MANITOBA
KING'S BENCH ACT

An Annotation
of the King's Bench Act, and the Rules made thereunder

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with
an Index and Table of Cases

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TO
THE HONORABLE
SIR HUGH JOHN MACDONALD, KT., K.C.,
AS
A SLIGHT TOKEN OF REGARD
THIS WORK
IS
WITH HIS PERMISSION
RESPECTFULLY DEDICATED.

ESTEN K. WILLIAMS.

WINNIPEG, 14TH MAY, 1914.

PREFACE

The frequent use made of Holmested & Langton's edition of the Ontario Judicature Act and also of the English Annual Practice by the Practitioners and the Courts of the Province and the growing numbers of Manitoba and Western decisions of importance, induced the writer to believe that an annotation of the King's Bench Act and Rules carried out in a somewhat similar manner might prove of value to the Profession.

This annotation is possibly rendered more apropos at the present time by the fact that the recent Revision of Statutes (1913) has resulted in the re-arrangement of the Rules, and also by the fact that the new Ontario Rules as framed by the Honourable Mr. Justice Middleton and which came into force on September 1st, 1913, have made many changes in both the form and the meaning of the Ontario Rules. The new edition of the Ontario Rules will require a key to make it valuable for speedy reference in this Province and this annotation will, it is hoped, furnish that key, as in it the corresponding new Ontario Rule, if any, is given with each of the Manitoba Rules, and there is also a double reference table of Rules. The writer has also endeavored to point out briefly the principal difference between the two practices.

As most of the profession have in their libraries the 1905 edition of Holmested & Langton, and as the majority of the Manitoba Rules are identical with the Ontario Rules in that edition, and as the cases there collected are of course still applicable, the number of each former Ontario Rule is given and each is called, for convenience of reference, the 1905 Ontario Rule, as, although the date is not correct, the former rules are available to most Manitoba Practitioners in the 1905 edition of Holmested & Langton. All references to that work are to the 1905 edition.

The writer believes that every important Manitoba practice decision has been given, in most cases the proposition

which each lays down summarized—together with a number of recent Ontario cases, British Columbia and Alberta decisions and a few from Saskatchewan.

It was the writer's desire to make an annotation that would be of use to the Law Student as well as to the Practitioner, and for that reason some of the notes deal with elemental points, the inclusion of which, however, will be justified if they prove of assistance to the Student.

A morning spent in Chambers will show that many of the Law Students depend upon, and in many cases impose upon, the courtesy of the officials of the Court to obtain any practical knowledge about work they are given by their principals to do.

Thanks are due, and the writer renders the same, to the Law Society of Manitoba for permission accorded to copy certain of the Head Notes of the Manitoba Reports, and to Mr. W. A. Taylor, Secretary of the Law Society, for valuable and helpful suggestions.

The Index and Table of Cases were prepared by A. Murray S. Ross, Esquire, of the Manitoba Bar, a member of the Manitoba Statute Revision Committee, who assisted in many other ways in the annotation. Many helpful suggestions were made by Messrs. C. H. Locke, F. M. Burbidge and P. J. Montague, all of the Manitoba Bar.

In conclusion, for the many oversights and errors which undoubtedly will occur, the writer craves the consideration of the Profession, in the hope that the annotation will prove sufficiently useful to condone its short comings.

ESTEN K. WILLIAMS.

Winnipeg, Manitoba, 14th May, 1914.

REFERENCE TABLE NO. I

N.B.—C signifies Compare.

1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.	1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.
1	1	4	..	45	45	None	None
2	2	6 (a) 3 (b)	.. 3 (d)	46 47	46 47	664 None	408 None
3	3	None	..	48	48	665	409
4	4	3	2	49	49	665	409
5	5	5	..	50	50	666	None
6	6	7	4	51	51	667	410
7	7	8	..	52	52	668	None
8	8	9, 10	..	53	53	669	411
9	9	9	..	54	54	670	412
10	10	11	758	55	55	671	413
11	11	12	759	56	56	672	416
12	12	..	..	57	57	673	417
13	13	18	..	58	58	674	418
14	14	22, 26	..	59	59	675	None
15	15	35	752 (2)	60	60	676	"
16	16	35	752 (2) (762	61 62	61 62	677 678	421 419
17	17	28	..	63	63	679	None
18	18	none	..	64	64	680	420
19	19	26 (1)	..	65	65	681	421
20	20	None	..	66	66	682	None
21	21	37	..	67	67	683	422
22	22	38 (1)	..	68	68	684	423
23	23	39 (1)	..	69	69	685	None
24	24	38	..	70	70	686	"
25	25	None	..	71	71	687	424
26	26	13, 41	760, 761	72	72	688	None
27	27	42	208	73	73	689 Pt.	425
28	28	None		74	74	690	426
29	29	"	..	75	75	691	427
30	30	"	..	76	76	692	None
31	31	"	..	77	77	694 (1)	429
32	32	44	223	78	78	693	428 Pt.
33	33	634 (3)	531 (4)	79	683	769	502
34	34	45 (1)	209	80	79	695 (1)	430 (1)
35	35	45 (2) 49 (2)	209 223	81 82	80 81	695 (2) 697	430 (2) 432
36	36	49	..	83	82	698	433 (1)
37	37	46 (1)	211	83 (a)	82 (a)	698 (2)	433 (2)
38	38	656	..	84	83	716	438
39	39	657	402	85	84	717	None
40	40	659	..	86	86	719	"
41	41	660	404	87	87	720	439 Pt.
42	42	661	405	88	88	721	439 Pt.
43	43	662	406	89	89	722	440
44	44	663	407	90	90	723	441

1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.	1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.
91	91	724	None	148	148	6	None
92	92	725	442	149	149	None	None
93	93	726	None	150	150	None	None
94	94	727	443	151	151	71	724
95	95	728	444	152	152	72	725
96	96	729	445	153	153	73	None
97	97	730	446	154	154	74	None
98	98	731	None	155	155	75	None
99	99	732	447	156	156	82 (2)	726
100	100	733	448	157	157	82 (1)	726
101	101	734	None	158	158	83	Jud. Act 76
102	102	735	449				
103	103	736	450	159	159	84	755
104	104	737	451	160	160	85	756
105	105	738	None	161	161	86	757
106	106	739	452	162	162	91	196
107	107	740	453	163	None	None	None
108	108	741	454	164	163	Jud, Act	Jud. Act 69 (b)
109	109	742	455				
110	110	759	458	165	164	94	268
111	111	760	458	166	165	98, 99	234
112	112	761	458	167	166	100	234 Pt.
113	113	762	458	168	167	113	Jud. Act 44
114	114	763	458				
115	115	764	458	169	168	114	180
116	116	765	458	170	169	None	None
117	117	766	459	171 (a)	170 (b)	None	None
118	118	744	468	171 (b)	(f)	None	None
119	119	745	469	172	172	120	5
120	120	746	470	173	9 Ed. 7	None	None
121	121	747	471	174	9 Ed. 7	None	None
122	122	748	472 Pt.	175	175	127	7
123	123	749	473			128	
124	124	750 (1)	474	176	176	123	6
125	125	752	476			125	
126	126	753	477	177	177	126	25
127	127	754	478	178	206	15	762
128	128	755	479	179	207	377	125
129	129	756	480	180	178	143	13
130	130	757	481	181	179	144	14
131	131	758	482	182	204	168	45
132	132	50	Jud. Act	183	205	164	27
133	133	405	727	184	7-8 Ed. 7	None	None
134	134	406 407 (1)	728	185 186	208 209	175 174	49 None
135	135	410	730	187	210	180	53
136	136	412	731	188	211	181	None
137	137	None	None	189	212	182	None
138	138	"	"	190	213	183	54
139	139	"	"	191	214	None	None
140	140	416	731 (2)	192	215	None	None
141	141	None	None	193	216	184	55
142	142	None	None	194	217	176	50
143	143	51	None	195	218	185	66
144	144	52	None	196	219	186	67 Pt.
145	145	53	None	197	220	187	68
146	146	54	None	198	221	188	None
147	147	55, 56	732 (3)	199	222	189	None

1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.	1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.
200	223	None	None	250	268	383	464 (1)
201	224	190 (1)	490	251	269	384	464
202	225	191	None	252	270	385	486
203	226	192	67 Pt.	253	271	None	None
204	227	193	74	254	272	386	483
205	228	194	90	255	273	387 (1)	484 (1)
206	229	195	None	256	274	387 (3)	484 (3)
207	230	196	None	257	275	387 (1)	484 (1)
208	251	204	88	258	276	387 (3)	484 (3)
209	231	197	91	259	277	388	485 (1)
210	232	199	None	260	278	389	485 (1)
211	233	200	75	261	279	390	485 (2)
212	234	201	76	262	280	391	487
213	235	222	100	263	281	392	488
214	236	231 Pt	108 Pt.	264	282	238	5 (2)
215	237	202	None	265	283	239	None
216	238	203	..	266	284	240	None
216 (a)	238 (a)	203 (1)	79	267	180	145	15
216 (b)	238 (b)	203 (2)	80	268	181	146 Pt.	16 Pt.
216 (c)	238 (c)	203 (3)	81	269	182	146 Pt.	16 Pt.
216 (d)	238 (d)	203 (d)	82	270	184	150	17
216 (e)	238 (e)	203 (e)	83	271	185	135 Pt.	{12 Pt. {200
216 (f)	238 (f)	203 (f)	84				
216 (g)	238 (g)	203(g)	85	272	359	327	None
217	239	203 (2)	86	273	367	333	203
218	240	203 (3)	87	274	183	None	None
219	241	205	89	275	3 Geo. V	None	None
220	242	206	134 Pt.	276	368	334	16 Pt.
221	243	206 (5)	134 Pt.	277	188	151	None
222	244	207, 208	135	278	189	152	18
223	245	{209 {215	{165 {170	279 (1)	190	153	19
				279 (2)	191	154	20
224	246	209	165	280	192	155	None
225	248	210	166	281	193	156	None
226	248 A	211	167	282 (1)	194	157	21
227	248 B	212	168	282 (2)	195	158	22
228	247	209	165	283	196	223 Pt.	101 Pt.
229	247 A	None	None	284	197	231 (3)	108 Pt.
230	247 B	None	None	295	198	159	23 Pt.
231	247 C	None	None	286	199	160	23 (3)
232	249	213	169	287	186	147	24
233	250	216	171	288	187	c/159	c/23
234	252	217	94	289	200	161	None
235	253	218	95	290	201	162	25
236	254	219	96	(a)	(a)	(a)	(a)
237	255	220	None	(b)	(b)	(b)	(b)
238	256	221	93	(c)	(c)	(c)	(c)
239	257	232	69	(d)	(d)	(d)	(d)
240	258	None	None	(e)	(e)	(e)	(e)
241	259	233	None	(f)	(f)	(f)	(f)
242	260	234	70	(g)	(g)	(g)	(g)
243	261	235	71	291	202	162 (h)	25 (h)
244	262	236	72	292	203	167	16 Pt.
245	263	237	73, 77	293	360	328	198
246	264	378	460	294	361	329	199
247	265	379	465	295	362	None	None
248	266	380	461 Pt.	296	363	335	389
249	267	382	462	297	364	336	390 Pt.

1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.	1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.
298	365	332	202 Pt.	348	327	1247	
299	366	None	None			300	127
		120		349	328	None	None
300	285	124	5	350	329	302	128
		242	109	351	330	304	130
301 (a)	285 (a)	134	11	352	331	None	None
(b)	(b)	120	5	353	332	305	131
(c)	(c)	Practice	Practice	354	333	306	132
302	287	None	None	355	334	307	133
303	288	169	46	356	335	308	None
304	289	None	None	357	336	289	159
305	290	269	142	358	337	290	160
306	291	251	115	359	338	291	161
		252	116	360	339	293	163
307	292	254	None	361	340	294	None
308	293	253	None	362	341	309	183 Pt.
309	294	248	113	363	342	310	184
310	295	249	113	364	343	311	185
311	296	250	114	365	344	312	183 Pt.
312	297	250	114	366	345	313	134 Pt.
313	297 A	256	118	367	346	314	186 Pt.
314	297 B	257	119	368	347	None	None
315	298	250	114	369	348	316	189
316	298 A	252	116	370	349	317	188 (2)
317	298 B	263	121	371	350	318	None
		593		372	351	319	188
318	299	264	None	373	352	320	190 Pt.
319	300	264	None	374	353	321	None
320	301	None	None	375	354	322	191
321	302	265	139	376	355	324	193 Pt.
322	303	262 (2)	None	377	356	325	193 Pt.
323	304	266	140	378	357	326	194
		267		379	358	1224	772 (1)
324	305	None	None	380	369	337	396 (1)
325	306	268	141	381	370	338	396 (2)
326	306 (a)	None	None	382	371	339	None
327	307	270	142	383	372	340	None
328	308	273	145	384	373	342	None
329	309	274	None	385	374	343	172
330	310	275	147	386	375	341 (1)	173 (1)
331	311	276	148	387	376	341 (2)	173 (2)
332	312	277	149	388	377	345	174
333	313	278	150	389	378	346	378
334	314	279	151	390	379	347	175
335	315	280	152	391	380	348	215 Pt.
336	315 (a)	1304	146	392	381	349	204
337	316	281	153	393	382	350	225
338	317	282	154	394	383	None	None
339	318	283	None	395	384	352	179
340	319	284	None	396	385	353	176
341	320	285	155	397	386	354	177
342	321	286	156			439	327 (1)
343	322	287	156	398	387	439 (a)	327 (2)
344	323	376	233			442	336
		377	125	399	388	440	334
345	324	296	136	400	389	443	345 (1)
346	325	297	137	401	390	446	346
347	326	298	137	402	391	444 Pt.	347 Pt.

1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.	1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.
403	391 A	447	337	451	438	358	217
404	392	448	341	452	439	364 Pt.	234 (6) Pt.
405	393	449	333 Pt.				
406	394	450 Pt.	333 Pt.	453	440	365	234 (6) Pt.
407	395	451	339			364 Pt.	
408	396	452	342				
409	397	453	344	454	441	None	None
410	398	454	331	455	442	366	207
411	399	455	343	456	443	633 Pt.	None
412	400	456 (1)	None	457	444	634 (2)	531 (3)
413	401	456 (2) (3)	None	458	445	c/636	c/516
				459	446	None	None
414	402	456 (3)	None	460	447	None	None
415	402 A (B)	457	340 Pt.	461	448	367	223 (1)
				462	449	368	c/205
416	402 (1) (B)	458 (1)	340 Pt.	463	452 Pt.	372 (1)	126 Pt.
				464	452 (a)	372 (2)	126 Pt.
416 (2)	402 (2)	458 (2)	340 (2)	465	452 (b)	372 (3)	126 (2)
417	403	459	340 (3)	466	453	373	None
418	404	460	None	467	454	365	None
419	405	461	330			374	
420	406	None	None	468	455	375	None
421	407	None	None	469	456	c/372 (1)	c/126 Pt.
422	407 A	462	Jud. Act. 70	470	457	478	c/273
				471	458	479	274
423	407 B	None	None	472	459	480	273 Pt.
424	408	463	349	473	460	481	275
425	409	464	348	474	460 A	None	None
426	410	465	349 c/350	475	461	482	276
				476	462	483	269
427	411	466	c/350	477	463	484	270
428	412	468	None	478	464	485 (1)	271
429	413	None	None	479	465	None	None
430 (1)	414	467	None	480	466	None	None
430 (2)	9 Ed. c 14	None	None	481	467	None	None
				482	468	None	None
431	415	469	351 (1) Pt.	483	469	None	None
				484	470	None	None
432	416	469 Pt.	None	485	471	488	158
433	417	470	351 (2) 352	486	472	487	272
				487	473	489	226
434	418	471	c/353	488	474	490	227
435	419	None	None			492	
436	420	472	352	489	475	491	228
437	421	473 Pt.	353 Pt.			492	
438	422	474	353 Pt.	490	476	493	229
439	423	475	None	491	477	c/493	c/229
440	424	476	None	492	478	None	None
441	425	477	328	493	479	495	230
442	428	355	213 Pt.	494	480	496	None
443	429	356	213 Pt.	495	481	497	231
444	430	357	216	496	426	c/309	c/183
445	431	359	224 Pt.	497	427	c/312	c/183
446	432	360	214	498	483	499 (1)	277
447	434	None	None	499	484	500	278
448	435	None	None	500	485	None	None
449	436	361	None	500 A	..	..	..
450	437	362	219	501	486	c/504	c/280

1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.	1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.
502	487	499 (2)	c/277	555	533	424	313
503	488	501 Pt.	279 Pt.	556	534	425	314
504	489	501 Pt.	None	557	535	426	..
505	490	501 Pt.	280 Pt.	558	536	427	317
		502 Pt.		559	537	428	309
506	491	506	280 Pt.	560	538	430	321
		502 Pt.		561	539	431	322
507	492	503	281	562	540	433	325 (1)
508	493	502	281 (2)	563	542	435	320
		504		564	543	529 Pt.	245 Pt.
509	494	504	280 Pt.	565	544	529 (d)	245 (d)
510	495	507	284	566	545	530	246
511	496	505	282	567	547	531	None
512	497	507	283	568	548	532	J. A.
513	498	511 (1)	286 (1)	569	549	533	None
514	499	512	287	570	550	534	None
515	500	513	288 Pt.	571	551	535	None
516	501	514	290	572	552	538 (1)	248 Pt.
517	502	None	None	573	553	538 (b)	248 Pt.
518	503	None	None	574	554	536	None
519	503 A	None	None	575	555	538 (d)	248 (b)
520	503 B	None	None	576	556	539	249
521	503 C	None	None	577	559	543	251
522	503 D	None	None	578	560	544	252
523	503 E	None	None	579	561	545	..
524	503 F	None	None	580	562	546	253
525	503 G	None	None	581	663	778	499
526	504	516	291	582	665	779	..
527	505	517 (1)	292	583	667	780	c/500
528	506	517 (2)	None	584	563	547	254
529	507	518	293	585	564	549	257
530	508	519	294	586	7-8 Ed. 7	..	..
531	509	520	295	587	565	..	..
532	510	521	296	588	566	552	260
533	511	522	297	589	567	553	..
534	512	523	298 Pt.	590	568	554	c/J.A. 45
		524		591	569	555	263 Pt.
535	513	525	234	592	570	..	..
536	514	524	298	593	571	557 Pt.	263 (2)
537	515	527	None	594	572	..	..
538	516	527	None	595	573	558	264
539	517	528	None	596	574	559	..
540	518	394	304	597	575	c/560	..
541	519	395	300	598	576	567	..
542	520	396	301	599	577	568	..
543	521	397	302 Pt.	600	578	569	..
544	522	398	303	601	579	..	..
545	523	399	302 Pt.	602	580	..	..
546	524	400	c/303	603	580 A	..	..
547	525	401	None	604	581	570	265 Pt.
548	526	402	None	605	582	571	266
549	527	403	305				267
550	528	404	c/305	606	583	572	..
551	529	None	None	607	584	574	36
552	530	419	307	608	585	..	..
		420	308	609	586	575	37
553	531	421	310			587	355
554	532	423 (1)	312	610	587	..	..

1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.	1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.
611	588	..	..	658	634	619	519
612	589	580	..	659	635	620	510
613	590	582 590	14 (1) 355	660	636	621	
				661	637	623 Pt.	512
614	591	583	42 355	662	638	640	521
				663	639	641	522
615	592	585 591	43 355	664	640	642 (1)	523
				665	641	642 (2)	..
616 (1)	593	595	466	666	642	..	..
616 (2)	593 (a)	596 (1)	467	667	643	642 (3)	..
616 (3)	593 (b)	596 (2)	..	668	644	642 (4)	..
616 (4)	593 (c)	596 (6)	468 (3)	669	645	643	532
617	594	597 (1)	c/397	670	646	644	532 (3)
618	595	c/597 (1)	c/397	671	Act Sec.	O.J.A. 98	O.J.A. 37
619	596	c/597 (1)	c/397		41 A		
620	597	..	..	672	647	777 (1)	507
621	598	..	..	673	648	783	c/501
622	599	..	..	674	649	783	c/491
623	600	..	..	675	650	..	..
624	601	370 Pt. 371	386 Pt.	676	651	c/782 783 785	..
625	602	603	57				
626	603	..	56	677	658	c 767(5)	505 (3)
627	604	604	58			777 (2)	507 (6)
628	605	605 606 Pt.	59 60 Pt.	678	664	639	520
				679	682	767	505
629	606	606 Pt.	60 Pt.	680	482	498	232
630	606 A	607	61	681	684	774	509 Pt.
631	607	609	c 356	682	685	775	509 Pt. 505
632	608	610	261				
633	609	611	262	683	686	776	..
634	610	..	..	684	687	..	..
635	611	612	357	685	688	836	3 (k)
636	612	613	..	686	689	..	..
637	613	614	..	687	690	845	539 Pt.
638	614	615	..	688	691	848	..
639	615	616	222	689	692	843	538
640	616	617	220	690	693	835 (a)	3 (g)
641	617	618	..	691	694	839	534 Pt.
642 (1)	618	624	526	692	695	846	540
642 (2)	618 (a)	625	527 (1)	693	696	847	541
642 (3)	618 (b)	..	..	694	697	849	542
642 (4)	618 (c)	625 (c)	527 (2)	695	698	852	544
643	619	626	528	696	699	853	545
644	620	627	..	697	700	841	537
645	621	628	531 (1)	698	701	228 (4)	105
646	622	629 (1)	512 Pt.	699	702	228 (2)	105 (2)
647	623	629 (2)	..	700	703	840	535 536
648	624	c/1224	c/772				
649	625	630	..	701	704	854	..
650	626	631	529	702	705	853	c/545
651	627	632	..	703	706	855	546
652	628	638	530	704	707	856	545
653	629	622	511	705	708	857	547
654	630	635 (1)	515 (1)	706	709	858	548
655	631	c/636	c/516	707	710	859	549
656	632	636	516	708	711	860	550
657	633	637	517	709	712	863	565

1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.	1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.
710	713	864	566	768	768	..	..
711	714	865	555 Pt.	769	769	..	..
712	715	866	..	770	770	921	599
713	716	868	567	771	771	..	..
714	717	871	570	772	772	937	None
715	718	869	568	773	776	944	608
716	719	870	569	774	777	945	..
717	720	867	..	775	778	946	..
718	721	872	571	776	779	949	..
719	722	873	..	777	780	950	610
720	722 A	..	..	778	781	953 (2)	611 (2)
721	723	885 Pt.	574 Pt.	779	782	953 (3)	611 (3)
722	724	885	574 Pt.	780	783	703	435
723	725	886	579	781	784	701	c/412
724	726	..	..	782	785	704	..
725	727	887	..	783	786	705	..
726	728	888	573 Pt.	784	787	706	..
727	729	889	573	785	788	707	414
728	730	890	576	786	789	708	415
729	731	891	575	787	790	709	..
730	732	892	3 (h)	788	791	710	..
731	733	893	577	789	792	711	..
732	734	894	578	790	793	712	..
733	735	895	..	791	794	713	..
734	736	896	..	792	795	714	436
735	737	897	..	793	796	715	437
736	738	898	..	794	797	956	615
737	739	..	..	795	798	957	..
738	740	..	..	796	799	960	618 Pt.
739	741	..	..	797	800	961	618 Pt.
740	742	1015	..	798	801	962	..
741	743	1016	..	799	802	963	..
742	744 Pt.	..	..	800	803	964 (1)	619 (1)
743	745	1017	..			.. (2)	.. (2)
744	746	1019	..	801	804	964 (3)	619 (3)
745	747	1020	..	802	805	965	620 (1)
746	747 (a)	..	..	803	806	966 (1)	620 (1)
747	748	900	580			(3)	
748	749	902	581	804	807	967	620 (3)
749	750	903	582	805	808	968	621
750	751	910	584	806	809	969	621 Pt.
751	752	905	585	807	810	..	..
752	753	906 Pt.	586	808	811	970	457
753	754	906 Pt.	c/585	809	812	..	..
754	755	907	587	810	813	..	..
755	755 A	..	..	811	814	1058 Pt.	..
756	756	c/835	c/3 (e)(f)	812	815	c/1059	..
757	757	838	534	813	816	1058 Pt.	..
758	758	..	..	814	817	c/1059	..
759	759	911	590	815	818	..	..
760	760	..	..	816	819	..	..
761	761	..	..	817	820	..	..
762	762	913	592	818	821	..	..
763	763	914	594 (1)	819	822	..	..
764	764	915	594 (2)	820	823	..	..
765	765	916	595	821	824	..	..
766	766	920 (1)	596 (1)	822	825	..	..
767	767	920 (2)	596 (2)	823	826	..	..

1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.	1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.
824	827	..	..	881	884	1090 Pt.	..
825	828	..	..	882	885	1091	..
826	829	..	..	883	886	..	..
827	830	..	..	884	887	..	..
828	831	..	..	885	888	862	552
829	832	..	..	886	889	42 (12)	208 (9)
830	833	..	..			47	210
831	834	..	..	887	890	1094	..
832	835	1059	..	888	891	1095	369
833	836	1060	..	889	892	1097	371
834	837	1061	..	890	893	c/361	..
835	838	..	..	891	894	1096	370
836	839	1062	..	892	895	1099	372
837	840	1063	..	893	896	1100 Pt.	622
838	841	1064	..	894	897	None	None
839	842	1065	..	895	898	1100 Pt.	623 Pt.
840	843	1066	..	896	899	1103	625
841	844			897	900	1104	626
842	845			898	901	1105	627
843	846			899	902	1106	628 Pt.
844	847			900	903	1107	629
845	848			901	904	1106 Pt.	628 Pt.
846	849			902	905	1109	631
847	850			903	906	1110	632
848	851			904	907	1111	633
849	852			905	908	..	..
850	853			906	909	..	..
851	854			907	910	..	..
852	855			908	911	1108	630
853	856			909	912	1112	634
854	857			910	913	1113	635
855	858			911	914	1114	636
856	859	..	..	912	915	1117	..
857	860	..	..	913	916	1118	639
858	861	1067		914	917	1119	640
859	862	1068	359	915	918	..	..
860	863	1069	360	916	919	1120	641
861	864	1070	361	917	920	1120 (4)	641 (4)
862	865	1071 Pt.	..	918	921	1121	642
863	866	1072	362 Pt.	919	922	..	..
		1073		920	923	..	..
864	867	1074	363	921	924	c/1125	c/646
865	868	1075	364	922	925	c/1124	c/645
866	869	1076	365	923	926	..	..
867	870	..	..	924	927	..	..
868	871	..	..	925	928	..	..
869	872	1077	366	926	929	..	..
870	873	1078 (1)	367 (1)	927	930	..	..
871	874	1079	368	928	994		
872	875	1081	..		3 Geo.V	938	600
873	876	1086	..	929	994	939	601
874	877	1080	622 Pt.	930	994	940	601 (2)
875	878	..	..	931	994	941	606 (1)
876	879	1084	..	932	994	942	606 (2)
877	880	..	..	933	3 Geo. V.	943	607
878	881	c/1085	..	934	931	1130	J.A. 74
879	882	..	..	935	932	1131	..
880	883	..	..	936	933	1132	649

See Table No. II. in Holmested, 1905 Edition

1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.	1913 M.R.	1902 M.R.	1905 O.R.	1913 O.R.
937	934	1135	656	968	964 A	1184	..
938	935	1138	655	969	965	1185	None
939	936	1139	..	970	966	1186	..
940	937	1136 c/1154	654 c/670	971	967	c/1184	..
941	938	None	None	972	968	1182	681
942	939	1140	..	973	969	1183	682
943	940	1143	673	974	969 A	1154	670
944	942	1144	387	975	969 B	1176	667 Pt.
945	943	1145	388	976	970	1190 (1)	686 (1)
946	944	1146	653	977	971	1192	688
947	945	1147 1148	657	978	972	1193	683 (1)
948	946	1149	671	979	973	1195	683 (2)
949	947	1153	..	980	974	1194	684 Pt.
950	948	..	..	981	975	1196	684 Pt.
951	7-8 Ed. 7	None	None	982	976	1197	685
952	..	..	..	983	977	..	..
953	950	1157	661	984	978	1199	375 Pt.
954	951	1159	662	985	3 Geo. V.	1198	373
955	952	1160	..	986	979	1198 (c) (d)	373 (c) (d)
956	953	1161	663	987	980	1200	373 (e)
957	954	1163	664	988	981	..	373 (f)
958	955	1164	665	989	982	1201	c/374
959	956	1165	666	990	983	1202 1203	374 376
960	957	1167	678 Pt.	991	984	1205	379
961	958	1170	679	992	985	1207 (1)	381 (1)
962	959	1171	680	993	986	1207 (2)	381 (2)
963	960	1168	678 Pt.	994	987	1208	382
964	961	1169	678 Pt.	995	988	1209	383 (2)
965	962	1172	..	996	989	1209 (4)	383 (5)
966	963	1173 1174	672	997	990	c/1178	c/676 Pt.
967	964	1177	..	998	992	..	..
				999	993	..	..

REFERENCE TABLE NO. II

N.B.—"C" signifies Compare.

1913 O.R.	1913 M.R.	1913 O.R.	1913 M.R.	1913 O.R.	1913 M.R.	1913 O.R.	1913 M.R.
1	..	35	..	79	216 (a)	121	317
2	4	36	607	80	216 (b)	122	..
3 (d)	2	37	609	81	216 (c)	123	..
3 (e) (f)	756	38	..	82	216 (d)	124	..
3 (h)	730	39	..	83	216 (e)	125	344
4	6	40	..	84	216 (f)		179
5	172	41	613	85	216 (g)	126	463
	300	42	614	86	217		464
	301 (b)	43	615	87	218		c 465
	264	44	..	88	208		469
6	176	45	182	89	219	127	348
7	175	46	303	90	205	128	350
8	..	47	..	91	209	129	..
9	..	48	..	92	280	130	351
10	c 928	49	185	93	238	131	353
11	301 (a)	50	194	94	234	132	354
12	271 Pt.	51	..	95	235	133	355
13	180	52	..	96	236		220
14	181	53	187	97	234	134	221 Pt.
15	267	54	190	98	..		366 Pt.
	268	55	193	99	..	135	222
	269	56	626	100	213	136	345
16	292 Pt.	57	625	101	283		346
	276	58	627	102	..	137	347
17	270	59	628 Pt.	103	..	138	..
18	278	60	628 Pt.	104	..	139	321
19	279 (1)		629 Pt.	105	698	140	323
20	279 (2)	61	630	106	c 698	141	325
21	282 (1)	62	..	107	..	142	305
22	282 (2)	63	..	108	214		327
	285	64	..		284	143	..
23	c 286	65	..	109	300	144	..
	288	66	195	110	..	145	328
24	287	67	203	111	..	146	336
	177		196	112	..	147	330
25	290	68	197	113	309	148	331
	291	69	239		310	149	332
26	..	70	242	114	311, 312	150	333
27	183	71	243		315	151	334
28	..	72	244	115	306	152	335
29	..	73	245	116	306	153	337
30	..	74	204		316	154	338
31	c 519	75	211	117	..	155	341
32	..	76	212	118	313	156	342
33	..	77	237	119	314		343
34	..	78	..	120	..	157	..

1913 O.R.	1913 M.R.	1913 O.R.	1913 M.R.	1913 O.R.	1913 M.R.	1913 O.R.	1913 M.R.
158	485	208	27	257	585	305	549
159	357		886 Pt.	258	..	306	c 550
160	358	209	34	259	..	307	552
161	359		35	260	588	308	552
162	..	210	886 Pt.	261	632	309	559
163	360	211	37	262	633	310	553
164	..	212	..	263	591	311	..
165	223	213	442		593	312	554
	224		443	264	595	313	555
	228	214	446	265	604	314	556
166	225	215	391 Pt.	266	605	315	..
167	226	216	444	267	605	316	..
168	227	217	451	268	165	317	558
169	232	218	..	269	476	318	..
170	223	219	450	270	477	319	..
171	233	220	640	271	478	320	563
172	385	221	..	272	486	321	560
173	387, 386	222	639	273	c 470	322	561
174	388	223	32, 35		472 Pt.	323	..
175	390	224	461	274	471	324	..
176	396	225	445	275	473	325	562
177	397	226	393	276	475	326	..
178	..	227	487	277	c 502	327	398
179	395	228	488		498	328	441
180	169	229	489	278	499	329	..
181	..		490	279	503 Pt.	330	419
182	..	230	c 491	280	505	331	410
183	365	231	493		506	332	..
	362	232	495		c 501	333	405, 406
	c 496	233	680	281	509	334	399
	497		344		507	335	..
184	363	234	166, 167		508	336	398
185	364		452	282	511	337	403
186	367		453	283	512	338	..
187	..	*235	535	284	510	339	407
188	370	236	..	285	..	340	414, 415
	372	237	..	286	513		416, 417
189	369	238	..	287	514	341	404
190	373	239	..	288	515	342	408
191	375	240	..	289	..	343	411
192	..	241	..	290	516	344	409
193	376	242	..	291	526	345	400
	377	243	..	292	527	346	401
194	378	244	..	293	529	347	402
195	..	245	564, 565	294	530	348	425
196	162	246	566	295	531	349	424
197	..	247	..	296	532		c 426
198	293	248	572, 575	297	533	350	c 427
199	294		573	298	534	351	431
200	271	249	576		536		433
201	..	250	..	299	..	352	c 434
202	298	251	577	300	541		436
203	273	252	578	301	542	353	c 437
204	392	253	580	302	543		438
205	c 462	254	584		545	354	
206	..	255	..	303	544	355	609, 613
207	455	256	..		546		615, 614
				304	540	356	c631

*These four Rules are not printed in the official edition of the Ontario Rule

1913 O.R.	1913 M.R.	1913 O.R.	1913 M.R.	1913 O.R.	1913 M.R.	1913 O.R.	1913 M.R.
357	635	409	48, 49	464	250	512	646
358	..	410	51		251		661
359	859	411	53	465	247	513	..
360	860	412	54	466	616 (1)	514	..
361	861		c 781	467	616 (2)	515	653
362	863 Pt.	413	55	468	118		654
363	864	414	785		616 (4)		c 655
364	865	415	786	469	119	516	656
365	866	416	56	470	120		c 458
366	869	417	57	471	121	517	657
367	870 Pt.	418	58	472	122	518	..
368	871	419	62	473	123	519	658
369	888	420	64	474	124	520	678
370	891	421	65	475	..	521	662
371	889	422	67	476	125	522	663
372	892	423	68	477	126	523	664
373	985 to 988	424	71	478	127	524	..
		425	73	479	128	525	..
374	990	426	74	480	129	526	642
	c 989	427	75	481	130	527	642 (2)
375	984 Pt.	428	78	482	131		642 (4)
376	990	429	77	483	254	528	643
377	c 984	430	80, 81	484	255 to 258	529	650
378	389	431	..			530	652
379	991	432	82				457
380	..	433	83	485	259	531	645
381	992	434	..		260		33
	993	435	780	486	261	532	645
382	994	436	792	487	252		646
383	995, 996	437	793	488	262	533	..
384	..	438	84	489	263	534	757
385	..	439	87, 88	490	..		691
386	624 Pt.	440	89	491	201	535	700
387	944	441	90	492	c 674	536	700
388	945	442	92	493	..	537	697
389	296	443	94	494	..	538	689
390	297	444	95	495	..	539	687
391	..	445	96	496	..	540	692
392	..	446	97	497	..	541	693
393	..	447	99	498	..	542	694
394	..	448	100	499	581	543	..
395	..	449	102	500	c 583	544	695
396	380	450	103	501	c 673	545	c 702
	381	451	104	502	79		696
397	617	452	106	503	..	546	703
	c 618	453	107	504	..	547	705
398	619	454	108		677	548	706
399	..	455	109	505	679	549	707
400	..	456	..		682	550	708
401	..	457	808	506	..	551	..
402	39	458	110 to 116	507	672	552	885
403	..				677	553	..
404	41	459	117	508	..	554	..
405	42	460	246	509	681	555	711
406	43	461	248		682	556	..
407	44	462	249	510	659	557	Exec. Act
408	46	463	..	511	653	558	"
						559	"

1913 O.R.	1913 M.R.	1913 O.R.	1913 M.R.	1913 O.R.	1913 M.R.	1913 O.R.	1913 M.R.
560	Exec. Act	611 (3)	779	662	954	716	..
561	..	612	..	663	956	717	..
562	..	613	..	664	957	718	..
563	..	614	..	665	958	719	..
564	..	615	794	666	959	720	..
565	709	616	..	667	975 Pt.	721	..
566	710	617	..	668	c 975	722	147
567	713	618	796	669	..	723	..
568	715		797	670	940	724	151
569	716	619	800		974	725	152
570	714		801	671	948	726	157
571	718		802	672	966		156
572	..	620	803	673	943	727	133
573	726		804	674	..	728	134
	727	621	805	675	..	729	..
574	721		806	676	c 997	730	135
	722	622	893	677	..	731	140
575	729		874 Pt.	678	960 Pt.		136
576	728	623	895 Pt.		963 Pt.	732	..
577	731	624	..	679	964	733	..
578	732	625	896	680	961	734	..
579	723	626	897	681	962	735	..
580	747	627	898	682	972	736	..
581	748	628	899	683	973	737	..
582	749		901		978	738	..
583	..	629	900		979	739	..
584	750	630	908	684	980	740	..
585	751	631	902		981	741	..
	c 753	632	903	685	982	742	..
586	752	633	904	686	976	743	..
587	754	634	909	687	..	744	..
588	..	635	910	688	977	745	..
589	..	636	911	689	..	746	..
590	759	637	..	690	..	747	..
591	..	638	..	691	..	748	..
592	762	639	913	692	..	749	..
593	..	640	914	693	..	750	..
594	763	641	916	694	..	751	..
	764		917	695	..	752	15, 16
595	765	642	918	696	..	753	..
596	766	643	..	697	..	754	..
	767	644	..	698	..	755	159
597	..	645	c 921	699	..	756	160
598	..	646	c 922	700	..	757	161
599	770	647	..	701	..	758	10
600	928	648	..	702	..	759	11
601	929	649	936	703	..	760	26
	930	650	..	704	..	761	26
602	..	651	..	705	..	762	c16, 178
603	..	652	..	706	..	763	..
604	..	653	946	707	..	764	..
605	..	654	c 940	708	..	765	..
606	931	655	938	709	..	766	..
	932	656	937	710	..	767	..
607	933	657	947	711	..	768	..
608	773	658	..	712	..	769	..
609	..	659	..	713	..	770	..
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611 (2)	778	661	953	715	..	772	379

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TABLE OF CASES

N.B.—The references immediately following each case are to the section or rule referred to in it. The sections are marked "Sec"; merely the numbers of the rules are given.

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CORRIGENDA

Page 27, line 19, for "prefer" read "refer."
Page 54, line 8, for "9" read "6."
Page 78, line 16, for "the referee" read "a judge."
Page 91, line 14, for "guarding" read "guardian."
Page 171, line 11, after "20 M.R." insert "571."

Manitoba King's Bench Act Annotations

SECTION 2—INTERPRETATION.

These interpretation sections also apply to the Rules.

Rule 5. See section 86. As to clause (c) Les Soeurs de la Charite v. Forrest, 16 W. L. R. 395.

SECTION 17—ALIMONY.

R. S. O. 1897, C. 51, s. 34, was similar—it is dropped from the 1913 Act, but see s. 3 (3-4 Geo. V., c. 19, Ont.)

As to jurisdiction, see Wood v. Wood, 1 M. R. 317.

In an action for alimony the plaintiff must prove—

1. Marriage de facto, unless tacitly admitted by filing no defence.
2. Need of alimony and refusal of defendant to provide support.
3. Defendant's means.
4. Validity of the marriage.

Interim Alimony. See Rule 624.

The Statement of Claim should ask for alimony, interim alimony and costs.

In England a husband was allowed alimony, Swift v. Swift (1899), Pro. 159—this section only applies to "any wife."

The Order for interim alimony should contain the plaintiff's undertaking to go down to trial as speedily as possible. Bowslaugh v. Bowslaugh, 6 P.R. 200. As to Costs, Rules 944 and 945. Counsel fees ibid.

The defendant in an action for alimony offered "to receive the plaintiff as his wife at any time when she is prepared to come and reside with him and accept the home he is able to provide for her, and conduct herself as a wife reasonably should," but the trial Judge, being satisfied upon the evidence that desertion had been proved and that the defendant's offer was not honestly made, but only for the purpose of avoiding

a judgment for alimony, held, following Rae v. Rae, 31 O. R. 321, that such offer, under the circumstances, was not sufficient to defeat the Plaintiff's claim. E. v. E., 15 M.R. 352

"Decree for the Restitution of Conjugal Rights."

By the English Law as of the 15th day of July, 1870, nothing but cruelty or adultery on the part of a wife after marriage would be a bar to an order for such restitution, or entitle the husband to a judicial separation.

Scott v. Scott (1864), 4 S. & T. 113. Russell v. Russell (1897), A.C. 395, followed in A. v. A. 15 M.R. 483.

Adultery a bar to the action, Leib v. Leib, 7 W.L.R. 824 (Sask.).

Unchastity before marriage and concealment of it from the husband until the birth of a child is not sufficient to make the marriage null and void or to disentitle the wife to alimony. A. v. A., 15 M. R. 483, following Aldrich v. Aldrich (1892), 21 O. R. 447.

Resumption of co-habitation is a necessary ingredient of condonation by the husband of any matrimonial offence committed by the wife such as would prevent him from relying upon it as a defence to an alimony suit. A. v. A. supra, following Keats v. Keats (1859), 1 S. & T. 334. See the case of A. v. A. for the history of this section and the English law and practice.

As to what the decided cases define as legal cruelty, see Russell v. Russell (1897), A.C. 395, followed, and Lovell v. Lovell, 13 O. L. R. 569, distinguished, in Willey v. Willey (1908), 18 M. R. 298, 9 W. L. R. 166.

A deed of separation unless void for fraud, duress, want of understanding on the part of the wife, lack of independent advice, misrepresentation or undue influence, if followed by an immediate separation, requires no other consideration to support it and is a complete defence to a subsequent action by the wife for alimony.

Ditch v. Ditch (1911), 21 M.R. 507, and cases there cited Pherill v. Pherill, 6 O. L. R. 642.

After a lapse of time the deed should not be impeached unless upon clear proof of one or other ground of avoidance if the deed has been acted upon by both parties, ibid, following Sibbering v. Balcarras (1850), 3 De.G. (and) Sm., 735, and Allcard v. Skinner (1887), 36 Ch. D. 145.

Pleading. As to relevancy of facts pleaded to show unfitness of husband to have custody of child. Pyne v. Pyne, 3 O. W. N. 162.

An application for interim alimony may be made as soon as the defence is filed or the time for filing one to the original statement of claim has elapsed. Rule 624.

On such an application the merits of the defence set up should not be looked into or considered. McArthur v. McArthur (1905), 15 M.R. 151, 1 W.L.R. 1, following Foden v. Foden (1894), P. 307. Campbell v. Campbell (1873), 6 P.R. 128. Keith v. Keith (1876), 7 P.R. 41. See also Thrower v. Thrower, 3 O.W.R. 541.

Unless the statement of claim makes a demand for a specific sum by way of interim alimony as contemplated by rule 624, it should only be allowed from the date of the Order, not from the commencement of the action, Peterson v. Peterson (1873, 6 P.R. 150, McArthur v. McArthur (1905), 15 M.R. 151, 1 W.L.R. 1.

As to registration of Judgment see section 19.

SECTION 18.—Criminal Conversation.

To be tried by Jury unless waived, section 49.

Semble, there is no such action in Saskatchewan, Marson v. Coulter, 16 W.L.R. 157, but one for enticing and harbouring, ibid.

Measure of Damages, Herve v. Dominique, 2 W.W.R. 235.

Proof of marriage must be as strict as in a Bigamy action, per Richards and Perdue, J.J.A., Zdrahal v. Shatney, 22 M.R. 521; Aliter per Cameron & Haggart, J.J.A., ibid.

SECTION 19.—Registration of Judgment for Alimony.

Semble, an order for interim alimony is within this clause.

SECTION 25 (e).—Rules of Law—Declaratory Judgments and Orders.

In Saskatchewan it was held under a similar section that in an action where there is no claim for consequental relief the plaintiff was not entitled to a declaration, Viola School District Trustees v. Canada Saskatchewan Land Co., 16 W.L.R. 176.

SECTION 25 (h).—RULES OF LAW—RESTRAINING PROCEEDINGS.

See Ditch v. Ditch, per Perdue, J.A., 21 M.R. 507, at p. 521, 19 W.L.R. 504.

SECTION 25 (l).—RULES OF LAW—DEFENDANT IN AN ACTION ON FOREIGN JUDGMENT MAY PLEAD ON THE MERITS.

As to the Rule in Ontario as to Quebec Judgments see 3-4 Geo. V., Ont. c. 19, ss. 50 to 52.

Only defences that might be pleaded in an action in the original court may be pleaded, and not defences which, though good in Manitoba, would be no defence in the original Court. Hickey v. Legresley, 15 M.R. 304, 1 W.L.R. 546. British Linen Co. v. McEwan, 8 M.R. 99. Semble, the pleadings should contain an allegation that the alleged defences are good according to the law followed by the original Court, ibid.

For cases where pleas have been struck out as embarrassing as having been fought out in the original Court, Gault v. McNabb, 1 M.R. 35; Meyers v. Prittie, 1 M.R. 27. Refused. Hickey v. Legresley supra. International v. G.N.W.C. Ry. Co., 9 M.R. 147.

As to proof of foreign judgment, Stephens v. Olson, 1 W.L.R. 572, New Hamburg Mfg. Co. v. Shields, 4 W.L.R. 307. The foreign judgment must be final, Graham v. Harrison, 6 M.R. 210.

A default judgment, obtained in one province against a defendant who at the time of the institution of the action was domiciled in another province, is not enforceable in the province in which the defendant is domiciled — Dakota Lumber Co. v. Rinderknecht, 1 W.L.R. 481—2 W.L.R. 275. Deacon v. Chadwick, 1 O.L.R. 346, Belcourt v. Noel, 3 W.W.R. 926, 23 W.L.R. 368., British American Investment Co. v. Flawse, 19 W.L.R. 253, Fairchild v. McGillivray, 16 W.L.R. 562, McLorg v. Stanning, 7 W.L.R. 701 (C.C. appeal).

Attornment to Jurisdiction in written contract changes the above Rule. Manitoba Windmill & Pump Co. v. McLellan, 16 W.L.R. 283.

Domicile—change of. Fairchild v. McGillivray supra, Walsh v. Herman, 7 W.L.R. 389. Williams v. A.G. (1904), A. C. 287.

Foreign judgment obtained on substituted service not acted upon: Wanderers Hockey Club v. Johnson, 25 W.L.R. 434, (B. C.).

SECTION 26 (e).—Debts and Choses in Action arising out of Contract Assignable at Law.

Quaere, whether the section does not prevent the application of the rule in Dearle v. Hall, 3 Russ 1; Fraser v. Imperial Bank, 23 W.L.R. 445.

Waterloo Mfg. Co. v. Kirk, 19 W.L.R. 344.

A right of action for deceit on the sale of a business is not assignable under this section, McGregor v. Campbell, 19 M.R. 38.

SECTION 26 (f)—Assignments subject to Defence and Set off existing as between Debtor and Assignor.

This section does not apply to a defence which could only be pleaded by way of counterclaim, Cummings v. Johnson, 23 M.R. 740, 23 W.L.R. 144.

Damages arising out of breach of a contract assigned may be set off against a claim under the contract, ibid. and see rules 308 and notes.

Semble if a defendant is in a position to repudiate his contract because of his vendor's fraud he might set up the fraud by way of defence even as against a bona fide assignee, ibid. A counterclaim by a defendant for unliquidated damages arising out of a wholly independent cause of action in no way connected with the claim assigned is not a defence or set off within this section, McManus v. Wilson, 8 W.L.R. 106.

SECTION 26 (m).—Stipulations as to Time.

Considered Barlow v. Williams, 4 W.L.R. 233.

SECTION 26 (o).—Mandamus, Injunction, Receivers.

Act of 1902 Sec. 39 (o) Similar. R.S.O. 1897, Cap. 51, s. 58, ss. 9, similar, now in Ontario Judicature Act 3-4 Geo. V., Cap. 19, as Sec. 17.

Mandamus. Three kinds.

1. Old original High Prerogative Writ (still preserved) see Rule 876, Holmested, p. 77, but in the form of an Order, (sed quaere Frankel v. City of Winnipeg, 23 M.R. 296).
2. Under the K. B. Act s. 26 ss. (o) (Rules 872-873).

3. Statutory Writ simplifying the procedure under I. Rules 881 et seq. This, however, does not displace No. I., but merely supplements it.

The discretionary writ being prerogative in its nature cannot be given against the Crown or the High Officers of the Crown. For principles see Rich v. Melancthon Board of Health, 26 O.L.R. 48.

Lies to compel delivery of papers by a public officer to his Successor, Reg. ex rel. Pacaud v. Dubois, 3 M.R. 15.

Will not lie where any other adequate remedy. Holmes v. Brown, 18 M. R. 48 (mandamus to compel Mayor to sign cheque for valid legal claim refused as action lay against municipality). Noble v. Municipality of Turtle Mountain, 15 M.R. 514 (Indictment). Frankel v. City of Winnipeg, 23 M.R. 296, 22 W.L.R. 597, or unless the applicant has a legal right to the performance of some duty of a public and not merely a private character, ibid.

Will not lie to compel the exercise of a discretionary duty. Re Club Laurier, 23 W.L.R. 380.

Conveyance of children to school under Public Schools Act,—Mandamus will lie to compel. Rex ex rel. Wills v. Green, 23 W. L. R. 264.

There is no jurisdiction in the Court to declare void an election return which is not on its face a nullity, Davis v. Barlow, 15 W.L.R. 49; the question must be dealt with by the Forum created by the Controverted Elections Act, ibid.

A mandamus will not lie to compel the removal of encroaching fences and buildings, Thordarson v. Akin, 15 W.L.R. 115; Rule 601.

Semble, a mandamus will lie against a Railway Company to compel arbitration in the case of taking possession of land required for a right of way and in the absence of a contract. Carr v. C.N.R., 6 W.L.R. 723. A mandamus to compel a Court Reporter to furnish a complete copy of evidence taken or a Criminal trial, was refused, the Reporter claiming to have furnished a complete copy and there being no evidence to the contrary, Rex v. Campbell, 2 W.L.R. 223, (Y.T.).

Mandamus granted to Sheriff who had an execution against a municipality to compel the Secretary-Treasurer to produce Assessment Rolls to strike rate, London, etc., Loan Co. v. Morris, 9 M.R. 377.

A mandamus lies to compel a Clerk of a municipality to produce its books to a ratepayer. Re Cuddy, 10 M.R. 422.

A mandamus will not issue if it will be fruitless and futile. Rex. v. Bonnar 14 M.R. 467. As to a mandamus under Public Schools Act, Canada Permanent v. East Selkirk, 16 M.R. 618, 21 M.R. 750, 5 W.L.R. 485. Under the Liquor License Act Rex ex rel. Sovreen v. Edwards, 22 M.R. 790. Inability to obey no grounds for refusal. London & Canadian v. Morris, 9 M.R. 377; Canada Permanent v. E. Selkirk, 21 M.R. 750, 5 W.L.R. 485.

Relief by way of mandamus may now be obtained in an action under Rule 876. Carr v. C.N.R., 17 M.R. 178. See Frankel v. City of Winnipeg, 23 M.R. 296.

The refusal of a mandamus on the ground of the existence of another adequate remedy should be without prejudice to a recourse to that remedy, Noble v. Municipality of Turtle Mountain, 15 M.R. 514, 2 W.L.R. 144.

For a consideration of the Rules re Mandamus, see Frankel v. City of Winnipeg, 23 M.R. 296.

The Referee in Chambers or the Local Judges have no jurisdiction. Rule 886.

INJUNCTION. See Rule 887, abolishing the Writ of Injunction. As to damages in lieu of, see following section.

Pleading. The coupling of a claim for an injunction with a prayer for forfeiture sometimes waives the latter, Evans v. Davis, 10 Ch. D. 747. Moore v. Ulleoats (1908), 1 Ch. 575.

Must claim in pleadings, Reid v. Gibson, 17 C.L.J., Occ. N. 226.

Must allege in the application for an injunction that the defendant threatens and intends to repeat the illegal act complained of, Stannard v. Vestry of S. Giles, 20 Ch. D. 195. Thompson v. Baldry, 22 M.R. 76.

Acts only in personam. McPherson v. Temiskaming Lumber Co., 3 O.W.N. 36.

Will go to restrain persons not parties to the action. Hubbard v. Woodfield 57 S.J. 729.

As to interim preservation of property, Rules 888 et seq.

Interlocutory Order. Application for, rule 890. Referee in Chambers may not make, as it is a Court Order (Clause (o)).

Local Judge may in certain cases, Rule 37 and Notes.

EX PARTE INJUNCTIONS. May be granted. Rule 890. There must be fullest disclosure. Miller v. Campbell, 14 M.R. 437.

Burbank v. Webb, 5 M.R. 264, Stewart v. Turpin, 1 M.R. 323, though an injunction to which the applicant is entitled after fullest disclosure made will not always be discharged on the ground of non-disclosure, ibid., Winnipeg & H.B.R.W. Co. v. Mann, 6 M.R. 409, and the same case as to Laches disentitling to. Costs, cases cited above. In cases of suppression of facts, the proper practice is to take objection on the motion to continue and not by motion to suppress.

See generally Hart v. Brown, 23 W.L.R. 295 (Alta.), Calloway v. Pearson, 6 M.R. 364.

An ex parte injunction having been dissolved on the ground that the questions involved were of such difficulty that they should be decided at the hearing only, an amendment was made and a new ex parte injunction granted, and upon motion to continue it, held the plaintiffs were entitled to have a full consideration of all the questions involved, and a more deliberate argument having solved the difficulties, the injunction was continued. C.P.R. v. N.P. & M.R., 5 M.R. 301.

MANDATORY INJUNCTION. Now in form a direct Mandatory Order, Jackson v. Normanby (1899), 1 Ch. 438.

Lies to compel the return to mortgaged premises of a house wrongfully removed therefrom, J. I. Case Threshing Machine Co. v. Berard, 17 W.L.R. 91.

Will not lie to restrain an existing encroachment. Thordarson v. Akin, 15 W.L.R. 115.

An Order for an interim injunction confirmed on appeal, is not binding upon a trial judge. Fraser v. C.P.R., 7 W.L.R 734.

Generally an injunction will lie:—

At the suit of a riparian owner to prevent dredging of sand out of bed of a navigable river which causes a subsidence of the bank, Patton v. Pioneer N. & S. Co., 21 M.R. 405; to prevent blasting operations on adjoining land. Miller v. Campbell, supra; to enforce a contract to accept and exclusively use plaintiff's goods by restraining the use of any other (the plaintiff not left to his remedy in damages), Winnipeg Saturday Post v. Couzens, 21 M.R. 562, 19 W.L.R. 25, sed vide Cass v. Couture, Cass v. McCutcheon, infra; to restrain the negotiation of promissory notes obtained by misrepresentation (similar finding as to damages) Thompson v. Baldry, 22 M.R. 76, 19 W.L.R. 773; to restrain a wife selling shares assigned to her

by her husband contrary to 13 Eliz. c. 5, Toronto Carpet Co. v. Wright, 22 M.R. 294, 21 W.L.R. 304.

Even where the public will be inconvenienced by the granting, Patton v. Pioneer Navigation & Sand Co., 16 M.R. 435; (to prevent illegal acts of strikers) Cotter v. Osborne, 16 M.R. 395, (q.v. as to form of order); to prevent the officers of an unincorporated association enforcing a fine imposed upon a member under a regulation going beyond what is proper and needful, Matheson v. Kelly, 26 W.L.R. 475; to restrain the use of a trade name which is a colourable imitation of the Plaintiff's name and device with the intent to deceive, Matthews v. Omansky, 25 W.L.R. 603; to enforce an undertaking not to engage in a similar business if reasonable as to time and space, Kelly v. McLaughlin, 19 W.L.R. 633; to prevent a sale of goods wrongfully distrained, O'Connor v. Peltier, 8 W.L.R. 576.

Injunction refused. To restrain sale of chattels for arrears of taxes on ground of irregularity in assessment and by-laws, where a validating act is passed between the time of seizure (sale being stopped by interim injunction) and action, McCutcheon Lumber Co. v. Rural Municipality of Minitonas, 22 M.R. 681; to compel completion of contract for exclusive sale of bricks, the Plaintiff being left to remedy in damages, Cass v. Couture, Cass v. McCutcheon, 14 M.R. 458 (sed vide Winnipeg Saturday Post v. Couzens supra).

Where another adequate remedy exists, Little v. McCartney, 18 M.R. 323 (Injunction to prevent an irregular Local Option by-law being submitted to electors, refused, proper remedy, motion to quash); Dominion Express Co. v. City of Brandon, 19 M.R. 257, 12 W.L.R. 498 (injunction to restrain the levy of an alleged illegal tax refused, proper remedy to pay under protest and sue to recover); to restrain a threatened trespass where Plaintiff's right not clear, Monkman v. Babington, 5 M.R. 253; where the proper remedy an action of deceit, Boothe v. Rattray, 18 W.L.R. 61; the Court has no power to restrain persons from acting without authority, Calloway v. Pearson, 6 M. R. 364; to restrain the Defendant using his own name as a trade mark, Slater v. Ryan, 5 W.L.R. 142.

To prevent the obstruction of the plaintiff's view, McBean v. Wyllie, 14 M.R. 135; nor may an individual enforce a city fire limit by-law for his benefit unless he suffers especially from the breach (ibid).

Penalty for non-compliance — Attachment. See Rules 701 et seq.

Motion to commit. A Court motion, Hardie v. Lavery, 5 M.R. 135, payment of costs, in default committal, ordered in Davis v. Barlow, 21 M.R. 265, 18 W.L.R. 239. In the case of a Corporation a fine, and in default sequestration, ibid.

Parties. Semble the A.-G. is not a necessary party where the Plaintiff is especially injured by the pollution of a river by a municipality. Clare v. City of Edmonton, 26 W.L.R. 678.

Undertaking as to damages — enforcement, reference. Oliver v. Slater, 16 W.L.R. 107. Costs, Rule 953 and notes.

Receivers. The appointment of Receivers has usually been within the exclusive jurisdiction of Courts of Chancery. For an historical resume see 24 Halsbury, Section 626, and see Kinnear v. Cline, 18 O.L.R. 457, 13 O.W.R. 1138.

This section is given effect to by Rules 110 et seq. and Rules 207 as to Receivers of deceased's estates, and 891 as to interim preservation of property.

Receivers are appointed in two cases:—

I. Pendente Lite.

II. By way of Equitable Execution.

Receiver Pendente Lite. The appointment of a Receiver Pendente Lite operates as an Injunction which is not usually granted with a Receiver.

As to who may apply.

See Embree v. McCurdy, 14 O.L.R. 326, 10 O.W.R. 131. Carter v. Fay (1894), 2 Chy. 541. Collinson v. Ware (1901), 1 Chy. 812.

The defendant at his own request was appointed Receiver without salary upon the application of the plaintiff (who proposed a Trust Company) he having always managed the business and having been guilty of no misconduct, in Kelly v. Kelly, 7 W.L.R. 542.

The appointment is discretionary with Court. Owen v. Homan, 4 H.L.C. 997. Re Asselin 6 O.L.R. 170, 2 O.W.R. 712. Harris v. Beauchamp (1894), 1 Q.B. 809, Embree v. McCurdy, 14 O.L.R. 326.

Duties of Receiver. Fawkes v. Griffin, 18 P.R. 48.

The Receiver of a town municipality will be responsible to the corporation for loss of interest occasioned by his neglect to deposit in the bank moneys collected by him for the town. Town of Emerson v. Wright, 5 W.L.R. 365.

In litigation as to probate a Receiver is always appointed. Salter v. Salter (1896), Pro. 291, and in an action to recover land, a Receiver may now be appointed. Foxwell v. Van Grutten (1897), 1 Chy. 64; John v. John (1898), 2 Chy. 573. Formerly a legal mortgagee applying for a receiving order could only have it under special circumstances—now the rule is otherwise. Re Prytherch, 42 Ch. D. 600; Aikins v. Blain, 13 Gr. 646.

Receiver by way of Equitable Execution.

For cases where appointed, see Stewart v. Jones, 1 O.L.R. 34, Osler v. Newton, 19 O.A.R. 94, re Beavid, 4 O.W.N. 720.

An Order was refused in the following cases:

A Receiver will not be appointed to collect the dues of a trade union, Cotter v. Osborne, 19 M.R. 145, unless express or implied contract to pay, ibid, nor where it lies in the power of a third party to say whether the debtor shall have any share of the estate or not, Canada Mutual v. Nesbitt, 31 O.R. 562, Egan v. Smith, 17 P.R. 330.

Quaere, whether an order would be made in the case of money being paid into a county court for the benefit of one of the parties to the suit upon the application of a creditor of such party? Otto v. Connery, Betourney Garnishee, 16 M.R. 532.

The property affected should be distinctly named. Gibson v. Lowell, 19 Gr. 197.

A Receiver will be appointed of rents of mortgaged lands, Imperial Bank of Canada v. Twyford, 1 W.L.R. 157.

Where tenants are concerned the order should direct them to attorn to the Receiver.

Railway Companies. Formerly a Judgment Creditor could not foreclose or sue a railway but could only get a Receiver of its assets as anything else was considered against public policy. The law is now changed as to those railways under Dominion legislation or declared to be for the general benefit of Canada by the B.N.A. Act, sec. 92, sec. 10, ss. A. and C. The Railway Act of Canada now makes provision for sale or foreclosure. See Toronto General Trust Company v. Central Ontario Railway, 2 O.W.R. 261, 8 O.L.R. 342 (1905), A.C. 576.

To wholly Provincial railways the old rule applies and a Receiver is still necessary, Crawford v. Tilden, 14 O.L.R. 342, 9 O.W.R. 781.

For questions arising in this manner see Allan v. Manitoba

& N.W.R., 10 M.R. 143, 12 M.R. 57, 9 M.R. 388, 10 M.R. 106.

Charlebois v. Great N.W. Ry., 11 M.R. 135.

The Receiver of a railway company must make production in an action, Maxwell v. Manitoba and N.W. Ry., 11 M.R. 149.

As to status of a Receiver, see Simpson v. Ottawa, 1 Chy. Ch. R. 99, Grant v. Willoughby, 17 Gr. 627.

Generally see Lloyd v. Medway (1905), 2 K.B. 359, McLean v. Allen, 14 P.R. 84.

As to necessity for fi. fa. being returned, see Stewart v. Grobb, 15 A.R. 299; Thompson v. Cushing, 30 O.R. 123, 388.

The possession of the Receiver is the possession of the Court, so that damages for the detainer of goods by a Receiver cannot be recovered, Peruvian v. Dreyfus (1892), A.C. 166.

The appointment of a Receiver does not disturb the paramount title of the party in possession; if there is no paramount title the Receiver takes possession, Wallace v. Wallace, 11 P.R. 508. His possession is the possession of all parties to the suit according to their titles. If the holder of the title paramount is not in possession, that of the Receiver cannot be interfered with, Coleman v. Blandell, 18 Gr. 44.

PENALTY FOR CONTEMPT. Fox v. Nipissing, 29 Gr. 11. See Gardener v. Burgess, 13 P.R. 250.

The right of a Receiver to production and inspection of documents under his order does not extend to his solicitor, Desaulniers v. Johnston, 15 W.L.R. 205.

SECTION 26 (p).—DAMAGES IN LIEU OF INJUNCTION.

Damages. Where a plaintiff can be compensated in damages it does not always follow that (at least) an interim injunction will be refused. Thompson v. Baldry, 19 W.L.R. 773, and in Winnipeg Saturday Post v. Couzens, 21 M.R. 562, 19 W.L.R. 25, an injunction was granted and the plaintiff not left to his remedy in damages, sed vide Cass v. Couture, 14 M.R. 458.

Refused where plaintiff's tenants from month to month seek to prevent the carrying on of a nuisance on other parts of the premises, McKenzie v. Kayler, 15 M.R. 660.

SECTION 26 (r).—EFFECT OF GIVING TIME TO A PRINCIPAL DEBTOR.

Watson Mfg. Co. v. Bowser, 16 W.L.R. 505.

Blackwood v. Percival, 14 M.R. 217.

SECTION 49 (1).—TRIAL AND PROCEDURE—JURY ACTIONS.

See the Ontario Act 3-4 Geo. V., c. 19, ss. 53, et seq. for the corresponding Ontario provisions, formerly ss. 102 to 107 and 111.

See section 50 (1).

See the Jury Act, R.S.M. 1913, cap. 108.

For a review of the previous decisions under this and the following sections,and of the former law,see the judgment of Mathers, J., in Griffiths v. Winnipeg Electric R.W. Co., 5 W.L.R. 149, at p. 150, and of Howell, C.J.A., same case, at page 372, distinguishing inter alia, Morrison v. Robinson, 8 M.R. 218, Case v. Laird, 8 M.R. 461, and Harvie v. Snowden, 9 M.R. 318.

Illegal seizure defined, Bartlett v. House Furnishing Co., 4 W.L.R. 567.

SECTION 49 (3).—TRIAL AND PROCEDURE—NON-JURY ACTIONS.

The Referee in Chambers has jurisdiction under this rule, Moyer v. Jones, 22 W.L.R. 858, to order a trial by jury and to set aside a notice for a non-jury trial, ibid; Cameron v. Winnipeg Electric Ry., 17 M.R. 475, 7 W.L.R. 698. The Master in Chambers has not, nor has he, power to strike out a jury notice except as irregular, (rule 208 s. 12.).

In Ontario the practice is to serve a notice for a jury trial in cases other than those where one is allowed by the Act, and the question as to the right (if any) comes up in the form of a motion to strike out, which is usually referred to the Judge at the trial. The practice is, therefore, quite different; also in Manitoba no non-jury case may be tried at the assizes (section 35), and notice of trial given for such assizes where the case does not come within section 49 (1), and no order has been made under this section, should be struck out, Simonson v. C.N. R., 23 M.R. 40, 23 W.L.R. 705.

Unless an order for a jury is obtained and served not later than the last day for giving notice of trial for that assize (ibid).

Time for application for special jury after amendment, Brown v. Telegram, 21 M.R. 775.

The discretion of a Judge who affirms an order of the Referee for a jury trial should not be interfered with, Clark v. Laing, 23 M.R. 537 (headnote), 23 W.L.R. 663, McCormick v. C.P.R., 12 W.L.R. 363. See Navarro v. Radford-Wright Co. infra. As to review of the Referee's discretion, Hewitt v. Hud-

son Bay Co., 17 W.L.R. 61. But it will be if he proceeds upon a wrong principle, McCormick v. C.P.R. supra.

Jury trial refused where:—

Although an action appears to be brought under an Act of another province where the cause of action arose similar to the Act of the Manitoba Legislature referred to in 49 (1), it is not within the class of actions which may be tried by a jury without an order, Simonson v. C.N.R., 23 M.R. 540, 23 W.L.R. 705; the plaintiff has elected his forum and set down the case for trial by a Judge without a jury, even though an application would otherwise have been successful, McConnell v. Winnipeg Electric Co., 23 M.R. 23, 23 W.L.R. 325, even though the case was struck off the trial list once in the plaintiff's absence; but the defendant cannot so fix the forum and prevent the plaintiff so applying, Moyer v. Jones, 22 M.R. 803, 22 W.L.R. 858. Where a plaintiff claimed to be suing under the Workmen's Compensation for Injuries Act, was held not to be a "workman" within the meaning of the Act, Hewitt v. Hudson's Bay Co., 15 W.L.R. 372, see 17 W.L.R. 61.

Jury Trial Ordered: In an action for damages for serious injury caused by alleged negligence (in running an automobile on the wrong side of the road into the plaintiff on his motor cycle) Clarke v. Laing, 23 M.R. 537, explaining Navarro v. Radford Wright Co., 22 M.R. 703. When the Judge is satisfied on the material filed that the injury was serious and the damages in case of success would be substantial, Jocelyn v. Sutherland, 23 M.R. 539, 23 W.L.R. 392.

In an action for conspiring to cause a wrongful dismissal and to slander plaintiff as one at least of the causes of action was akin to two of those referred to in this section, viz. slander and malicious prosecution, Robinson v. G.T.P., 23 M.R. 408, 24 W.L.R. 38, 781, following Griffiths v. Winnipeg Electric Ry. Co., 16 M.R. 512.

In actions where serious injury was sustained, and as to sufficiency of material on such an application, and review of Judge's discretion by the Court of Appeal, Navarro v. Radford-Wright Co., 22 M.R. 730, 22 W.L.R. 665.

In an action under Lord Campbell's Act, if the person injured would have been entitled to one if he had brought action, Marion v. Winnipeg Electric Ry. Co., 21 M.R. 757, 20 W.L.R. 55.

In an action under the Workmen's Compensation Act and

at Common Law where both claims arise out of the same circumstances—leave granted to apply to trial Judge to limit the hearing to the issues raised under the Act. Schultz v. Lyall-Mitchell Co., 17 W.L.R. 103.

Generally, Seymour v. Winnipeg Electric Ry. Co., 11 W.L.R. 679.

Where two causes of action one within section 49 and one not within it, and the plaintiff is not willing to waive his right to a jury trial of the first action, and he does not apply within a reasonable time after the action becomes at issue for the trial of the other cause of action by a jury, the defendant may move under rule 245 to strike out clauses setting up the latter cause of action—the motion may not be made before issue or before delivering a defence. Coates v. Pearson, 3 W.L.R. 1.

By the Jury Act, R.S.M. 1913, cap. 108, s. 59, a Judge in Chambers may direct a trial by special jury within 6 days after the action is at issue to try certain actions, ss. 40 (1) or (3).

In civil actions the verdict of 9 jurors is sufficient, s. 68, and see s. 69.

In cases of trial by jury each party has three challenges without cause, s. 75; if by special jury, two, s. 76.

SECTION 51.—Verdict—Court or Judge May Direct Jury to Give Special Verdict, Except in Actions for Libel.

In an action for libel there may be a general verdict and the jury are not to be required or directed to find the defendant guilty merely upon proof of publication and of the sense ascribed to the same in the action, but the Court may direct and the jury may find a special verdict if desired, R.S.M., cap. 113, s. 13.

SECTION 65.—Fees—Salaries—Officers to See Fees Paid—No Fees to be Charged Government.

By the Law Fees Act, R.S.M. 1913, cap. 110, sec. 4, additional fees must be paid when documents are used for any other or further purpose than that for which the fee was paid.

Fees are taxable as costs, s. 48.

No proceedings are to be taken until fees are paid, sec. 9, and are void if fees not paid, sec. 10.

Payment of a triple fee may be allowed where default is

through inadvertence, sec. 12, and sec. 13 provides an additional penalty by way of fine.

By sec. 11 Judges and officers are required to take exception when fees are not paid whether the parties do or not.

SECTION 80.—Transfer of County Court Cases to King's Bench.

See R.S.M. 1913, c. 44, s. 125.

An order for transfer under this section may not be made after final judgment against two defendants and where there has been no defence or counterclaim it is a mere nullity, McInnes v. Norquist, 23 M.R. 815.

In such a case a statement of claim must be filed and served, Doll v. Howard, 11 M.R. 73.

The jurisdiction only arises where the defence or counterclaim involves matters beyond the County Court jurisdiction, Town of Emmerson v. Forrester, 13 W.L.R. 280.

If the Judge of the Court of King's Bench refuses such an order, a County Court Judge should not hear a similar application, Town of Emmerson v. Forrester, supra.

RULES OF COURT.

RULE 1.—Interpretation—Criminal, Crown or Revenue, Election or Winding-up Proceedings not Affected.

Nothing in these rules shall be construed as intended to affect the practice or procedure in criminal proceedings, (or proceedings on the Crown or revenue side of the court, (a) or upon election petitions, or under the Winding-up Acts.) R.S.M. c. 40, r. 1.

The rules of Court are defined by section 2 of the King's Bench Act, hereinafter referred to as the Act, sub-section (a) and include forms as well as further rules that may be made by the Judges from time to time under the authority of section 53 of the Act. The power to make rules confers the power to alter them, R.S.M. 1913, cap. 105, s. 19.

The rules with all forms, tariffs and schedules are a part of the Act, sec. 86.

For effect of Repeal, c. 105, s. 28.

The interpretation Rules have the force of a statute, McKim v. Township of East Luther, 19 P.R. 214, Centaur v. Hill, 1 O.W.N. 401.

Meaning of "person," c. 105, s. 27 (j).

Rule number 1 of Manitoba Rules 1902, and number 4 of Ontario Rules 1905 similar, no corresponding Ontario Rule. See preface.

This rule is made in pursuance of section 82 of the Act. The words in brackets were dropped out of the former Ontario Rule, it being considered that such proceedings were to be carried on in the same way as ordinary actions subject to former Ontario Rules 238 and 241, and see Rex ex rel. Tuttle v. Quesnel, 11 W.L.R. 96. The Manitoba counterpart of 238 is 264, but 241 has none. Quaere, What is the effect of these rules 1 and 238 read together? See also section 82 of the Act.

The former Ontario Rule 4 had not the words "or under the winding-up Act." The former Manitoba Rule had at (a) the words "of King's Bench."

RULE 2.—INTERPRETATION—"JUDGE."

A "Judge" in these rules means a Judge of the court or a Judge (a) having the authority for the time being of a Judge of the court, unless there is something in the context indicating a different meaning. R.S.M. c. 40, r. 2.

Former Manitoba Rule 2. Former Ontario Rules 6 (a) and 3 (b) similar. Ontario Rule 3 (d).

The Ontario Rule 6 (a) was similar in effect but had the words (or officer) at (a) and gave jurisdiction to the Master in Chambers (see prefatory note to rules) or local judge to entertain applications to be made under the Rules to "the court or a Judge," subject to express limitations. Semble there is no such meaning to this rule and the Referee's jurisdiction must be found solely in rules 27, 29.

RULE 3.—INTERPRETATION—"MASTER"—"SCHEDULE."

1902 Rule 3. Former Ontario Rules contained no similar rule.

RULE 4.—INTERPRETATION—FORMER PRACTICE SUPERSEDED.

1902 Rule 4. Former Ontario Rules 2 and 3. The present Ontario Rule 3 corresponds to this rule. The Ontario Rules superseded and rescinded all former rules in terms as this rule in effect also does. See section 24 of the Act.

Wolff v. Ogilvie, 12 P.R. 645. Flett v. Way, 14 P.R. 315.

RULE 5.—

1902 Rule 5, 1905 Ontario Rule 5 similar. The former Ontario Rule made the provisions of the Interpretation Act also apply. The Manitoba Interpretation Act, R.S.M. 1913, cap. 105, applies, see section 7.

RULE 6.—INTERPRETATION—DIVISION OF RULES.

1902 Rule 6. 1905 Ontario Rule 7 similar, 1913 Ontario Rule 4.

If it were not for these provisions the division into titles and headings would govern the construction. Inglis v. Robertson (1898) A.C. 616.

RULE 7.—INTERPRETATION—PROMULGATION OF NEW RULES.

Every rule hereafter made (by the court under the powers conferred by section 53 of this Act), shall be construed as intended to come into force on the seventh day after the day of its publication in *The Manitoba Gazette*, R.S.M. c. 40, r. 7; 3 Geo. 5, c. 12, s. 3, *part*.

1902 Rule 7; 1905 Ontario Rule 8 similar.

The 1902 rule had not the words in brackets which were added by 3 Geo. V, cap. 12, section 3, and see section 87 of the Act requiring such rules to be published forthwith after the making, in the *Manitoba Gazette*.

RULE 8.—OFFICERS AND OFFICES—GENERALLY—OFFICE HOURS.

1902 Rule 8, 1905 Ontario Rule 9, 10 similar.

This rule and the following are merely directory.

See as to Taxing Officers Cousineau v. City of London F. I. Co., 13 P.R. 36.

RULE 9.—OFFICERS AND OFFICES—GENERALLY—HOLIDAYS.

1902 Rule 9, 1905 Ontario Rule 9.

The Manitoba Interpretation Act is 1913 cap. 105. (1902), C. 89, sec. 8, ss. 3. See rule 385 and notes.

RULE 10.—OFFICERS AND OFFICES—GENERALLY—WHO MAY TRANSACT BUSINESS IN OFFICES.

1902 Rule 10. The 1905 Ontario Rule 11 (1913 R. 758) is similar, but an exception is made in the case of Quieting

Titles Applications, which come before the High Court, and not, as in Manitoba, before the District Registrar. See Holmested and Langton (1905 Edn.) p. 203, et seq. and notes.

RULE 11.—OFFICERS AND OFFICES — GENERALLY—OFFICERS TO BE AUXILIARY TO ONE ANOTHER.

1902 Rule 11, 1905 Ontario Rule 12. 1913 Ontario Rule 759 similar.

These rules have no English counterpart.

RULE 12.—OFFICERS AND OFFICES—PROTHONOTARY—REGISTRAR —DEPUTY CLERK'S ISSUE BY PROTHONOTARY OF STATEMENT OF CLAIM.

1902 Rule 12. Those officers are appointed under the Act by virtue of sections 54 to 57 and section 59. The (1905) Ontario Rule 14 (1913 rule 761) defining offices in which proceedings are commenced has no counterpart in Manitoba. The (1905) Ontario Rule 15 (1913 rule 762) requiring all proceedings to be carried on in the office in which they are commenced has a Manitoba counterpart in rule 178, and see rule 16.

RULE 13.—OFFICERS AND OFFICES—PROTHONOTARY—REGISTRAR —DEPUTY CLERK'S SEALING PROCESS.

1902 Rule 13. The 1905 Ontario Rule 18 contained similar provisions.

RULE 14.—DUTIES OF PROTHONOTARY.

RULE 15.—DUTIES OF DEPUTY CLERKS OF THE CROWN AND PLEAS AND DEPUTY REGISTRARS.

RULE 16.—HOURS OF DEPUTY CLERKS OF THE CROWN AND PLEAS ENTRY OF ORDERS.

RULE 17.—REGISTRAR TO ACT AS JUDGMENT CLERK.

RULE 18.—REGISTRAR TO PERFORM DUTIES OF CLERK OF RECORDS AND WRITS.

RULE 19.—POSTING UP TRIAL AND ARGUMENT LISTS.

RULE 20.—REGISTRAR TO HAVE ACCESS TO BOOKS OF PROTHONOTARY—REQUISITION FOR PAPERS.

RULE 21.—ORDERS OF COURTS.

RULE 22.—CLERKS IN OTHER DISTRICTS.

RULE 23.—RETURN OF CRIMINAL PROCEEDINGS THROUGH PROTHONATORY.

RULE 24.—REGISTRAR OF PROCEEDINGS TO ACT AS TRIAL CLERK IN E. J.D.

RULE 25.—DIVISION OF WORK BETWEEN REGISTRARS AND PROTHONATORIES.

RULE 26.—ABSENCE OF REGULAR OFFICERS PROVIDED FOR.

RULE 27.—REFEREE IN CHAMBERS.

The jurisdiction of the Referee in Chambers is found in rule 27, made under sec. 53 (c) of the Act and rule 455 (see notes.).

The rule formerly had for the words "or may be" at A, the word "now." This was amended by 3 Geo. V., cap. 12, s. 3. This amendment apparently increases the jurisdiction of the Referee, as in Watson v. Dandy, 12 M.R. 175, it was held that the rule, as it formerly stood, only applied to the powers, authority and jurisdiction which at the time of coming into force of the Act and rules,, but independently thereof, a Judge in Chambers had, and did not authorize him to make any order for sale of land under rule 804 (under registered certificate of judgment) of the rules of 1895—now dropped from the Act.

As to reviewing a Referee's discretionary orders, rules 679 and notes.

The Referee has no jurisdiction to appoint an administrator pendente lite, Tellier v. Schilemans, 16 M.R. 430. A Judge in Chambers may: ibid.

As to the jurisdiction of the Referee to allow amendments and the exercise of his discretion, see Johnson v. Land Corporation of Canada, 6 M.R. 527.

The Referee has no jurisdiction to suppress a commission obtained upon Judge's order. Thompson v. Seguin, 8 M.R. 79.

The Referee has jurisdiction to direct a sale of goods, in an interpleader order, in default of the claimant giving the security ordered. Bank of Nova Scotia v. Hope; Hope & Co. claimants, 9 M.R. 37.

The Referee has power to order a trial by jury and to set aside a notice for a non-jury trial, Moyer v. Jones, 22 W.L.R. 858.

The Referee has jurisdiction to extend the time for giving security in an interpleader issue. Howe v. Martin, 6 M.R. 615, 6 M.R. 477.

As to Referee's duty in directing an issue in an Interpleader, Galt v. McLean, 6 M.R. 424.

The Referee may exercise the power of ordering the trial of an action by a jury given to a Judge by sub-section 3 of section 49 of the Act.

Cameron v. Winnipeg Electric Railway Company, 17 M.R. 475.

The referee has no power to rescind his own order not made ex parte, and an appeal will not lie from his refusal to rescind. Walker v. Robinson, 15 M.R. 445, 1 W.L.R. 181..

The Referee has no power, once the action is entered for trial, to make an order for the entry of judgment for the defendant, even upon consent, ibid. Such judgment can then only be pronounced by a judge sitting in court; but he may dismiss an action by consent, ibid.

Nor has he power to order a reference as to damages caused by the issue of an injunction; Toronto Land Co. v. Scott, 1 M.R. 105.

As to his discretion in a motion for Summary Judgment, see Law v. Neary, 10 M.R. 592, and appeals from a Referee, rule 679.

The Referee in chambers, in regard to all actions and matters in court, shall be and hereby is empowered and required to do such things, transact all such business and exercise all such authority and jurisdiction in respect to the same as by virtue of any statute or custom or by the rules of practice of the court or any of them respectively are (a) or may be done, transacted or exercised by him or by any Judge of court sitting in chambers, save and except in respect to the matters following:—

(*a*) all matters relating to criminal proceedings or the liberty of the subject;

(*b*) appeals and applications in the nature of appeals and applications concerning the hearing of appeals, and applications to vary or rescind an order made by a judge;

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

(*d*) all matters in respect of which the jurisdiction of a judge in chambers is not derived from legislation of the Legislature of Manitoba;

(*e*) proceedings as to lunatics under any statute of Manitoba;

(*f*) applications for advice under "The Manitoba Trustee Act";

(*g*) applications as to the custody of infants, (or for the sale, leasing or other disposition of the lands of an infant);

(*h*) applications for the lease or sale of settled estates, or to enable minors with the approbation of the court to make binding settlements of their real or personal estate at marriage, and in regard to questions submitted for the opinion of the court in the form of special cases on the part of such persons as may by themselves, their committees, guardians or otherwise concur therein;

(*i*) opposed applications for administration orders;

(*j*) thereferring of causes or matters to arbitration;

(*k*) reviewing taxation of costs;

(*l*) applications for leave to appeal or re-hear, or to move against a verdict or judgment, or to move to reverse or vary an order of a judge, after the time limited for so appealing, re-hearing or moving has elapsed;

(*m*) applications for payment of money out of court or dispensing with payment of money into court;

(*n*) proceedings under "The Manitoba Controverted Elections Act";

(*o*) proceedings under "The Landlords and Tenants Act";

(*p*) proceedings under "The Manitoba Railway Act";

(*q*) the taking of evidence upon and hearing and disposing of any question summarily, in chambers, as to the liability of a garnishee where such liability is disputed, or the disposing of a claim of a third party, without directing the trial of an issue;

(*r*) the taking of evidence upon and summarily disposing of a claim in chambers under rule 903;

(*s*) proceedings under "The Manitoba Expropriation Act";

(*t*) applications for the allowance of fees to attorneys, solicitors or counsel greater than those taxable by the taxing officer without special order, except fees in respect of matters before the referee in chambers;

(*u*) applications under the rules contained in division xiii.

originating notices. R.S.M. c. 40, r. 27; 3 Geo. 5, c. 12,s. 3, *part*.

1902 Rule 27, 1905 Ontario Rule 42, 1913 Ontario Rule 208 similar.

The referee (in Ontario, the master) in chambers cannot act in matters where a judge acts as persona designata; see re Chambers and C.P.R., 15 W.L.R. 696. And he has no jurisdiction in the case of summary applications against a solicitor. Re Bridgman, 16 P.R. 263.

The 1905 Ontario Rule 42 gave jurisdiction in actions proposed to be brought, e.g. in case of leave being required to issue writ for service out of the jurisdiction or shortening the time for appearance; quaere, whether the present Ontario Rule gives such power. Any motion which may be brought should be brought before the referee in chambers, rule 31.

RULE 27, SS. (a).—REFEREE IN CHAMBERS.

1902 ss. (a); 1905 Ontario Rule ss. 1; 1913 Ontario Rule ss. 1 similar in terms.

RULE 27, SS. (b)—REFEREE IN CHAMBERS.

1902 ss (b); 1905 Ontario Rule ss. 2, ss. 3 similar; 1913 Ontario Rule ss. 2, ss. 3 similar. Toronto v. Toronto, 5 O.W. R. 403.

Re Gabourie, 12 P.R. 252.

Douglas v. C.N.R., 23 M.R. 490.

RULE 27, SS. (c).—REFEREE IN CHAMBERS.

1902 ss. (c); 1905 Ontario Rule ss. 17 (a); 1913 Ontario Rule ss. 14.

RULE 27, SS. (d).—REFEREE IN CHAMBERS.

1902 ss. (d); 1905 Ontario Rule ss. 16 excepted any matter by the rules expressly required to be done by a judge of the High Court of Justice. 1913 ss. 13 similar.

RULE 27, SS. (e).—REFEREE IN CHAMBERS.

1902 ss. (e); 1905 Ontario Rule ss. 5; 1913 O.R. ss. 5 similar.

RULE 27, SS. (f).—REFEREE IN CHAMBERS.

1902 ss. (f); 1905 Ontario Rule ss. 6; 1913 Ontario Rule 208. has no counterpart in terms, but see sections 6 and 13. Re

Martin, 4 O.W.R. 429, re Cafferty, 15 O.L.R. 306, re Williams, 1 Chy. Ch. R. 372; Wilson v. Bell, 32 O.R. 118; re Mathers, 18 P.R. 13.

RULE 27, SS. (g).—REFEREE IN CHAMBERS.

1902 ss. (g). The 1905 Ontario Rule ss.7 had not the words in brackets, but section 11 of the same rule gave the same powers. The 1913 Ontario Rule, section 7, is very full, but the effect is similar.

RULE 27, SS. (h).—REFEREE IN CHAMBERS.

1902 ss. (h). The 1905 Ontario Rule ss. 8 was similar. The present Ontario Rule 208 ss. 7 is very concise in terms but the effect is the same.

RULE 27, SS. (i).—REFEREE IN CHAMBERS.

1902 ss. (i); 1905 Ontario Rule ss. 10; 1913 Ontario Rule ss. 8.

See Re Underhill, 17 C.L.T. 9.

RULE 27, SS. (j).—REFEREE IN CHAMBERS.

1902 ss. (j) 1905 Ontario Rule section 17 (b) was similar but subject to the consent of the parties who might agree to a disposition by the Master. The 1913 Ontario Rule 208 section 15 corresponds to the present Manitoba Rule in effect.

RULE 27, SS. (k).—REFEREE IN CHAMBERS.

1902 ss. (k); 1905 Ontario Rule section 17 (c) similar unless the parties consented to the Master's jurisdiction. The present rule 208 has no similar section, but section 13 of rule 208 read in conjunction with rules 508 and 509, attains the same object as Manitoba Rule 27 (k).

RULE 27, SS. (l).—REFEREE IN CHAMBERS.

1902 ss. (l). The 1905 Ontario Rule ss. 3 applies to extending time for appeal before or after the time limited for that purpose has expired. The 1913 Ontario Rule ss. 3 has the same effect.

RULE 27, SS. (m).—REFEREE IN CHAMBERS.

1902 ss. (m). 1905 Ontario Rule ss. 13 is confined to administration and partition matters, in others the Master has

jurisdiction. The 1913 Rule 208 ss. 10 makes no change in the Ontario practice.

RULE 27, SS. (n).—REFEREE IN CHAMBERS.

This sub-section and the following ones down to and including sub-section (t) are similar in terms to correspondingly lettered sub-sections of 1902 Rule 27 and have no Ontario counterparts. Sub-section (u) was added by 3 Geo. V, cap. 12, section 3, being made necessary by the adding to the Rules now numbered 928 to 933, both inclusive, by the same Act.

Similarly the Ontario Rule 208 has provisions foreign to the Manitoba Rules, namely, ss. 9 expressly excepts from the jurisdiction of the Master, prohibition, a motion which is within the jurisdiction of a judge of the court, Re Landsborough, 21 M.R. 712, rule 893 et seq., and mandamus as to which in Manitoba, see rule 886 excluding from jurisdiction of Referee. The Referee has not jurisdiction in injunction matters See section 26 (o) of Act and notes.

The following are other matters in which by the Ontario Rule the jurisdiction of the Master is excluded: by ss. 11 the allowance of taxed costs in lieu of commission under the provisions of rule 653 (Manitoba Rule 946); by ss. 12, striking out a jury notice except for irregularity. (See notes to section 49 of the Act for the Manitoba practice); by ss. 16, staying proceedings after verdict or judgment at a trial (Manitoba Rule 677 gives such power to a judge and is somewhat similar to the new Ontario Rule (1913) 495 which confines the power to the judge at the trial). Manitoba Rule 455 does not give the power to a judge in chambers, therefore semble the Referee has no such power in Manitoba even in the absence of express exception.

RULE 28.

1902 Rule 28 similar. No Ontario counterpart. This rule gives the referee jurisdiction to adjourn motions made returnable for a day on which there is no judge available to hear them if they are within the scope of motions outlned in sections (e) to (t) both inclusive of rule 27.

RULE 29.—REFEREE IN CHAMBERS.

1902 Rule 29 was similar but added a declaratory clause validating and confirming all orders made by the Referee un-

der the rules or any previous rule in so far as the authority and jurisdiction thereby conferred was concerned, but excepting cases where orders made by him for the sale of lands had been set aside. This clause which has been dropped in revision merely declared the legal effect of the rules. Under this rule the Referee may exercise powers conferred by a later statute on a judge of the court, sitting in chambers: Northern Electric and Manufacturing Co. v. City of Winnipeg, 23 M.R. 225, 23 W.L.R. 805.

RULE 30.—REFEREE IN CHAMBERS.

1902 Rule 30. There is no Ontario counterpart to this rule. See rule 37 below, giving the same powers to the local judges.

RULE 31.—REFEREE IN CHAMBERS.

1902 Rule 31. This rule has no Ontario counterpart, but Ontario Practice has been the same since Hughes v. Rees, 9 P.R. 86.

RULE 32.—REFEREE IN CHAMBERS.

1902 Rule 34; 1905 Ontario Rule 44; 1913 Ontario Rule 223 has the same result.

The Referee, if he sends up a matter under this rule should endorse his certificate upon the papers, Hughes v. Rees, 9 P.R. 86; Mahoney v. Welsh, 6 O.W.R. 18; Holmested and Langton, 1905 Ed. p. 220 (notes).

RULE 33.—REFEREE IN CHAMBERS.

1902 Rule 33; 1905 Ontario Rule 634 (3); 1913 Ontario Rule 531 (4), and see 1913, 515 and 516 Ontario Rules providing generally for entry or non-entry of orders.

For orders requiring entry see rules 655 and 656; as to mode of entry, see rule 657 (Ontario rule 517 similar). Under the Ontario Rules the official Referee may sit for and at the request of the Master in chambers. There is no such officer in Manitoba, but the Prothonotary is Deputy Referee, appointed under section 55 of the Act and usually sits in the absence of the Referee in chambers.

RULE 34.—LOCAL JUDGES.

This and the three following rules are made to give effect to the provisions of sections 53 (e) and 77 of the Act. See notes to rule 455.

1902 Rule 34 declared the county court judge of every judicial district, except the eastern, local judge in all actions brought within his district. This must be found in section 77 of the Act. The 1905 Ontario Rule. 45 s.1, was somewhat similar, but contained many exceptions owing to the fact that in Ontario the powers of the local judge as local Master in chambers and as local judge in chambers (see rule 47 having no Manitoba counterpart)—both of which offices he holds, are different. In Manitoba the local judge merely has the same powers as the Referee in chambers and no more—he is not a judge in chambers. The 1913 Ontario Rules 209-210 carry on the same distinction. Douglas v. C.N.R., 23 M.R. 490.

RULE 35.—LOCAL JUDGES—REFERENCE BY LOCAL JUDGE TO JUDGE OF COURT.

A local judge may prefer any matter pending before him in chambers to a judge (a), (in chambers) for decision, and the judge may dispose of the same in whole or in part or refer back the whole or a part . R.S.M. c. 40, r. 35.

1902 Rule 35 had at A the words "of the Court" 1905 Ontario Rule 45 s. 2 and 49 (2) had not the words in brackets. The 1913 Rules in Ontario numbered 209 and 223 provide a similar practice.

Semble, the local Judge may not refer such a motion to the Referee in Chambers, although that officer would have had jurisdiction to hear the motion if it had originally been brought before him. Mahoney v. Welsh, 6 O.W.R. 18.

RULE 36.—LOCAL JUDGES—INTERPLEADER APPLICATIONS TO LOCAL JUDGES.

Every local judge shall have all the powers of the referee in chambers in respect to all interpleader applications and all matters incidental thereto and the disposal of the same, when such application is made by or on behalf of the sheriff of his(a) judicial district, whether the action in respect of which the application is made was commenced in the judicial district of such judge or not. An interpleader application by or at the instance of a sheriff may in every case be made to the local

judge for the judicial district which, or part of which, constitutes such sheriff's bailwick, and such local judge shall have the aforesaid powers in reference thereto. R.S.M. c. 40, r. 36.

1902 Rule 36 similar, having at A the words "the judicial district for which such county court judge is the local judge.' The 1905 Ontario Rule 49 was the same in effect. This Rule was dropped in the Ontario revision of 1913.

As to interpleaders in County Courts, see rules 920 et seq. and notes.

RULE 37.—LOCAL JUDGES—REAL PROPERTY ACT APPLICATIONS TO LOCAL JUDGES.

1902 Rule 37. No Ontario counterpart. See notes to rule 30 above.

The Act, section 78, gives local judges the power to grant interlocutory injunctions to remain in force for a period not exceeding 8 days in cases of emergency, and is similar in terms to the 1905 Ontario Rule 46 (1), 1913 Ontario Rule 211 (1). In Ontario the local judge may dispose of the same if all parties interested consent (1905) rule 46 (2), 1913 rule 211 (2). In Manitoba the court must continue the injunction, otherwise it expires. Section 78.

RULE 38.—MASTER'S OFFICE—GENERAL RULES—COURT MAY DISPOSE OF MATTERS WITHOUT REFERENCE.

1902 Rule 38; 1905 Ontario Rule 656. None similar in 1913 revision.

This rule refers to matters properly referrable to a Master and not such as the adjudication of the action. Accounts in an administration suit have been taken under this rule; Holmested & Langton, 1905 Ed. p. 864. "It is used in case of mere computation and in simple cases to avoid expense. The Registrar performs the necessary duties, and, in cases of computation, the amount found is inserted in the order or judgment as a finding of the court."

Some cases in which a reference might be directed are:

1. As to encumbrances under a judgment for foreclosure or sale—generally in mortgage actions. Rule 246.
2. In administration, see rule 778.
3. In partition, see rule 794.
4. To settle conveyances, rule 808.

5. To appoint committee guardian or receiver, rules 796 et seq.

The Master is appointed by the Lieutenant Governor in Council under section 54 of the Act, his deputy under 55, and their duties are in the discretion of the judges, sections 56 and 68. As to powers, see section 60, giving power to administer oaths, take affidavits, receive affirmations and examine witnesses and parties as the court may direct, and see also the rules following here.

RULE 39.—MASTER'S OFFICE—GENERAL RULES—CARRIAGE OF ORDER OF REFERENCE.

1905 Rule 39; 1905 Ontario Rule 657 reads "14 days after the order has been signed or issued by the party having the carriage of the same," otherwise as in the Manitoba Rule; 1913 Ontario Rule 402 similar.

RULE 39 (2)—MASTER'S OFFICE—GENERAL RULES—COPY OF JUDGMENT SUFFICIENT FOR MASTER.

Added by 3 Geo. V, cap. 12, s.3. There is no Ontario counterpart to this rule. See notes to rule 375 dispensing with office copies in Manitoba.

The Ontario Rule (1905 rule 658) (1913 rule 403) has a provision requiring notice of the first proceeding before the Master to be given to every party affected by or interested in the inquiry though any such party may not have appeared or pleaded, unless the Master otherwise direct. This merely declares the former practice. Holmested & Langton, 865. No Manitoba counterpart, but semble rule 48 would require the same practice to be followed.

RULE 40.—MASTER'S OFFICE—GENERAL RULES—MASTER MAY ADD PARTIES.

1902 Rule 40 similar; 1905 Ontario Rule 659 similar, only it required service of an office copy. 1913 Ontario Rule 404 partly similar, see notes to rule 41. Prior to 1913 the Manitoba Rule required merely a direction, now an order must be made by the Master; changed 3 Geo. V, cap. 12 s. 3.

No direct relief can be obtained against parties added under this rule, and they cannot themselves get any relief against co-defendants beyond what is claimed by the plaintiff; Watson

v. Cadwaller, 23 M.R. 760, 26 W.L.R. 1; Campbell v. Imperial Loan Co., 15 M.R. 614, and see Sveinsson v. Jenkins, 21 M.R.746.

Prior incumbrancers should not be made parties, Allan v. Manitoba and North Western Railway Co. Re Gray, No. 2, 10 M.R. 123; Leggo v. Thibaudeau, 7 M.R. 38.

Where a prior encumbrancer was wrongfully added in the Master's office, and the plaintiff acquiesced, he was not, after a great lapse of time, allowed to take objection to it, and the added incumbrancer could not be foreclosed nor dismissed from the proceedings. An order was made foreclosing the defendants by bill and the incumbrancers properly added in default of payment, but with leave, if not paid off, to apply for a sale, or that the plaintiff pay her or stand foreclosed. Leggo v. Thibaudeau, 7 M.R. 38.

RULE 41.—MASTER'S OFFICE—GENERAL RULES—ENDORSEMENT ON COPY SERVED.

1902 Rule 41 similar, changed to its present form by 3 Geo. V, cap. 12 s. 3. 1905 Ontario Rule 660; 1913 Ontario Rule 404 contains the provisions of former Manitoba Rules 40 and 41.

RULE 42.—MASTER'S OFFICE — GENERAL RULES — PARTIES ADDED MAY MOVE TO DISCHARGE JUDGMENT.

A party served with a (a)copy of a judgment or order under rule 40 may apply to the court, at any time within fourteen days from the date of such service, to discharge the judgment or order, or to add to, vary or set aside the same. R.S.M. c. 40, h. 42; 3 Geo. 5, c. 12, s. 3, part.

1902 Rule 42 had at A the words "an office"; struck out by 3 Geo. V, c. 12 s. 3; 1905 Ontario Rule 662; 1913 Ontario Rule 405; Vacation 395 (e).

RULE 43.—MASTER'S OFFICE—GENERAL RULES—MASTER MAY CLASSIFY INTERESTS AND REGULATE THEIR REPRESENTATION.

1902 Rule 43; 1905 Ontario Rule 662; 1913 Ontario Rule 406.

RULE 44.—MASTER'S OFFICE—GENERAL RULES—MASTER MAY CHANGE CONDUCT OF REFERENCE.

1902 Rule 44; 1905 Ontario Rule 663; 1913 Ontario Rule 407.

The Ontario Rules have not the last clause in the Manitoba Rule which, however, merely declares the result of the former part of the rule.

RULE 45.—MASTER'S OFFICE—GENERAL RULES—MASTER MAY CLOSE REFERENCE IN CASE OF UNDUE DELAY.

1902 Rule 45. This rule has no Ontario counterpart. It would seem and is submitted that the Master's powers are wide enough to permit of his taking some such step even without the enabling rule.

RULE 46.—MASTER'S OFFICE—GENERAL RULES—REFERENCE TO BE PROCEEDED WITH DE DIE IN DIEM, UNLESS OTHERWISE ORDERED.

1902 Rule 46; 1905 Ontario Rule 664; 1913 Ontario Rule 408. The Ontario Rules, though differently expressed, are identical in effect.

RULE 47.—MASTER'S OFFICE—GENERAL RULES—REFERENCE NOT TO BE UNNECESSARILY ADJOURNED TO TAKE UP OTHER CASES.

1902 Rule 47. No Ontario counterpart.

RULE 48.—MASTER'S OFFICE—GENERAL RULES—WARRANT TO CONSIDER.

1902 Rule 48; 1905 Ontario Rule 665; 1913 Ontario Rule 409. The Ontario Rule covers the matters provided for by this and the following Manitoba Rule.

RULE 49.—MASTER'S OFFICE—GENERAL RULES—PROCEEDINGS UPON RETURN OF WARRANT.

1902 Rule 49. See notes to rule 48 above.

RULE 50.—MASTER'S OFFICE—GENERAL RULES—NO STATEMENT IN PLEADING OR EVIDENCE AT TRIAL NECESSARY TO ENABLE MASTER TO EXERCISE HIS POWERS.

1902 Rule 50; 1905 Ontario Rule 666. The 1913 Ontario Rules have dropped this rule. Quaere, was it considered that rule 410 (Manitoba 51) gave the powers set out in this rule?

RULE 51.—MASTER'S OFFICE—GENERAL RULES—POWERS OF MASTER UPON REFERENCE.

1902 Rule 51; 1905 Ontario Rule 667; 1913 Ontario Rule 410.

The Master has power to direct the appointment of an accountant and to tax the payment of his fees. Scott v. Griffin, 6 M.R. 116. Remuneration allowed to executors as just allowance, re Sanford Estate, 18 M.R. 413.

RULE 52.—MASTER'S OFFICE—GENERAL RULES—EXAMINATION OF WITNESSES UPON REFERENCE.

1902 Rule 52; 1905 Ontario Rule 668. The 1913 Ontario Rule omitted this rule. The Master may issue his certificate upon which a praecipe order for a commission to examine witnesses will issue. Rule 502.

As to allowances for witness fees, see Scott v. Griffin, supra.

RULE 53.—MASTER'S OFFICE—GENERAL RULES—EXAMINATION OF WITNESSES AND PRODUCTION OF DOCUMENTS.

1902 Rule 53; 1905 Ontario Rule 669; 1913 Ontario Rule 411.

See Lewis v. Georgeson, 6 M.R. 272, as to foreign evidence taken by the Master.

Penalty for non-compliance with order under this rule, see rules 437, 438.

RULE 54.—MASTER'S OFFICE—GENERAL RULES—ADVERTISEMENTS FOR CREDITORS.

1902 Rule 54; 1905 Ontario Rule 670; 1913 Ontario Rule 412.

RULE 55.—MASTER'S OFFICE—GENERAL RULES—DEALING WITH CREDITORS' CLAIMS.

1902 Rule 55; 1905 Ontario Rule 671; 1913 Ontario Rule 413.

RULE 56.—MASTER'S OFFICE—GENERAL RULES—SETTLING CONVEYANCES.

1902 Rule 56; 1905 Ontario Rule 672; 1913 Ontario Rule 416.

RULE 57.—MASTER'S OFFICE—GENERAL RULES—FORM AND MODE OF VERIFYING ACCOUNTS.

1902 Rule 57; 1905 Ontario Rule 673; 1913 Ontario Rule 417.

RULE 58.—MASTER'S OFFICE—GENERAL RULES—BOOKS OF ACCOUNT AS PRIMA FACIE EVIDENCE.

1902 Rule 58; 1905 Ontario Rule 674 has not the last clause. 1913 Ontario Rule 418. Semble the result is the same.

RULE 59.—MASTER'S OFFICE—GENERAL RULES—NO STATE OF FACTS, ETC., TO BE BROUGHT IN—COPIES OF DEEDS, ETC.

1902 Rule 59; 1905 Ontario Rule 675; 1913 Ontario Rule drops this rule.

RULE 60.—MASTER'S OFFICE—GENERAL RULES—COPIES OF DOCUMENTS TO BE SUPPLIED AS MASTER DIRECTS.

1902 Rule 60; 1905 Ontario Rule 676; 1913 Ontario Rule drops this rule.

RULE 61.—MASTER'S OFFICE—GENERAL RULES—PARTIES BOUND BY MASTER'S DIRECTION WITHOUT WARRANT.

1902 Rule 61; 1905 Ontario Rule 677; 1913 Ontario Rule 421, last clause, continues this provision in Ontario.

RULE 62.—MASTER'S OFFICE—GENERAL RULES—ASCERTAINING MATTERS CONTESTED BEFORE PROCEEDING WITH REFERENCE.

1902 Rule 62; 1905 Ontario Rule 678; 1913 Ontario Rule 419 similar, only fuller.

RULE 63.—MASTER'S OFFICE—GENERAL RULES—WARRANT TO ASCERTAIN MATTERS CONTESTED.

1902 Rule 63; 1905 Ontario Rule 679; 1913 Ontario Rule drops this rule.

FOR THE PURPOSES AFORESAID: To decide what is admitted and what is contested between the parties.

RULE 64.—MASTER'S OFFICE—GENERAL RULES—PARTY SEEKING TO CHARGE ACCOUNTING PARTY MUST GIVE NOTICE OF PARTICULARS.

1902 Rule 64; 1905 Ontario Rule 680; 1913 Ontario Rule 420.

The new Ontario Rule requires parties seeking to falsify to deliver particulars of the item objected to referring to it by number. For a case of falsifying items see Phillips v. Prout, 12 M. R. 413.

RULE 65.—MASTER'S OFFICE—GENERAL RULES — MASTER'S BOOK.

1902 Rule 65; 1905 Ontario Rule 681; 1913 Ontario Rule 421, all but the last clause. See notes to rule 61.

RULE 66.—MASTER'S OFFICE—GENERAL RULES—MASTER TO CERTIFY PROCEEDINGS IN HIS OFFICE.

1902 Rule 66; 1905 Ontario Rule 682; 1913 Ontario Rule drops this rule although semble the Master might certify any proceedings in his office without the authority of a rule.

RULE 67.—MASTER'S OFFICE—GENERAL RULES—SIMPLEST AND SPEEDIEST METHOD OF PROSECUTING REFERENCE TO BE ADOPTED.

1902 Rule 67; 1905 Ontario Rule 683; 1913 Ontario Rule 422 similar. See notes to Rule 165.

RULE 68.—MASTER'S OFFICE—GENERAL RULES—APPOINTMENT FOR SEVERAL DAYS MAY BE INCLUDED IN ONE WARRANT.

1902 Rule 68, 1905 Ontario Rule 684; 1913 Ontario Rule 423.

RULE 69.—MASTER'S OFFICE—GENERAL RULES—PARTIES NOTIFIED BY MASTER NOT TO BE SERVED WITH WARRANT.

1902 Rule 69; 1905 Ontario Rule 685; 1913 Ontario Rule omits this rule.

RULE 70.—MASTER'S OFFICE—GENERAL RULES—PARTIES NOTIFIED LIABLE FOR DEFAULT.

1902 Rule 70; 1905 Ontario Rule 686; 1913 Revision drops this rule.

RULE 71.—MASTER'S OFFICE—GENERAL RULES—CLOSING HEARING OF REFERENCE — MASTER'S REPORT — WARRANT TO SETTLE.

1902 Rule 71; 1905 Ontario Rule 687; 1913 Ontario Rule 424.

The Master's report is settled upon the return of his warrant to settle. The form is governed by Rules 73, 74 & 80. The report is delivered to the party having conduct of the motion and filed in the Prothonotary's office (Rule 77), and becomes absolute at the expiration of 14 days unless sooner moved against (Rule 79). See Holmested & Langton, p. 911 et seq.

RULE 72.—MASTER'S OFFICE—GENERAL RULES—POINTS INTENDED TO BE RAISED UPON APPEAL TO BE TAKEN BEFORE MASTER.

1902 Rule 72; 1905 Ontario Rule 688; dropped in 1913 Revision.

It is not necessary to raise these points in writing (Rule 76), but it is a matter of careful practice to do so if an appeal is contemplated.

RULE 73.—MASTER'S OFFICE—GENERAL RULES—ACCOUNTS, ETC., NOT TO BE SET OUT IN REPORT.

1902 Rule 73; 1905 Ontario Rule 689; 1913 Ontario Rule 425. See Notes to Rule 71.

RULE 74.—MASTER'S OFFICE—GENERAL RULES—METHODS OF PREPARING REPORTS AFFECTING MONEY—IN COURT.

1902 Rule 74; 1905 Ontario Rule 690; 1913 Ontario Rule 426. See Notes to Rule 71.

RULE 75.—MASTER'S OFFICE—GENERAL RULES—DELIVERY OF REPORT.

1902 Rule 75; 1905 Ontario Rule 691; 1913 Ontario Rule 427.

The report, or a duplicate thereof, should then be filed in the prothonotary's office, Rule 77, and notice of filing given to all parties.

RULE 76.—MASTER'S OFFICE—GENERAL RULES—OBJECTION TO REPORT.

1902 Rule 76; 1905 Ontario Rule 692. The 1913 revision dropped this rule. See notes to rule 72.

RULE 77.—MASTER'S OFFICE—GENERAL RULES—FILING REPORT —NOTICE OF FILING.

1902 Rule 77; 1905 Ontario Rule 694; 1913 Ontario Rule 429.

For the effect of filing, see Rule 79. The report should be filed in the prothonotary's office Rule 14 (a). See Rules 16 and 178, and rule 78 as to place of filing reports of a Local Master. The report must be filed before being acted upon, even if confirmation is not required. Ellis v. Henderson, 8 P. R. 387.

RULE 78.—MASTER'S OFFICE—GENERAL RULES—PLACE OF FILING.

1902 Rule 78; 1905 Ontario Rule 693; 1913 Ontario Rule 428 part.

RULE 79.—MASTER'S OFFICE—GENERAL RULES—WHEN REPORT BECOMES ABSOLUTE.

1902 Rule 683; 1905 Ontario Rule 769; 1913 Ontario Rule 502. See Holmested & Langton, pp. 1006 and 1007, as to moving in Chambers to confirm a report. See Holmested & Langton, p. 1005, for reports which do not require confirmation.

The long vacation is not to be reckoned in the time allowed for a report to become absolute, rule 395, unless otherwise directed, ibid.

An appeal lies to a Judge in Chambers, rule 679, on motion, notice of which must be served at any time before the report becomes absolute, rule 679 (3), and the motion returnable within 16 days after the date of the order, rule 679 (4).

The appeal may not be taken upon any point save those raised under rule 72.

When the report stands confirmed by lapse of time, the time for appeal may be extended, rule 396.

RULE 80.—MASTER'S OFFICE—GENERAL RULES—HOW MONEY TO BE PAID.

1902 Rule 79; 1905 Ontario Rule 695 (1); 1913 Ontario Rule 430 (1).

RULE 81.—MASTER'S OFFICE—GENERAL RULES—PAYMENT OF MONEY INTO BANK.

1902 Rule 80; 1905 Ontario Rule 695 (2); 1913 Ontario

Rule 430 (2). This rule does not govern the payment of money into Court except in cases where the payee is to do something before he can get the money, e.g., execute a conveyance in a specific performance action, or a discharge or a release in a mortgage action. For other cases of payment in see rule 133. The Accountant is the officer appointed under section 54 of the Act.

RULE 82.—MASTER'S OFFICE—GENERAL RULES—FORM OF REPORT IN ADMINISTRATION SUITS.

1902 Rule 81; 1905 Ontario Rule 697; 1913 Ontario Rule 432.

RULE 83.—MASTER'S OFFICE—GENERAL RULES—JURISDICTION OF MASTER UPON REFERENCE FEES.

1902 Rule 82; 1905 Ontario Rule 698; 1913 Ontario Rule 433.

RULE 84.—MASTER'S OFFICE—SALES—MODE OF SALE.

1902 Rule 83; 1905 Ontario Rule 716; 1913 Ontario Rule 438.

RULE 85.—MASTER'S OFFICE — SALES—CONDUCT OF SALE UNDER TRUSTS OF WILLS OR SETTLEMENT.

1902 Rule 84; 1905 Ontario Rule 717; 1913 Ontario Rules omitted this rule.

RULE 86.—MASTER'S OFFICE—SALES—APPOINTMENT TO SETTLE ADVERTISMENT.

1902 Rule 86; 1905 Ontario Rule 719; 1913 Ontario Rules omit this rule.

RULE 87.—MASTER'S OFFICE—SALES—ADVERTISEMENTS.

1902 Rule 87; 1905 Ontario Rule 720; 1913 Ontario Rule 439 part.

The particulars are provided for by Rule 88.

RULE 88.—MASTER'S OFFICE—SALES—ADVERTISEMENTS.

1902 Rule 88; 1905 Ontario Rule 721; 1913 Ontario Rule 439 part.

The standing conditions referred to in clause (g) are those in rule 90.

RULE 89.—MASTER'S OFFICE—SALES—SETTLING AND ARRANGING FOR SALE.

1902 Rule 89; 1905 Ontario Rule 722; 1913 Ontario Rule 440.

RULE 90.—MASTER'S OFFICE—SALES—STANDING CONDITIONS OF SALE.

1902 Rule 90; 1905 Ontario Rule 723; 1913 Ontario Rule 441.

RULE 91.—MASTER'S OFFICE—SALES—UPSET PRICE OR RESERVED BIDDING.

1902 Rule 91; 1905 Ontario Rule 724; 1913 Ontario Rules none similar.

RULE 92.—MASTER'S OFFICE—SALES—PARTIES THAT MAY BID.

1902 Rule 92; 1905 Ontario Rule 725; 1913 Ontario Rule 442.

RULE 93.—MASTER'S OFFICE—SALES—PUBLICATION OF ADVERTISEMENT.

1902 Rule 93; 1905 Ontario Rule 726; 1913 Ontario Rule none similar.

RULE 94.—MASTER'S OFFICE—SALES—CONDUCT OF SALE.

1902 Rule 94; 1905 Ontario Rule 727; 1913 Ontario Rule 443.

RULE 95.—MASTER'S OFFICE—SALES—BIDDINGS.

1902 Rule 95; 1905 Ontario Rule 728; 1913 Ontario Rule 444.

RULE 96.—MASTER'S OFFICE—SALES—DEPOSIT AT SALE.

1902 Rule 96; 1905 Ontario Rule 729; 1913 Ontario Rule 445.

RULE 97.—Master's Office—Sales—Verifying Sale.

1902 Rule 97; 1905 Ontario Rule 730; 1913 Ontario Rule 446.

RULE 98.—Master's Office—Sales—Form of Report on Sale.

1902 Rule 98; 1905 Ontario Rule 731; 1913 Ontario Rule none similar.

RULE 99.—Master's Office—Sales—Objections to Sale.

1902 Rule 99; 1905 Ontario Rule 732; 1913 Ontario Rule 447.

RULE 100.—Master's Office—Sales—Payment of Purchase Money Into Court—Possession of Estate.

1902 Rule 100; 1905 Ontario Rule 733; 1913 Ontario Rule 448.

RULE 101.—Master's Office—Sales—Settling Conveyances.

1902 Rule 101; 1905 Ontario Rule 734; 1913 Ontario Rule, none similar.

RULE 102.—Master's Office—Sales—Delivery of Abstract, —Objections to Abstract.

1902 Rule 102; 1905 Ontario Rule 735; 1913 Ontario Rule 449.

RULE 103.—Master's Office—Sales—Determination of Questions Upon Abstract.

1902 Rule 103; 1905 Ontario Rule 736; 1913 Ontario Rule 450.

RULE 104.—Master's Office—Sales—Master not to Report on Abstract—Making Objections—Certifying Abstract.

1902 Rule 104; 1905 Ontario Rule 737; 1913 Ontario Rule 451.

RULE 105.—Master's Office—Sales—No Objections Allowed After Confirmation or Acceptance of Abstract.

1902 Rule 105; 1905 Ontario Rule 738; 1913 Ontario Rule, none similar.

RULE 106.—MASTER'S OFFICE—SALES—VERIFICATION OF ABSTRACT.

1902 Rule 106; 1905 Ontario Rule 739; 1913 Ontario Rule 452.

RULE 107.—MASTER'S OFFICE—SALES—SERVICE OF OBJECTIONS AND REQUISITIONS.

1902 Rule 107; 1905 Ontario Rule 740; 1913 Ontario Rule 453.

RULE 108.—MASTER'S OFFICE—SALES—VERIFICATION OF ABSTRACT IN CASE OF VENDOR'S NEGLECT.

1902 Rule 108; 1905 Ontario Rule 741; 1913 Ontario Rule 454.

RULE 109—MASTER'S OFFICE—SALES—APPLICATION OF RULES 102-108.

1902 Rule 109; 1905 Ontario Rule 742; 1913 Ontario Rule 455.

HEADNOTE TO RULE 110.

The following rules regulating the appointment of receivers are to carry into effect the provisions of section 26 (o) of the Act. See the notes to that section. The practice is as follows. The party who has obtained his order for a receiver, unless the receiver is named in the order and as receiver without security, takes his order into the Master's office (Rule 39) and at the same time proposes his receiver and his sureties. The Master then issues his warrant or appointment, setting out the name of the proposed receiver and his sureties and the amount of the bond. This is served upon the necessary parties and on the return day the proposing party brings in before the Master the bond properly executed. If the other side desire to propose another surety, they may give notice in writing, specifying his name and the names of the sureties and the amount of the proposed bond, and they then bring in before the Master their bond duly executed. As to who may or may not be appointed see notes to section 26 (o).

RULE 110.—MASTER'S OFFICE—RECEIVERS, COMMITTEES, ETC.—WARRANT FOR APPOINTMENT OF RECEIVER.

1902 Rule 110; 1905 Ontario Rule 759; 1913 Ontario Rule 458.

RULE 111.—MASTER'S OFFICE—RECEIVERS, COMMITTEES, ETC.—BRINGING IN BOND.

1902 Rule 111; 1905 Ontario Rule 760; 1913 Ontario Rule 458.

The solicitor of the party having the conduct of the proceedings may not be on the bond, Re Gibson, 13 P.R. 359.

The amount of the bond is usually double the annual rent of the realty together with twice the value of the personalty likely to come into the receiver's hands. But see Re Graham (1895) 1 Chy. 66.

The giving of security is a condition precedent in so far as strangers to the action are concerned. A receiver is appointed *on giving security*. If a judgment creditor seized before security was given, the seizure would be valid, and there is no receiver until security is given.

But in the case of a receiver of the rents of lands, it operates as an immediate taking in execution, and the receivership relates back upon giving security. The order should specifically state if security is dispensed with.

An interim receiver without security may be appointed in cases of emergency. The sheriff was formerly appointed, but this came to be considered improper, as the monies did not come into his hands or under his security as sheriff, Kirk v. Burgess 15 O.R. 610.

RULE 112.—MASTER'S OFFICE—RECEIVERS, COMMITTEES, ETC.—PARTY DESIRING ANOTHER RECEIVER TO GIVE NOTICE.

1902 Rule 112; 1905 Ontario Rule 761; 1913 Ontario Rule 458. "Where two parties are equally interested and receivers are proposed by both, who are equally unobjectionable, the nominee of the party having the conduct of the proceedings is preferred." Simpson v. Ottawa, 1 Chy. Ch. R. 99.

RULE 113.—Master's Office—Receivers, Committees, Etc.—Appointment of Receiver—Settling Security.

1902 Rule 113; 1905 Ontario Rule 762; 1913 Ontario Rule, 458.

RULE 114.—Master's Office—Receivers, Committees, Etc.—Master not to Make Report—Form of Appointment.

1902 Rule 114; 1905 Ontario Rule 763; 1913 Ontario Rule 458.

The appointment of committees of lunatics, etc., is made in the same way (Rule 116).

RULE 115.—Master's Office—Receivers, Committees, Etc.—Filing Appointment.

1902 Rule 115; 1905 Ontario Rule 764; 1913 Ontario Rule 458.

See as to Ontario practice under this rule, McLennan v. Gray, 12 P.R. 431.

RULE 116.—Master's Office—Receivers, Committees, Etc.—Appointment of Committees of Lunatics, et al.

1902 Rule 116; 1905 Ontario Rule 765; 1913 Ontario Rule 458.

See Rule 114 as to form of appointment. This rule is passed to give effect to section 13 of the Act, which see.

RULE 117.—Master's Office—Receivers, Committees, Etc.—Fixing Time for Receivers, et al. to Pass Accounts.

1902 Rule 117; 1905 Ontario Rule 766; 1913 Ontario Rule 459.

Where a receiver ordered to pay money into Court fails to do so, he may be committed, McIntosh v. Elliott, 2 Gr. 396; Fawkes v. Griffin, 18 P.R. 48. It has been held in Ontario that R.S.O. 1897, ch. 80, s. 5, does not render a receiver immune.

See also In re Dunn (1904), 1 Chy. 648.

In the following series of Rules the practice is laid down for proceedings in the Master's office after a judgment for foreclosure sale or redemption has been obtained. Every such judgment is to be read as if it contained the particulars set out in Rules 118 to 131 following here and in Rule 252 providing

for final order of foreclosure upon default. For the form of such judgment see Rules 658 et seq.

In cases of undefended actions judgment may be obtained on motion if any of the defendants are infants and on praecipe if there are no infants. Rule 616.

When a mortgagor or mortgagee desires sale, the practice is governed by Rules 127 and 128 and 246 et seq., the notes to which should be referred to.

RULE 118.—MASTER'S OFFICE—FORECLOSURE, SALE AND REDEMPTION—ENQUIRY AS TO ENCUMBRANCES.

1902 Rule 118; 1905 Ontario Rule 744; 1913 Ontario Rule 468.

A similar procedure is followed in Ontario under this rule upon a judgment for foreclosure or sale of chattels.

See also McDermott v. Bielschowsky, 2 W.W.R. 182.

RULE 119.—MASTER'S OFFICE—FORECLOSURE, SALE AND REDEMPTION—BRINGING IN CERTIFICATES AS TO ENCUMBRANCES.

1902 Rule 119; 1905 Ontario Rule 745, similar in effect; 1913 Ontario Rule 469.

The plaintiff is to bring into the master's office certificates from the registrar or district registrar of the registration district or land titles district (a) wherein the lands lie, setting forth all the encumbrances which affect the property in the proceedings or pleadings mentioned, and such other evidence as he may be advised. R.S.M. c. 40, r. 119.

The former rule 119 had at A the following words, "and the sheriff of the Judicial District." The former practice in the province in regard to executions was, as in Ontario, to issue a fi. fa. lands and file the same with the sheriff, which bound the lands in the same manner as a certificate of judgment now does under the Real Property Act. The fi. fa. lands was then abolished in Manitoba (see Rule 738), and the certificate of the sheriff no longer became necessary except as to fi. fa. issued before the passing of the original of Rule 738. Some of these, it is understood, are still kept alive for renewals for personal reasons, about five in number, but the others have not been renewed and so have expired. As it is not likely that any of the lands so affected will be foreclosed, this amendment made in the revision will remove from the rule a requirement that cannot be complied with.

The certificates should be down to a date a day subsequent to the issue of the statement of claim. Mortgages of land under the new system can only be foreclosed as provided for by the Real Property Act. Re Alarie and Frechette, 23 M.R. 628, and the Court of King's Bench has no jurisdiction in such a case unless perhaps if there is a special agreement between the parties raising equities as to title or for a conveyance of an estate in the land, ibid.

See Rules 246 et seq. infra and notes.

RULE 120.—MASTER'S OFFICE—FORECLOSURE, SALE AND REDEMPTION—ENCUMBRANCERS TO BE MADE PARTIES.

1902 Rule 120; 1905 Ontario Rule 746; 1913 Ontario Rule 470.

The notice provided for is commonly called "Notice T," i.e., to encumbrancers; and provides the machinery for adding parties after judgment.

Where the party brought into the Master's office under this rule takes no steps to have the decree varied or set aside, he cannot afterwards object to the plaintiff's right to a decree of foreclosure. Phillips v. Prout, 12 M.R. 143.

Any party added who claims to rank ahead of the plaintiff must move to discharge the order adding him (under Rule 121), McDermott v. Bielschowsky, 2 W.W.R. 182.

Where a plaintiff has served a party with such notice he cannot afterwards object to the plaintiff's right to a decree of foreclosure, Phillips v. Prout, 12 M.R. 143.

See Homested and Langton, pp. 961, 962, for further practice under this rule. If the encumbrancer does not attend and prove his claim, he is treated as if he disclaimed, and is foreclosed. See Rule 123.

RULE 121.—MASTER'S OFFICE—FORECLOSURE, SALE AND REDEMPTION—PARTIES ADDED MAY MOVE AGAINST ORDER.

1902 Rule 121; 1905 Ontario Rule 747; 1913 Ontario Rule 471.

The Ontario Rule requires the motion to be made within ten days—otherwise it is the same. See notes to foregoing rule.

RULE 122.—MASTER'S OFFICE—FORECLOSURE, SALE AND REDEMPTION—ENCUMBRANCERS TO BE SERVED WITH APPOINTMENT.

1902 Rule 122; 1905 Ontario Rule 748; 1913 Ontario Rule 472 part only.

This appointment is only served upon parties who were parties before judgment. Rule 120 only applies to parties after judgment, all other parties must be added under rule 120 and all original parties notified under this rule before the Master may proceed to hear and determine. See rule 123 as to the effect of non-compliance. The Ontario Rule 472 is longer, owing to provisions as to the form of the notice to be served upon the defendant by writ under Ontario Rule 403, which has no Manitoba counterpart except as in the first part of this rule. The result is the same.

RULE 123.—MASTER'S OFFICE—FORECLOSURE, SALE AND REDEMPTION—PARTIES DULY SERVED AND NOT ATTENDING TO BE FORECLOSED.

1902 Rule 123; 1905 Ontario Rule 749; 1913 Ontario Rule 473. By this rule encumbrancers who do not attend and prove their claims under rule 120, and original parties or parties before judgment who do not attend, under rule 122 are foreclosed. The Court has power to re-open upon terms, however, if application is duly made.

RULE 124.—MASTER'S OFFICE—FORECLOSURE, SALE AND REDEMPTION—TAKING ACCOUNTS—TWELVE MONTHS TO BE GIVEN FOR PAYMENT.

1902 Rule 124; 1905 Ontario Rule 750 (1); 1913 Ontario Rule 474.

The second clause of Rule 124 is new in Manitoba being added by 7-8 Ed. VII,c. 13, s.13, and has no counterpart in Ontario, where the practice is to allow 6 months. The Manitoba practice was formerly the same until former Rule 124 was passed and now semble 6 months would be allowed in cases of contract made before the 29th February, 1908. Rice vs. Murray, 2 M.R. 37.

One day is to be appointed for redemption by all parties, Rule 253.

In default of payment according to the report a final

order of foreclosure may be made against the defaulter upon application ex parte, rule 252. Where a payment is made after the report is made, notice of credit must be given by the party to whom it is made, rule 255. Final order of foreclosure may go after such notice in the discretion of the Judge, rule 256, or the party receiving such payment may apply exparte or upon notice for a new day, rule 257.

If no notice of credit is given, there should be an order referring it to the Master to fix, or the order may itself fix, a new day for payment, Manitoba and N.W. Loan Co. v. Scobell, 2 M.R. 125.

If no notice is given the mortgagee may be deprived of his costs.

RULE 125.—MASTER'S OFFICE—FORECLOSURE, SALE AND REDEMPTION—MASTER'S REPORT.

1902 Ontario Rule 125; 1905 Ontario Rule 752; 1913 Ontario Rule 476.

In practice the report is drawn by the solicitor having the carriage of the matter and settled by the Master. Under the usual mortgage decree the plaintiff has a right to issue execution immediately after the making of the Master's report and before its confirmation. Cameron v. McIlroy, 1 M.R. 197.

RULE 126.—MASTER'S OFFICE—FORECLOSURE, SALE AND REDEMPTION—SUBSEQUENT ACCOUNTS.

1902 Rule 126; 1905 Ontario Rule 753; 1913 Ontario Rule 477.

RULE 127.—MASTER'S OFFICE—FORECLOSURE, SALE AND REDEMPTION—SALE, PROCEEDINGS ON FOR JUDGMENT.

1902 Rule 127; 1905 Ontario Rule 754; 1913 Ontario Rule 478.

See the rules governing sales 84 et seq. and rules 247 and notes.

RULE 128.—MASTER'S OFFICE—FORECLOSURE, SALE AND REDEMPTION—APPLICATION OF PURCHASE MONEY.

1902 Rule 128; 1905 Ontario Rule 755; 1913 Ontario Rule 479.

RULE 129.—Master's Office—Foreclosure, Sale and Redemption—Judgment for Redemption—Twelve Months to be given for Payment.

1902 Rule 129; 1905 Ontario Rule 756; 1913 Ontario Rule 480.

Clause (2) of this rule was added by 7-8 Ed. VII, cap.13,ss. 2-3. See notes to rule 124.

RULE 130.—Master's Office—Foreclosure, Sale and Redemption—Redemption or Foreclosure or Redemption and Sale.

1902 Rule 130; 1905 Ontario Rule 757; 1913 Ontario Rule 481.

RULE 131.—Master's Office—Foreclosure, Sale and Redemption—Conveying Property When Payment Made.

In an action for foreclosure or sale upon payment by the defendant, or in an action for redemption upon payment by the plaintiff, of the amount found due, the plaintiff or defendant shall, unless the judgment otherwise directs, assign and convey the mortgaged premises in question to the defendant (or plaintiff, as the case may be) making the payment, or to whom he may appoint, free and clear of all encumbrances done by him, and deliver up all deeds and writings in his custody or power relating thereto, [upon oath; and in case of a corporation the affidavit shall be made by the officer thereof having the custody of such deeds and writings.] R.S.M. c. 40, r. 131.

1902 Rule 131; 1905 Ontario Rule 758; 1913 Ontario Rule 482.

The Ontario Rule has not the clause in brackets and is made expressly subject to the provisions of the Mortgage Act. R.S.M. 1913, cap. 130, s. 4, contains similar provisions as to when a redeeming mortgagor may require the mortgagee to assign to a third party or his nominee.

RULE 132.—Accountant—General Rules—Accountant to Have Charge of Suitors' Accounts.

1902 Rule 132; 1905 Ontario Rule 50. In 1913 the office and powers of the accountant were incorporated into the Judica-

ture Act. 3 & 4 Geo. V., (Ont.) cap. 19. The accountant is appointed under section 54 of the Act.

RULE 133.—ACCOUNTANT—PAYMENT INTO COURT—BANK TO RECEIVE MONEY.

1902 Rule 133; 1905 Ontario Rule 405; 1913 Ontario Rule 727.

Rules 134 and 135 provide for the manner of payment in. See the notes to these rules. Money may be paid into Court under order in certain cases, e.g., as a term of obtaining indulgence, or without an order with a plea of tender under rule 559, or in satisfaction under rule 552.

RULE 134.—ACCOUNTANT—PAYMENT INTO COURT—PRAECIPE FOR DIRECTION TO BANK.

1902 Rule 134; 1905 Ontario Rule 406, 407 (1); 1913 Ontario Rule 728 part.

Money may be paid in under an order or with a pleading under rule 552 or under 558 or 559. In the latter case the pleading is filed and produced to the accountant who upon receipt of the pleading or order and upon praecipe issues his direction to the bank to receive the money. The further procedure is governed by rule 135.

RULE 135.—ACCOUNTANT—PAYMENT INTO COURT—RECEIPT IN TRIPLICATE.

1902 Rule 135; 1905 Ontario Rule 410; 1913 Ontario Rule 730.

The bank on receiving the direction gives a triplicate receipt, one part of which goes to the party paying in, the second to the accountant, and the third to the Provincial Treasurer.

See also the notes to rules 552 et seq.

RULE 136.—ACCOUNTANT—PAYMENT OUT OF COURT—HOW MONEY TO BE PAID.

1902 Rule 136; 1905 Ontario Rule 412; 1913 Ontario Rule 731.

RULE 137.—ACCOUNTANT—PAYMENT OUT OF COURT.

1902 Rule 137; No Ontario counterpart; See rule 653 as to form of order.

RULE 138.—ACCOUNTANT—PAYMENT OUT OF COURT—TO WHOM CHEQUES PAYABLE.

1902 Rule 138: No Ontario counterpart.

RULE 139.—ACCOUNTANT—PAYMENT OUT OF COURT—TIME FOR ISSUE OF CHEQUES.

1902 Rule 139; No Ontario counterpart.

RULE 140.—ACCOUNTANT—PAYMENT OUT OF COURT—DOCUMENTS TO BE LEFT WITH ACCOUNTANT.

1902 Rule 140; 1905 Ontario Rule 46; 1913 Ontario Rule 731 (2).

RULE 156.—ACCOUNTANT—STOP ORDER—PERSON LIABLE TO PAY COSTS.

1902 Rule 156; 1905 Ontario Rule 82; 1913 Ontario Rule 726.

The Manitoba Rule is radically different from the corresponding Ontario Rules in that it provides no machinery (although see Rule 157) for obtaining a stop order. The Ontario Rules provide for obtaining a stop order ex parte upon an application to the Court or a Judge supported by affidavit verifying the claim of the party applying. The result of the Manitoba Rule is in practice the same. See rule 157 providing that the Order may be obtained ex parte.

The applicant must submit to the terms of the rule as to costs, etc., as a condition of getting the order.

A stop order has no effect until delivered to the accountant. If there is not time to obtain a stop order in Ontario, a caveat may be filed with the accountant, which holds the fund in Court 24 hours longer so an order may be obtained. See Holmsted & Langton, pp. 236 et seq.

A stop order does not affect rights or give priority.

A stop order was originally within the Chancery jurisdiction.

It gives no charge on a fund in Court in favor of the party obtaining it, and he is not entitled to an order for payment out as against his judgment debtor without first getting a charging order on the fund. McWilliams v. Bailey, 9 M.R. 563.

RULE 157.—ACCOUNTANT—STOP ORDERS—NOTICE OF APPLICATION FOR STOP ORDER.

1902 Rule 157; 1905 Ontario Rule 82; 1913 Ontario Rule 726.

See notes to rule 156. Quaere whether this rule permits an ex parte application in so far as persons interested in the fund to be affected by the order are concerned.

RULE 158.—TAXING OFFICERS—TAXING OFFICER AT WINNIPEG.

1902 Rule 158; 1905 Ontario Rule 83; 1913 Judicature Act 76 (p); see rules 953 et seq.

RULE 159.—TAXING OFFICERS—LOCAL TAXING OFFICERS.

1902 Rule 159; 1905 Ontario Rule 84; 1913 Ontario Rule 755.

RULE 160.—TAXING OFFICERS—COSTS TAXABLE BY LOCAL TAXING OFFICERS.

1902 Rule 160; 1905 Ontario Rule 85; 1913 Ontario Rule 756.

RULE 161.—TAXING OFFICERS—POWER OF TAXING OFFICERS.

1902 Rule 161; 1905 Ontario Rule 86; 1913 Ontario Rule 757.

RULE 162.—SOLICITORS' AGENTS—"SOLICITORS' AND AGENTS' BOOK"—ENTRIES IN SAID BOOK.

1902 Rule 162; 1905 Rule 91; 1913 Ontario Rule 196.

For the effect of non-compliance with this rule see Rule 294.

These entries are compulsory, Essery v. G. T. R., 13 P.R. 219.

The Ontario Rules also require every solicitor practicing in Toronto to enter his name in the book together with his address.

RULE 163.—SOLICITORS' AGENTS—"SOLICITORS' AND AGENTS' BOOKS" IN OTHER JUDICIAL DISTRICTS THAN EASTERN.

1902 (none) added by 2 Geo. V., c. 14, s. 4 part. No Ontario counterpart. See rule 294 and notes to rule 162.

RULE 164.—SHORTHAND WRITERS—FEES OF STENOGRAPHERS.

1902 Rule 163. In Ontario the Judicature Act contains a similar provision, sec. 69 (b).

RULE 165.—EXPERTS.

1902 Rule 164; 1905 Ontario Rule 94; 1913 Ontario Rule 268.

This is a change from the former rule made by 3 Geo. V., c. 12, s. 3 (part), which only authorized the Court to obtain such assistance. Formerly a Master might not do so. Re Robertson, 24 Gr. 555. The word "engineers" occurred after the word "merchants" in the 1902 rule. The meaning is apparently not changed. See rule 67 as to the powers of a Master.

RULE 166.—SITTINGS OF THE COURTS—WEEKLY SITTINGS.

1902 Rule 165; 1905 Ontario Rule 98, 99, 100; 1913 Ontario Rule 234 part.

For matters properly disposed of by a Judge in Chambers and in Court respectively, see rule 455. This rule and the five following are made under section 29 of the Act.

RULE 167.—SITTINGS OF THE COURTS—WEEKLY SITTINGS—ORDER IN WHICH CASES TO BE CALLED.

1902 Rule 166; 1905 Ontario Rule 100; 1913 Ontario Rule 234 part.

RULE 168.—SITTINGS OF THE COURTS—OTHER SITTINGS FOR TRIALS.

1902 Rule 167; 1905 Ontario Rule 113; 1913 Ontario Jud. Act, s. 44, et seq.

RULE 169.—SITTING OF THE COURTS—VACATION JUDGES.

1902 Rule 168; 1905 Ontario Rule 114; 1913 Ontario Rule 180; as to Vacations see rule 397.

RULE 170.—SITTINGS OF THE COURTS—VACATION JUDGES—ANY JUDGE MAY SIT FOR VACATION JUDGE.

1902 Rule 169; No Ontario counterpart. This rule gets around the difficulty pointed out in Holmested, p. 253, notes to rule 114, as existing in Ontario.

RULE 171.—Sittings of the Courts—Court in Banc.

1902 Rule 170. The Ontario counterpart except in so far as former rule 117 regarding the Divisional Courts is concerned is now superseded.

Until the passing of the Court of Appeal Act (R.S.M. 1913, cap. 43) in 1906, all appeals now taken to that Court were taken to the Court of King's Bench sitting in banc. See sec. 6 of the Court of Appeal Act, ss. (3) reserving part of the jurisdiction of the Court in Banc., and see section 10 of the Court of Appeal Act.

See sections 44 et seq. of the Act.

Sub-section (a) corresponds to ss. (b) and ss. (b) to ss. (f) of the 1902 rule. The jurisdiction of the Court is now limited by this rule to cases where it is specially designated by statute. Former Manitoba Rule 171 is dropped from the King's Bench Rules as unnecessary, as it is now Court of Appeal Rule 31.

RULE 172.—Actions—Commencement of Actions—Statement of Claim.

1902 Rule 172; 1905 Ontario Rule 120; 1913 Ontario Rule 5.

See section 2 ss. (e) of the Act for the definition of an action, it includes suit, set off or counterclaim, and means a civil proceeding commenced by statement of claim or in such other manner as may be prescribed by the rules of Court.

The fees must be paid before a statement of claim may be issued. See notes to section 65 of the Act.

The Ontario action is commenced by writ of summons. See rule 300 and notes.

A cause removed from the Surrogate Court into the Court of King's Bench must be commenced by statement of claim, Re Jickling, 17 W.L.R. 400.

For a history of this rule, First National Bank v. Curry, 16 W.L.R. 102.

This rule applies although the cause of action arose and the defendant resides outside the province (and see rule 173), ibid.

For a form, see form 36 and 37.

The form for service out of the jurisdiction is the same as that for service within the jurisdiction, rule 175.

A statement of claim must be filed and served before taking any other step in the cause when an action is transferred from a County Court to the King's Bench. Doll v. Howard, 11 M.R. 73. As to transferring an action from the Surrogate Court

ibid and R.S.M. 1913, c. 47, s. 61. Re Jickling, 20 M.R. 436. As to who should be plaintiff in such a case ibid.

For service of statement of claim, see rules 267 et seq. It must be served within 6 months, rule 176.

For essentials, see rules 300 et seq.

Where the action is to enforce a public right, it must be brought by the Attorney General. Hope v. Hamilton, 1 O.L.R. 477. See rules 264 and 265 as to costs in such a case, Attorney General v. Richard, 4 M.R. 336, and notes to rules 265, 266 and 934.

For proceedings commenced by originating notice, see rules 928 et seq.

As to class suits, see rule 211, and as to parties generally, rules 195 et seq.

For the place of issuing, see rule 173, and result of bringing in wrong district, rule 174.

For the manner of issuing, rule 176. Place of trial, rule 564.

RULE 173.—ACTIONS—COMMENCEMENT OF ACTIONS—WHERE ACTION TO BE COMMENCED.

This rule was added by 9 Ed. VII., c.14,s.1(part). There is no similar rule in Ontario. There the writ may issue from any County, but the trial of land actions must be in the County where the land is situated. Rules 121 (1905) and (529) 245. The effect of this rule is not to limit the scope of rule 172 but to make certain actions local ones, First National Bank v. Curry, 16 W.L.R. 103.

See notes to rule 172.

RULE 174.—ACTIONS—COMMENCEMENT OF ACTIONS—ACTIONS BROUGHT IN WRONG DISTRICT.

Added by 9 Ed. VII. c. 14, s. 1, to amplify rule 173.

RULE 175.—ACTIONS—COMMENCEMENT OF ACTIONS—FORM FOR OUTSIDE SERVICE.

1902 Rule 175; 1905 Ontario Rule 127, 128; 1913 Ontario Rule 7.

The Ontario Rules require different forms of writ for service, (1) within Ontario, (2) without Ontario, and (3) they require a notice of writ to be served without Ontario if outside

the British Dominions, and the defendant not a British subject.

RULE 176.—ACTIONS—COMMENCEMENT OF ACTIONS—ISSUE OF STATEMENT OF CLAIM—TIME FOR SERVICE.

1902 Rule 176; 1905 Ontario Rules 123-125; 1913 Ontario Rule 6.

See rule 833, and 1905 Ontario Rule 132, 1913 Ontario Rule 9.

For the rules governing service, see rule 267.

The application, unless there are "extraordinary circumstances," should be made within the six months, Watson v. Bowser, 10 W.L.R. 92.

This rule is discussed in Sellick v. Selkirk, 22 M.R. 323. See Clarke v. Bradlaugh, 8 Q.B.D. 63; Archibald v. Strathy, 18 S.C. R. 116.

RULE 177.—ACTIONS—COMMENCEMENT OF ACTIONS—ENTRY OF.

1902 Rule 177; 1905 Ontario Rule 126; 1913 Ontario Revision drops this rule.

RULE 178.—ACTIONS—SUBSEQUENT PROCEEDINGS, WHERE TO BE TAKEN—OFFICE IN WHICH PROCEEDINGS TO BE CARRIED ON.

1902 Rule 206; 1905 Ontario Rule 15; 1913 Ontario Rule 762. See notes to rule 12. .....

RULE 179.—ACTIONS—SUBSEQUENT PROCEEDINGS, WHERE TO BE TAKEN—PROCEEDINGS ON ISSUES.

1902 Rule 207; 1905 Ontario Rule 377; 1913 Ontario Rule 125. See rule 344 and notes.

RULE 180.—ACTIONS—DISCLOSURE BY SOLICITORS AND PLAINTIFFS—DECLARATION BY PLAINTIFF'S SOLICITORS—DISCLOSURE OF RESIDENCE, ETC., OF PLAINTIFFS—STAY OF PROCEEDINGS.

1902 Rule 178; 1905 Ontario Rule 143; 1913 Ontario Rule 13.

See rules 300 and 301 as to form of statements of claim.

The name and address of the plaintiff's solicitor must be endorsed on the statment of claim, rule 301.

Under the new Ontario Rule non-compliance is no longer contempt, but the solicitor may be directed to pay the costs of the action.

The Ontario Rule covers any notice, etc., by which a cause or matter is commenced, and it was held in Bole v. Rose, 10 M.R. 633, that in a notice of motion by a person not a party to suit and taking his first proceedings in it, his residence should be stated.

Disclosure of residence of plaintiff. This is required by rule 300 (a). Particulars of residence of husband of a married woman plaintiff ordered, McLellan v. Mun. of Assiniboia,5 M.R. 299. See also Laffertey v. Spain,7 M.R.32. A defendant may move to stay an action brought by a solicitor without the plaintiff's authority, Ross v. Webb, 22 M.R. 257, 21 W.L.R. 254. The plaintiff should be served personally, ibid.

Stay of proceedings. The proper practice seems to be a motion before the Referee in chambers, although in Ross v. Webb it was made to a judge in chambers upon notice, although the new Ontario Rule provides for an ex parte application. As to the time within which the party complaining must make such application; see notes to rule 326.

See also rule 181 as to disclosure by partners.

RULE 181.—Actions—Disclosure by Solicitors and Plaintiffs—Declaration, Etc., as to Names, Etc., of Partners—Stay of Proceedings—Effect of Disclosing Names.

1902 Rule 179; 1905 Ontario Rule 144; 1913 Ontario Rule 14.

See the Partnership Act, R.S.M. 1913, cap. 151, secs. 48 and 57, requiring trading, manufacturing and mining partnerships to be registered. Not including real estate firms. Lambert v. Munns, 1 W.W.R. 718. The new Ontario Rule drops clause 3. See rule 213.

Semble, the demand may be made before pleading.

See notes to rules 698 and 699.

As to execution, see rule 698. Clause 3 seems to bring all partners disclosed within rule 698, reading the two rules together, but if it does not see rule 699, providing for execution against a person claimed to be a partner. If the disclosure is verified by affidavit (although it would not seem to be neces-

sary) the deponent may not be cross-examined on it. Abraham & Co. v. Dunlop (1905) 1 K.B. 46, but see rule 488.

RULE 182.—Actions—Defence, Etc.—General Rules—Time Within Which Defendant Served in Manitoba to File Defence.

1902 Rule 204; 1905 Ontario Rule 168 (1); 1913 Ontario Rule 45.

The day of service is not included in such 16 days, rule 386.

Where filed in vacation, see rule 184. See rule 185.

As to defence by a person not a party, see rule 187.

Under the Ontario practice an appearance must be entered to a writ. The plaintiff then follows his writ with a statement of claim and the defendant then files his statement of defence.

RULE 183.—Actions—Defence, Etc.—General Rules—Time Within Which Defendant Served Out of Manitoba to File Defence.

1902 Rule 205; 1905 Ontario Rule 164; 1913 Ontario Rule 27.

In Ontario the time for appearance is limited by the order which must be obtained before a writ can be served outside the jurisdiction, and see rules 290 and 291 for cases in which an order is or is not required under the Manitoba Rules.

See rule 323 as to delivery of a statement of defence, and rule 302 as to requisites. See notes to rule 181.

The day of service is not included in the computation. Rule 386.

RULE 184.—Actions—Defence, Etc.—General Rules—Amending Statement of Defence Filed in Vacation—Reply Thereto.

Added by 7-8 Ed. VII, c. 12, s. 15. No Ontario counterpart.

For the vacations, see rule 397.

Rule 625 provides for motions for leave to sign judgment in cases of claims specially endorsed under rule 300 (d).

RULE 185.—Actions—Defence, Etc.—General Rules—Defence May be Filed at Any Time Before Judgment.

1902 Rule 208; 1905 Ontario Rule 175 part; 1913 Ontario Rule 49.

RULE 186.—ACTIONS—DEFENCE, ETC.—SOLICITOR NOT FILING DEFENCE PURSUANT TO UNDERTAKING LIABLE TO ATTACHMENT.

1902 Rule 209; 1905 Ontario Rule 174; 1913 Ontario Revision drops this rule.

See rule 267 dispensing with service where such an undertaking is given.

As to attachment, see rule 701, and Cotter v. Osborne, 17 M.R. 164.

RULE 187.—ACTIONS—DEFENCE, ETC.—RECOVERY OF LAND—DEFENCE OF LAND—DEFENCE WITHOUT LEAVE BY PERSON NOT NAMED AS DEFENDANT.

1902 Rule 210; 1905 Ontario Rule 180; 1913 Ontario Rule 53.

For the effect of such a defence, see rule 189.

A tenant served with, or having notice of a statement of claim is to give notice to his landlord. R.S.M. 1913, cap. 169, s. 3.

Joinder—rule 240.

See notes to rules 302 and 341.

This rule applies where the tenant is named as defendant; for cases in which he is not so named see rule 188. See as to limiting defence rule 193, and default judgment, rule 613; motions for judgment, rule 633; confession of, rule 617.

RULE 188.—ACTIONS—DEFENCE, ETC.—RECOVERY OF LAND—DEFENCE BY LEAVE BY PERSON NOT NAMED AS DEFENDANT.

1902 Rule 211; 1905 Ontario Rule 181; 1913 Ontario Revision drops this rule.

This rule would appear to be necessary where the tenant is not named as defendant, in which case a motion is necessary for leave to defend. This rule seems also to apply where the time for defending has expired. See rule 189 for the effect of this defence.

See as to limiting defence, rule 193.

RULE 189.—ACTIONS—DEFENCE, ETC.—RECOVERY OF LAND—DEFENCE BY LANDLORD.

1902 Rule 212; 1905 Ontario Rule 181; 1913 Ontario

Revision drops this rule. This rule applies to cases under rules 187 and 188.

RULE 190.—ACTIONS—DEFENCE, ETC.—RECOVERY OF LAND—PARTY SO DEFENDING AFTERWARDS TO BE NAMED AS PARTY DEFENDANT.

1902 Rule 213; 1905 Ontario Rule 182; 1913 Ontario Rule 54, part.

The Ontario Rules require notice of the appearance entered under the foregoing rules. By rule 323, the defence must be delivered, and, therefore, a party not named as defendant must serve his statment of defence upon all parties. See rule 323 requiring delivery "between the parties."

RULE 191.—ACTIONS—DEFENCE, ETC.—RECOVERY OF LAND—WHERE ACTION BROUGHT BY SEVERAL PERSONS AS JOINT TENANTS, ETC.

1902 Rule 214; no Ontario counterpart.

RULE 192.—ACTIONS—DEFENCE, ETC.—RECOVERY OF LAND—PROCEEDINGS ON TRIAL IN SUCH CASE.

1902 Rule 215; no Ontario counterpart.

RULE 193.—ACTIONS—DEFENCE, ETC.—LIMITING DEFENCE—LIMITED DEFENCE IN LAND CASES.

1902 Rule 216; 1905 Ontario Rule 184; 1913 Ontario Rule 55. See rules 187 and 188, also rule 302.

Default judgment in such actions, rule 613 and notes.

RULE 194.—ACTIONS—DEFENCE, ETC.—LIMITING DEFENCE—LIMITED DEFENCE IN OTHER CASES.

1902 Rule 217; 1905 Ontario Rule 176; 1913 Ontario Rule 50.

The Ontario Rule adds a clause providing for a reference on 4 clear days notice to ascertain the amount due. There is no Manitoba counterpart. The Ontario Rule expressly excepts actions upon a mortgage or for the recovery of land.

See rule 616 (2) and notes.

RULE 195. — ACTIONS — PARTIES — GENERALLY — JOINDER OF PLAINTIFFS.

1902 Rule 218; 1905 Ontario Rule 185; 1913 Ontario Rule 66.

As to joinder of causes of action, see rules 239 et seq.

As to third party procedure, rule 223, and parties in Master's office, rule 40 and notes.

In an action to set aside a chattel mortgage as fraudulent, the grantor must be joined. Kuntz Brewery v. Grant, 3 O.W.N. 237.

Tenants may be added as co-plaintiffs with the owner in an action for an injunction to restrain a nuisance, McKenzie v. Kayler, 1 W.L.R. 290, following Broder v. Saillard, 2Ch. D. 692.

Creditors are not necessary parties to an action to enforce an agreement to pay creditors, Gillies v. Commericial Bank of Manitoba, 9 M.R. 165.

The assignor of certain scrip is properly joined as co-plaintiff with the assigneee in an action of replevin of the scrip, Wright v. Battley, 24 C.L.T., Occ. N. 278; Carter v. Long, 26 S.C.R. 430 followed.

Multifariousness, Dougan v. Mitchell, 9 M.R. 477.

See rules 220 (2), (4), as to consent of added parties being required.

As to adding, striking out and substituting parties, see rule 220. See rule 211 as to a representative party where the parties are numerous. A corporator who uses the name of a corporation as a plaintiff need not have the previous sanction of the company for so using it. Colonial Assurance Co. v. Smith, 4 W.W.R. 295.

As to the proper parties, Swanson v. McArthur, 4 W.W.R. 231. See generally Lamb v. North 22 M.R. 360.

A judgment creditor, like any other subsequent incumbrancer, has the right to bring an action to sell the equity of redemption held by his judgment debtor without making the mortgagee a party, and where a prior mortgagee holds by a title absolute in form he may be made a party defendant without an offer to redeem. Wallace v. Smart, 22 M.R. 68.

If a covenant be made to two jointly, either is entitled to sue in the name of both upon indemnifying the other. Conley

v. Wellband, 3 M.R. 207. See also generally: Evans v. Jeffrey, 1 O.L.R. 621, as to joinder of separate tort feasors.

EXTRA-PROVINCIAL CORPORATIONS.

May sue, although not registered as required by R.S.M. 1913, cap. 35, s. 108, the words of section 125 being "maintain an action," provided they subsequently become registered and may then continue and succeed in the action. Slater Shoe Co. v. Burdette (Alta.), 26 W.L.R. 109; Blais v. Bankers Trust Corporation (Alta), 25 W.L.R. 653; Smith v. Western Canada (Alta.), 17 W.L.R. 531.

No title at time of issuing statement of claim.

Creed v. Creed (1913), 1 I.R. 48.

RULE 196.—ACTIONS—PARTIES—GENERALLY—JOINDER OF DEFENDANTS.

1902 Rule 219; 1905 Ontario Rule 186; 1913 Ontario Rule 67 part.

Individual members of a company who have conspired to induce the company to break a contract may be joined as defendants with the company in an action for damages for the breach of contract. Gas Power Age v. Central Garage Co., 19 W.L.R. 193, 442, 1 W.W.R. 116 distinguishing Smurthwaite v. Hannay, 1894, A.C. 494, and Saddler v. G.W.R., 1896 A.C. 450. See also Compania v. Houlder (1910), 2 K.B. 354.

A plaintiff may under this rule proceed in the same action against the defendant for a breach of contract and against other defendants for maliciously and wrongfully procuring and inducing the breach, there being such a unity in the matters complained of as entitles the plaintiff to join all the defendants. Gas Power Age v. Central Garage Co., 21 M.R. 496; dis. Smurthwaite v. Hannay (1894), A.C. 494; and Saddler v. G. W.R. Co. (1896), A.C. 450; as decided under English Order XVI, rule 1, before it was amended to make it the same as 195.

Paragraphs charging slander jointly against members of a partnership and corporation will be ordered struck out as embarrassing—formerly it would have been a misjoinder, Messervey v. Simpson, 1 W.W.R. 919. See Frankenberg v. Great Horseless, etc., Co. (1900), 1 Q.B. 504.

In an action to set aside a fraudulent conveyance or preference, the grantor should not be joined unless there is a declaration that the grantee holds as trustee for him. Gunn v. Vinegratsky, 17 W.L.R. 54, and the grantor's name was struck out

after he delivered a defence, on his own application in Bank of Hamilton v. Winters, 16 W.L.R. 218.

Rule 239 as to joinder of causes of action; and rule 329 as to pleading them.

See rule 203 as to joinder of defendant in cases of doubt.

See rule 211 as to appointing a representative party where the parties are numerous.

This rule and 197 and 239 authorize the severance and distribution of the damages according to the respective liabilities of the defendant, Stewart v. Teskee, 15 W.L.R. 604, 20 M.R. 167.

A statement that two defendants in collusion with the others defamed the plaintiff is insufficient to set up a conspiracy to defame, Alexander v. Simpson, 1 W.W.R. 932.

An owner of land may bring an action to recover possession, although he has previously given a lease of it to a third party, Penner v. Winkler, 15 M.R. 528.

A person should not be made a defendant for discovery only unless he was an agent, and even in such cases quære, Bank of Hamilton v. Winters, 16 W.L.R. 218.

This rule (196) does not permit a plaintiff to proceed in one action against two separate insurance companies upon separate policies, although they cover the same goods destroyed by the same fire, Levi v. Phoenix, 17 M.R. 61, 6 W.L.R. 17.

A plaintiff who had commenced such an action was required to elect within 5 days which company she would proceed against in the action and to discontinue as against the other, Levi v. Phoenix, 17 M.R. 61.

Multifariousness. First National Bank v. Avitt, 26 W.L.R. 37, 425, 5 W.W.R. 663, 842. Now got rid of under rule 197 and not by demurrer.

RULE 197.—Actions—Parties—Generally—Case of Defendant not Interested in All the Relief Prayed.

1902 Rule 220; 1905 Ontario Rule 187; 1913 Ontario Rule 68.

See the notes to the preceding rules and Holmested & Langton, p. 330. See rule 203 as to joinder in case of doubt. The Ontario revision of 1913 drops the following five rules, it apparently being considered that the foregoing rules cover all such cases.

Multifariousness. Formerly attacked by demurrer, now

got rid of by this rule. First National Bank v. Avitt, 26 W.L.R. 37-425, 5 W.W.R. 663, reviewing Ward v. Short, 1 M.R. 328; Haffield v. Nugent, 6 M.R. 547; Martel v. Mitchell, 16 M.R. 206, 3 W.L.R. 144; Andrews v. Forsyth, 7 O.L.R. 188; Maw v. Massey Harris, 14 M.R. 252; Alexander v. Simpson, 22 M.R. 424, and other cases, and distinguishing Lee v. Gallagher, 15 M.R. 677, and Gas Power Age v. Central Garage, 21 M.R. 496.

RULE 198.—Actions—Parties—Generally—Joinder of All Parties Liable on One Contract.

1902 Rule 221; 1905 Ontario Rule 188.

See notes to rule 197, and see rule 203.

RULE 199.—Actions—Parties—Generally—Joinder of Mortgagor and Surety.

1902 Rule 222; 1905 Ontario Rule 189.

See notes to rule 197.

RULE 200.—Actions—Parties—Generally—Prior Mortgagee Not to be Joined Except Under Special Circumstances.

1902 Rule 223. There is no such Ontario Rule now, this practice being considered to be too well settled.

See notes to rule 197.

RULE 201.—Actions—Parties—Generally—Direction that Parties Interested in Equity of Redemption be Added in Master's Office.

1902 Rule 224; 1905 Ontario Rule 190 (1); 1913 Ontario Rule 490.

See notes to rule 197.

As to adding parties in the Master's office see rule 40 and notes applying only to mesne encumbrancers and execution creditors. This rule does not apply to such parties but to persons interested in the ultimate equity of redemption, i.e. the mortgagor or any one in his shoes (Holmested 333), who as a general rule should be made original defendants, ibid, rules 40-218 and this rule 201 are the exceptions to the general rule that after judgment at the trial parties cannot be added.

RULE 202.—ACTIONS—PARTIES—GENERALLY—OFFICERS OF CORPORATIONS NOT TO BE MADE PARTIES FOR DISCOVERY ONLY.

1902 Rule 225; 1905 Ontario Rule 191.

See notes to rule 197.

As to discovery by corporations, see rules 398, 428.

Formerly a distinction was sought to be drawn between "officer" and "servant," but it failed.

RULE 203.—ACTIONS—PARTIES—GENERALLY—JOINDER OF SEVERAL DEFENDANTS IN CASE OF DOUBT.

1902 Rule 226; 1905 Ontario Rule 192; 1913 Ontario Rule (67) part.

See notes to rule 196.

This rule does not permit the recovery of judgment against two or more parties separately liable, Holmested & Langton, pp. 336, 337.

RULE 204.—ACTIONS—PARTIES—GENERALLY — TRUSTEES, EXECUTORS AND ADMINISTRATORS AS PARTIES.

1902 Rule 227; 1905 Ontario Rule 193; 1913 Ontario Rule 74.

See Cass v. McCutcheon, 15 M.R. 667,669. 1 W.L.R. 435. See also Allan v. Manitoba v. N.W. Ry., 12 M.R. 57.

Holmested & Langton, p. 337, et seq.

The new Ontario Rule 74 (2), permits such representation in an action to enforce a security by foreclosure or otherwise following English Rule 130. Quaere, whether the Manitoba Rule permits this?

The personal representatives of a deceased settlor are necessary parties to an action by his widow to set aside a deed of settlement executed by a settlor and his wife conveying property to trustees, Fonseca v. Jones, 21 M.R. 168.

In an action against G, the heir of B, an intestate, who in her lifetime was entitled to a distributive share of the estate of Z deceased, which estate had not been administered by Z's administratrix, to have G's interest in the lands sold under a registered judgment, it appearing that letters of administration to B's estate had not been taken out. Held, that an administrator of the estate of B was a necessary party to any proceedings affecting her estate or the defendant's interest in it.

Re Shepherd (1889), 43 Chy. D. 131, followed. McDougall v. Gagnon, 16 M.R. 232.

RULE 205.—ACTIONS—PARTIES—GENERALLY—APPOINTING REPRESENTATIVE OF DECEASED PERSON.

1902 Rule 228; 1905 Ontario Rule 194; 1913 Ontario Rule 90.

Rules 212, 215, 219, and 220 further elaborate the provisions to allow actions to be carried on without the joinder of persons who would ordinarily require to be added parties.

See Holmested & Langton, p. 341.

The Ontario Rule has not the words in brackets, but is otherwise similar.

A person cannot be appointed under this rule without his consent. Prince of Wales Co. v. Palmer, 25 Beav. 605.

See the notes to rule 206 and following.

RULE 206.—ACTIONS—PARTIES—GENERALLY—APPOINTING ADMINISTRATOR TO REPRESENT ESTATE INTERESTED IN ACTION—

Where probate of the will of a deceased person, or letters of administration to his estate, have not been granted by a Surrogate Court, (or the executor or administrator is dead or incapable of representing the estate), and the representation of such estate is required in any action or proceeding in the court, the court may appoint one of the official administrators to represent the estate, and the said official administrator shall thereupon have the rights, authority and responsibility of an administrator or administrator *pendente lite* (as the case may be) appointed by the Surrogate Court.

(2) Where an administrator is appointed under this rule, the same fees shall be payable as would be payable to the Crown, or to the judge of the Surrogate Court, under any Act then in force, upon the grant of administration of an estate of the same value made by the Surrogate Court.

(3) Where administration is granted by the court under this rule, the registrar shall forthwith transmit by mail to the surrogate clerk a certified copy of the grant; and in case the grant is with will annexed, he shall, at the same time, also transmit to the said clerk a certified copy of the will; and the surrogate clerk shall make similar entries in respect of the documents so transmitted as he makes in respect of particulars furnished to him under "The Surrogate Court Act." R.S.M. c. 40, r. 229.

1902 Rule 229; 1905 Ontario Rule 195. The 1913 revi-

sion omits this rule. See notes to rule 205. The following seem to be the essential differences between this rule and 205:

1. Rule 205 only applies where the deceased was interested in his lifetime in the matter in question and not where the administration of the estate of the deceased is the subject of the action, Holmested, p. 341. Rule 206 would seem to apply in either case.

2. Rule 205 only applies to cases where there is no personal representative. Rule 206 to where probate or administration has not been granted.

3. Rule 205 provides for a representation with the powers of a general administrator, rule 206 semble gives only the powers of an administrator ad litem.

In Manitoba the official administrator is appointed under the Surrogate Court Act. R.S.M. 1913, cap. 47, s. 75, by the Lieut.-Governor, in Council for each judicial or surrogate district of the Province. There is no such officer in Ontario. A person cannot be appointed under this rule without his consent, Prince of Wales Co. v. Palmer, 25 Beav. 605. The Ontario Rule had not the words in brackets and it provided for the appointment of an administrator ad litem.

RULE 207.—ACTIONS—PARTIES—GENERALLY—PARTIES TO ACCOUNT AGAINST EXECUTOR DE SON TORT—APPOINTMENT OF RECEIVER.

Where no order for general administration is asked or required, or where it is shown that an executor *de son tort* has taken possession of the bulk of the personal assets belonging to the estate of a deceased person, such executor *de son tort* may, on the application of any one interested in the estate of the deceased, and without the appointment of any other personal representative of the estate, be required to account for any assets of the estate which have come to his hands; and where a proper case is made for the appointment by the court of a receiver of the estate of a deceased person who has no [legally appointed] personal representative, the estate may be administered under the direction of the court, without the appointment of any person other than the receiver to represent the estate. R.S.M. c. 40, r. 230.

1902 Rule 230; 1905 Ontario Rule 196; 1913 revision drops this rule.

The Ontario Rule 196 had not the words in brackets. See section 26 (o) of the Act under which receivers are appointed and notes thereto.

RULE 208.—ACTIONS—PARTIES—GENERALLY—PARTIES TO ADMINISTRATION PROCEEDINGS.

In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave, be entitled to appear either in court or in chambers or in a master's office, on the claim of any person (not a party to the cause) against the estate of the deceased in respect of any debt or liability. The court, judge or master, as the case may be, may direct any other party to the cause to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as he shall think fit. R.S.M. c. 40, r. 251.

1902 Rule 251; 1905 Ontario Rule 204; 1913 Ontario Rule 88.

The logical position for this rule would seem to be as in Ontario after rule 218.

A mere order for leave to appear does not carry costs of appearing. These must be specifically given. Day v. Beattie, 21 Chy. Div. 830.

The Ontario Rule has not the words in brackets. The general rule is that only the executor or administrator should appear to oppose a contested claim on an administration action. Smith v. Watts, 52 L.J. Chy. 209.

RULE 209.—ACTIONS—PARTIES—GENERALLY—INFANTS AS PARTIES.

1902 Rule 231; 1905 Ontario Rule 197; 1913 Ontario Rule 91.

For the rules governing service upon infants, see rules 278, 279.

For the consent of a person to be added or substituted as a next friend, see rule 220 (3)—it must be in writing and filed. ibid. Quaere whether this rule applies to the case of a person made an original plaintiff as next friend of an infant. See 1905 Ontario Rule 198 requiring a written authority to the solicitor to be filed before his *name is used*. There is no Manitoba counterpart, but Manitoba Rule 220 (3) has an Ontario counterpart in rule 134.

An amendment at trial was allowed adding a next friend, Durie v. Toronto Ry., 5 O.W.N. 829. For effect of naming no next friend, see Flight v. Boland, 4 Russ. 298.

See Becher v. McDonald, 5 M.R. 223, where an infant plaintiff in the county court filing judgment in the Queen's Bench was not allowed to examine the defendant as a judgment debtor without a guardian or next friend.

An infant claimant in an interpleader must have a next friend. Grant v. McKay, 10 M.R. 243, an application for a stay pending the appointment of a next friend not refused on the ground of delay because only made after the infant plaintiff's unsuccessful appeal to the Full Court from the interpleader order in the above case, ibid.

Costs. An infant cannot sue in forma pauperis by next friend unless it is shown that he cannot procure as next friend a person who is willing to assume responsibility for costs and unless the proposed next friend is a pauper. Re Sturgeon, 20 M.R. 284, 16 W.L.R. 415.

The court will not appoint the official guardian of infants to bring an action as next friend of a pauper infant without his consent to assume the ordinary responsibility attaching to that position, ibid.

See Carscaden v. Philion, 9 M.R. 135, as to property qualification of a next friend; and re Sturgeon supra.

See Holmested & Langton, pp. 347 et seq.

RULE 210.—Actions—Parties—Generally—Married Women as Parties.

1902 Rule 232; 1905 Ontario Rule 199. The 1913 revision omits this rule. The Ontario Rule 199 allowed a married woman to sue for alimony and in cases provided for by the Married Women's Property Act, otherwise requiring her to sue by a next friend.

See Holmested & Langton, pp. 350 et seq.

For the former practice in Manitoba see Ontario Bank v. Smith, 6 M.R. 600; Carscaden v. Philion, 9 M.R. 135. In the former case a next friend was held necessary upon the application for a commission by a married woman defendant, the latter merely laid down rules as to the property qualification of a next friend. Quaere whether under this rule these cases are applicable?

See rule 220 (3) and notes to rule 209.

See generally McLellan v. Mun. of Assiniboia, 5 M.R. 299, where particulars of the residence, etc., of the husband of a married woman plaintiff were ordered.

RULE 211.—ACTIONS—PARTIES—GENERALLY — REPRESENTATIVE PARTY WHERE PARTIES NUMEROUS.

1902 Rule 233; 1905 Ontario Rule 200; 1913 Ontario Rule 75.

See notes to rules 195 and 196.

The court must authorize a defendant to represent a class—that is, by order.

To "the Creditors" Bill to set aside a conveyance to a trustee for other creditors the cestuis qui trustent are not necessarily parties defendant, Leacock v. Chambers, 3 M.R. 645.

ASSIGNMENTS ACT. As to necessary parties to an action on behalf of creditors or by one creditor, see Gunn v. Vinegratsky, 20 M.R. 311; Empire Sash & Door v. Maranda, 21 M.R. 605.

See Cotter v. Osborne, 10 W.L.R. 354, as to effect of this rule.

RULE 212.—ACTIONS—PARTIES—GENERALLY—APPOINTMENT OF REPRESENTATIVES OF HEIRS-AT-LAW, NEXT OF KIN OR A CLASS.

1902 Rule 234; 1905 Ontario Rule 201; 1913 Ontario Rule 76.

The Ontario Rule applies also to the right of an unborn person. Under this rule as under the English Rule there is no power in the court to order representation of unborn children.

RULE 213.—ACTIONS—PARTIES—GENERALLY — PARTNERS MAY SUE OR DEFEND IN FIRM NAME.

1902 Rule 235; 1905 Ontario Rule 222; 1913 Ontario Rule 100.

The Ontario Rule in terms applies to persons whether British subjects or not, or whether residing within or without Ontario and (carrying on business within Ontario). The part without the brackets seems merely to declare the law and practice; Holmested 412; and the Manitoba Rule should be read as if it had the same clause mutatis mutandis. The clause in brackets should also, it would seem, be in the Manitoba Rule, as the

court can only give effect to the rule as if it were, unless acting within the line of cases set out in Foote Private International Law at pp. 180 et seq.

DISCLOSURE of the names of plaintiffs-partners suing in the name of the firm. Rule 181 and notes.

Under this rule 213 the court may order such disclosure of the names of either plaintiff or defendant partners.

SERVICE. In case of a dissolved partnership this rule provides for service.

In other cases see rules 283 and 284.

As to execution against partners, rule 688 and notes.

RULE 214.—ACTIONS—PARTIES—GENERALLY—PERSONS TRADING IN FIRM NAME MAY BE SUED.

1902 Rule 236; 1905 Ontario Rule 231 part; 1913 Ontario Rule 108 part.

May such a person sue in his firm name? Apparently not. Holmested & Langton, p. 427.

See rule 282 as to a lunatic defendant.

See the notes to rule 213. This rule apparently does not apply to a person not a British subject residing out of the jurisdiction but carrying on business within the jurisdiction, Holmested, 427.

RULE 215.—ACTIONS—PARTIES—GENERALLY—COURT MAY PROCEED THOUGH SOME OF THE PARTIES INTERESTED ARE NOT BEFORE IT.

1902 Rule 237; 1905 Ontario Rule 202. The 1913 revision drops this rule. The Ontario Rule (202) used the word "instrument" instead of the words "settlement, will or other instrument."

RULE 216.—ACTIONS—PARTIES — GENERALLY — CASES WHERE ONE OF A CLASS MAY SUE WITHOUT JOINING OTHERS.

1902 Rule 238; 1905 Ontario Rule 203; 1913 Ontario Rules 79 to 86, both inclusive.

The Ontario Rule reads "an objection for want of parties shall not lie in any of the following (i.e. above) cases" and is not confined to a defendant.

Assignments of choses in action—see the Act, section 26 (c) et seq.

RULE 217.—Actions—Parties—Generally—In Above Cases Court May Require Persons to be Joined.

1902 Rule 239; 1905 Ontario Rule 203 (2); 1913 Ontario Rule 86.

The above cases. Those in rule 216.

The new Ontario Rule contains a provision for placing the plaintiff on the record on the same footing, etc., as in rule 217. "Plaintiff" is apparently a misprint for "defendant."

RULE 218.—Actions—Parties—Generally—Persons Necessary Parties, Except for Rule 216, to be Served with Copy of Judgment.

1902 Rule 240; 1905 Ontario Rule 203 (3); 1913 Ontario Rule 87.

See notes to rule 201 and 208. The Ontario Rules require office copies of the judgment. These are now abolished in Manitoba Rule 375. As to service, see rule 292.

Rule 208 should logically follow here.

The motion to vary is subject to rules 391, 442 and 452.

RULE 219.—Actions—Parties—Generally—Upon Objection at Hearing for Want of Parties, Judgment May be Given Saving Rights of Absentees.

1902 Rule 241; 1905 Ontario Rule 205; 1913 Ontario Rule 89.

The Ontario Rule provides for saving the rights of "all persons not parties."

RULE 220.—Actions—Parties—Generally—Misjoinder Adding, Striking Out and Substituting Parties.

1902 Rule 242; 1905 Ontario Rule 206; 1913 Ontario Rule 134 part.

As to adding parties in the Master's office, see rule 40 and Leggo v. Thibeaudeau, 7 M.R. 38.

See notes to rules 201, 208 and 218.

As to adding parties on transmission of interest pendente lite, see rule 542.

Consent in Writing. The consent required by ss. (3) must be signed by the party to be added himself, Watt v. Popple 16 M.R. 348, 4 W.L.R. 519. No agent, no matter what his authority, can consent, ibid.

No such consent is required for the addition in a proper case of a person as a party defendant, ibid.

The Ontario Rule 99 (198 of 1905) also requires the authority to the solicitor to be filed. See rule 209 and note.

At any stage of the proceedings.

Amendment adding parties allowed after action set down for trial, Shiels v. Adamson, 14 M.R. 703.

Amendments refused, Merchants Bank v. Good, 6 M.R. 543.

Next friend. See notes to rule 209.

No action shall be defeated.

As to power of court where joinder refused, Lamb v. Lasby, 3 W.W.R. 1139, and cases there noted, where it was held that the court might dispose of the matter as far as the rights of those before it were affected, Broom v. Toronto, 3 O.W.N. 1286.

Amendment on praecipe.

An amendment under rule 348 (327) adding defendants was upheld in First National Bank v. Avitt, 5 W.W.R. 663, but the action was held multifarious as amended and the plaintiff put to his election. See Holmested & Langton, p. 512, and notes to rule 300, Former Ontario Practice (sub. tit Chancery Practice), and to Manitoba Rule 348, sed vide rule 221 requiring application on motion.

Service on added defendant.

Governed by rule 222. A defence is to be filed within 16 days, rule 182, or as the case may be (rules 183, 184, 185), unless otherwise ordered under this rule.

A defendant can be added against the wish of the plaintiff only in a very plain case, Imperial Paper Mills v. MacDonald, 7 O.W.R. 472; National Trust v. Trusts & Guarantee, 3 O.W.N. 104.

RULE 221.—ACTIONS—PARTIES—GENERALLY—HOW AND WHEN APPLICATION MAY BE MADE.

1902 Rule 243; 1905 Ontario Rule 206, sec. 5; 1913 Ontario Rule 134 part.

Persons partly joined under rule 195 are properly added under rule 221, Liddiard v. Toronto Ry., 5 O.L.R. 371.

RULE 222. — ACTIONS — PARTIES — GENERALLY — AMENDING STATEMENT OF CLAIM WHERE DEFENDANT ADDED OR SUBSTITUTED.

1902 Rule 244; 1905 Ontario Rule 207 and 208; 1913 Ontario Rule 135.

The Ontario Rules are similar in effect. Delivery of the amended statement of claim.

See for time, for amending and delivering, rules 353 and 356, as to manner of amending, rule 354; time for filing, see rule 220 (notes).

RULE 223.—ACTIONS—PARTIES—THIRD PARTY PROCEDURE—ORDER FOR DETERMINATION OF QUESTION OF CONTRIBUTION OR INDEMNITY BETWEEN PARTIES AND OTHERS.

Where (*a*) a defendant is, or claims to be, entitled to contribution or indemnity, or any other remedy or relief, over against any other person, not a party to the action, or where (*b*) it appears to the court or a judge that a question in the action should be determined, not only as between the plaintiff and defendant (or defendants), but as between (the defendants or between) the plaintiff (or) defendant (or defendants) and any other person, or between any (d) of them, the court or a judge may, on notice being given to such (e) (other) person, and all parties to the action, make such order as may be proper for having the question so determined. 10 Ed. 7, c. 17, s 2 (245).

1902 Rule 245; 1905 Ontario Rule 209-215; 1913 Ontario Rule 165, 170.

This rule and the following rules, to 232 inclusive, are for the purpose of carrying out the provisions of section 25 (f) of the Act. They appear for the first time in the revision of 1913 under their proper heading, Third Party Procedure. These rules were added to by cap. 17 of 10 Ed. VII, but the revision of 1913 has completely altered the form and position of the rules in an attempt to simplify their interpretation. The 1905 Ontario Rules were 209 to 216 inclusive, now 165 to 171. These rules are much simpler than the Manitoba Rules, although giving plenary relief, and provide for a third party notice so called to be issued (formerly by leave of the court or a judge obtained ex parte—now dispensed with) in the same manner as a writ of summons. The notice calls upon

the third party to enter an appearance within ten days (rule 166) after service. The changes to the Manitoba and Ontario Rules render a comparison less confusing than formerly, but an application to the Ontario Rules and cases is still apt to obscure the mind of the practitioner. See the difficulties set out in Daniels v. Dickson (1907), 17 M.R. 35, 6 W.L.R. 165.

The former Manitoba Rule 245 had not the words in brackets.

At (*b*) it had the words "from any other cause." At (*d*) the words "or either" and at (e) for the word "other" the words "last mentioned."

The words "not a party to the action" were added in the 1913 revision and are taken from the Ontario Rule (165). Probably the effect is not changed, as it would seem from the side note, which is unchanged, that the framers of the former rule intended it to apply to matters arising between parties and strangers to the action, but yet arising out of the main cause of the action. Of course, strictly, the side notes may not be looked at to aid in the interpretation. The new words seem, however, only to apply to the first class of cases mentioned below. The rule would, it is suggested, read better if the word "from" were added after the word "indemnity" in the second line.

Rule 223 divides into two parts:

1. The first part deals with claims for contribution or indemnity or other remedy or relief over against the third party, *not a party to the action*, and is given effect to by rule 224, which allows the defendant without leave to serve his notice on the third party and the original parties to the action (rule 224 (2)), with statement of claim attached, file a copy of the notice with the proper officer (i.e. in the office in which the proceedings were commenced, rule 178) and await the result. The third party must file his defence according to rule 225. See rules 226 and 227.

2. The second part of this rule 223 deals with cases where it appears to the court or a judge (the words "from any other cause" now being struck out of the rule) that a question in the action should be determined, not only between the plaintiff and defendant or defendants (which cases are governed

by rule 309, but no counterclaim can be set up which does not claim relief from a plaintiff) but as between semble,

(a) the defendants.

(b) the plaintiff and the third party.

(c) the defendant or defendants and the third party.

(d) or any of them.

Under this part an application must be made upon notice to all parties and proposed parties to enable such question to be determined. The court or judge apparently makes the order referred to in rule 228, and the filing of a defence is governed by rule 229 and the effect of not filing a defence stated, while rule 230 provides for the entry of judgment by the original defendant against the defaulting third party even though the original defendant has allowed judgment to go against him by default. Rule 231 provides for entry of judgment by a judge at or after trial in case of default. The Ontario Rules have no counterpart for the practice under heading 2, except as in rule 270 in claims between co-defendants.

DIRECTIONS. If a defence is filed by a party added under the practice set out in subhead 1, the party giving the notice must move for directions under rule 232 q.v.

DELAY. A plaintiff must not be delayed, rule 233.

SUBSEQUENT PROCEEDINGS. Rule 233 (2).

The form given in the Act (5) is similar to the Ontario form. See Holmested & Langton, forms 478. The Ontario rules 166, 167 and 168 provide for appearance and do the same work as rules 224, and rules 225 to 231 in so far as the practice is the same.

DISCOVERY. See rule 426 permitting discovery, and Bates v. Burchell (1884), W.N. 108.

Generally for a resume of the practice, see Daniels v. Dickson, 17 M.R. 35, where it was held that in an action by the endorsee of a promissory note against the maker the defendant is not entitled to serve a notice on the payee under either branch of this rule when the defence relied on is that the payee was guilty of fraud in obtaining the note and that the plaintiff is not a holder in due course.

CONTRIBUTION. These rules do not extend to a case in which the defendant's claim against the third party is founded on tort. Western Canada Flour Mills Co. v. C.P.R., 20 M.R. 422, 16 W.L.R. 420.

CONTRIBUTION. As to what is not, Johnston v. Wild, 44

Chy. D. 146. None between joint tort-feasors, Merryweather v. Nixon, 8 Term 186. But Palmer v. Wick (1894), A.C. 318, seems to confine to wilful tort. See the statutory exceptions in various company Acts making directors liable for false prospectuses, and Furness v. Pickering (1908), 2 Chy. 224.

INDEMNITY.—There must be a contract express or implied. Speller v. Bristol, 13 Q.B.D. 96. This case was decided under the English Rules which do not contain the words "any other relief over against." There might be a different decision in Manitoba. The test seems to be, ask "Is the defendant's claim on the third party dependent upon the validity of the plaintiff's claim against the defendant?" If the answer is "Yes," then the proper procedure is by notice under these rules (subject to notes to rule 223.).

See London v. Gloucester, 13 O.L.R. 34.

The "very damages" must be recovered from the third party as the defendant would be liable to pay the plaintiff, Mahony v. Canada Foundry, 12 O.L.R. 514. Payne v. Collin, 17 P.R. 39, decided under the old rule, Confederation Life v. Labatt (1898), 18 P.R. 266 under the new.

RULE 224.—ACTIONS — PARTIES — THIRD PARTY PROCEDURE—NOTICE TO SUCH PERSONS—FILING AND SERVICE OF—CONTENTS OF NOTICE—FORM OF.

Where a defendant is, or claims to be, entitled to contribution or indemnity, or other remedy or relief, over against any person not a party to the action, he may serve a notice to that effect.

(2) A copy of such notice shall be filed with the proper officer, and served on such person and on all other parties to the action, (accompanied, in the case of such person, with a copy of the statement of claim), according to the rules relating to the service of statements of claim.

(3) The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court or a judge, be served within the time limited for delivering his statement of defence.

(4) Such notice may be in the form or to the effect of the form No. 5 in the schedule to these rules, with such variations as circumstances may require. 10 Ed. VII, c. 17, s. 2 (246).

1902 Rule 246; 1905 Ontario Rule 209; 1913 Ontario Rule 165.

See notes to rule 223.

This rule is now in its logical place instead of after rule 228 as formerly.

This rule applies to an original defendant and one by counterclaim, i.e., a plaintiff. Levi v. Anglo-Continental (1902), 2 K.B. 481.

Service out of the jurisdiction, McChane v. Giles (1902), 1 Chy. 287.

RULE 225.—ACTIONS — PARTIES — THIRD PARTY PROCEDURE—DEFENCE BY PERSONS SERVED WITH NOTICE UNDER RULE 224—CONSEQUENCES OF FAILURE TO ENTER DEFENCE—LEAVE TO DEFEND AFTER PRESCRIBED TIME.

1902 Rule 248; 1905 Ontario Rule 210; 1913 Ontario Rule 166.

See notes to rule 223.

As to motion to strike out a notice, see Windsor v. Highland, 17 P.R. 130. See rule 451. As to what questions may be determined on such a summary motion, see Swale v. C.P.R., 25 O.L.R. 492; Pollington v. Cheesman, 4 O.W.N. 410; Pettigrew v. G.T.R., 22 O.L.R. 23.

RULE 226.—ACTIONS — PARTIES — THIRD PARTY PROCEDURE—ENTRY OF JUDGMENT AGAINST PERSON IN DEFAULT AND IN FAVOR OF PERSON GIVING NOTICE.

1902 Rule 248A; 1905 Ontario Rule 211; 1913 Ontario Rule 167.

Rule 223. This rule was added to 1902 rules by 10 Ed. VII, cap. 17, s. 2.

RULE 227.—ACTIONS — PARTIES — THIRD PARTY PROCEDURE—ENTRY OF JUDGMENT AGAINST PERSONS IN DEFAULT BY ORDER OF JUDGE MADE AT OR AFTER TRIAL.

1902 Rule 248B; 1905 Ontario Rule 212; 1913 Ontario Rule 168. See notes to rule 223. This rule was added to 1902 rules by 10 Ed. VII, c. 17, s. 2.

RULE 228.—ACTIONS — PARTIES — THIRD PARTY PROCEDURE—COURT MAY DIRECT NOTICE TO BE GIVEN.

1902 Rule 247; 1905 Ontario Rule 209; 1913 Ontario Rule 165.

See notes to rule 223.

RULE 229.—ACTIONS — PARTIES — THIRD PARTY PROCEDURE—DEFENDANT SERVED WITH NOTICE TO FILE DEFENCE TO NOTICE; IN DEFAULT HE SHALL BE DEEMED TO ADMIT LIABILITY—LEAVE TO DEFEND, THOUGH NOT DONE IN TIME.

1902 Rule 247A: no Ontario counterpart. See rule 223 and notes. Added by 10 Ed. VII, c. 17, s. 2.

RULE 230.—ACTIONS — PARTIES — THIRD PARTY PROCEDURE—ENTRY OF JUDGMENT AGAINST PARTY IN DEFAULT UNDER RULE 229.

1902 Rule 247B; no similar Ontario Rule. See notes to rule 223. Added by 10 Ed. VII, c. 17, s. 2.

RULE 231.—ACTION — PARTIES — THIRD PARTY PROCEDURE—ENTRY OF JUDGMENT AGAINST PARTY IN DEFAULT BY ORDER OF JUDGE AT OR AFTER TRIAL.

1902 Rule 247 (c); no Ontario rule. See notes to 223. Added 10 Ed. VII, c. 17, s. 2.

RULE 232.—ACTIONS — PARTIES — THIRD PARTY PROCEDURE—DIRECTIONS AS TO MODE OF DETERMINING QUESTIONS—GENERAL DIRECTIONS AND AS TO COSTS.

1902 Rule 249; 1905 Ontario Rule 213; 1913 Ontario Rule 169.

A third party applied in Piller v. Roberts, 21 Ch. D. 198. If the defendant and plaintiff settle their action the defendant cannot proceed against the third party in the same action. The third party may have it dismissed with costs to be paid by the defendant. Wheeler v. Cornwall, 4 O.L.R. 120; Russell v. Eddy, 5 O.L.R. 379.

RULE 233.—ACTIONS — PARTIES — THIRD PARTY PROCEDURE—PLAINTIFF NOT TO BE PREJUDICED OR UNNECESSARILY DELAYED—WHAT RULES GOVERN SUBSEQUENT PROCEEDINGS.

1902 Rule 250; 1905 Ontario Rule 216; 1913 Ontario Rule 171.

The expression subsequent proceedings in ss. 2 refers to the proceedings directed by the court or judge when making an order for directions under rule 232 (2), Warren v. Pettingill (1913), 23 M.R. 747. For a case where an order would be refused on the ground of delay, see Daniels v. Dickson, 17 M.R. 35.

RULE 234.—ACTIONS—PARTIES—COMMITTEES, GUARDIANS, OR NEXT FRIENDS—INSANE PERSONS AS PARTIES.

1902 Rule 252; 1905 Ontario Rule 217; 1913 Ontario Rules 94 and 97.

The Act applying to lunatics is R.S.M. 1913, cap. 120. See the preamble as to jurisdiction and section 3. If "not so found," the rule applies. If "so found." must sue by his committee who is a private person, or the Inspector of Public Institutions (sec. 18), or the Official Administrator of the judicial district in which the lunatic resides or has property, may be appointed. (Sec. 17). Service on a lunatic. See rule 282 as to service under this rule, otherwise see the Lunacy Act. As to petitions in lunacy, see the Lunacy Act supra and rule 772. The proper practice for any person desiring to defend for a lunatic who has no committee would seem to be to move before the Referee in chambers to be appointed guardian. Holmested & Langton, p. 407, but the official guardian is usually appointed (rule 234(a).) See also rule 238. If no defence is filed, the plaintiff cannot enter default judgment but must proceed under rule 235. As to next friends, see rule 220 and notes—the consent of the next friend must be filed.

RULE 235.—ACTIONS—PARTIES—COMMITTEES, GUARDIANS, OR NEXT FRIENDS—APPOINTMENT OF GUARDIAN TO FILE DEFENCE FOR PERSON OF UNSOUND MIND.

1902 Rule 253; 1905 Ontario Rule 218; 1913 Ontario Rule 95. See notes to preceding rule.

Six clear days. Holidays are computed in the six days, rule 385. See rule 388.

OFFICIAL GUARDIAN appointed under section 72 of the Act. See that section for his duties.

An infant plaintiff upon having a transcript of a judgment obtained in the county court, filed in the King's Bench, cannot examine the defendant as a judgment debtor unless a guardian is appointed. Becher v. MacDonald, 5 M.R. 223.

Unless the official guardian consents to assume the ordinary responsibility attaching to the position, a pauper infant cannot have him appointed to bring an action. Re Sturgeon, 20 M.R. 284. The provisions of sub-section 2 must be strictly observed, otherwise the appointment is void. Warnock v. Prieur, 12 P.R. 264.

RULE 236.—ACTIONS—PARTIES — COMMITTEES, GUARDIANS, OR NEXT FRIENDS—APPOINTMENT OF GUARDIANS AD LITEM TO INFANTS ET AL., MADE PARTIES AFTER JUDGMENT.

1902 Rule 254; 1905 Ontario Rule 219; 1913 Ontario Rule 96.

The word "office" in this rule should be struck out, as office copies are dispensed with by rule 375. True copies are now required (ibid) in cases within rules 201, 218, 40, and notes to rule 218. For the mode of service see rule 237. If several infants, semble only one copy need be served. See rule 278 (2). As to appointment of guardians ad litem to infants, before judgment, see rules 278 and 281. See also notes to rule 234 and 237. Quaere whether in the class of cases coming within rule 278 service under this rule does not also constitute the official guardian, ipso facto, guardian of the infant?

RULE 237.—ACTIONS—PARTIES — COMMITTEES, GUARDIANS, OR NEXT FRIENDS—SERVICE OF INFANT OR LUNATIC WITH COPY OF JUDGMENT.

1902 Rule 255; 1905 Ontario Rule 220; 1913 Ontario Rules drop this rule.

"OFFICE COPY." There is now no such thing. See notes to rule 235.

The Master in directing service under this rule will have reference to rule 278 as to infants, and 235 (2) and 282 as to lunatics not so found. Neither this rule nor the foregoing apply to lunatics so found, in the latter case service should be made on the committee. See notes to rule 236.

RULE 238.—ACTIONS—PARTIES — COMMITTEES, GUARDIANS, OR NEXT FRIENDS—APPLICATION FOR APPOINTMENT OF GUARDIAN FOR APPLICANT.

1902 Rule 256; 1905 Ontario Rule 221; 1913 Ontario Rule 93; rule 235 (3) and see notes.

RULE 239.—ACTIONS—JOINDER OF CAUSES OF ACTION.

1902 Rule 257; 1905 Ontario Rule 232; 1913 Ontario Rule 69.

This rule must be read with rules 195 and 196. See those rules and notes, also rule 329. See also rules 240 as to actions for recovery of land, and 241 modifying this rule. Rule 245 provides for exclusion, etc., of some issues. See rule 197. All

the defendants need not be interested in all the relief prayed, and rule 244 as to joint and several claims. If all defendants are not interested in matters set up by the plaintiff in an action against several defendants, such defendants may have the paragraph setting up the matters in which they are not interested struck out, but none of the interested defendants may make such application, Martel v. Mitchell, 16 M.R. 266.

This rule and 196 and 197 authorize the severance and distribution of the damages in an action according to the respective liabilities of the defendant, Stewart v. Teskee, 15 W.L.R. 604.

MULTIFARIOUSNESS. See notes to rules 196 and 197, and Dougan v. Mitchell and Ward v. Short, 1 M.R. 328.

Two causes of action were allowed to be joined in Hagel v. Starr, 2 M.R. 92. Gas Power Age v. Central Garage Co., 21 M.R. 496. Coates v. Pearson, 16 M.R. 3, 3 W.L.R. 1, claims for malicious prosecution joined with claim for trespass; joinder of two separate causes of action in one of which one of the defendants has no concern, refused. Ney v. Ney, 3 O.W.N. 927. See also Clarke v. Bartram, 3 O.W.N. 691.

JURY TRIALS. See section 49 of the Act. Actions which must be tried by jury under this section may be joined with actions that must not without an order, and such a joinder is not embarrassing or contrary to the rules or practice. Coates v. Pearson supra. As to practice in such cases, ibid. See also Schultz v. Lyall Mitchell Co., 20 M.R. 429.

Joinder refused. Thomas v. Day, 2 W.W.R. 133 (sed vide Pringle v. Dwyer, 2 W.W.R. 1049); Smurthwaite v. Hannay, 63 L.J.Q.B. 737; Hinds v. Town of Barrie, 6 O.L.R. 656; Hopkins v. Brown, 5 W.W.R. 1266.

In Messervey v. Simpson, 22 M.R. 421, a claim for damages for slander against several defendants, without alleging a conspiracy to defame, was added to a claim for false imprisonment. Held the claim for slander should be struck out as embarrassing. See also Alexander v. Simpson, 22 M.R. 422.

RULE 240.—ACTIONS—JOINDER OF CAUSES OF ACTION—ACTIONS FOR RECOVERY OF LAND.

1902 Rule 258. This rule formerly had a counterpart in Ontario but has been repealed. Holmested & Langton, p.430. Now the only check on such joinder is that permitted by the rule similar to rule 245 infra.

For an instance of joinder under this rule and a case where such an application should be made, see Lee v. Gallagher, 15 M.R. 677. The leave may be granted after commencement of the action at any time the court thinks it reasonable —ibid.

See rule 187 as to defence; as to default judgment, rule 613; and motions for judgment, rule 633.

RULE 241.—

1902 Rule 259; 1905 Ontario Rule 233. This rule is dropped in Ontario by the revision of 1913 and such claims would now appear to be properly joined. See notes to rule 233 Holmested, p. 430.

RULE 242.—ACTIONS—JOINDER OF CAUSES OF ACTION—CLAIM BY OR AGAINST HUSBAND OR WIFE.

1902 Rule 260; 1905 Ontario Rule 234; 1913 Ontario Rule 70. See Vaughan v. Building & Loan Assn., 6 M.R. 289. See rule 210 and notes.

RULE 243.—ACTIONS—JOINDER OF CAUSES OF ACTION—CLAIMS BY OR AGAINST EXECUTOR.

1902 Rule 261; 1905 Ontario Rule 235; 1913 Ontario Rule 71.

ALLEGED. The allegation must be in pleadings. See rule 245 and notes.

RULE 244.—ACTIONS—JOINDER OF CAUSES OF ACTION—JOINT AND SEVERAL CLAIMS.

1902 Rule 262; 1905 Ontario Rule 236; 1913 Ontario Rule 72. See Wright v. Battley, 24 C.L.T., Occ. N. 278; Conley v. Wellband, 3 M.R. 207 (Joint Covenantees).

RULE 245.—ACTIONS—JOINDER OF CAUSES OF ACTION—ORDER FOR SEPARATE ISSUES.

1902 Rule 263; 1905 Ontario Rule 237; 1913 Ontario Rules 73 and 77. For an instance of when applications may be made under this rule see Coates v. Pearson, 16 M.R. 3.

RULE 246.—Actions—Mortgage Actions—Mortgagee May Have Sale Instead of Foreclosure.

1902 Rule 264; 1905 Ontario Rule 378; 1913 Ontario Rule 460.

The new Ontario Rules have grouped the series of rules similar to those commencing with rule 246, the rule corresponding to 616, and the series commencing with the Ontario counterpart of rule 118 together. These rules really constitute a code and must be so read.

Rules 199 and 200 provide for the joinder of parties in a mortgage action before judgment.

Rules 246 et seq. provide for the practice before judgment, and generally in a mortgage action, especially after the proceedings in the Master's office, e.g., as to the effect of a final order of foreclosure, etc.

Rules 40, 201 and 218 provide for the joinder of parties in a mortgage action after judgment (in the Master's office).

Rules 118 et seq. provide the practice in the Master's office.

Rule 616 provides for judgment in mortgage actions if undefended, or where some of the defendants are infants.

The court obtains jurisdiction under section 13 (b) of the Act.

Mortgages under the real Property Act must be foreclosed under the provisions of the Act. Re Alarie, 5 W.W.R. 257. Smith v. National Trust, 45 S.C.R. 618. These and the rules noted above, therefore only apply to old system mortgages.

See Holmested & Langton, p. 584, and notes following rule 378.

Instead of Foreclosure. Foreclosure on default is the usual remedy, Credit Foncier F.C. v. Andrew, 9 M.R. 65; even if there is a power of sale in the mortgage, ibid.

The mortgagee may, subject to rule 247, have sale and a personal judgment over the balance, if he asks for the same in his prayer for relief, and if there is an express or implied contract to pay the mortgage debt. See cases noted Holmested, p. 585. See rule 254.

As to when a mortgagor or subsequent encumbrancer may demand a sale. See rule 248, and an encumbrancer added in the Master's office, rule 249.

Proceedings on sale, see rule 127 et seq.

Acceleration clauses. Effect of, see rules 259 and 260.

RULE 247.—ACTIONS—MORTGAGE ACTIONS—TERMS ON WHICH SALE INSTEAD OF FORECLOSURE DIRECTED.

1902 Rule 265; 1905 Ontario Rule 379; 1913 Ontario Rule 465.

See notes to rule 246.

The court usually proceeds according to the same rules as govern a mortgagee applying but will depart in special cases. Holmested, p. 590.

USUAL TIME TO REDEEM: Six or twelve months. See notes to rule 124.

A judgment under this rule for immediate sale, without a day for redemption, can only be obtained on motion in court, except where infants are concerned; the motion may then be made in chambers, 616.

RULE 248.—ACTIONS—MORTGAGE ACTIONS—DEPOSIT WHERE SALE REQUESTED BY SUBSEQUENT ENCUMBRANCER OR MORTGAGOR.

1902 Rule 266; 1905 Ontario Rule 380; 1913 Ontario Rule 461 part.

See also rule 249. The 1913 Ontario Rule only goes to defendant by writ, leaving subsequent encumbrancers to their relief under rule 462 (Man. Rule 249 below). A subsequent encumbrancer should not be made an original defendant. Nelson v. Cochrane, 13 P.R. 76.

RULE 249.—ACTIONS — MORTGAGE ACTIONS — ENCUMBRANCER MADE PARTY IN MASTER'S OFFICE MAY APPLY FOR SALE.

1902 Rule 267; 1905 Ontario Rule 382; 1913 Ontario Rule 462.

See notes to rule 248. All subsequent encumbrancers should be added in the Master's office.

The deposit must be made before the report is settled. (See rule 125 and notes as to settling report.)

The praecipe should follow the rule as to form. The registrar should issue this order, rule 21.

RULE 250.—ACTIONS — MORTGAGE ACTIONS — PLAINTIFF MAY NOTIFY DEFENDANT ASKING SALE, TO CONDUCT IT.

1902 Rule 268; 1905 Ontario Rule 383; 1913 Ontario Rule 464 (1).

As to filing election and return of deposit, see rule 251.

RULE 251.—ACTIONS—MORTGAGE ACTIONS—RETURN OF DEPOSIT TO DEFENDANT.

1902 Rule 269; 1905 Ontario Rule 384; 1913 Ontario Rule 464.

The 1913 Ontario Rule 464 (1) provides that the Master shall deal with the deposit in other cases.

RULE 252.—ACTIONS—MORTGAGE ACTIONS—FINAL ORDER OF FORECLOSURE.

1902 Rule 270; 1905 Ontario Rule 385; 1913 Ontario Rule 486.

See rule 253 and notes to rule 124.

As to where the state of accounts is changed before final order of foreclosure, rule 255.

RULE 253.—ACTIONS—MORTGAGE ACTIONS—ONE DAY TO BE APPOINTED FOR REDEMPTION BY ALL PARTIES.

1902 Rule 271. No Ontario counterpart, Holmested & Langton, p. 603.

RULE 254.—ACTIONS—MORTGAGE ACTIONS—ORDER FOR PAYMENT OF DEFICIENCY.

1902 Rule 272; 1905 Ontario Rule 386; 1913 Ontario Rule 483.

RULE 255.—ACTIONS—MORTGAGE ACTIONS—NOTICE OF CREDIT WHERE ACCOUNT CHANGED AFTER REPORT OR ORDER.

1902 Rule 273; 1905 Ontario Rule 387 (1); 1913 Ontario Rule 484 (1).

The Ontario Rule combines this rule with rule 257, allowing the party receiving such sums to apply for a new day Rule 124 and notes.

RULE 256.—ACTIONS—MORTGAGE ACTIONS—FINAL ORDER AFTER SUCH NOTICE.

1902 Rule 274; 1905 Ontario Rule 387 (3); 1913 Ontario Rule 484 (3).

RULE 257.—ACTIONS—MORTGAGE ACTIONS—PARTY RECEIVING SUMS AFTER REPORT, ETC., MAY APPLY FOR NEW DAY OF PAYMENT.

1902 Rule 275; 1905 Ontario Rule 387 (1); 1913 Ontario Rule 484 (1).

RULE 258.—ACTIONS—MORTGAGE ACTIONS—PARTY SERVED WITH NOTICE OF CREDIT MAY APPLY.

1902 Rule 276; 1905 Ontario Rule 387 (3); 1913 Ontario Rule 484 (1).

RULE 259.—ACTIONS—MORTGAGE ACTIONS—ACCELERATION CLAUSES IN MORTGAGES OR AGREEMENTS FOR SALE.

In any action for the foreclosure or sale of the equity of redemption in any mortgaged property, or for recovery of possession thereof for default in the payment of interest or an instalment of principal, [and in actions for the foreclosure of the rights and interests of a purchaser under an agreement of sale of land,] the defendant [or other person entitled to redeem] may before judgment move to dismiss the action upon paying into court the amount then due for principal, interest and costs, [according to the terms of the mortgage or other instrument, without reference to and notwithstanding any provision therein for the acceleration of the time or times for payment of any subsequent instalment or instalments of such principal in case of default of payment of an overdue instalment of principal or interest, and he shall thereupon be relieved from the consequences of non-payment of so much of the principal money and interest as may not then have become payable by reason of lapse of time.] 3 Geo. 5, c. 12, s. 3, *part*.

1902 Rule 277; 1905 Ontario Rule 388; 1913 Ontario Rule 485.

This rule was recast in its present form by 3 Geo. V, c 12, s. 3. It was formerly similar to the present Ontario Rule The words in brackets were not in the previous rule. The amendments were apparently made to get over the difficulty pointed out in National Trust v. Campbell, 17 M.R. 587. An acceleration clause was not one against which equity would relieve as

being in nature of a penalty, Sterne v. Beck (1863), 1 De G.J. & S. 595.

This rule applies to payment before judgment, rule 260 to payment after judgment but before final order of foreclosure or sale or recovery of possession.

RULE 260. — ACTIONS — MORTGAGE ACTIONS — ACCELERATION CLAUSES IN MORTGAGES OR AGREEMENTS FOR SALE.

In any action for the purposes and under the circumstances mentioned in the last preceding rule, a defendant or party interested in the land may move to stay proceedings in the action after judgment, but before sale or final foreclosure or recovery of possession of the property by the plaintiff, upon paying into court the amount then due for principal, interest and costs, [according to the terms of the mortgage or other instrument, without reference to and notwithstanding any provision therein for the acceleration of the time or times for payment of any subsequent instalment or instalments of such principal in case of default of payment of an overdue instalment of principal or interest, and he shall thereupon be relieved from the consequences of non-payment of so much of the principal money and interest as may not then have become payable by reason of lapse of time.] 3 Geo. 5, c. 12, s. 3, *part*.

1902 Rule 278; 1905 Ontario Rule 389; 1913 Ontario Rule 485.

This rule was amended in accordance with the amendment to rule 259 by the same Act for the same reasons. See notes to 259 and National Trust v. Campbell, 17 M.R. 587, 7 W. L.R. 754, as to former practice.

The words in the brackets are new.

This rule applies after judgment.

But see rule 261 as to subsequent default.

RULE 261.—ACTIONS—MORTGAGE ACTIONS—JUDGMENT MAY BE ENFORCED UPON SUBSEQUENT DEFAULT.

1902 Rule 279; 1905 Ontario Rule 390; 1913 Ontario Rule 485 (2).

RULE 262.—ACTIONS—MORTGAGE ACTIONS—ORDER ON DEFAULT IN REDEMPTION ACTION.

1902 Rule 280; 1905 Ontario Rule 391; 1913 Ontario Rule 487.

See rules 263 and 252.

RULE 263.—ACTIONS—MORTGAGE ACTIONS—DIRECTIONS WHERE PLAINTIFF IN REDEMPTION ACTION IS FORECLOSED.

1902 Rule 281; 1905 Ontario Rule 392; 1913 Ontario Rule 488.

RULE 264.—ACTIONS—CROWN ACTIONS—PROCEDURE IN CROWN ACTIONS.

1902 Rule 280; 1905 Ontario Rule 391; 1913 Ontario Rule 5 (2).

See Act, section 13 (g) (h) as to letters patent.

Actions against the crown are governed by the petition of Right Act, R.S.M. 1913, cap. 152.

The petitioner must obtain the fiat of the Attorney General (s.4), and the petition is then to be filed and served (s.5). If the petition has reference to real estate, notice must be given to the last occupant of the real estate (s.6). No scire facias is necessary.

The crown must appear in 28 days. The practice is the same as in an action in the King's Bench. The trial is to be by a judge without a jury (14).

Costs may be given to or against the crown (ss. 17, 18). S. 19 provides for enforcing a judgment for costs against the crown.

Semble rule 772 applies.

See 1913 Ontario Rules 738 to 750, both inclusive, for similar practice.

RULE 265.—ACTIONS—CROWN ACTIONS—COSTS OF CROWN IN CROWN ACTIONS.

1902 Rule 283; 1905 Ontario Rule 239; 1913 Ontario Rules drop this rule.

See rule 934. See Johnston v. Regem (1904), A.C. 817; Vaithmattia Pillai v. Regem, 29 T.L.R. 709, but see rule 265 and A.-G. v. Toronto General Trust, 5 O.L.R. 607. Rule 264.

RULE 266.—ACTIONS — CROWN ACTIONS — COSTS AGAINST CROWN.

1902 Rule 284; 1905 Ontario Rule 240; 1913 Ontario Rules drop this rule. See notes to rule 265.

RULE 267.—SERVICE OF PAPERS—STATEMENT OF CLAIM—PERSONAL SERVICE OF STATEMENT OF CLAIM WHEN NOT NECESSARY.

1902 Rule 180; 1905 Ontario Rule 145; 1913 Ontario Rule 15.

The revision of 1913 grouped all rules respecting service as nearly as might be.

UNDERTAKING should be in writing to bring it within rule 186. The penalty for default is attachment. This rule applies (e.g.) to notices under rule 928, see rule 274.

RULE 268.—SERVICE OF PAPERS—STATEMENT OF CLAIM—ORDINARY METHOD OF SERVICE.

1902 Rule 181; 1905 Ontario Rule 146 part; 1913 Ontario Rule 16 part.

ENDORSEMENT. Those in rules 300 and 301.

For service on:—

1. Corporations, see rules 285 et seq.
2. Married women, infants, and lunatics, rules 277 et seq.
3. Partners, rules 283 and 284.
4. Parties out of Manitoba, rules 290 et seq.

See rule 274. The original need not be shown. Service must be made within 6 months from date of the statement of claim (rule 176) unless the time is extended. Watson v. Bowser, 18 M.R. 425; Selliek v. Selkirk, 1 W.W.R. 1090, or an order made under rule 292.

Service should be personal, rule 269. As to requisites, see Ritz v. Schmidt, 12 M.R. 138. It should be explained to a party who does not speak English, ibid. If refused it may be thrown down in front of him, ibid.

A tenant is to give notice to his landlord of an action to recover land, if the statement of claim is served on him or comes to his notice, or forfeit three years rack rent. R.S.M. 1913, cap. 109, section 3.

Non service held to be an irregularity and not a nullity in Rutherford v. Breadry, 9 M.R. 29, sed quaere.

See rule 294, as to service on solicitors.

RULE 269.—SERVICE OF PAPERS—STATEMENT OF CLAIM—SUBSTITUTIONAL SERVICE.

1902 Rule 182; 1905 Ontario Rule 146 part; 1913 Ontario Rule 16 part. See notes to rule 268. Personal service should be made if possible. Young v. Dominion, 19 P.R. 139.

SUBSTITUTIONAL SERVICE. This rule only applies to statements of claim and is supplemented by rule 274. Ordered only upon motion supported by affidavit showing the reason service cannot be made, and a reasonable probability that the substituted service will come to the party's notice. Howard v. Lawson, 19 M.R. 223; Griffin v. Blake, 21 M.R. 547; 19 W.L.R. 208.

When parties out of the jurisdiction, see rule 292, see rule 294.

Lunatic—re Bulger, 21 M.R. 702.

SERVICE BY PUBLICATION. Effect of, Howard v. Lawson, 19 M.R. 223; 11 W.L.R. 213. Must have reasonable chance of coming to parties' knowledge, ibid. Judgment by default refused in Howard v. Lawson as not being likely to have ever come to party's notice. The court on a motion for judgment will in such cases scrutinize the material filed, Griffin v. Blake, 21 M.R. 547.

RULE 270.—SERVICE OF PAPERS—STATEMENT OF CLAIM—ENDORSING ON STATEMENT OF CLAIM A MEMORANDUM OF SERVICE—AFFIDAVIT OF SERVICE TO MENTION DAY SUCH ENDORSEMENT MADE.

1902 Rule 184; 1905 Ontario Rule 150; 1913 Ontario Rule 17.

See Bisson v. Sinnott, 1 M.R. 26; McDonald v. Deacon, 4 M.R. 452. Holidays are not included in the three days, rule 385.

RULE 271.—SERVICE OF PAPERS—PAPERS GENERALLY—SERVICE OF PAPERS WHEN PARTY SUES OR DEFENDS IN PERSON.

1902 Rule 185; 1905 Ontario Rule 135 part; 1913 Ontario Rule 12 part; and 200.

The Ontario Rules provide for service at the plaintiff's address, if within two miles from the central office, if more than two miles, or no such address endorsed, service may be

made by registered letter. (Rule 200 allows by posting as in rule 271).

See rule 297, as to where a solicitor is subsequently employed.

RULE 272.—SERVICE OF PAPERS—PAPERS GENERALLY—WHERE PLEADINGS, ETC., MAY BE SERVED.

1902 Rule 359; 1905 Ontario Rule 327; 1913 revision drops this rule.

RULE 273.—SERVICE OF PAPERS—PAPERS GENERALLY—MODE OF SERVING ORDER.

1902 Rule 367; 1905 Ontario Rule 333; 1913 revision drops this rule.

The former Ontario Rule applies to cases of arrest and attachment.

RULE 274.—SERVICE OF PAPERS—SUBSTITUTIONAL SERVICE—ORDER FOR—EFFECT OF—HOMOLOGATING PREVIOUS SERVICE.

1902 Rule 183; no Ontario counterpart. See notes to rule 269.

As to when allowed in a lunacy application re Bulger, 21 M.R. 702.

RULE 275.—SERVICE OF PAPERS—SUBSTITUTIONAL SERVICE—"REAL PROPERTY ACT" PROCEEDINGS.

This rule was added by 3 Geo. V, cap. 12, s. 3 part, and has no Ontario counterpart.

RULE 276.—SERVICE OF PAPERS—SUBSTITUTIONAL SERVICE—DISPENSING WITH SERVICE.

1902 Rule 368; 1905 Ontario Rule 334; 1913 Ontario Rule 16 part.

The Ontario Rule (16) does not go to dispensing with service as 334 did. Under this rule an order may be made for service substitutionally upon a solicitor, who has left the jurisdiction and cannot be found, of a notice of motion for an order to refer his bill rendered to taxation, re Reid estate, 17 M.R. 652.

See Holmested & Langton, p. 538.

RULE 277.—SERVICE OF PAPERS—MARRIED WOMEN, INFANTS, LUNATICS—SERVICE ON MARRIED WOMAN.

1902 Rule 188; 1905 Ontario Rule 151. The 1913 revision drops this rule.

RULE 278.—SERVICE OF PAPERS—MARRIED WOMEN, INFANTS, LUNATICS—SERVICE UPON OFFICIAL GUARDIAN OF INFANTS.

1902 Rule 189; 1905 Ontario Rule 152; 1913 Ontario Rule 18.

See section 21 (3), (4) of the Act, under the authority of which this rule is passed.

This rule only applies in cases where an estate in which the infant is interested is concerned; for other cases where service may be made on an infant personally, see rule 279, and as to appointing a guarding in such cases, rule 280.

See notes to rules 209 and 220.

RULE 279.—SERVICE OF PAPERS—MARRIED WOMEN, INFANTS, LUNATICS—SERVICE UPON INFANT PERSONALLY.

1902 Rules 190 and 191; 1905 Ontario Rules 153 and 154; 1913 Ontario Rules 19 and 20.

See notes to rule 278 and 280.

The Ontario Rule adds at the end of paragraph 1 the words "who may enter an appearance (defend) for the infant in the absence of other order or direction." The Manitoba practice would appear to be the same, see rule 209.

RULE 280.—SERVICE OF PAPERS—MARRIED WOMEN, INFANTS, LUNATICS—WHEN GUARDIAN TO BE APPOINTED.

1902 Rule 192; 1905 Ontario Rule 155; 1913 Ontario Rule 92.

"Not represented by the official guardian"—in cases coming within section 2 of rule 279. The infant himself may move under this rule, the plaintiff under rule 281. See also rule 238 and notes.

RULE 281.—SERVICE OF PAPERS—MARRIED WOMEN, INFANTS, LUNATICS—MOTION FOR APPOINTMENT OF GUARDIAN.

1902 Rule 193; 1905 Ontario Rule 156; 1913 Ontario Rules drop this rule.

The Ontario Rule was expressly subject to the rule corresponding to 238, see notes to 280.

RULE 282.—Service of Papers—Married Women, Infants, Lunatics—Service Upon Lunatics—Guardian Ad Litem for Lunatic Without Committee.

1902 Rules 194 and 195; 1905 Ontario Rules 157 and 158; 1913 Ontario Rules 21 and 22. See the Act, section 21 (3), (4), in cases of settled estates. See rules 234 and 235.

In Ontario the Inspector of Prisons, etc., is ex officio the committee of every lunatic confined in a public asylum, who has no other committee, but not within the meaning of this rule (21 (2)). For Manitoba, see the Lunacy Act, R.S.M. 1913, cap. 12. The keeper of the asylum is within this rule, Holmested, p. 290.

RULE 283.—Service of Papers—Partners—Service Upon Partners Sued in Firm Name.

1902 Rule 196; 1905 Ontario Rule 223 part; 1913 Ontario Rule 101 part.

RULE 284.—Service of Papers—Partners—Service Where Person Carries on Business in Firm Name.

1902 Rule 197; 1905 Ontario Rule 231 (3) part; 1913 Ontario Rule 108 part. See rules 213 and 214, and notes.

RULE 285.—Service of Papers—Corporations—Service Upon Corporations.

1902 Rule 198; 1905 Ontario Rule 159; 1913 Ontario Rule 23 (1). See rule 288. Service upon a plaintiff as secretary treasurer of a defendant company, of plaintiffs, process is no service, Crawford v. Colville, 22 W.L.R. 50 (Alta.).

RULE 286.—Service of Papers—Corporations—Service Upon Railway Companies, Etc.

1902 Rule 199; 1905 Ontario Rule 160; 1913 Ontario Rule 23 (3).

RULE 287.—Service of Papers—Corporations—Service of Process, Etc., Upon General Agent of Non-Resident.

1902 Rule 186; 1905 Ontario Rule 147; 1913 Ontario Rule 24.

RULE 288.—SERVICE OF PAPERS—CORPORATIONS—CERTAIN CORPORATIONS, ETC., DEEMED WITHIN JURISDICTION IN ATTACHING AND GRANISHING PROCEEDINGS.

1902 Rule 187. See 1905 Ontario Rule 159 and 1913 Ontario Rule 23.

This rule applies to attaching and garnishing proceedings. These are governed in Ontario by the rule similar to 285.

RULE 289.—SERVICE OF PAPERS—CORPORATIONS—SERVICE AS PROVIDED BY ANY SPECIAL STATUTE.

1902 Rule 200; 1905 Ontario Rule 161. Dropped out of the Ontario Rules by 1913 revision, but see 1913 Ontario Rule 23 (2).

RULE 290.—SERVICE OF PAPERS—SERVICE OUT OF MANITOBA—SERVICE OUT OF JURISDICTION.

1902 Rule 201; 1905 Ontario Rule 162; 1913 Ontario Rule 25.

For a history of, and the jurisdiction for, these rules see Holmested & Langton, p. 294.

For the form of statement of claim required see rule 175.

Under the Ontario Rules, service must be "allowed" by the court or a judge, that is by order made upon motion (ex parte) Pennington v. Morley, 3 O.L.R. 514; for cases where an order is required under the Manitoba practice see rule 291 and 292. No order is required in cases under rule 290.

For what proceedings are within this rule see Groves v. Tentler, 21 M.R. 417, and the cases noted there distinguishing Rasch v. Wulfert (1904), 1 K.B. 118, and the English Rule. (This case held that a notice of motion to have an award made a judgment of the court under rule 773 (now repealed) was within rule 290 (201); the principle is of course not affected by the repeal). See clause (e) infra.

Each clause must be read as separate and complete. Tassell v. Hallen (1892), 1 Q.B. 321.

Quaere whether a petition in lunacy under rule 772 could be served out of the jurisdiction, re Bulger, 21 M.R. 702.

As to the right of defendant within the jurisdiction to take advantage of irregularities in service out of the jurisdiction, see Edgeworth v. Allan, 22 O.W.R. 617; Minot v. Durick, 3 W.W.R. 904.

Patent cases. Service ex juris in Maw v. Massey Harris, 14 M.R. 252.

RULE 290, SS. (c).

Former Manitoba Rules and the Ontario Rules are similar. See Emperor of Russia v. Proskouriakoff, 18 M.R. 56; 42 S.C.R. 226; 8 W.L.R. 464, in which the principle of the rule is discussed.

RULE 290, SS. (e).

The Ontario Rule applies as well to an action on a judgment.

As to what contracts come within this rule see Gullivan v. Cantelon, 16 M.R. 644; Bell v. Rokeby, 1 W.L.R. 124 (action for agent's commission on proposed sale of land in Manitoba).

See also Groves v. Tentler, 21 M.R. 417.

TORT. Emperor of Russia v. Proskouriakoff, 18 M.R. 56; 42 S.C.R. 226, followed, Anchor Elevator v. Heney, 18 M.R. 96 (taking chattel mortgage without taking possession of the goods, a fraudulent preference only).

RULE 290, SS. (g).

The former Manitoba Rules and the Ontario Rules are all similar. In an action for specific performance by a purchaser against a vendor under agreement and the vendor's assignee of the agreement and the monies payable under it where the vendor is out of Manitoba, and the assignee has been duly served within Manitoba, the vendor may be served ex juris under this section, Smith v. Ernst, 22 M.R. 317; 20 W.L.R. 353. Service under this section is proper where out of several claims one only is against the defendant out of the jurisdiction as well as against the defendant within the jurisdiction-proceedings at trial. Swanson v. McArthur, 23 M.R. 84; 22 W.L.R. 317.

RULE 291.—SERVICE OF PAPERS—SERVICE OUT OF MANITOBA—WHERE DEFENDANT HAS ASSETS IN MANITOBA.

1902 Rule 202; 1905 Ontario Rule 162(h); 1913 Ontario Rule 25 (h). See notes to rule 290.

A motion under this rule is an interlocutory motion. Bank of Nova Scotia v. Booth, 19 M.R. 471, and rule 529 applies, ibid.

A prima facie cause of action must be shown. Davis v. Wenatchee (Alta.), 23 W.L.R. 326.

Where it is shown that a resident of Manitoba is indebted to a corporation domiciled out of the jurisdiction in a sum which might be garnisheed and which exceeds $200, an order for service on the company out of the jurisdiction will be made. Bank of Nova Scotia v. Booth, supra. See Brand v. Green, 13 M.R. 101.

See also Gullivan v. Cantelon, 16 M.R. 644; Emperor of Russia v. Proskouriakoff, 18 M.R. 56; 42 S.C.R. 226. See Gibbons v. Berliner, 28 O.L.R. 620.

An order made under this rule is an ex parte order, Swanson v. McArthur, 22 W.L.R. 317; 3 W.W.R. 381; and the referee may rescind his own order under rule 451, ibid, or even though the application not made within 4 days, Swanson v. McArthur, 23 M.R. 84; 22 W.L.R. 317. See also Restall v. Allen, 3 O.W. N. 63. The Ontario rule also applies "in respect of a claim for alimony" added by 5 Ed. VII, c. 13, s. 22. See sub-section (e) which in Ontario has after the words "founded on" in the first line the words "a judgment or on." It would seem, following the authorities in Holmested, p. 310, that this rule does not include a claim for alimony, which can only be brought under clause (e). See also Eames v. Eames, 3 O.W.N. 42.

For material on an application under this rule see notes to 1905 Ontario Rule 163. Holmested, p. 311, which has no Manitoba counterpart.

RULE 292.—SERVICE OF PAPERS—SERVICE OUT OF MANITOBA—OTHER MODES OF PROCEEDING AGAINST ABSENT DEFENDANT.

1902 Rule 203; 1905 Ontario Rule 167; 1913 Ontario Rule 16 part. See notes to rule 274 and Holmested, p. 314.

RULE 293.—SERVICE OF PAPERS—SERVICE ON SOLICITOR—SOLICITOR'S ADMISSION OR ACCEPTANCE OF SERVICE.

1902 Rule 360; 1905 Ontario Rule 328; 1913 Ontario Rule 198.

RULE 294.—SERVICE OF PAPERS—SERVICE ON SOLICITOR—SERVICE UPON SOLICITOR'S AGENT.

1902 Rule 361 and 2 Geo. V., c. 14, s. 5; 1905 Ontario Rule 329; 1913 Rule 199.

The 1912 amendment was made to follow out the practice introduced by amendment to rules 162 and 163 q.v.

See rules 268 and 269. This rule only applies where personal service is not required.

See rules 271 and 297.

RULE 295.—SERVICE OF PAPERS—SERVICE ON SOLICITOR—SERVICE ON WINNIPEG AGENT TO BE DEEMED 4 DAYS LATER THAN ACTUAL DATE OF SERVICE.

1902 Rule 362. No Ontario counterpart.

RULE 296.—SERVICE OF PAPERS—SERVICE ON SOLICITOR—CHANGING SOLICITOR.

1902 Rule 363; 1905 Ontario Rule 335; 1913 Ontario Rule 389 in part.

This order should be signed by the registrar, rule 21, and notified to the prothonotary, rules 178, 176.

See notes to rule 959, as to solicitor's lien.

RULE 297.—SERVICE OF PAPERS—SERVICE ON SOLICITOR—SERVICE IN CASE OF PARTY ACTING IN PERSON AND SUBSEQUENTLY EMPLOYING SOLICITOR AND GIVING NOTICE THEREOF.

1902 Rule 364; 1905 Ontario Rule 336; 1913 Ontario Rule 390 in part. See rules 294 and 271 and notes.

RULE 298.—SERVICE OF PAPERS—SERVICE ON SOLICITOR—SERVICE OF PROCEEDINGS FOR FORECLOSURE OR SALE MAY BE ON SOLICITOR IN CERTAIN CASES.

1902 Rule 365 (amended 3 Geo. V., c. 12, s. 3) 1905 Ontario Rule 332.

1913 Ontario Rule 202 in part. The amendment struck out the word, "judgment," before the word creditor in Line 7, as hereinafter provided, i.e., by Rule 299. As to when a Retainer ceases Miller v. Kanady, 5 O.L.R. 412.

RULE 299.—SERVICE OF PAPERS—SERVICE ON SOLICITOR—SERVICE OF CERTAIN NOTICES UPON EXECUTION OR ATTACHMENT CREDITORS.

1902 Rule 366. No Ontario counterpart except as in rule 202 part. See Rule 298 and notes.

HEAD NOTE TO RULE 300.

In considering the Ontario cases it is to be remembered that the practice there is somewhat different. An action is commenced by writ of summons to which the defendant must appear and file a notice of appearance. The plaintiff then within one month (formerly three months) delivers his statement of claims to which a statement of defence must be delivered in ten days (formerly eight days). In cases where a writ is specially endorsed with a claim arising out of a debt or money demand the practice is similar to that under Manitoba Rule 625, which see. The foregoing is sufficient to explain the difference between the Manitoba and Ontario practice, which is otherwise in this respect identical. See rules 172 and 189 and notes.

RULE 300 (a).—PLEADING—STATEMENT OF CLAIM—FORM AND CONTENTS OF STATEMENT OF CLAIM.

1902 Rule 285 (a); 1905 Ontario Rule 120; 1913 Ontario Rule 5.

This rule contains both the requirements of a writ of summons and a statement of claim in Ontario. The Ontario Rules require this part of the information to appear in the writ.

See rules 172 as to statement of claim.

A prayer for such further or other relief as the plaintiff is entitled to does not justify the granting of a separate kind of relief different from that specifically claimed and suggested by the facts alleged..

Cargill v. Bower, 10 Chy. D. 502, 47 L.J. Ch. 649; Hamilton v. Macdonell, 13 W.L.R. 495.

A declaratory judgment or damages will not, therefore, be granted by virtue of such prayer in an action by an agent for a commission. Kennerley v. Hextall, 23 W.L.R. 205; 3 W.W.R. 699, following Gaughan v. Sharpe, 6 A.R. 417; Jessup v.

G.T.R., 7 O.A.R. 128; Phillips v. Royal Niagara Hotel, 25 Gr. 358.

But in an action for unpaid balance of purchase money of land the plaintiffs may have a declaration of lien on the property and a sale in the event of non payment. Les Soeurs de la Charite v. Forrest, 16 W.L.R. 58.

Prayer for general relief held to entitle a party to relief not raised by counsel on argument, Sanderson v. Heap, 11 W. L.R. 238; Johanneson v. Galbraith, 16 M.R. 138; 3 W.L.R. 275.

Prayer for specific performance and in the alternative for damages in lieu thereof, held not to entitle plaintiff to common law damages for breach of contract. Johannson v. Gudmundson, 19 M.R. 83, 10 W.L.R. 254.

Interest properly allowed under a prayer for general relief if the pleadings make a case for its allowance, if based upon contract, but not otherwise. Fensom v. Bulman, 7 W.L.R. 134.

But a plaintiff cannot desert the specific relief claimed and ask relief of another description, 16 M.R. 149.

RULE 300 (b).—PLEADING—STATEMENT OF CLAIM—FORM AND CONTENTS OF STATEMENT OF CLAIM.

1902 Rule 285 (b); 1905 Ontario Rule 242; 1913 Ontario Rule 109.

The Ontario Rules apply to the statement of claim although the same information must appear on the writ.

A statement of claim in a vendor's action for a sale of land on default of payment of an instalment should allege a vendor's lien and ask that it be declared, Robinson v. Starr, 23 M.R. 848; although if facts are alleged from which as a matter of law such lien would be inferred, and there is a distinct prayer for sale, it may be ordered upon motion for judgment in an undefended action, ibid.

A prayer for declaration of a lien pursuant to the Mechanics' and Wage Earners' Lien Act should be contained in a statement of claim in an action to enforce a mechanic's lien, Whitman v. Harvey, 13 W.L.R. 287.

The fact that a statement of claim asks for specific performance, does not bar the plaintiff from recovering damages claimed alternatively, Johannson v. Gudmundson, 11 W.L.R. 176, per Cameron, J.A., p. 185.

RULE 300 (c).—PLEADING—STATEMENT OF CLAIM—FORM AND CONTENTS OF STATEMENT OF CLAIM.

1902 Rule 285 (c).

There is no Ontario counterpart to this rule, but there is an Ontario Rule (1905-299) 138 providing that particulars may be ordered. This may also be obtained in Manitoba upon an application for that purpose which is made not under any rule, for there is no Manitoba Rule similar to 138, but by virtue of the inherent jurisdiction of the court. As for the principal under which they are ordered, see Spedding v. Fitzpatrick, 38 Chy. D. 410. See notes to rules 325 and 326.

RULE 300 (d).—PLEADING—STATEMENT OF CLAIM—FORM AND CONTENTS OF STATEMENT OF CLAIM.

There is no Ontario counterpart to this rule, but under rule 33 (1905 rule 138) the plaintiff may specially endorse his writ with such a claim and then upon a defence being filed move for judgment under rule 57 (1905 rule 603) without pleading, the special endorsement being taken as a statement of claim. The same practice is followed in Manitoba in similar cases, motion for judgment being made under rule 625. (See notes to that rule). Without the special provisions as to interest it could not be claimed. See for the history of the interest clause Holmested & Langton, p. 270. For forms similar to those in use before the coming into force of the Queen's Bench Act of 1895, Holmested & Langton's Forms and Precedents, sub-title "Writ of Summons Special Endorsement."

For a case of a special endorsement under the former practice see Dundee Mortgage and Investment Co. v. Sutherland, 1 M.R. 308; also Stewart v. Richard, 3 M.R. 610, distinguished in London and Canadian Loan Co. v. Morris, 7 M.R. 129.

In an action for damages for wrongful dismissal it is not necessary for the plaintiff to aver he is ready and willing to continue to serve the defendants, Beaucage v. Winnipeg Stone Co., 14 W.L.R. 575.

In an action for libel imputing unchastity to a woman, it is not necessary to allege or prove special damage, R.S.M. 1913, cap. 113, s. 12, but this section must be pleaded.

In such an action the pleadings must contain an averment of the sense in which the words are used, s. 6.

RULE 301 (a).—PLEADING—STATEMENT OF CLAIM—NOTICES AND ENDORSEMENTS UPON STATEMENT OF CLAIM.

1902 Rule 286 (a); 1905 Ontario Rule 134; 1913 Ontario Rule 11.

See rule 180 as to disclosure by solicitors.

The Ontario provisions are similar but apply to the writ of summons.

RULE 301 (b).—PLEADING—STATEMENT OF CLAIM—NOTICES AND ENDORSEMENTS UPON STATEMENT OF CLAIM.

1902 Rule 286 (b); 1905 Ontario Rule 120; 1913 Ontario Rule 5 part.

RULE 301 (c).—PLEADING—STATEMENT OF CLAIM—NOTICES AND ENDORSEMENTS UPON STATEMENT OF CLAIM.

1902 Rule 286 (c). No similar rule in Ontario but the form of endorsement in the writ prescribed by the Act requires such a notice, but no amount is specified for costs.

The Ontario Rules providing for delivery of a statement of claim or extending in the pleading the claim endorsed on the writ require no counterpart in Manitoba. The pleading in a statement of claim is governed by rules 318 et seq. as to pleading generally, which see.

See rule 552 and notes as to payment by defendant of claim and costs.

RULE 302.—PLEADING—DEFENCE AND COUNTERCLAIM—FORM AND CONTENTS OF STATEMENT OF DEFENCE AND COUNTERCLAIM.

1902 Rule 287. There is no similar rule in Ontario.

302 (a). The general rules of pleading apply to statement of defence, rule 318; limiting defences, rules 193 and 194; defences in action for recovery of land, rule 187 et seq.

Particulars set off or counterclaim.

As to particulars see note to rule 300 (e).

Demurrers are now forbidden in Ontario and all mention of them is dropped from the rules. See 1905 rule 259, where they were expressly forbidden, and see Holmested & Langton, p. 464.

Questions of law are however permitted to be raised on the

pleadings, the idea being to prevent objections being raised by demurrer that would only result in amendment. As to the effect of a demurrer, see an interesting judgment of Meredith, C.J.O., in Stevens v.Moritz (1913) 5 O.W.N. p. 421. Demurrers are however continued in Manitoba. See notes to rule 347.

Questions of substantial difficulty or importance should not be disposed of on motion under rule 347, but should be left to be dealt with at the trial of the action.

Long v. Barnes (1902), 14 M.R. 427. The statement of defence set out at length in this report might be studied to show what are considered questions of such substantial difficulty and importance.

An application to strike out parts of a statement of defence would seem to be the plaintiff's only substitute for a demurrer. See notes to rule 302 (e) and 466. The principles upon which a demurrer would be sustained seem to be settled in Makarsky v. C. P. R. (1904), 15 M.R. 53, and Gardiner v. Bickley (1904), 15 M.R. 354, which it is submitted should be applied to the motion in this case, which were however decided after Long v. Barnes, which case was not cited or considered apparently, although Mr. Justice Richards, who decided Long v. Barnes, as sustained by the Court of Appeal, was a member of the Court which decided Makarsky v. C. P. R. The principle in the Long case seems to be much narrower than in the Makarsky and Gardiner cases, and it is urged should now be applied to similar applications under rule 347. A plaintiff cannot demur to the statement of defence or any part, Aetna Life Insurance Company v. Sharpe (1896), 11 M.R. 141. The proper practice is for the plaintiff to move to strike out under rule 347, which is interpreted more widely than the similar Ontario Rule (423) 137 (ibid), discussed and explained Long v. Barnes (1902), 14 M.R. 427.

Where a defendant has demurred to certain paragraphs of the statement of claim as disclosing no facts entitling the plaintiff to recover, a motion to strike out the same paragraphs as embarrassing should not be entertained where the demurrer is pending. Smith v. Murray, 21 M.R. 753, 14 W.L.R. 402.

The Manitoba Rules have no counterpart of the Ontario Rules 122 to 124, which allow either party to raise questions of law on the pleadings. See Manitoba Rule 302 (e) and notes.

The proper practice under rules 452 and 466 where a demurrer is incorporated in the statement of defence, is to apply

for an order of a Judge, if it is desired, to have the demurrer heard before the trial of the issues of fact, and without such an order the matters of law should be disposed of at the trial along with the issues of fact. Here a demurrer was set down for hearing on a Wednesday without an order, but had been heard and overruled.

Held also upon an appeal that as the defendant could not now argue the demurrer at the trial the appeal must be proceeded with.

Foster v. Municipality of Lansdowne (1897), 12 M.R. 41.

A demurrer ore tenus will not be allowed unless there is a demurrer on the Record, Wright v. Winnipeg, 3 M.R. 349.

If a plea is bad in part, it is bad as to the whole, and a demurrer should be to the whole plea, otherwise it will work a discontinuance, Sparham v. Carley, 8 M.R. 448.

Generally see Gillespie v. Lloyd, 11 C.L.T., Occ. N. 121.

Multifarious pleas are now got rid of under rule 197 and not by demurrer as formerly.

Where the pleas are clearly bad they should be struck out and the plaintiff not put to the expense of a demurrer, Bank of B. N. A. v. Munro, 9 M.R. 151.

As to costs, when a demurrer should be raised but is not, National Trust v. Proux, 20 M.R. 137.

As to payment into Court with defence and pleading same rules 552 et seq.

In an action for libel the defendant may in certain cases plead that there was no actual malice or gross negligence in the publication and apologize, R.S.M. 1913, cap. 113, ss. 8 and 7, and pay into Court with such a defence by way of amends, s. 9.

RULE 303.—PLEADING—DEFENCE AND COUNTERCLAIMS—NOTICE OR ENDORSEMENT UPON STATEMENT OF DEFENCE.

1902 Rule 288; 1905 Ontario Rule 169; 1913 Ontario Rule 46.

The Ontario Rules apply to the appearance. See head note to Rule 300.

RULE 304.—PLEADING—DEFENCE AND COUNTERCLAIMS—EFFECT OF INCLUDING DEMURRER.

1902 Rule 289; no Ontario counterpart. See notes to rule 302 (c).

RULE 305.—PLEADING—DEFENCE AND COUNTERCLAIMS—ADMISSION IN STATEMENT OF DEFENCES—DENIALS REQUIRED.

1902 Rule 290; 1905 Ontario Rule 269; 1913 Ontario Rule 142.

The last clause was added to this rule by 2 Geo. V., cap. 14, s. 2. By the Ontario Rule 142, which is changed considerably from rule 269, a defendant is not permitted to deny generally but must "set forth the facts upon which he relies even though this may involve the assertion of a negative." And see Smith v. Canada Cycle and Motor Co., 20 M.R. 134.

By 1905 Ontario Rule 272 silence of a pleading was no admission.

The Ontario Rule applies to "each party." As to penalty for non-compliance with this rule see rule 948.

See Rule 327 as to the manner of making such admissions.

As to motions for relief upon admissions on pleadings, see rule 639 and notes.

A general denial does not comply with this rule, McPherson v. Edwards, 14 W.L.R. 172, but semble if left on the record may be treated as a specific denial, ibid.

RULE 306 (1).—PLEADING—DEFENCE AND COUNTERCLAIMS—COUNTERCLAIM.

1902 Rule 291 (1); 1905 Ontario Rule 251; 1913 Ontario Rule 115.

This rule was passed to carry out the provisions of section 25 (f) of the Act.

See Giles v. Farrah, 21 O.L.R. 457.

Defendants in this rule would seem not to include a third party made a defendant to a counter claim, Holmsted & Langton, p. 445.

RULE 306 (2).—PLEADING—DEFENCE AND COUNTERCLAIMS—EFFECT OF COUNTERCLAIM.

1902 Rule 291 (a); 1905 Ontario Rule 252; 1913 Ontario Rule 116.

SET OFF.—For the history of the law of set off, see Holmested & Langton, p. 446, and as to the changes made by this rule, ibid.

A defendant, sued for a balance due under an agreement

of purchase of land assigned to the plaintiff, cannot set off against the debt a claim against the assignor for unliquidated damages arising out of transactions wholly unconnected with the purchase, McManus v. Wilson, 17 M.R. 567.

A buyer of goods from an agent as such cannot set off a claim against the agent in the action of the principal for goods sold, Wood v. John Arbuthnot, 16 M.R. 320.

See also Sifton v. Caldwell, 11 M.R. 653; Lillie v. Thomas, 1 W.L.R. 467; McGregor v. Campbell, 19 M.R. 38.

COUNTER CLAIM.—The Court has determined that in settling the right of parties where there is a counterclaim, the claim and counterclaim are, for all purposes except execution, two independent actions, Esher M.R. in Stumore v. Campbell (1892), 1 Q.B. 317.

In an action for possession of land by a landlord against his tenant, the defendant may counterclaim against the plaintiff for damages for illegal seizure, distress and sale of his goods under an alleged claim for rent of the same land: and the paragraph of the statement of defence setting up such counterclaim will not be struck out on the ground that it raises an issue which should be tried by a jury, Gowenlock v. Ferry, 11 M.R. 257, following Dockstader v. Phipps, 9 P.R. 204, and Goring v. Cameron, 10 P.R. 496.

A clause in the order permitted the defendant to amend another paragraph of his defence within 6 days in default of which it was to be struck out, and the defendant availing himself of the privilege, held that by compliance with such part of the order he had not precluded himself from appealing against the other part, ibid.

Gowenlock v. Ferry is considered in Bergman v. Smith, 11 M.R. 364.

Rules 306 and 307 apply only to a counterclaim against an original contractor and not against an assignee from him, and a claim for damages unconnected with the contract cannot be set off against the assignee, Cummings v. Johnston, 23 M.R. 740, following McManus v. Wilson, 17 M.R. 567, and Stoddart v. Union Trust Ltd. (1912), 1 K.B. 181.

Damages arising out of a breach of the contract assigned may be set off against a claim under the contract, Cummings v. Johnson, supra., Young v. Kitchin (1878), 3 Ex.D. 127; Newfoundland v. Newfoundland (1888), 13 A.C. 199; Campbell v. Canadian Co-operative Ins. Co., 16 M.R. 464.

Effect of bringing cross action instead of counter-claiming consolidation, set off. See La Fleche v. Bernardin, 21 M.R. 315. Generally see Kearns v. Kearns, 3 O.W.N. 1151. Medland v. Naylor, 3 O.W.N. 1005; Action for calls on stock, counterclaim against directors, Polson Iron Works v. Main, 23 O.W.R. 786.

Sale of goods in ordinary course of business. Assignment of chose in action, set off, Bank of Montreal v. Tudhope, 21 M.R. 380.

As to pleading matters arising pendente lite, see rule 357.

Formerly a defendant could not sign judgment on a counterclaim in default of defence, Thompson v. Yockney, 22 W.L.R. 863; 3 W.W.R. 591. Now see rule 315 and notes to rule 311. A plaintiff's defence to a counterclaim must be delivered within 8 days. See rule 315, also rules 312, 182 and 183.

RULE 307.—PLEADING—DEFENCE AND COUNTERCLAIMS—STRIKING OUT COUNTERCLAIM.

1902 Rule 292; 1905 Ontario Rule 254; 1913 Ontario Revision has dropped this rule.

"Named in manner aforesaid." The reference is really to rule 309. For a similar inversion of position of the rules see Holmested & Langton, p. 456.

Principles upon which excluded:

Formerly it was held that a defendant could not counterclaim in respect of a cause of action not matured before the issue of the writ (statement of claim), Sharp v. McBurnie, 3 M.R. 161, and that a plea of counterclaim should show that it was payable before and at the commencement of the action, ibid. Now rule 357 allows it in certain cases.

A defendant can only set up by way of counterclaim or set off a demand for which he can bring an action.

Therefore a cause of action which arose out of the jurisdiction cannot be set up by way of counterclaim or set off unless the circumstances be such as to permit of an action being brought upon it. Canadian Bank of Commerce v. Northwood, 5 M.R. 342.

See also Gowenlock v. Ferry, 11 M.R. 257; Miller v. Sutton, 20 M.R. 269.

The application is properly made to the Referee in Chambers, rule 27.

RULE 308.—PLEADING—DEFENCE AND COUNTERCLAIMS—JUDGMENT FOR BALANCE OF COUNTERCLAIM.

1902 Rule 293; 1905 Ontario Rule 253; 1913 Ontario Rules appear to drop this rule.

The same rule might be attained by setting off against each other pro tanto, judgment pronounced on a claim and on a counterclaim under rule 306 (2), with judgment for payment of any balance.

Rule 306 (a) and this rule together make the same principles apply if a balance is found owing to the plaintiff. Bennett v. White (1910), W.N. 167. Levi Bros. v. Edwards, 11 O.L.R. 30.

RULE 309.—PLEADING—DEFENCE AND COUNTERCLAIMS—PROCEEDINGS WHEN COUNTERCLAIM AFFECTS THIRD PERSON.

1902 Rule 294; 1905 Ontario Rule 248; 1913 Ontario Rule 113.

This and the following rules dealing with this subject are made under the authority of section 25 (f) of the Act.

A third party brought in by counterclaim cannot set up a counterclaim against the plaintiff by counterclaim, Street v. Grover, 2 Q.B.D. 498; Alcoy and G. R. W. & H. Board v. Greenhill (1896), 1 Chy. 19; General Electric v. Victoria Electric, 16 P.R. 476; unless what is a counterclaim is in reality but a set off or a defence, Green v. Thornton, 9 C.L.T., Occ.N. 139. But where the plaintiff by counterclaim joins issue on such counterclaim, he cannot complain of such irregularity, Hamilton v. Vineberg, 3 O.W.N. at 1338; but see Hyatt v. Allan, 3 O.W.N. 370.

Under these rules there can be:—

1. A counterclaim by a defendant against the plaintiff and another as above.

2. No counterclaim by the defendant and a stranger to the action against a plaintiff (this is the converse of one) nor can the defendant make such others parties by counterclaim.

Pender v. Taddei (1898), 1 Q.B. 708.

There must be a claim against the plaintiff or the third party procedure under rules 223 et seq. must be followed.

Where the counterclaim is against the plaintiff alone, it need not arise out of the same transaction, but where the

counterclaim is against the plaintiff and another, it is restricted in two ways.

1. The relief sought by the counterclaim must be specifically related to the subject matter of the same action.

2. The plaintiff must have some interest in the counterclaim against the stranger.

Romann v. Brodrecht, 9 P.R. 2; Fernie v. Kennedy, 19 M.R. 207; 12 W.L.R. 48.

Rules 306, 307 and 308 only apply to counterclaims raised between the original parties to the action. Rule 309 et seq. apply only where the defendant's counterclaim brings a third party into the action. The style of cause is doubled thus:—

Between A.B., plaintiff, and
C.D. and E.F., defendants.
and
Between C.D., plaintiff by counterclaim, and
A.B., E.F., and X.Y., defendants by counterclaim.

The Ontario Rule expressly requires the addition of the words "by counterclaim;" the practice in Manitoba is the same.

This must be served upon the original parties to the action, that is A.B. and E.F. within 16 days (or as in rule 183 required) being "within the period within which he is required to deliver his defence to the plaintiff." Service upon the stranger X.Y. is governed by the following rule.

For the time for filing a defence, 8 days, see rules 311 and 312.

Defence includes counterclaim where there is one, Thompson v. Yockney, 23 M.R. 57.

RULE 310.—PLEADING—DEFENCE AND COUNTERCLAIMS—SERVICE OF COUNTERCLAIMS ON SUCH THIRD PERSON.

1902 Rule 295; 1905 Ontario Rule 249; 1913 Ontario Rule 113.

Amended by 10 Ed. VII., cap. 17, s. 4.

Defence includes counterclaim where there is one, Thompson v. Yockney, supra.

This must be served upon the stranger to the proceedings. See notes to rule 309.

For rules regulating service of statement of claim, see 267 et seq. A defence is provided for by the following rule.

RULE 311.—PLEADING—DEFENCE AND COUNTERCLAIMS—STATEMENT OF DEFENCE BY SUCH THIRD PERSON.

Any person not (originally made a party) to the action, who is served with a counterclaim as aforesaid, must file his statement of defence as if he had been served with a statement of claim in an action. Such person shall be a party to the action from the time when the counterclaim is filed. R.S.M. c.40, r. 296; 3 Geo. 5, c. 12, s. 3, *part*.

1902 Rule 296; 1905 Ontario Rule 250; 1913 Ontario Rule 114.

The words in brackets were substituted for the words "a defendant" by 3 Geo. V., cap. 12, s. 3. The added parties must therefore defend within 16 days, or as the case may be, under rules 182 and 183.

The original parties must defend within 8 days under rule 315.

The amendment in the rule was made to obviate the difficulties pointed out by Mathers, C.J.K.B., in his judgment in Thompson v. Yockney, 23 M.R. 571; 22 W.L.R. 863; 3 W.W.R. 591, where he held that a defendant could not sign judgment on a counterclaim in default of defence. See this very able judgment for a history of these rules and the cause of the confusion now remedied by the amendment to rules 311, 312, 315, 317 and 320. By rule 315 default judgment may now be signed. See head note of same case as reported, 23 M.R. 571.

RULE 312.—PLEADING — DEFENCE AND COUNTERCLAIM—DEFENCE TO COUNTERCLAIM.

1902 Rule 297; 1905 Ontario Rule 250; 1913 Ontario Rule 114.

The former rule (297) had for the word "must" the word "may." The change was made by 3 Geo. V. cap. 12, s. 3. See notes to rule 311.

This rule gives to all parties the right to file a defence to a counterclaim. Strangers to the action already had the right under rule 311 to be exercised within the time provided for by rule 315 q.v. and the original plaintiff is again given the right by rule 315, where an original defendant is also made defendant by counterclaim, semble he would have the same length of time to defend thereto as he would to a statement of claim, as rule 315 only excepts a plaintiff.

The Ontario Rule requires all defendants by counterclaim to defend within 10 (formerly 8) days.

Payment into court in answer to counterclaim, rule 558.

A plaintiff made a defendant by counterclaim may counterclaim against the plaintiff by counterclaim in respect of a cause of action accruing subsequent to the issue of the writ, Toke v. Andrews, 8 Q.B.D. 428; or in respect of a breach of contract alleged in the counterclaim so long as it is pleaded as a shield and not as a sword. Renton Gibbs v. Neville (1900), 2 Q.B. 181; Snyder v. Minnedosa, 5 W.W.R. 151, 23 M.R. 750.

RULE 313.—PLEADING—DEFENCE AND COUNTERCLAIM—REPLY TO STATEMENT OF DEFENCE.

1902 Rule 297 (a); 1905 Ontario Rule 256; 1913 Ontario Rule 256; 1913 Ontario Rule 118; Rule 297 (a) added by 5-6 Ed. VII, c. 17, s. 2.

Long vacation is not to be reckoned in computing the time, rule 395 (e).

The rules governing pleadings apply to a reply.

In Ontario the reply must be delivered within 3 weeks.

A plaintiff may either reply or amend his statement of claim under rule 320, except as provided for in this rule and rules 311, 312, and 314, and the only pleadings in an action shall be a statement of claim and a statement of defence. If it is desired to set up new facts, the latter practice must be followed, as a reply is merely what is called and can set up no new facts, subject to rule 358. See also Qua v. C.O. Woodman, 5 O.L.R. 51.

The action is at issue at the expiration of 10 days from the delivery of the last pleading, rule 320.

Where the statement of defence is a mere denial and the reply is in no way called for thereby, but contains new matter which constitutes a departure, the reply will be ordered struck out. Monarch Lumber Co. v. Hewitt, 1 W.W.R. 1013; Empire Sash, etc., Co. v. Maranda, 19 W.L. R. 78.

Review of discretion of referee, ibid.

In Ontario a counterclaiming defendant is entitled to deliver a reply to the defence of a plaintiff (defendant by counterclaim). Irwin v. Turner, 16 P.R. 349. Semble rule 313 will not bear such an interpretation, especially read in the light of section 2 (e) of the Act. See also rule 184 as to amended statement of defence filed in vacation.

Where a plaintiff's claim is based entirely upon the Assignments Act, it is a departure in pleading to set up in reply a case based on the Bills of Sale Act, and such case should not be recognized. Empire Sash & Door Co. v. Maranda, 21 M.R. 605.

RULE 314.—PLEADING — DEFENCE AND COUNTERCLAIM — NO SUBSEQUENT PLEADING WITHOUT LEAVE.

1902 Rule 297 (b); 1905 Ontario Rule 257 part; 1913 Ontario Rule 119 part; rule 297 (b) was added by 5-6 Ed. VII, c. 17, s. 2.

The Ontario Rules have not the last clause, and require a joinder of issue to be served. Under the Manitoba Rule (320) the action automatically becomes at issue at the expiration of ten days from the delivery of the last pleading. Quaere as to the meaning of the last clause in the rule, as a reply should merely be a denial and answer, which would put all questions in issue.

It is permissible to reply by denial of allegations, by way of confession and avoidance. Smith v. Smith, 2 O.L.R. 410.

RULE 315.—PLEADING — DEFENCE AND COUNTERCLAIM — TIME FOR FILING DEFENCE TO COUNTERCLAIM.

The time limited for filing a statement of defence to a counterclaim shall be as stated in rules 182 and 183, except in the case of a plaintiff who shall, (a) deliver it within eight days from service of the counterclaim on him. R.S.M. c. 40, r. 298; 3 Geo. V, c. 12, s. 3 part.

1902 Rule 298; 1905 Ontario Rule 250; 1913 Ontario Rule 114.

The former rule had at (a) the words "if he wishes to deliver a defence." These were struck out by 3 Geo. V, cap 12, s. 3, following the judgment in Thompson v. Yockney, supra. See notes to rule 311.

RULE 316.—PLEADING—DEFENCE AND COUNTERCLAIM—RULES GOVERNING SUBSEQUENT PROCEEDINGS TO COUNTERCLAIMS.

1902 Rule 298 (a); 1905 Ontario Rule 252; 1913 Ontario Rule 116.

The rule 298 (a) was added by 10 Ed. VII, cap. 17, s. 5.

The above Ontario Rules are the only ones at all resemb-

ling rule 316, but it would seem they would warrant the practice which is the same as that called for by rule 316.

RULE 317.—PLEADING—DEFENCE AND COUNTERCLAIM — PROCEEDINGS WHEN COUNTERCLAIMS NOT DEFENDED.

1902 Rule 298 (b); 1905 Ontario Rules 263 and 553; 1913 Ontario Rule 121.

1902 298 (b) added by 10 Ed. VII., c. 17, s. 5 part.

"Including the plaintiff in the action." These words were added by 3 Geo. V., c. 12, s. 3. See notes to rule 311.

The Ontario Rules (121, 356 and 357) require the pleadings to be noted closed and a motion made ex parte for judgment except in certain cases where it may be signed on praecipe. The same practice will be followed in Manitoba under rule 317, in so far as failure to file a defence to a counterclaim is concerned, but there is no provision in Manitoba for noting pleadings closed. For other cases see rules 607 et seq. which govern the proceedings when no defence is filed to a statement of claim.

RULE 318.—PLEADING—GENERALLY—FORMER RULES AND LAWS OF PLEADING ABOLISHED.

1902 Rule 299; 1905 Ontario Rule 264; 1913 Ontario Rule omits this rule. The effect is the same. See also rule 2. The cardinal difference between the former system of common law pleading and the present is that the common law rules required the parties to set forth the legal result of the facts and not the facts themselves. Now the facts must be stated, as in the former Chancery practice, and the legal result is decided by the Court. See notes to rule 325 infra.

RULE 319.—PLEADING—GENERALLY—RULES OF PLEADING SUBSTITUTED.

1902 Rule 300; 1905 Ontario Rule 264; 1913 Ontario Rule omits this rule. The practice is the same.

RULE 320.—PLEADING—GENERALLY—PLEADINGS IN ACTIONS—ISSUE—EFFECT OF FILING DEFENCE—AMENDMENT—DEFENCE TO COUNTERCLAIM.

1902 Rule 301. There is no Ontario counterpart to the first part of this rule.

First amended by 5-6 Ed. VII., cap. 17, s. 3.

The word defence includes counterclaim where there is one. Thompson v. Yockney, 23 M.R. 571.

Action at issue. In Ontario an action is at issue when joinder of issue is served after the reply if any (under Ontario Rule 119) or if no joinder is delivered, three weeks after the delivery of the statement of defence. See Ontario Rule 1905 (262) and notes, 1913 Ontario Rule 120.

In Ontario, where a reply is delivered but issue is not joined, the pleadings become closed upon the expiration of 4 days from the delivery of the reply, Schneider v. Proctor, 9 P.R. 11; Qua v. C.O. Woodman, 5 O.L.R. 51. After the pleadings are closed either party may give notice of trial, Ontario rule 530.

The Manitoba Rule governing notice of trial is 566, except as mentioned in rules 311, 312, 313 and 314.

The pleadings provided for by these rules are:—

311. Statement of defence by third person added under rule 309 by counterclaim.

312. Defence to counterclaim.

313. Plaintiff's reply.

314. Any pleading allowed on special application to the Court or a Judge.

See notes to these rules supra.

"And he may amend his statement of Claim."

The plaintiff may follow this rule or reply under rule 313. See notes to rule 313 for the principles governing his choice.

For the rules governing amendment, see rule 348 et seq.

Defence to Counterclaim. This side note should have been struck out in revision, as the following clause to which it referred was struck out by 3 Geo. V., cap. 12, s. 3, following the decision in Thompson v. Yockney, 3 W.W.R. 591.

"Where a counterclaim has been filed the plaintiff may file a defence to such counterclaim." See the third party procedure. Rules 223 et seq. and notes.

Under this rule it is not necessary to file a reply if it is only sought to deny allegations, as by this rule they are considered denied. See also per Howell, C.J.M., Affleck v. Mason, 21 M.R. at p. 761.

Where a statement of defence has been amended, an action is not at issue until the expiration of 10 days from the delivery of the amended statement of defence, Brown v. Telegram Printing Co., 21 M.R. 775, and as to statement of claim, this case is followed in Pitura v. Haney, 23 M.R. 753.

RULE 321.

1902 Rule 302; 1905 Ontario Rule 265; 1913 Ontario Rule 139 part.

See rule 372 as to rolls and records, size of when folded, etc.

As to paper notices and written proceedings generally see rules 369 et seq.; and as to "writing" and "written," R.S.M., cap. 105, s. 27 (k).

RULE 322.—PLEADING—GENERALLY—PRINTING PLEADING—ALLOWANCE FOR SAME.

1902 Rule 303; 1905 Ontario Rule 265 (2).

A folio shall mean 100 words. Rule 374.

RULE 323.—PLEADING—GENERALLY—DELIVERY OF PLEADING SUBSEQUENT TO STATEMENT OF CLAIM—MARKING PLEADING.

1902 Rule 304; 1905 Ontario Rule 266, 267; 1913 Ontario Rule 140.

The Ontario Rule also requires the name of the solicitor and his address to be endorsed on the face. Manitoba Rule 303 makes the same requirements as to a statement of claim. Semble there is no such rule as to other pleadings in Manitoba.

The Ontario Rule 267 was the same as the last clause of rule 323, except that delivery also included service; under the new Ontario practice (rule 140), the pleading must first be filed and the copy served must bear the date of filing endorsed on the face. The practice in Manitoba is the same and a pleading is generally filed before being served, and see rule 324 which would seem to require filing before service.

RULE 324.—PLEADING—GENERALLY—SERVICE OF PLEADING SUBSEQUENT TO STATEMENT OF CLAIM.

1902 Rule 305. No Ontario counterpart in form, this practice being provided for by rule (267) 140. See notes to rule 323 above.

Service should be made upon the solicitor if one appears for the party, rule 293, or his agent, ibid. If the party appears in person, the papers and proceedings may be left in the office out of which the statement of claim issued, rule 271. See rule 272 and as to service of a statement of claim, rules 267 et seq.

RULE 325.—PLEADING—GENERALLY—FORM OF PLEADINGS.

1902 Rule 306; 1905 Ontario Rule 268; 1913 Ontario Rule 141.

The Ontario Rules have not the last clause. See the notes to rule 318, as to the difference between the former and present practice requiring the stating of material facts. See also Lawler v. Carrier, 10 P.R. 620; Harris v. Jenkins, 22 Chy. D. 481; Phillips v. Phillips, 4 Q.B.D. 127; Stratford v. Gordon, 14 P.R. 407; Bradt v. Tew, 18 P.R. 30; Davey v. Garrett, 7 Ch. D. 473. See also 25 C.L.T. 668.

The following rules should be carefully read in conjunction with this rule, the whole forming, as it were, a codification of the rules of pleading.

Statements of claim are governed, in so far as the pleading is concerned, particularly by this rule and rules 300 (b) and 328. Relief claimed to be stated specifically, statements of defence by 339, 340, 341, 342 and 343, and pleadings generally by 329; distinct claims or defences to be stated separately, 330; effect of document may be stated, 331; malice, etc., to be alleged as a fact, 332; also notice; 333, also implied contract; 334, facts presumed need not be stated; 335, representative capacity specifically denied; 336, allegations and proof of conditions precedent, 337, must specifically deny incorporation if the fact of non-incorporation is sought to be proved; 338, as to effect of bare denial of contract.

When the failure to prove a fact will cause an action to fail, that fact is a material one upon which the plaintiff relies, and, under this rule, should be set out in the statement of claim.

Makarsky v. C.P.R. (1904), 15 M.R. 53.

As to manner of making admissions, see rule 327 infra.

In a statement of claim making out a case for an injunction to prevent an infringement of the plaintiff's trade name, they may either allege in terse and general terms the acquisition of a title by long user or they may set out such facts in detail to prove the user, as they might have furnished by way of particulars if demanded, in case they had confined themselves in the first instance to a general allegation of title acquired by user. Theo Noel Co. & Vitae Ore Co., 17 M.R. 319, followed MacLean v. Kingdon Printing Co., 18 M.R. 274. See rule 347 and notes.

Must plead positively and not on information. Alois Schweiger & Co. v. Vineberg Co., 15 M.R. 536.

A plea, against the validity of which as a defence there is direct Manitoba authority, will not, on that ground only, be struck out, Woods v. Tees, 5 M.R. 256.

A statement of claim against a railway company for killing a horse contained a general plea of negligence and a specific plea alleging the absence of cattle guards. The evidence proved a defect in the fence. Held the pleading was sufficient to support a finding for the plaintiff, Stitt v. C.N.R. Co., 3 W.W.R. 1117.

See notes to rule 328, supra.

As to particulars see the following rule:

LIBEL. If the words are not libellous per se there must be an innuendo showing in what sense they were defamatory, Smith v. Dun, 21 M.R. 583, per Howell, C.J.M., at p. 593.

RULE 326.—PLEADING—GENERALLY—PARTICULARS TO BE FILED.

1902 Rule 306 (a). No Ontario counterpart. The 1905 Ontario Rules had a rule (299) providing for the ordering of particulars upon an application for that purpose. This rule appears to have been dropped in the 1913 revision, and the power of ordering particulars now seems to depend upon the inherent jurisdiction of the court, as it did before the passing of rule 299, Queen Victoria Park, etc., v. Howard, 13 P.R. 14, and as it seems to do in Manitoba.

The present rule was added by 10 Ed. VII, cap. 17, s. 6.

See notes to rule 300 (e).

Semble the better practice is to demand particulars by written demand, and in default move before the referee in chambers for them under the authority set out above.

As to the general rules applicable on such a motion, see Smith v. Boyd, 17 P.R. 463; Bank of Toronto v. Insurance Company, 18 P.R. 27.

The motion should be confined to such particulars as are refused upon demand. In the discretion of the judge an order for particulars may be made ex parte, but the correct practice is upon notice of motion, Martel v. Dubord, 1 M.R. 174.

Particulars will not be ordered after the close of the pleadings, Smith v. Boyd; and Bank of Toronto v. Insurance Co. followed. Savage v. C.P.R., 16 M.R. 376; Rat Portage Lumber Co. v. Equity Fire Ins. Co., 17 M.R. 33, 6 W.L.R. 3, unless it is shown by affidavit or otherwise independently of

the pleadings that they are required for the purpose of saving expense or preventing surprise at the trial, ibid.

Particulars are not, as in England, treated as amendments to the pleadings. If the party seeking particulars has examined the opposite party for discovery and failed to get them, that might be treated as a special circumstance warranting the order. Savage v. C.P.R., supra; Kelly v. Kelly, 18 M.R. 331.

If delivered on examination, they are as binding as if in a pleading, ibid.

In certain cases discovery may be ordered before a party is compelled to reply to a demand for particulars, Timmons v. National Life, 18 M.R. 465, and see notes to rule 398. Paragraph—"*Particulars.*"

As to in libel actions, see Timmons v. National Life, 18 M.R. 465; 19 M.R. 227, on plea of privilege.

Lever v. Associated Newspapers (1907), 2 K.B. 626.

In malicious prosecution actions, Cousins v. C.N.R., 18 M. R. 320. Fraud, Appleman v. Appleman, 12 P.R. 138. Particulars refused in a negligence action, Cuperman v. Ashdown, 20 M.R. 424; 16 W.L.R. 687, in which Metcalfe, J., sums up the Manitoba practice, following Miller v. Westbourne, 13 M.R. 197. Particulars ordered of special damage in Elliott v. Hogue, 3 M. R. 674, an action on a promissory note. In actions of tort must show special grounds for order, Miller v. Rural Municipality of Westbourne, 13 M.R. 197.

For Ontario practice see Town of Sturgeon Falls v. Imperial Land Co., 2 O.W.N. 1433; 3 O. W.N. 49, 216.

For particulars of a plea of not guilty by statute, rule 343

See notes to rules 180 and 181 as to disclosure by solicitors and plaintiffs.

RULE 327.—PLEADING—GENERALLY—ADMISSIONS.

1902 Rule 307; 1905 Ontario Rule 270. 1913 Ontario Rule omits this rule and leaves it to rule 142 (see notes to rule 305, above), which applies to all pleadings to require admissions without specifying the form they are to take. By rule 142 a defendant is not permitted to deny generally.

RULE 328.—PLEADING—GENERALLY—RELIEF CLAIMED TO BE STATED SPECIFICALLY.

1902 Rule 308; 1905 Ontario Rule 273; 1913 Ontario Rule 145. The terms of rule 145 are less verbose, but the rule

means the same, it would appear, although it drops the words "or relief claimed by the defendant in his statement of defence." The last clause of rule 328 is omitted from Ontario Rule 145. See notes to rule 398 infra.

See notes to rules 300 and 325 supra, which must be read with this rule.

Dilatory pleas are abolished, Goldfields v. Harris, 2 O. W. N. 1391.

As to the relief that may be given under a prayer for "such further and other relief," see Holman v. Knox, 25 O.L.R., p. 588, at p. 606 and 607; Gaughan v. Sharpe (1881) 6 A.R. 417; Gunn v. Trust & Loan (1882), 2 O.R. 393.

As to pleading alternatives, see Grice v. Bartram, 3 O.W. N. 178, they must not be inconsistent, ibid. Hines v. Pepper, 6 O.W.R. 713; Moore v. Ulleoats [1908], 1 Ch. 575; Slater v. Canada Central, 25 Gr. 363.

See Empire Sash, etc., v. Maranda, 21 M.R. 607.

Where several defendants are joined in an action the statement of claim must show clearly what is charged against each party, otherwise the ambiguous portions will be struck out, Alexander v. Simpson, 1 W.W.R. 932.

As to joinder of parties, see rules 195 et seq.

As to amendments of statements of claim, rules 320, 345 et seq., and as to pleading matters arising pendente lite, rules 358 and notes.

RULE 329.—PLEADING—GENERALLY—DISTINCT CLAIMS OR DEFENCES TO BE STATED SEPARATELY.

1902 Rule 309; 1905 Ontario Rule 274;. 1913 Ontario Rules drop this clause.

This rule governs the manner of setting up the pleas allowed by rules 196 and 239.

In Alois Schweiger & Co. v. Vineberg Co., 15 M.R. 536, a clause was struck out as conflicting with this rule.

RULE 330.—PLEADING—GENERALLY — EFFECT OF DOCUMENT MAY BE STATED.

1902 Rule 310; 1905 Ontario Rule 275; 1913 Ontario Rule 147.

The Ontario Rule 275 had at the end the words "unless the precise words of the document or any part thereof are material." Ontario Rule 147 is identical with rule 330.

The precise words in libel actions must still be set out, Bradlaugh v. The Queen, 3 Q.B.D. 607; Hay v. Bingham, 5 O.L.R. 224.

RULE 331.—PLEADING—GENERALLY—ALLEGATION OF MALICE, ETC.

1902 Rule 311; 1905 Ontario Rule 276; 1913 Ontario Rule 148.

Where an act is lawful, the mere fact that it was done maliciously does not make it unlawful, Allen v. Flood 1898, A.C. 1.

FRAUD. As to sufficiency of allegation, see Marshall v. Staden, 68 Eng. R. 177, followed in Pringle v. Dwyer, 2 W. W.R. (Alta.) 1049; Dougan v. Mitchell, 9 M.R. 477, demurrer allowed; A-G. v. Richard, 4 M.R. 336; Moore v. Scott, 5 W.L.R. 8. The other side may demand particulars of the fraud, Appleman v. Appleman, 12 P.R. 138.

MALICE: Rogers v. Clark, 13 M.R. 189; Hopewell v. Kennedy, 9 O.L.R. 49.

NEGLIGENCE: It is sufficient to allege negligence generally, Quillinan v. Can. Southern Ry., 6 O.R. 567.

Shaw v. C.P.R., 5 M.R. 198; Stitt v. C.N.R., 3 W.W.R. 1116.

RULE 332.—PLEADING—GENERALLY—ALLEGATION OF NOTICE.

1902 Rule 312; 1905 Ontario Rule 277; 1913 Ontario Rule 149.

A contract is not really a fact, it is an inference of law from facts. See rule 333.

RULE 333.—PLEADING—GENERALLY—ALLEGATION OF IMPLIED CONTRACT.

1902 Rule 313; 1905 Ontario Rule 278; 1913 Ontario Rule 150 has not the last clause.

See note to rule 332. Where an express agreement in writing exists rule 330 governs the pleading of it.

For rules governing the interpretation of such a contract, see Bailey v. Dawson, 3 O.W.N. 560; 25 O.L.R. 387, where the cases are collected, and Watson v. Manitoba Free Press Co., 18 M.R. 309; Alois Schweiger & Co. v. Vineberg Co., 15 M. R. 536. See rule 338 as to the effect of a bare denial of a contract.

RULE 334.—Pleading—Generally—Facts Presumed Need Not be Stated.

1902 Rule 314; 1905 Ontario Rule 279; 1913 Ontario Rule 151.

See rule 587.

RULE 335.—Pleading—Generally—Representative Capacity to be Denied Specifically.

1902 Rule 315; 1905 Ontario Rule 280; 1913 Ontario Rule 152.

See also rule 305. In Ontario the silence of a pleading is no admission (1905 Ontario Rule 272) 1913 Rule 144. In Manitoba it is by virtue of rule 305 and 335.

RULE 336.—Pleading—Generally—Allegations and Proof of Conditions Precedent.

1902 Rule 315 (a); 1905 Ontario Rule 130; 1913 Ontario Rule 146. This rule was added by 7, 8 Ed. VII, cap. 12, s. 10. See Clarke v. City of Winnipeg, T.W. 56.

As to pleading conditions in a fire policy, see Prairie City Oil Company v. Standard Mutual Fire Ins. Co., 19 M.R. 720; 14 W.L.R. 380, sub. nom., Lewis v. Standard Mutual, etc., Co., 44 S.C.R. 40.

RULE 337.—Pleading—Generally—Incorporation of Party Need Not be Proved Unless Specifically Denied.

1902 Rule 316; 1905 Ontario Rule 281; 1913 Ontario Rule 153.

See King Furniture v. Berlin, 5 O.L.R. 463. See rule 214.

RULE 338.—Pleading—Generally—Bare Denial of Contract Only Denial of the Making.

1902 Rule 317; 1905 Ontario Rule 282; 1913 Ontario Rule 154.

See rule 333 and notes.

RULE 339.—Pleading—Generally—No Plea in Abatement.

1902 Rule 318; 1905 Ontario Rule 283. The 1913 revision drops this rule.

A plea in abatement was one showing some ground for

abating, i.e. quashing, the writ. This is now superseded by the practice under Manitoba Rule 220, and in Ontario the revision of 1913 dropped the corresponding 1905 rule (206). For a case under the former practice see Shore v. Green, 6 M.R. 322, and see McKeown v. Lechtzier, 26 W.L.R. 264.

RULE 340.—Pleading—Generally—No New Assignment.

1902 Rule 319; 1905 Ontario Rule 284. The 1913 Ontario revision drops this rule. See notes to rule 339. The Ontario Rules also have a provision (rule 157) that a subsequent pleading shall not raise any new ground of claim or contain any allegations of fact inconsistent with the previous pleading of the party pleading the same. There is no such rule in Manitoba. See Holmested & Langton, p. 488, for a history of new assignment, and p. 492 for cases governing inconsistent pleadings. Quaere whether subject to the rule allowing alternative pleas (328), which also exists in Ontario, the practice in Manitoba would not be the same.

RULE 341.—Pleading—Generally—Defence to Action for Recovery of Land.

1902 Rule 320; 1905 Ontario Rule 285; 1913 Ontario Rule 155. The Ontario Rule has not the last clause of 341, which seems to be redundant.

The plaintiff may force the defendant to discover his title before trial by moving to appoint a receiver of the rents and profits, as the defendant must oppose the plaintiff's prima facie title with his own, Johns v. Johns (1898) 2 Chy. 580.

A mortgagor in default could not set up this rule.

The effect of a deed is not a fact, and a mere plea of the effect is embarrassing, Phillips v. Phillips, 4 Q.B.D. 127; Holmested & Langton, p. 489.

RULE 342.—Pleading—Generally—Plea of "Not Guilty by Statute."

1902 Rule 321; 1905 Ontario Rule 286; 1913 Ontario Rule 156 part.

For the effect of such a plea see Pettitt v. Kerr, 5 M.R. 359.

As to the manner of pleading see the following rule.

RULE 343.—PLEADING—GENERALLY—PLEA OF "NOT GUILTY BY STATUTE" TO CONTAIN REFERENCE TO STATUTE RELIED ON.

1902 Rule 322; 1905 Ontario Rule 287; 1913 Ontario Rule 156 part.

In referring to a revision of statutes the statute originally bringing the law pleaded into force, should also be referred to; although in one case where a plaintiff required particulars of such a defence an Ontario Divisional Court overruled the application, holding that the Ontario Rule (299) excluded it. Taylor v. G.T.R., 2 O.L.R. 148. See R.S.O. 1897, cap: 88, and the Dominion Railway Act, sec. 306.

RULE 344.—PLEADING—ISSUES—SETTLING THE ISSUE OF FACT IN DISPUTE BETWEEN PARTIES—SETTLING ADMISSIONS—PROCEDURE.

1902 Rule 323 as amended by 6-7 Ed. VII. c. 12, s. 5; 1905 Ontario Rules 376 and 377; 1913 Ontario Rule 125 and 233.

This rule permits rule 436 to be given effect to.

See rule 463 to 469, as to special cases.

Rule 636 provides for judgment on motion after issues tried, if not provided for in the order directing.

RULE 345.—PLEADINGS—STRIKING OUT, AMENDING PLEADINGS, ETC.—COURT MAY ORDER SCANDALOUS MATTER TO BE EXPUNGED.

1902 Rule 324; 1905 Ontario Rule 296; 1913 Ontario Rule 136.

The court may make such an order without application from either party, or a stranger may apply for such order.

Holmested & Langton, p. 497.

This rule applies to proceedings at the trial only. The new Ontario Rule covers all applications no matter when made. The Manitoba Rules 346 and 347 provide for applications other than at trial. The Ontario Rules have a rule (261) 124 which provides for the striking out of a pleading as a whole, and the pleading must be attacked as a whole. There is no such rule in Manitoba, but a pleading may be attacked in its entirety.

SCANDALOUS. As to what is scandalous, see Millington v. Loring, 6 Q.B.D. 190; Remington v. Scholes (1897) 2 Chy. 1;

In re Jessop 1910, W.N. 128; Christie v. Christie, L.R. 8, Ch. App. 499; Saddlier v. Smith, 7 P.R. 409. Is not scandalous, if revelant, Fisher v. Owen, 8 Ch. D. 653.

Costs. As to disallowance of costs of unnecessary pleadings, see rule 974, and as to the costs of such an application, Holmested v. Langton, p. 498.

Prolixity, not necessarily a ground for striking out. Theo Noel Co. v. Vitae Ore Co., 17 M.R. 319. See notes to rule 347.

RULE 346.—PLEADING—STRIKING OUT, AMENDING PLEADINGS, ETC.—MOTION TO EXPUNGE MAY BE MADE AT ANY TIME BEFORE HEARING.

1902 Rule 325; 1905 Ontario Rule 297; 1913 Ontario Rule 137.

See notes to rules 345 and 347. See A. v. B., 14 M.R. 729, as to scandal in an affidavit.

RULE 347.—PLEADING—STRIKING OUT, AMENDING PLEADINGS, ETC.—STRIKING OUT OR AMENDING SCANDALOUS OR EMBARRASSING MATTERS.

1902 Rule 326; 1905 Ontario Rule 298; 1913 Ontario Rule 136.

The rule was cast in its present form by 7-8 Ed. VII, c. 12, s. 6.

Rule 345 is confined to expunging a pleading or having it taken off the files as scandalous. See notes to that rule.

Under this rule a pleading may be struck out in whole or in part, if the whole or a part is:

1. Scandalous. See notes to 345.

2. Unnecessary. See notes to 345; as to prolixity, need not be struck out as being merely unnecessary, Pyne v. Pyne, 3 O.W.N. 162.

3. Embarrassing.

This rule merely declares the powers inherent in the Court, Holmested & Langton, p. 499.

Pleadings should seldom be interfered with on summary application. Glass v. Grant, 14 P.R. 407; Stratford v. Gordon, 14 P.R. 407; Holland v. Hall, 3 O.W.N. 103.

For a history of the rule see Pyne v. Pyne, supra.

Laches may defeat such an application, British Linen Co. v. McEwen, 8 M.R. 214.

Nor should such a motion be made while there is a demurrer pending, Smith v. Murray, 21 M.R. 753. A plaintiff, who may not now demur, may move to strike out any pleading which would have been held bad on demurrer under the former practice. Aetna Life Insce. Co. v. Sharpe, 11 M.R. 141.

Costs of successful motion, to successful party in the cause in any event, ibid.

The embarrassment should be plain and obvious, Douglas v. Young, 22 W.L.R. 733 (Sask.).

Prolixity not embarrassment, Maclean v. Kingdon Printing Co., 18 M.R. 274, but obscurity is Strathdee v. Manufacturers, 11 W.L.R. 468 (Alta). See notes to rule 345 and subhead (2) to this rule, above. Pleading matters of evidence is embarrassing, Jones v. Gore, 22 W.L.R. 739 (Sask.).

SLANDER. For embarrassing pleas in. See Messervey v. Simpson, 22 M.R. 421, 20 W.L.R. 531; Holland v. Hall, 3 O.W.N. 103. A pleading is embarrassing unless it follows rules 318 et seq.

Generally as to this rule see Duryea v. Kaufman, 21 O.L.R. 161. Hamilton v. National Trust, 7 O.L.R. 607; Wilbur v. Nelson, 3 O.W.N. 236, Rutherford v. Murray-Kay, ibid 29, Addis v. Gramophone Co. (1909), A.C. 488, 493, binding by virtue of Trimble v. Hill, 5 A.C. 342, 344; National Trust v. Trust and Guarantee, 3 O.W.N. 104.

In an action of negligence a denial of negligence followed by an allegation of contributory negligence is not embarrassing, Smith v. Canada Cycle & Motor Co., 15 W.L.R. 344.

Specific denials of material allegations contained in the statement of claim are unobjectionable, ibid.

A plea of fair comment in a defence in a libel action was held not to be embarrassing. Martin v. Manitoba Free Press Co., 7 M.R. 413.

RULE 348.—PLEADING—STRIKING OUT, AMENDING PLEADINGS, ETC.—AMENDING BY PLAINTIFF WITHOUT LEAVE—TIME FOR FILING DEFENCE—PRAECIPE ORDER TO AMEND CLERICAL ERRORS—ONE ORDER OF COURSE TO AMEND OBTAINABLE AT ANY TIME BEFORE ISSUE.

1902 Rule 327; 1905 Ontario Rule 300 (part) 1247 (part)

It would seem that under the first clause of this rule a plaintiff may amend his statement of claim even after the

defence has been delivered (ss. 2), if he amends within the time limited for filing such defence. A new time for filing a defence then begins to run if one has been filed, and a defence to the amended statement of claim must be filed within 8 days, even it would seem where the defendant is out of the jurisdiction. Quaere, if no defence is filed and a plaintiff amends on the last day but one, must the defence still be filed on the last day? It would seem so, but see rule 350 (ss. 2), only goes to cases where a defence is filed.

No order is required to amend under the first clause of this rule. Either party may amend under clause (3) by virtue of 3 Geo. V., c. 12, s. 3, which inserted the words "any pleading" in place of the words "the statement of claim." The plaintiff may amend once on praecipe at any time before the action is at issue, ss. (4) added by 1-2 Ed. VII., c. 6, s. 5. The action is at issue at the expiration of 10 days from the delivery of the last pleading. For orders of course or side bar rules, see Holmested & Langton, p. 212. See rule 21 and notes.

By an amendment on praecipe under this rule new parties defendant may be added with claims for relief against them, First National Bank v. Avitt, 26 W.L.R. 37, 5 W.W.R. 663.

See notes to rule 351.

A defendant may amend his set off or counterclaim without leave under rule 349, but must move to amend his statement of defence, if he desires to do so, under rule 351. As to the effect of not pleading to an amended pleading, see rule 350.

As to amending a statement of claim where a defendant is added or substituted, see rule 222.

RULE 349.—PLEADING—STRIKING OUT, AMENDING PLEADING, ETC.—AMENDMENTS BY DEFENDANT WITHOUT LEAVE.

1902 Rule 328; no similar Ontario Rule. A defendant must move for leave to amend under the Ontario Rules unless by consent. It would seem that under this rule a statement of defence may not be amended, but only a set off or counterclaim, and that unless it is desired to amend merely clerical errors in a statement of defence under rule 348 (3), a motion must be made under rule 351. See rules 320 and 348 and notes. A defence filed in vacation may be amended within 8 days after vacation, rule 184,—computation of,—rule 386.

As to pleading to an amended pleading, see rule 350.

The amendment must be made within 8 days. See rule 386.

RULE 350.—Pleading—Striking Out, Amending Pleading, Etc.—Pleading to Amend Pleading.

1902 Rule 329; 1905 Ontario Rule 302; 1913 Ontario Rule 128.

The Ontario Rules only apply to a defendant pleading to an amended pleading of a plaintiff, amended under (1905) Ontario Rule 300, 1913 Ontario Rule 127, and not to an amendment made on order.

Rule 350 applies to all cases and to amendments made on order.

A party pleading to an amended pleading may

1. Plead anew, or
2. Plead additional matter.
3. Permit his former pleading to the pleading since amended, to stand as his pleading to the amended pleading.

Requisites of Delivery. See rule 323 and 356.

RULE 351.—Pleading—Striking Out, Amending Pleading, Etc.—Application for Leave to Amend.

1902 Rule 330; 1904 Ontario Rule 304; 1913 Ontario Rule 130.

This rule provides for an application for leave to amend.

1. At any time before trial, to a Judge in Chambers.

This motion is properly made to the Referee in Chambers, rule 27.

The hardship of an amendment is no answer to an application.

Hunter v. Boyd, 6 O.L.R. 639.

That an amendment sets up a new cause of action is not of itself a sufficient ground for refusing to allow it.

Lee v. Gallagher, 15 M.R. 677, but see Davis v. Burt & McFarlane, 13 W.L.R. 534 (Sask.).

This rule gives effect to section 25 of the Act.

Where a plaintiff not entitled to relief on his pleadings is entitled on the pleading of the defendant, he should amend instead of admitting the favourable case in his reply. Boyle v. Wilson, 9 M.R. 180. As to the discretion exercised in allowing amendment, see Hanbury v. Chambers, 10 M.R. 167; Johnson v. Land Corporation of Canada, 6 M.R. 527.

The test is whether or not the party opposing the amend-

ment would be placed in such a position he could not be compensated by an allowance for costs or otherwise.

Winnipeg v. Winnipeg Electric, 19 M.R. 279.

Lee v. Gallagher, supra.

Snyder v. Minnedosa, 5 W.W.R. 151.

See notes to rule 302 (c) as to demurrer.

As to amending to plead matters arising pendente lite, see rule 358 et seq. and notes. As to amendment by adding or striking out parties, see rule 221 et seq.

In an action for an injunction to restrain breaches of a contract made on behalf of a company to be formed, an amendment to add claims for damages for the plaintiff as trustee for such company and for the company as c.q.t., was refused. Cass v. McCutcheon, 15 M.R. 669.

Great delay in making an application only partially accounted for, is no ground for refusing it if no injury is caused that cannot be compensated by costs. McPherson v. Edwards, 19 M.R. 337; 13 W.L.R. 440.

STATUTE OF LIMITATIONS. An amendment to plead this defence should be allowed, Lachappelle v. Lemay, 17 M.R. 161; Beck v. Anderson, 26 W.L.R. 144, 5 W.W.R. 659; Patterson v. Central, 17 P.R. 470.

STATUTE OF FRAUDS. An amendment to plead this defence was refused in James v. Smith (1891), 1 Chy. 384; but see Williams v. Leonard, 16 P.R. 551; Elmesley v. Harrison, 17 P.R. 425.

Leave granted to a defendant to amend his defence by adding the words "before action" to a plea of payment, Aetna Life Insce. Co. v. Sharp, 11 M.R. 141.

ASSIGNMENTS ACT. An amendment to a statement of claim after the expiration of the time limited for suit by the Assignments Act by adding the words "and the same is brought for the benefit of the creditors generally of the said debtor," refused, as the statutory time for bringing such an action had expired, Ferguson v. Bryans, 15 M.R. 170, following Davidson v. Campbell, 5 M.R. 250.

AMENDMENT GRANTED. Shiels v. Adamson, 14 M.R. 703, to plead an estoppel.

Refused. Bennett v. Gilmour, 16 M.R. 304 (to claim relief against G. who obtained an interest in land after he had transferred his former interest to the plaintiff).

Douglas v. Mann, 11 M.R. 546 (after defendant had refused production of the partnership books his application for leave to amend by setting up a partnership between the plain-

tiff and himself was refused). Huggard v. Bennetto, 16 W.L.R. 523, (to deny a trust declared under seal).

See as to perfecting defective material, rule 496.

Elliott v. Robertson, 10 M.R. 628. See notes to rule 312.

Costs. See rule 934.

As to the time within which the amendment must be made see rule 353, and for the manner of making, rules 354, 355 and 356.

2. At the trial to the presiding Judge.

Notice of intention to apply should be given under rule 352, a reasonable time before trial and the affidavit supporting the application as a general rule is served with the notice of motion.

If the application is made at the conclusion of the evidence, the truth of the allegations sought to be introduced must be borne out by the evidence, or the application will be refused, A.-G. and City of Winnipeg v. Winnipeg Elec. Ry., 2 W.W.R. 854; Houghton Land v. Ingham, 25 W.L.R. 962.

And it will be refused if the allegations sought to be set up constitute no ground of action or defence against the other side, ibid.

Amendment will be allowed to statement of claim even at the close of the plaintiff's case, if costs will compensate.

Scandinavian American National Bank v. Kneeland, 24 W.L.R. 139; 4 W.W.R. 564; 23 M.R. 480.

See also McCutcheon v. Johnston, 24 W.L.R. 868, action of detinue, amendment allowed to plead conversion. But refused to plaintiff at the close of defendant's argument in Cockwell v. Standard, etc., Co., 19 W.L.R. 57 (Sask.).

Amendment allowed by judgment at trial to plead partial defence to which the Judge gave effect (action specific performance—defence bona fides and inability to make title), Moody v. McDonald, 4 W.L.R. 303.

Amendment to defence in action for damages for death of plaintiff's wife allowed to alter admission of plaintiff's representative capacity to one limited to his representative capacity under Manitoba appointment, and denying any appointment by or under any authority of place where accident occurred, Couture v. Dominion Fish Co., 10 W.L.R. 85, see 11 W.L.R 412, 18 M.R. 468.

Amendment allowed to make a plea of fraud already on the record, a good plea, although an application to amend by

introducing such a plea de novo only granted under exceptional circumstances, Moore v. Scott, 5 W.L.R. 8.

An application at the trial for leave to amend to add a party in whose favour the statute of limitations had run was refused. Merchants Bank v. Good, 6 M.R. 543.

RULE 352.—Pleading—Striking Out, Amending Pleading, Etc.—Notice of Application to Amend at Trial.

1902 Rule 331. No Ontario counterpart but the practice is the same.

RULE 353.—Pleading—Striking Out. Amending Pleadings, Etc.—Time Limit for Amendment.

1902 Rule 332; 1902 Ontario Rule 305; 1913 Ontraio Rule 131.

The manner of amendment is prescribed by rules 354 and 355. If allowed at the trial the usual practice is not to make the actual amendment at the time but afterwards and within the time specified. The 1913 Ontario Rule is new in that it now requires the amendment to be made at once on the face of the record.

The amendment should, subject to the above, be made.

1. Within the time specified by the order or
2. Within 14 days if none is specified.

See rule 386 for computation of the 14 days.

The penalty for non-compliance with this rule is that the order becomes ipso facto void unless the time is extended. See rule 396, by which the application to extend the time may be made after the time has expired. The new Ontario Rule 131 now only gives 10 days.

RULE 354.—Pleading—Striking Out, Amending Pleadings, Etc.—How Amendments Made.

1902 Rule 333; 1905 Ontario Rule 306; 1913 Ontario Rule 132.

A reprint must be delivered either if

1. There are more than 200 words (2 folios, rule 374) to be inserted in any one place, or
2. If amendments are so numerous that reading of them interlined would be difficult or inconvenient.

RULE 355.—Pleading—Striking Out, Amending Pleadings, Etc.—Marking Amended Pleading.

1902 Rule 334; 1905 Ontario Rule 307; 1913 Ontario Rule 133. See rule 356 for delivery.

RULE 356.—Pleading—Striking Out, Amending Pleadings, Etc.—Delivery of Amended Pleading.

1902 Rule 335; 1905 Ontario Rule 308; 1913 Rules drop this rule. For the time within which delivery must be made, see rule 353.

Delivery includes filing, rule 323. The practice followed in the prothonotary's office requires the order to be filed when the amendment is made.

RULE 357.—Pleading—Pleading Matter Arising Pending the Action—Before Delivery of Defence.

1902 Rule 336; 1905 Ontario Rule 289; 1913 Ontario Rule 159.

The rules do not help a plaintiff in the original action. McLean v. McLean, 17 P.R. 440. He may only set up such matters by way of defence to a counterclaim, rule 358.

Defences arising after action brought. Bankruptcy, Retro-active statute.

Release. Chamberlain v. Chamberlain, 11 P.R. 501; Doyle v. Diamond Flint Glass Co., 10 O.L.R. 567.

A set-off arising pendente lite was pleaded in Ontario under a rule similar, Ontario Rule 289, but struck out as the Stat. Geo. II. did not permit it to be pleaded in Ontario under the rule (similar to 289). This may be reconsidered if it ever comes before a Divisional Court under the guise of a counterclaim. See also Reid v. Carruthers, 17 P.R. 5, P. v. D., 9 O.L.R. 248.

This rule only applies to matters arising before the defence is delivered; for matters after defence delivered see rule 359. If omitted, effect may be given to this rule by an application under rule 361 not by trying to amend under rule 359.

RULE 358.—Pleading—Pleading Matter Arising Pending the Action—Before Delivery of Defence to Counterclaim.

1902 Rule 337; 1905 Ontario Rule 290; 1913 Ontario Rule 160.

See notes to rules 348 and 350. The Ontario Rule 290 re-

quired the plaintiff to plead within 3 weeks, the new Ontario Rule drops the provision.

Quaere, whether the amendment if made must be made within any stated time as for instance under rule 348 (4) before the action is at issue, or, if the plaintiff instead of amending pleads thereto, then whether the plea is to be considered as governed by rule 313, or whether there is no time limit up to the close of the pleadings? The amendment may be made without an order apparently, see rule 360, but under what rule?

The following part of rule 360 seems to allow the amendment to be made on praecipe, accompanied by an affidavit setting out the facts if the matter arose within 8 days before the making of such amendment.

Rule 358 only applies to matters arising as defence to a counterclaim. If facts arise after defence filed, constituting a reply to the defence, a motion should be made under rule 361. The plaintiff may file a counterclaim to the defendant's counterclaim, Renton Gibbs v. Neville (1900), 2 Q.B. 181, and see notes to rule 350.

Snyder v. Minnedosa, 25 W.L.R. 443; 5 W.W.R. 30, 151, if it is only used as a shield and not as a sword.

Speton v. Gilmore, 14 M.R. 706; see Cameron v. Perry, 2 M.R. 231.

RULE 359—Pleading—Pleading Matter Arising Pending the Action—After Delivery of Defence.

1902 Rule 338; 1905 Ontario Rule 291; 1913 Ontario Rule 161.

This rule is the converse of 357. The Ontario Rules permit an amendment as in 359 or the filing of a new statement of defence and counterclaim, see Cameron v. Perry, 2 M.R. 231. Semble the amendment must be made within 8 days after filing of the original pleading, Rule 349, or if that elapses then within 8 days after the new matter arose under rule 360, or within the time set on a motion under rule 361, in case the defendant failed to avail himself of rules 349 and 360. A defendant may be allowed to amend his counterclaim filed by setting up causes of action for damages alleged to have arisen since the counterclaim was filed, Snyder v. Minnedosa, 25 W.L.R. 443.

RULE 360.—PLEADING—PLEADING MATTER ARISING PENDING THE ACTION—AMENDMENT ON PRAECIPE.

1902 Rule 339; 1905 Ontario Rule 293; 1913 Ontario Rule 163.

There is no Manitoba Rule similar to the Ontario Rule (292) 162.

Defences arising after the delivery of the statement of defence should be allowed on the defendant's application to amend (see rule 360) if they are such that they may be fully met by facts set up by the plaintiff in reply.

City of Winnipeg v. Winnipeg Elec. Ry., 19 M.R. 279.

RULE 361.—PLEADING—PLEADING MATTER ARISING PENDING THE ACTION—AMENDMENT BY LEAVE.

1902 Rule 340; 1905 Ontario Rule 294. The 1913 Revision drops this rule.

See notes to the preceding rules. For a case where this rule might be invoked, see notes to rule 358.

RULE 362—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EFFECT OF NON-COMPLIANCE AND ERRORS—FORMAL OBJECTIONS.

1902 Rule 341; 1905 Ontario Rule 309; 1913 Ontario Rule 183 part.

RULE 363—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EFFECT OF NON-COMPLIANCE WITH RULES.

1902 Rule 342; 1905 Ontario Rule 310; 1913 Ontario Rule 184.

IRREGULARITIES. For difference between irregularity and nullity see Holmested & Langton, p. 522, and Imperial Bank v. Glines, 10 M.R. 317, where an application to rescind was not made within the time provided for by rule 451, it was held the interest of the appellant was not affected and this rule was applied, Swanson v. McArthur, 3 W.W.R. 381. A party seeking to enforce a technicality should be treated "with the utmost strictness." Kerr v. Desjarlais, 9 M.R. 278.

See rule 270 where this rule might be invoked and rule 363.

WAIVER. An irregularity may be waived by a party's conduct of the action. Imperial Bank v. Glines, 10 M.R. 317.

The Ontario Rule has not the last sentence of rule 363, but the practice is the same.

RULE 364—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EFFECT OF NON-COMPLIANCE AND ERRORS—IRREGULARITY, APPLICATION TO SET ASIDE PROCEEDINGS FOR.

1902 Rule 343; 1905 Ontario Rule 311; 1913 Ontario Rule 185.

See notes to rule 363.

The notice of motion must specify the irregularity and the objections, rule 450.

RULE 365.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — AMENDMENTS—AMENDMENTS OF DEFECTS OR ERRORS.

1902 Rule 344; 1905 Ontario Rule 312; 1913 Ontario Rule 183 (part). As to amendment of pleadings, see rules 347 and 351; as to clerical errors, rule 662, as to parties, 220. These rules are the complements of one another.

As to irregularities in a Master's report, these are cured by confirmation under rule 79.

Under this rule a notice of motion may be amended by setting up grounds for relief which the applicant is entitled to urge but has ommitted. National Trust v. Campbell, 7 W.L.R. 754.

RULE 366.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — AMENDMENTS—SUBSTITUTION AND ADDITION OF PLAINTIFFS.

1902 Rule 345; 1905 Ontario Rule 313; 1913 Ontario Rule 134 part.

See rule 220 and notes as to consent of parties joined.

This rule only applies to plaintiffs and see the Law Fees Act, R.S.M. 1913, cap. 110.

RULE 367.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — AMENDMENTS—AMENDMENTS AT TRIAL.

1902 Rule 346; 1913 Ontario Rule 314, 1913 Ontario Rule 186 part.

See rule 351 and notes to rule 365.

As to manner of making amendments, see rules 354 and 355. The Ontario Rules are similar but are followed by rule 187 (315) (having no Manitoba counterpart) providing no physical alteration may be made on a record. See rule 352 for notice of application to amend. Time for amendment, rule 353.

RULE 368.—Miscellaneous Proceedings in an Action — Amendments—Reinstating Action Dismissed in Error—Setting Aside Judgment Obtained through Error.

1902 Rule 347. No Ontario counterpart.

The Ontario practice is the same. A new trial will be granted, Sheahan v. Toronto, R. W. Co., 2 O.W.N. 1263.

RULE 369.—Miscellaneous Proceedings in an Action—Paper, Notices and Written Proceedings Generally—Notices to be Written or Printed.

1902 Rule 348; 1905 Ontario Rule 316; 1913 Ontario Rule 189. See rule 321 and notes.

RULE 370.—Miscellaneous Proceedings in an Action—Paper, Notices and Written Proceedings Generally — Printing.

1902 Rule 349; 1905 Ontario Rule 317; 1913 Ontario Rule 188 (2).

RULE 371.—Miscellaneous Proceedings in an Action—Paper, Notices and Written Proceedings Generally—Paragraphs.

1902 Rule 350; 1905 Ontario Rule 318; 1913 Ontario Rules drop this rule.

RULE 372.—Miscellaneous Proceedings in an Action—Paper, Notices and Written Proceedings Generally—Rolls and Records.

1902 Rule 351; 1905 Ontario Rule 319; 1913 Ontario Rule 188.

Pleadings may be printed, rule 321, in the manner provided by rule 370.

RULE 373.—Miscellaneous Proceedings in an Action—Papers, Notices and Written Proceedings Generally—Short Style of Cause.

1902 Rule 352; 1905 Ontario Rule 320; 1913 Ontario Rule 190 part.

RULE 374.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — PAPERS, NOTICES AND WRITTEN PROCEEDINGS GENERALLY — FOLIO IS 100 WORDS.

1902 Rule 353; 1905 Ontario Rule 321; 1913 Ontario Rules drop this rule.

RULE 375.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—COPIES OF PAPERS—COPIES FOR SERVICE.

1902 Rule 354; 1905 Ontario Rule 322; 1913 Ontario Rule 191.

Office copies are still required in certain cases in Ontario, see Holmested & Langton, p. 531.

See notes to rules 236 and 237.

RULE 375.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—COPIES OF PAPERS—WRITTEN APPLICATION FOR COPIES OF PAPERS NOT DIRECTED TO BE SERVED.

1902 Rule 355; 1905 Ontario Rule 324; 1913 Ontario Rule 193 part.

An affidavit on production need not be served. A notice of filing is usually served and a demand for a copy made under this rule, which also governs demands for affidavits on motions which do not require to be served with the notice.

Pleadings must be delivered under rule 323. No demand is necessary.

For the time for complying with a demand, see rule 377.

RULE 377.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—COPIES OF PAPERS—TIME FOR FURNISHING SUCH COPIES.

1902 Rule 356; 1905 Ontario Rule 325; 1913 Ontario Rule 193 part. See rules 376 and 378 and notes.

The practice is to have the solicitor receiving the copy mark the demand satisfied upon receiving the same.

This rule is imperative, Holmested & Langton, p. 533.

RULE 378.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—COPIES OF PAPERS—COPIES OF DOCUMENTS IN POSSESSION OF ANOTHER PARTY.

1902 Rule 357; 1905 Ontario Rule 326; 1913 Ontario Rule 194.

Copies of affidavits are, as a matter of courtesy, not charged for. This rule applies to documents produced in an affidavit on production under rules 424 and 425.

Documents may be photographed, Lewis v. Londesborough (1893), 2 Q.B. 191, followed in Ontario by the late Mr. Cartwright (Master in Chambers) in Baston v. Hutchinson (unreported), January, 1912, in the terms of Lewis v. Londesborough, and see Foulds v. Bowen, 7 W.L.R. 517.

RULE 379.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — FORMS.

1902 Rule 358; 1905 Ontario Rule 1224; 1913 Ontario Rule 772 (1).

The new Ontario Rule also contains this clause.

The provisions contained in the form prescribed shall be deemed to be authorized by these rules. See section 86 of the Act.

Sec. 18 of the Interpretation Act is to the same effect, R. S.M. 1913, cap. 105.

RULE 380—MISCELLANEOUS PROCEEDINGS IN AN ACTION— TRANSMISSION OF PAPERS—TRANSMISSION OF DOCUMENTS TO WINNIPEG BY DEPUTY CLERKS.

1902 Rule 369; 1905 Ontario Rule 337; 1913 Ontario Rule 396 (1). See rule 78.

RULE 381.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRANSMISSION OF PAPERS — TRANSMISSION OF DOCUMENTS FROM ONE OFFICE TO ANOTHER.

1902 Rule 370; 1905 Ontario Rule 338; 1913 Ontario Rule 396 (2). See rule 178.

RULE 382—MISCELLANEOUS PROCEEDINGS IN AN ACTION— TRANSMISSION OF PAPERS—DOCUMENTS, HOW TRANSMITTED.

1902 Rule 371; 1905 Ontario Rule 339; 1913 Ontario Rules drop this rule, but rule 396 (1) (2) only provides for payment of postal or express charges.

RULE 383.—MISCELLANEOUS PROCEEDINGS IN AN ACTION— TRANSMISSION OF PAPERS—RETURN OF DOCUMENTS.

1902 Rule 372; 1905 Ontario Rule 340. 1913 revision drops this rule, but rule 396 (2) imports their return.

RULE 384.—Miscellaneous Proceedings in an Action—Time—Month Shall Mean Calendar Month.

1902 Rule 373; 1905 Ontario Rule 342. 1913 Ontario Rules drop this rule. See the Interpretation Act, R.S.M. 1913, cap. 105, sec. 24.

Time is C.P.R. central time, the time of the 90th meridian W. Longitude.

RULE 385.—Miscellaneous Proceedings in an Action—Time—Period of Less than 6 Days—Computation of.

1902 Rule 374; 1905 Ontario Rule 343; 1913 Ontario Rule 172.

Days on which the offices are closed. See rule 9. See the Interpretation Act, R.S.M. 1913, cap. 105, sec. 27 (2).

E.g. See rules 270 and 235. Where more than 6 days holidays are counted unless the last day falls upon one, when rule 388 applies.

RULE 386.—Miscellaneous Proceedings in an Action—Time—Days, How Computed.

1902 Rule 375; 1905 Ontario Rule 341 (1); 1913 Ontario Rule 173 (1).

RULE 387.—Miscellaneous Proceedings in an Action—Time—Clear Days.

1902 Rule 376; 1905 Ontario Rule 341 (2); 1913 Ontario Rule 173 (2).

RULE 388.—Miscellaneous Proceedings in an Action—Time—Where Last Day Sunday, or Day Offices Closed.

1902 Rule 377; 1905 Ontario Rule 345; 1913 Ontario Rule 174.

See rules 391 and 363 as to where the day of return of a motion falls on a holiday. Interpretation Act, R.S.M. 1913, cap. 105, s. 21 similar.

RULE 389.—Miscellaneous Proceedings in an Action—Time—Order for Security for Costs, Effect of in Computing Time for Defence.

1902 Rule 378; 1905 Ontario Rule 346; 1913 Ontario Rule 378.

See rules 984 et seq. and rules 182 and 183.

RULE 390.—Miscellaneous Proceedings in an Action—Time—Enlarging Time by Consent.

1902 Rule 379; 1905 Ontario Rule 347; 1913 Ontario Rule 175.

See rule 396 as to when an order may be had.

RULE 391.—Miscellaneous Proceedings in an Action—Time—Two Clear Days' Notice of Motion to be Given.

1902 Rule 380; 1905 Ontario Rule 348; 1913 Ontario Rule 215 part.

See rule 387, first and last days excluded.

See rule 385 and notes. Rule 928 et seq.

Rule 794. Partition applications 14 clear days' notice.

RULE 392.—Miscellaneous Proceedings in an Action—Time—Hours of Service on Solicitors.

1902 Rule 381; 1905 Ontario Rule 349; 1913 Ontario Rule 204. See rule 294.

RULE 393.—Miscellaneous Proceedings in an Action—Time—Half an Hour's Attendance on a Summons or Appointment Sufficient.

1902 Rule 382; 1905 Ontario Rule 350; 1913 Ontario Rule 225.

RULE 394.—Miscellaneous Proceedings in an Action—Time—One Appointment Sufficient.

1902 Rule 383; no Ontario counterpart.

RULE 395.—Miscellaneous Proceedings in an Action—Time—Long Vacation, when not Reckoned in Computing Time.

1902 Rule 384; 1905 Ontario Rule 352; 1913 Ontario Rule 179.

See rule 397 as to vacations.

The Ontario Rules are similar in effect, but except vacation from computation of time for appeals to a judge in chambers. The Ontario Rule 179 which has no Manitoba counterpart, except 395 (e) provides that vacation shall not be reckoned in the computation of times limited for filing, amend-

ing or delivering any pleading. The Manitoba Rule only makes such exception in the case of a reply to a statement of defence or counterclaim, rule 395 (c). See rule 313 and notes. The Ontario practice differs still further by providing that no pleading shall be amended or delivered in long vacation, 1913 Ontario Rule 178, except in certain specified cases, nor may an examination be held, rule 178. This rule has no Manitoba counterpart.

Master's report becoming absolute, see rule 79 and notes.

Order made under rule 542. An order to add parties on change of interest.

Moving to add to, etc., judgments. See rules 42, 120 and 121, 217 and 218 and notes.

Appeal to Court of Appeal. See Court of Appeal Rule 6 and Rule 672 et seq.

Reply to statement of defence. See rule 313.

RULE 396.—Miscellaneous Proceedings in an Action — Time—Enlargement or Abridgement of Time.

1902 Rule 385; 1905 Ontario Rule 353; 1913 Ontario Rule 176. See rule 390 as to consent. Braun v. Davis, 9 M. R. 539.

The time for filing affidavits under rule 497 was extended under this rule after the 4 days had elapsed, in Emperor of Russia v. Proskouriakoff, 7 W.L.R. 766.

RULE 397.—Miscellaneous Proceedings in an Action — Time—Vacations.

1902 Rule 386; 1905 Ontario Rule 354; 1913 Ontario Rule 177.

Vacation Judges. Rule 169. See rule 166; see rule 395.

Discovery.

Discovery may be obtained from a party adverse in interest in four different ways under the Manitoba Rules.

I. By examination under rules 398 et seq.

(a) Viva voce of

(1) a party adverse in interest, rule 398,

(2) an officer of a company so adverse, rule 398,

(3) a party for whose immediate benefit an action is brought or defended, rule 399.

(*b*) Physically by a physician when claiming for bodily injury.

II. By interrogatories, rule 423.

III. By production and inspection of documents, rule 424 et seq. from the parties set out in I. above.

IV. By inspection of property under rule 605.

Examination viva voce may be had as of right on service of appointment and subpoena under I, except where it is desired to be held before an examiner (other than those set out in rule 400) or where a party for whose immediate benefit an action is prosecuted or defended under rule 399 is to be examined. In these two excepted cases an order must be obtained, Rule 402. Lenius v. Lenius, 4 W.W.R. 978. Physical examination under rule 422 can only be made under an order. Interrogatories may be served without order, rule 423, and production is obtained on praecipe order 425 (although an order may be made under rule 424) except in cases under rule 427, where by analogy to Lenius v. Lenius, supra, an order would seem to be required.

As to actions for discovery only, see Holmested & Langton, p. 645, and Kennerley v. Hextall, 23 W.L.R. 205; 3 W.W.R. 699.

A person may not be made a party for discovery only unless he was an agent, but even then quaere. Bank of Hamilton v. Winters, 16 W.L.R. 218.

An officer of a company may not be made a party for purposes of discovery only, rule 202; as to differences between the English and Manitoba practice, see Morrison v. Rutledge, 22 W.L.R. 364; 3 W.W.R. 121. See section 13 (e) of the Act.

RULE 398.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — EXAMINATION FOR DISCOVERY.

1902 Rule 387; 1905 Ontario Rule 439, 439 (a) and 442; 1913 Ontario Rules 327 and 336. As to what is an examination for discovery, Crinkley v. Mooney, 3 O.W.N. 105.

Upon his affidavit on production. Semble that in Ontario the affidavit is conclusive and that cross-examination upon it is not permissible; Holmested & Langton, p. 692-693; Yonhoeus v. Canada Foundry Co., 3 O.W.N. 44. See rule 429, and notes to 430 (1).

Time of Examination. Before Trial. This is provided for in Ontario by rule (442) 336, which is to the same effect as

this rule. If a plaintiff is sought to be examined, then, after the defence is filed, if a defendant, after defence filed or the time for filing has expired, see rule 182 and 183. If a party to an issue, after the order is filed.

WHO MAY BE EXAMINED.

A *third party* served under rule 310 may, as between himself and the defendant serving him only, examine or be examined, the defendant serving him having the privileges of a plaintiff, rule 426, but only after the order for directions is made, Warren v. Pettingill, 23 M.R. 747; 25 W.L.R. 387.

A person for whose immediate benefit an action is brought or defended, rule 399.

Officers of corporations, both present and past.

See note preceding this rule.

Until the 20th June, 1903, a past officer of a corporation was examinable under the Ontario Rule. Now he may not be, rule 327 (a) and Holmested & Langton's notes to 1905 Ontario Rule 439 (a). Davies v. Sovereign Bank, 12 O.L.R. 567.

Servants of Corporations apparently are not examinable under the Manitoba Rule; "servant" is expressly named in the Ontario Rule, and see Holmested & Langton, 3rd ed., p. 647, referring to Holmested & Langton, 2nd ed., p. 611, and Morrison v. G.T.R., 5 O.L.R. 38, as to the distinction. Quaere, whether the Manitoba decisions noted below do not give the wider interpretation to the word "officer"? The examination of officers of corporations may, in Manitoba, be used in evidence at the trial. Rule 420, but not in Ontario, rules 327 (a) and 329.

A consulting engineer is not an officer of a corporation, Winger v. Streetsville, 12 O.W.R. 1172, but a water meter inspector has been held to be an officer of the corporation in an action against a city corporation for damages occasioned by the negligence of an employee of the water works department of the city in discharging his duty of examining a water meter on the plaintiff's premises, Shaw v. City of Winnipeg, 19 M.R. 551; 13 W.L.R. 706, following Dixon v. Winnipeg Electric R.W., 10 M.R. 660 (an electrician foreman held to be an officer of the defendant company and within this rule, following Canada Atlantic R.W. v. Moxley, 15 S.C.R. 145).

The following have also been held to be examinable as officers of corporations under this rule.

The conductor of a railway train (under certain circum-

stances), Gardanier v. C.N.R., 15 M.R. 1; the Chief Officer in Manitoba of a foreign corporation, Real Estate Loan Co. v. Molsworth, 2 M.R. 93; the road master of a railroad, Houghton v. C.N.R., 5 W.W.R. 160. Not so held, consulting engineer of a municipality, Winger v. Streetsville, supra.

Purview of Examination. See rule 411 and notes.

Interrogatories may be administered even if the party has been examined under this rule.

Timmons v. National Life, 19 M.R. 139; 11 W.L.R. 337.

One officer of a corporation may be examined upon the affidavit of the corporation, although it is sworn to by another officer. Bain v. C.P.R., 2 W.L.R. 235. Duty of officer on examination. Must obtain information from original sources, Fraser v. C.P.R., 4 W.L.R. 525 (but see same case, 5 W.L.R. 42), Bain v. C.P.R., 15 M.R. 544; McDonald v. C.P.R., 7 M.R. 425; Brydon Jack v. Vancouver, 16 W.L.R. 262, and notes to rule 430 (1). After examining one officer under this rule, another may not be examined to get what could have been got from the first, Brown v. London Fence, Ltd., 19 M.R. 138; 11 W.L.R. 411, distinguished in Houghton v. C.N.R., 5 W.W.R. 160, holding that more than one officer could be examined under this rule.

The Ontario Rule 327 (3) provides that an order must be obtained for the examination of more than one officer. There is no Manitoba counterpart. As to parties out of Manitoba, see rule 441 and notes. As to costs, rule 941.

Party adverse in interest. A defendant who, in his defence, submits completely to the relief sought by the plaintiff, is not a party adverse in interest to another defendant who disputes the plaintiff's rights, and the latter may not examine the former, Fonseca v. Jones, 19 M.R. 334; 13 W.L.R. 206.

Compelled to attend. By proceedings under rules 400 or 403. Analysis of medical preparations refused, Theo Noel Co. v. Vitae Ore Co., 8 W.L.R. 643.

Particulars. See notes to rule 326.

Discovery may be allowed in cases where a plaintiff is ordered to give particulars of his statement of claim, before delivering them, where the facts are peculiarly within the knowledge of the defendant, Batho v. Zimmer Vacuum, 3 O.W.N. 1660. See Timmons v. National Life, 18 M.R. 465; 9 W.L.R. 4; 10 W.L.R. 81. A similar order was made on the application

of a defendant in Caldwell v. Hughes, 3 O.W.N. 639. See also Kelly v. Kelly, 9 W.L.R. 517.

RULE 399.—Miscellaneous Proceedings in an Action — Examination for Discovery—Who Deemed a Party for Purpose of Examination.

1902 Rule 388; 1905 Ontario Rule 440; 1913 Ontario Rule 334.

An order is required for an examination under this rule. Lenius v. Lenius, 4 W.W.R. 978, following the practice under the similar Ontario Rule (440) as appears by a perusal of McDonald v. Norwich Union (1884), 10 P.R. 462, the first Ontario case on the rule, (followed in Tollemache v. Hobson, 5 B.C.R. 214.).

The new Ontario Rule 334, however, in terms provides for examination without an order.

Immediate benefit. See Major v. McKenzie, 17 P.R. 180. See notes to rule 427.

RULE 400.—Miscellaneous Proceedings in an Action — Examination for Discovery — Appointment and Subpoena.

1902 Rule 389; 1905 Ontario Rule 443; 1913 Ontario Rule 345 (1).

The Ontario Rule 443 only required service of a copy of the appointment and a subpoena. The Manitoba practice has been to serve a duplicate appointment with a subpoena, although the rule in terms only requires service of the latter. The new Ontario Rule (345) requires service of the original appointment on a party, of a subpoena on any other person liable to be examined.

Production of papers should be obtained by notice to produce, rule 404; subpoena dues tecum.

Penalty for non-attendance, rule 410. If service cannot be effected under this rule, rule 403 may be followed. See rule 401, supplementary to rule 400.

As to witness fees payable, see Unger v. Long, 12 M.R. 454. Semble if no objection is taken to payment of less amount at time of service and the amount is not returned to the party serving he should attend, Cyr v. O'Flynn, 6 W.L.R. 353.

Subpoena. The subpoena should not read "from day to day

until the above cause is tried to give evidence on behalf of," in the case of an examination for discovery, otherwise semble a motion for attachment will be refused or an order striking out the defence. Macdonald v. Domestic Utilities Mfg. Co., 23 M.R. 512. But see forms 86 and 87 which contain these words and rule 379.

A second subpoena and appointment may not be served under this rule where the party examining has failed to attend on the first appointment and the party to be examined has, McGibbon v. McNeill, 5 W.W.R. 1011.

RULE 401.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — EXAMINATION FOR DISCOVERY—SERVICE OF APPOINTMENT.

1902 Rule 390; 1905 Ontario Rule 446; 1913 Ontario Rule 346.

As to service, Unger v. Long, 12 M.R. 454.

RULE 402.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — EXAMINATION FOR DISCOVERY—ORDER TO EXAMINE.

1902 Rule 391; 1905 Ontario Rule 444 part; 1913 Ontario Rule 347 part.

The Ontario Rules have not the latter portion of the rule regarding service, etc., that being provided for by the general provisions of the rules.

Liable to be examined. See rule 398 and notes.

Before any other person, i.e other than those named in rule 400. See rule 441 governing examinations of parties out of Manitoba.

RULE 403.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY—SERVICE ON SOLICITOR IN LIEU OF CLIENT.

1902 Rule 391A; 1905 Ontario Rule 447; 1913 Ontario Rule 337.

The Ontario Rule provides for only seven days. As to computation of the 14 days, see rule 386. This rule was added to the 1902 rules by 5-6 Ed. VII., c. 17, s. 2 part. The Manitoba Rule had a counterpart [391A (3)] to clause (3) of the Ontario Rule permitting service of a subpoena on the party to be examined, but it was dropped in the 1913 revision; it is submitted such a clause is redundant, as the use of this rule

presupposed inability to effect personal service under rule 401, where the time is much shorter, 48 hours being all the notice necessary, Rule 402.

An original appointment, and not a copy, must be served under this rule, Foley v. Buchanan, 18 M.R. 296; 9 W.L.R. 3. (In reading this case it must be observed that 391A (3) is dropped; the above-stated proposition remains unaltered however.

Quaere, whether the rule applies to officers of corporations? See Holmested, p. 657, and Mills v. Mills, 15 P.R. 276; Barber v. Adams, 16 P.R. 156; Lindsay v. Curry, 14 O.W.R. 538.

Production, rule 404.

Penalty for non-attendance, rule 410.

RULE 404.—Miscellaneous Proceedings in an Action—Examination for Discovery—Production of Papers.

1902 Rule 392; 1905 Ontario Rule 448; 1913 Ontario Rule 341 part.

This rule was recast in its present form by 5-6 Ed. VII., c. 17, s. 4, which added the words "whose officer is to be examined," in clause (2).

The new Ontario Rule applies to "any person to be examined or any party to the action," and is therefore much wided than the Manitoba or former Ontario Rule. See rule 408 and notes to rule 430 (1), as to production, rule 410.

RULE 405.—Miscellaneous Proceedings in an Action—Examination for Discovery—Parties may be Examined on Their Own Behalf.

1902 Rule 393; 1905 Ontario Rule 449; 1913 Ontario Rule 333 part.

RULE 406.—Miscellaneous Proceedings in an Action—Examination for Discovery—When Such Examination to Take Place.

1902 Rule 394; 1905 Ontario Rule 450 part; 1913 Ontario Rule 333 part.

The Ontario Rule has not the last clause.

RULE 407.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY—MODE OF CONDUCTING EXAMINATION.

1902 Rule 395; 1905 Ontario Rule 451; 1913 Ontario Rule 339.

See rules 412 and 415, as to mode of taking down questions.

RULE 408.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY—A PARTY ADMITTING POSSESSION OF DOCUMENTS MAY BE ORDERED TO PRODUCE THEM.

1902 Rule 396; 1905 Ontario Rule 452; 1913 Ontario Rule 342.

The Ontario Rule applies to "anyone."

See rule 424, and Holmested & Langton, p. 658.

The Ontario Rule has not the last sentence but the practice would be the same. See also rule 403.

RULE 409.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY—APPEAL FROM SUCH AN ORDER TO PRODUCE.

1902 Rule 397; 1905 Ontario Rule 453; 1913 Ontario Rule 344.

The Ontario Rule 453 was similar and the practice on appeal would seem to be the same as on an appeal from the Referee in Chambers. The 1913 Ontario Rule only permits a review of the ruling without an appeal.

RULE 410.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY—PENALTY FOR REFUSING TO ATTEND OR ANSWER—SERVICE OF NOTICE OF MOTION.

1902 Rule 398 amended; 1905 Ontario Rule 454; 1913 Ontario Rule 330.

A party being examined has no right to refuse to be sworn unless the other party leaves the room, Loper v. Cairns, 3 W.W.R. 37, as to the examiner's right of exclusion, Pratt v. Pipe, 3 O.W.N. 214, it will not be reviewed, ibid.

See notes to rule 411.

Upon transfer from the County Court to the King's Bench a party was duly served with an appointment for examination. He neglected to attend and resisted a motion to commit on the ground that he had filed an affidavit of intention to appeal un-

der the County Court Act. Held, no excuse for non-attendance. Doll v. Howard, 10 M.R. 635.

Service, upon solicitor is sufficient only in cases of applications to dismiss or to strike out pleadings. Notice of motion to commit must be personnally served. See rule 701 and notes to rules 437 and 438. Refusal to answer no default if examination adjourned and not completed, Anderson v. Imperial Development, 16 W.L.R. 51. Refusal to sign depositions, rule 413. Striking out defence, principles applied, Ontario Bank v. Sutherland, 3 M.R. 261; American Plumbing Co. v. Wood, 3 M.R. 42.

Semble, a party may refuse to be sworn under a second appointment issued without leave, the first having lapsed owing to the default of the opposing party, McGibbon v. McNeill, 5 W.W.R. 1011.

Contempt and attachment. See rules 701 et seq.

The material on such a motion must be strictly correct. Doll v. Howard, 10 M.R. 635 (affidavit of service incomplete); MacDonald v. Domestic Utilities Mfg. Co., 23 M.R. 512, 24 W.L.R. 544. (Subpoena defective.) As to alterations and interlineations in a subpoena, see Unger v. Long, 12 M.R. 454.

Form of notice of motion, West Cumberland, etc., Co. v. Winnipeg & H.B.R.W. Co., 7 M.R. 504.

See notes to rule 400 and rule 437.

As to effect of offer to produce, Macdonald v. Domestic, supra.

Requirements of notice of motion. West Cumberland v. Winnipeg, etc., R.W. Co., infra.

Striking out defence. Failure to produce documents under subpoena D.T. on examination for discovery, no ground. Anderson v. Imperial Development Co., 20 M.R. 275, 16 W.L.R. 51. See also Vulcan Iron Works v. Winnipeg Lodge, etc., 9 W.L.R. 208. Refused in Macdonald v. Domestic, etc., Co., 23 M.R. 512, 24 W.L.R. 544 (subpoena defective).

Must file certificate of examiner on application, Anderson v. Imperial (supra) and set it out in notice of motion, West Cumberland, etc., Co. v. Winnipeg, etc., Ry., 7 M.R. 504; non-production under subpoena D.T., no default under this rule, ibid.

Striking out the defence does not bring the action within rule 603. Wilson v. Stuart, 16 W.L.R. 403.

RULE 411.—Miscellaneous Proceedings in an Action—Examination for Discovery—Objections to Questions.

1902 Rule 399; 1905 Ontario Rule 455; 1913 Ontario Rule 343.

See rule 437 as to failure to comply with an order to produce.

Under the new Ontario Rule (343) the examiner must rule upon objections. His ruling is subject to review without an appeal, rule 344.

Semble, the examiner has no power to rule, all he may do is state an opinion, rule 414, transmit objections under rule 411 and perhaps report under rules 413 and 418.

Rules governing propriety of questions.

A party to an action is not entitled to discovery of the evidences in the possession of the opposite party which exclusively relate to the case of the latter, and the truth of a statement to that effect respecting any particular document made in the affidavit on production of documents sworn to by one party cannot be questioned on an application by the opposite party to compel production of that document.

Following Von Ferber v. Enright, 19 M.R. 383; Lyell v. Kennedy (1883), 8 A.C. 217; Bidder v. Bridges (1884), 29 Ch. D. 29; Morris v. Edwards (1890), 15 A.C. 309. Action to set aside caveat, defendant refers in affidavit on production to a lease upon which the caveat is based, and objects to produce. Held not compellable, as not containing anything material to plaintiff's case and tending to support it.

Privilege. Questions as to privileged matters need not be answered, e.g., as to communications between the manager of a branch bank and head office, McLean v. Merchants Bank, 1 M.R. 178.

Names of witnesses need not be disclosed, Gibbins v. Metcalfe, 14 M.R. 364, but see Savage v. C.P.R., 15 M.R. 401, 3 W.L.R. 124; Bain v. C.P.R., 2 W.L.R. 235, and Affleck v. Mason, 21 M.R. 759, and notes to rule 430 (1).

Relevancy. Questions as to indemnity against costs being promised by strangers to the action need not be answered, Gibbins v. Metcalfe, 14 M.R. 364, or as to assistance, etc., ibid. In an action for an account of the profits of a partnership, the existence of which the defendant denies, the defendant should on his examination answer questions as to profits where there is an ambiguous contract, upon the meaning of which his an-

swers may throw some light, Vanderlip v. McKay, 3 W.L.R. 232.

May only question as to specific facts alleged and not as to insinuations, Reid v. Albertan, 23 W.L.R. 330.

In an action to restrain use of a trade name, questions to show misrepresentation of goods, by plaintiffs, are relevant, Theo Noel v. Vitae Ore Co., 17 M.R. 87.

If the statement of claim does not state a case entitling the plaintiffs to any relief against one of two defendants an order should not be made compelling him to answer questions which would be relevant if it did, Winnipeg Granite, etc., Co. v. Bennetto, 21 M.R. 743, 19 W.L.R. 567. Action for return of agreement assigned by plaintiff to defendant to enable him to borrow money, the plaintiff offering to return 15 shares of stock transferred to him by defendant as security. Defence: purchase of the agreement for the 15 shares fully paid up.

Held, that on examination the defendant should not be required to answer questions as to whether the shares referred to were fully paid up or as to what, if any, had been paid by him on them, as not being relevant, Morrison v. Rutledge, 22 M.R. 645, 22 W.L.R. 364, followed; Carney v. Carney (Sask.), 26 W.L.R. 398. The examination, though of the nature of a cross-examination, must be confined to the issues on the pleadings, ibid.

Form of objections in depositions. See West Cumberland, etc., Co. v. Winnipeg, etc., Co., 7 M.R. 504.

RULE 412.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATIONS FOR DISCOVERY — DEPOSITIONS, HOW TO BE TAKEN.

1902 Rule 400, amended by 5-6 Ed. VII., c. 17, s. 6; 1905 Ontario Rule 456 (1).

The 1913 revision (Ontario) omits this rule apparently as obsolete, sed quaere.

"*Such Oral Examination,*" see rule 407.

RULE 413.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY—SIGNING DEPOSITIONS.

1902 Rule 401; 1905 Ontario Rule 456 (2), (3) part. The 1913 Ontario revision drops this rule. See rule 412 and notes.

Special Matter. See also rule 418.

RULE 414.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY—TAKING QUESTIONS DOWN.

1902 Rule 402; 1905 Ontario Rule 456 (2).

The Ontario revision (1913) drops this rule, apparently relying on the counterpart to rule 411. This rule seems to apply to examinations taken down under rule 415 as well as under rule 412.

RULE 415.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY—TAKING EXAMINATION IN SHORTHAND.

1902 Rule 402 (a) as added by 5-6 Ed. 7, c. 17, s. 2 part; 1905 Ontario Rule 457; 1913 Ontario Rule 340 part.

RULE 416.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY—MODE OF.

1902 Rule 402 (b) (1); 1905 Ontario Rule 458 (1); 1913 Ontario Rule 340 part. See rules 414 and 418.

RULE 416 (2).—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY—EFFECT OF CERTIFIED COPIES.

1902 Rule 402 (b) (2); 1905 Ontario Rule 458 (2); 1913 Ontario Rule 340 (2). See also rule 417 as to certified originals and copies.

RULE 417.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY — RETURN OF DEPOSITIONS TO COURT.

1902 Rule 403; 1905 Ontario Rule 459; 1913 Ontario Rule 340 (3).

The Ontario Rules only contain the first clause of 417.

Proper office for filing, rules 176 and 178.

See also rule 416 (2).

RULE 418.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY—EXAMINER MAY MAKE A SPECIAL REPORT TO COURT.

1902 Rule 404; 1905 Ontario Rule 460; 1913 Ontario revision drops this specific rule.

Contempt. See rule 410.

RULE 419.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY — USE OF DEPOSITIONS AS EVIDENCE.

1902 Rule 405; 1905 Ontario Rule 461; 1913 Ontario Rule 330.

See notes to rules 398 and 420. Morrison v. Rutledge, 22 W.L.R. 366.

An examination may, under this rule, be put in evidence on the hearing of a reference ordered under the Arbitration Act, (1 Geo. V c. 1, s. 24 ss. c.), Turner v. Fotheringham, 4 W.W.R. 1192.

RULE 420.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY—USE OF DEPOSITIONS OF OFFICER OF CORPORATION.

1902 Rule 406. There is no Ontario counterpart to this rule, although one existed from 1897 to June 20th, 1903.

See notes to rules 398 and 421.

RULE 421.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY—USE OF DEPOSITIONS OF PAST OFFICER.

1902 Rule 407; no Ontario counterpart.

There is no examination of a past officer in Ontario. Notes to rules 398.

RULE 422.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EXAMINATION FOR DISCOVERY—PERSONAL EXAMINATION OF PARTY CLAIMING FOR BODILY INJURY MAY BE ORDERED.

1902 Rule. 407A added by 5-6 Ed. VII, c. 12, s. 2 part, and amended by 2 Geo. V, c. 14, s. 3, 1905 Ontario Rule 462, 1913 Judicature Act, sec. 70.

RULE 423.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—INTERROGATORIES—DELIVERY OF INTERROGATORIES.

1902 Rule 407 (B), added by 5-6 Ed. VII, c. 17, s. 2.

Under the Ontario Rules interragatories are only provided for in cases where commissions to take evidence are allowed. See rule 281 (1913), 503 (1905). There is no Ontario counterpart to this rule. Compare with rule 398 as to time of delivery and to and by whom delivered.

A party may be required to answer interrogatories under this rule notwithstanding the fact that he has also been ordered to attend and be examined under rule 398. Timmons v. National Life Assce., 19 M.R. 139, 11 W.L.R. 337. (It has since been suggested before the Bar Association that a party be put to his election as to proceeding under rule 398 or this rule, except as otherwise ordered by a judge).

Irrelevancy. Interrogatories must be relevant to the matters in issue in the pleadings, Affleck v. Mason, 21 M.R. 759.

Where in an action for libel the defendant has not pleaded justification, he is not entitled to administer interrogatories asking the plaintiff if he did certain acts with a view to showing that the statements in the alleged libel were true. Timmons v. National Life, 19 M.R. 227.

See also same case, 12 W.L.R. 492.

RULE 423 (8).—MISCELLANEOUS PROCEEDINGS IN AN ACTION—INTERROGATORIES—REQUIRING PARTY TO ANSWER OR ANSWER FURTHER.

The motion is properly made to the referee, Decarie v. City of Winnipeg, 18 M.R. 663. As to what further particulars will be ordered, see the same case, 11 W.L.R. 102.

As to disclosure of witnesses, see Gibbins v. Metcalfe, 14 M.R. 364; Affleck v. Mason, 21 M.R. 759.

RULE 423 (9).—MISCELLANEOUS PROCEEDINGS IN AN ACTION—INTERROGATORIES—CONSEQUENCES OF FAILURE OR REFUSAL TO ANSWER.

As to striking out defence, Douglas v. C.N.R., 4 W.W.R. 59, 325 and 1121. (Reinstated even after interlocutory judgment signed upon compliance and terms imposed, ibid.).

RULE 424.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PRODUCTION AND INSPECTION OF DOCUMENTS.

1902 Rule 408; 1905 Ontario Rule 463; 1913 Ontario Rule 349.

See notes preceding rule 398.

"This rule is applicable where for some reason or other production should be had, but the trial will be held (if the usual method of procedure, namely that under rule 425 is adopted) before the time for production expires, or in other cases where

justice requires such an order." See Holmested & Langton, p. 670. The order may be made at any step of the proceedings.

RULE 425.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PRODUCTION AND INSPECTION OF DOCUMENTS—ORDER OF COURSE FOR PRODUCTION OF DOCUMENTS.

1902 Rule 409; 1905 Ontario Rule 464; 1913 Ontario Rule 348.

The new Ontario Rule 348 requires a copy of such affidavit to be served forthwith after filing. This changes the former practice which corresponded with the present Manitoba practice of serving notice of filing and supplying a copy on demand, as otherwise the party might be unable to tax the costs of the copy so served. The block system of costs introduced in Ontario obviates this difficulty and simplifies the practice.

Penalty for non-compliance, rules 430 (2) and 437. This rule must be read with rule 430 (1) below.

Service of the order. See rule 440 and rule 294.

Photographs. Documents produced by an opposite party may be ordered to be photographed. Foulds v. Bowler, 7 W.L.R. 517. See notes to rule 378.

RULE 426.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PRODUCTION AND INSPECTION OF DOCUMENTS—POSITION AS TO DISCOVERY OF THIRD PERSON SERVED UNDER RULE 310.

1902 Rule 410; 1905 Ontario Rule 465. The 1913 revision drops this rule, leaving the third party to his relief under rule 425 (349), as under new Ontario Rule 350 (see notes to rule 427). See notes to rule [illegible] and Warren v. Pettingill, 23 M.R. 747, 26 W.L.R. 387, as to the time for examination under this rule (not until after the order for directions made).

RULE 427.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PRODUCTION AND INSPECTION OF DOCUMENTS—WHO DEEMED A PARTY FOR PURPOSE OF PRODUCTION OF DOCUMENTS.

1902 Rule 411; 1905 Ontario Rule 466; The 1913 Ontario revision drops this rule but includes a new rule (350) permitting an order for production wherever it might be compelled at the trial which would cover this case.

See notes to rule 399, which are equally applicable here. An order is needed to obtain production under this rule. See Lenius v. Lenius, 4 W.W.R. 978.

RULE 428.—Miscellaneous Proceedings in an Action—Production and Inspection of Documents — Affidavit on Production by Corporation.

1902 Rule 412; 1905 Ontario Rule 468; 1913 Ontario revision drops this rule.

RULE 429.—Miscellaneous Proceedings in an Action—Production and Inspection of Documents—Cross-Examination of Deponent.

1902 Rule 413. There is no Ontario counterpart. An affidavit on production is under the Ontario Rules conclusive. See notes to rule 398.

RULE 430 (1).—Miscellaneous Proceedings in an Action—Production and Inspection of Documents—Affidavit on Production, Form of.

1902 Rule 414 (1); 1905 Ontario Rule 467. The 1913 revision drops this rule.

As to the principles governing production, Morrison v. City of London Fire Ins. Co., 6 M.R. 222.

This rule must be read with rule 425.

Privilege. Reports to solicitor made under reasonable apprehension of action are privileged, Swaisland v. G.T.R., 3 O.W.N. 960; Shapter v. G.T.R., 3 O.W.N. 1334. See Bain v. C.P.R., 15 M.R. 544, 2 W.L.R. 235 infra. In Savage v. C.P.R., 16 M.R. 381, such privilege was refused.

Documents which relate exclusively to the case of the party required to make production need not be produced, Von Ferber v. Enright, 19 M.R. 383, 11 W.L.R. 648.

The truth of a statement that the documents are such made in an affidavit on production cannot be questioned on an application by the opposite party to compel production of that document, ibid. (See rule 435). Semble in an action upon an insurance policy the plaintiff may be compelled to produce copies of the claim papers sent by him to the insurance companies, Morrison v. City of London Fire Ins. Co., 6 M.R. 222.

Reports of various servants and officials of a railway company upon the occurrence of a fire alleged to have been caused by sparks from a locomotive, and as to the condition of the locomotive, if made in the regular course of duty under the rules of the company, are not privileged, Bain v. C.P.R., 15

M.R. 544; Savage v. C.P.R., 15 M.R. 401, 16 M.R. 381. That names of witnesses would be disclosed does not necessarily give privilege, Savage v. C.P.R., supra.

If an officer of a corporation makes an affidavit on production, any other examinable officer of the company may be examined on it, and his answers used to impeach the affidavit on an application for a further and better affidavit, Bain v. C.P.R., 5 M.R. 544.

Further and better affidavit.

British Association v. Nettlefold (1912), 1 K.B. 369; Theo Noel Co. v. Vita Ore Co., 10 W.L.R. 88.

The affidavit as filed must be taken as conclusive, unless the opposite party can show from admissions or former statements on oath of the affiant that there is reason to suppose other documents should be produced, Muir v. Alexander, 15 M.R. 103.

To show that there are documents which might be relevant is not sufficient, if the affidavit states they are not relevant, ibid.

Nor is a contentious affidavit admissible to contradict the affidavit on production, Cowan v. Drummond, 7 M.R. 575; although an affidavit verifying such documents is not contentious, ibid. Documents, production of which is objected to, must be definitely described or a better affidavit will be ordered, Hector v. Canadian Bank of Commerce, 11 M.R. 320.

RULE 430 (2).—Miscellaneous Proceedings in an Action—Production and Inspection of Documents—Case of Party not Making Discovery of Document.

Added to 1902 Rules by 9 Ed. VII, c. 14, s. 3. No Ontario counterpart.

RULE 431.—Miscellaneous Proceedings in an Action—Production and Inspection of Documents—Notice to Produce Documents Referred to in Pleading or Affidavit.

1902 Rule 415; 1905 Ontario Rule 469; similar 1913 Ontario Rule 351 part.

See notes to rules 430 (1) and 411.
See rule 434 as to effect of non-compliance.
See rules 433 as to scope of this rule.

RULE 432.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PRODUCTION AND INSPECTION OF DOCUMENTS—FORM OF SUCH NOTICE.

1902 Rule 416; 1905 Ontario Rule 469 (part); 1913 Ontario Rule no counterpart.

RULE 433.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PRODUCTION AND INSPECTION OF DOCUMENTS—NOTICE TO INSPECT.

1902 Rule 417; 1905 Ontario Rule 470; 1913 Ontario Rule 351 (2).

The party to whom such notice is given shall, within two days from the receipt of the notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in rule 430, or if any of the documents referred to in the notice have not been set forth by him in any such affidavit, then withinfour days from the receipt of the notice, deliver to the party giving the same a notice stating the time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, and stating which (if any) of the documents he objects to produce and on what ground. Such notice may be in form No. 10 in the schedule, with such variations as circumstances may require. R.S.M. c. 40, r. 417.

"SUCH AFFIDAVIT AS IS MENTIONED IN RULE 430." The clause in brackets does not occur in the corresponding Ontario Rule, which is otherwise similar in effect. Without this clause it would seem that this rule, and rules 431, 435, etc., would be held, as in Ontario, not to apply to affidavits on production.

See Holmested & Langton, pp. 674 (notes to rule 464) and 696 (notes to rule 470). The use of the clause in brackets makes it clear that this series of rules, commencing with 431, applies to affidavit on production as well as pleading and other affidavits.

RULE 434.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PRODUCTION AND INSPECTION OF DOCUMENTS—ORDER FOR INSPECTION.

1902 Rule 418; 1905 Ontario Rule 471. The 1913 Ontario revision drops this rule, but see rules 436 and 437.

RULE 435.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PRODUCTION AND INSPECTION OF DOCUMENTS—APPLICATION FOR SUCH ORDER.

1902 Rule 419. No Ontario counterpart; the practice is similar.

For penalty for non-compliance with order, rule 437.

RULE 436.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PRODUCTION AND INSPECTION OF DOCUMENTS—DETERMINATION OF ISSUE GOVERNING RIGHT TO DISCOVERY.

1902 Rule 420; 1905 Ontario Rule 472; 1913 Ontario Rule 352.

RULE 437.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PRODUCTION AND INSPECTION OF DOCUMENTS—CONSEQUENCES OF FAILURE TO COMPLY WITH ORDER TO PRODUCE.

1902 Rule 421 (5-6 Ed. VII., c. 17, s. 7) 1905 Ontario Rule 473 (part); 1913 Ontario Rule 353 part.

Compare rule 410 and see rule 425.

ATTACHMENT. See notes to rule 411 and 701 et seq.

For service on application for rules 438 and 273.

Where time for production tactily given, see Anderson v. Imperial Development Co., 16 W.L.R. 51, and see Cotter v. Osborne, 8 W.L.R. 90, for a case of destruction of books ordered to be produced.

RULE 438.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PRODUCTION AND INSPECTION OF DOCUMENTS—APPLICATION FOR SUCH ORDER.

1902 Rule 422; 1905 Ontario Rule 474; 1913 Ontario Rule 353 part.

See rule 53. Rules 438 and 701 et seq. as to attachment generally.

This rule provides an exception to the general rule requiring personal service of a notice of motion for attachment.

RULE 439.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PRODUCTION AND INSPECTION OF DOCUMENTS—SERVICE OF ORDER FOR DISCOVERY ON SOLICITOR, WHEN SUFFICIENT.

1902 Rule 423; 1905 Ontario Rule 475. The 1913 Ontario revision drops this rule.

See rules 294 and 440.

RULE 440.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PRODUCTION AND INSPECTION OF DOCUMENTS—ATTACHMENT OF SOLICITOR.

1902 Rule 424; 1905 Ontario Rule 476. The 1913 Ontario revision drops this rule.

See rules 701 et seq. as to attachment.

RULE 441.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PRODUCTION AND INSPECTION OF DOCUMENTS—EXAMINATIONS OF PARTIES AND OFFICERS OUT OF MANITOBA FOR DISCOVERY.

1902 Rule 425 (4-5 Ed. VII., c. 6, s. 2); 1905 Ontario Rule 477. Amended in 1913 Ontario revision, rule 328. The Ontario Rule did not apply to bodies corporate. See notes to rule 400.

See Miller v. Henry, 3 M.R. 425, for former practice.

This rule provides the proper practice for obtaining the attendance of an officer of a foreign corporation residing out of the jurisdiction and not rule 400, Macdonald v. Domestic Utilities Co., 24 W.L.R. 544, 4 W.W.R. 121, 23 M.R. 512.

RULE 442.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—MOTIONS AND OTHER APPLICATIONS—APPLICATION TO COURT OR JUDGE TO BE BY MOTION.

1902 Rule 428; 1905 Ontario Rule 355; 1913 Ontario Rule 213 part.

See rule 444 as to ex parte orders.

Rule 446 as to cases where all parties have not been served.

Evidence on motions, Rule 487 et seq.

Motions for judgment 631.

SECOND APPLICATION. If an application is merely allowed to lapse and no order is made upon it that will be no bar to a second application for the same relief, Standall v. Standall, 22 M.R. 591.

Aliter if an order made dismissing the first application, Smith v. Edmunds, 10 M.R. 240; Cyr v. O'Flynn, 5 W.L.R. 524.

RULE 443.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—MOTIONS AND OTHER APPLICATIONS—NO SUMMONS, RULE OR ORDER TO SHOW CAUSE TO BE GRANTED.

1902 Rule 429; 1905 Ontario Rule 356; 1913 Ontario Rule 213 part.

The Ontario revisison drops the first part of this rule.

As to notices, see rule 369.

Length of notice, rule 391.

Requirements of, on motion to compel answers on examination for discovery, West Cumberland, etc., Co. v. Winnipeg & H. B. Ry. Co., 7 M.R. 504.

A plaintiff must be served as well as the solicitor with a notice of motion to stay an action commenced by the solicitor without authority. Ross v. Webb, 22 M. R. 257.

RULE 444.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Ex Parte Orders.

1902 Rule 430; 1905 Ontario Rule 357; 1913 Ontario Rule 216.

Varying ex parte orders. See rule 451.

RULE 445.—Miscellaneous Proceedings in an Action—Motions and Other Applications—When Guardian to be Notified.

1902 Rule 431; 1905 Ontario Rule 359; 1913 Ontario Rule 224 (part).

The new Ontario Rule is made to apply to lunatics also.

RULE 446.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Case of All Proper Parties Not Having Been Served.

1902 Rule 432; 1905 Ontario Rule 360; 1913 Ontario Rule 214.

RULE 447.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Adjournment.

1902 Rule 434; no Ontario counterpart.

RULE 448.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Serving Notice of Motion on Defendant When No Defence Was Filed.

1902 Rule 435; no Ontario counterpart.

RULE 449.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Serving Notice of Motion with Statement of Claim.

1902 Rule 436; 1905 Ontario Rule 361. The 1913 Ontario revision drops this rule.

RULE 450.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Irregularity to be Clearly Specified in Notice.

1902 Rule 437; 1905 Ontario Rule 362; 1913 Ontario Rule 219.

RULE 451.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Ex Parte Orders May be Moved Against.

1902 Rule 438; 1905 Ontario Rule 358; 1913 Ontario Rule 217.

An objection that a motion under this rule was not made within the time limited for it to be made (4 days), will not be given effect to if no right of the objecting party has been affected (rule 363). Swanson v. McArthur, 23 M.R. 84, 3 W.W.R. 381.

In an action brought against M. and E. as co-defendants, E. moved, on notice to the plaintiff only to strike out its name as a defendant. The order was made by the Referee. Then A. moved before the Referee to rescind this order, which was done. Held that as to M. it was an ex parte order, and the Referee might rescind his own order under this rule, Swanson v. McArthur, supra. The material in such motions will be strictly scrutinized, Kerr v. Desjarlais, 9 M.R. 278; Macdonald v. Domestic Utilities, 23 M.R. 512.

RULE 452.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Setting Down Motions, etc.

1902 Rule 439; 1905 Ontario Rule 364 (part); 1913 Ontario Rule 234 (6) (part).

Special cases. Rule 463 as to setting down. See also 468. Demurrer, rule 302.

RULE 453.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Mode of Setting Down.

1902 Rule 440; 1905 Ontario Rule 364 part; 1913 Ontario Rule 234 (6) part.

The Ontario Rule has not the last provision.

RULE 454.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Time for Setting Down.

1902 Rule 441. No Ontario counterpart.

RULE 455.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Applications at Chamber—Chamber Business.

1902 Rule 442; 1905 Ontario Rule 366; 1913 Ontario Rule 207.

Matters which may be disposed of by the Referee in Chambers are set out in rule 27 (see notes) and, by Local Judges, in rule 34 (see notes) and see rule 462.

The Ontario Rule (366) also permitted applications to vacate certificates of lis pendens to be disposed of in chambers. The new rule is much wider, permitting mandamus and prohibition applications, etc., to be disposed of in chambers.

Such Other Matters. The following matters amongst others may be disposed of in chambers.

I. Motions on originating notice under rule 928 clauses (c), (d), (f), (g).

II. Partition applications, under rule 794.

III. Appeals from taxing officer, rule 681 and 684.

IV. Appeals from chambers, under rule 679.

V. Appointment of guardian for infant. Rule 281.

VI. Extending time for service of statement of claim. Rule 176.

VII. Applications for leave to amend. Rule 351.

VIII. Application for order for issue of subpoena D.T. under rule 471.

IX. Inspection of documents under rule 435.

X. Setting aside fraudulent conveyances under rule 740.

XI. Sale of judgment creditor's interest in lands under rule 741.

XII. Motions for judgment. Rule 625.

XIII. Motions for judgment in mortgage actions where infants are parties, under rule 616.

XIV. Declarations of lunacy under the Lunacy Act.

XV. Interpleader motions under rule 903.

XVI. The appointment of an administrator, pendente lite, Tellier v. Schilemans, 16 M.R. 430.

XVII. Attaching orders and writs of habeas corpus against sheriffs, rule 734.

The Referee in Chambers has no jurisdiction to entertain applications respecting matters set out in Rule 455 (a) (b) [Rule 27 (g)]; 455 (c) [unless unopposed (Rule 27) (c)]; 455 (e) in certain cases [Rule 27 (h)]; or matters set out under headings I, II, III, [See rule 27 (b), (k)]; IV (Rule 27 b); V (Rule 27 (g)); IX, XIII (Rule 27 (g)); XIV (Rule 27 (e)]; XV [Rule (27r)], and XVII (Rule 734) or XVI above. In the other matters the Referee would seem to have jurisdiction.

Chambers. Monday and Thursdays. Rule 166. As to adjournment from Court to Chambers and vice versa, rule 461.

A motion for prohibition may not be entertained in Chambers, Re Landsborough, 21 M.R. 708. A writ of certiorari may be ordered by a Judge in Chambers in certain cases, Re Hunter, 16 M.R. 489.

A motion for stay of proceedings under the Arbitration Act is properly returnable before the Referee in Chambers, Northern Electric v. City of Winnipeg, 23 W.L.R. 805.

RULE 456.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—MOTIONS AND OTHER APPLICATIONS—APPLICATIONS AT CHAMBERS—SIGNATURES TO ORDERS MADE BY JUDGE IN CHAMBERS.

1902 Rule 443; 1905 Ontario Rule 633 part; 1913 revision drops this rule.

RULE 457.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—MOTIONS AND OTHER APPLICATIONS AT CHAMBERS—SIGNATURES TO ORDERS MADE BY JUDGE IN CHAMBERS.

1902 Rule 444 (as framed by 10 Ed. VII., c. 17, s. 8); 1905 Ontario Rule 634 (2); 1913 Ontario Rule 531 (3).

As to signature of orders by Referee, see rule 31.

See rule 642 and notes as to form, variation, entry, etc.

RULE 458.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Applications at Chambers—Entry of Certain Orders.

1902 Rule 445. Compare 1905 Ontario Rule 636 and 1913 Ontario Rule 516; rule 656 is similar.

RULE 459.—Miscellaneous Proceedings in an Action—Motions and Other Applications in an Action—Applications at Chambers—Certain Documents Filed upon Motion—Prima Facie Correct.

1902 Rule 446. No Ontario counterpart.

RULE 460.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Applications at Chambers—Taking Accounts in Chambers.

1902 Rule 447. No Ontario counterpart.

RULE 461.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Applications at Chambers—Adjournments from Court to Chambers and Vice Versa.

1902 Rule 448; 1905 Ontario Rule 367; 1913 Ontario Rule 223 (1).

As to reference of a matter by a Judge to the Referee and vice versa, see rules 31 and 32.

RULE 462.—Miscellaneous Proceedings in an Action—Motions and Other Applications—Applications at Chambers—Judge in Chambers May Exercise Powers of Court and also Powers of Master.

1902 Rule 449; 1905 Ontario Rule 368. See 1913 Ontario Rule 205.

This rule is limited by the preceding rules: re Landsborough, 21 M.R. 713.

Considered and interpreted by Perdue, J., to mean that this rule does not enable a Judge in Chambers to do anything he could not have done before the passing of the act,—in Walker v. Robinson, 1 W.L.R. 181.

RULE 463.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — SPECIAL CASES.

1902 Rule 452 part; 1902 Rule 372 (1); 1913 Ontario Rule 126 part.

As to form, rule 371.

As to infants, the Act, sec. 21, and rule 468.

Setting down. Semble it is sufficient to set it down one day before the day of hearing. Rule 452 (In Ontario 6 clear days' notice must be given). Copies must be left for the Judges, rule 467.

RULE 464.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — SPECIAL CASES—AGREEMENT BETWEEN PARTIES.

1902 Rule 452 (a); 1905 Rule 372 (2); 1913 Ontario Rule 126 part.

RULE 465.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — SPECIAL CASES—HEARING.

1902 Rule 452 (b); 1905 Ontario Rule 372 (3); 1913 Ontario Rule 126 (2).

RULE 466.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — SPECIAL *Cases*—PRELIMINARY QUESTION OF LAW.

1902 Rule 453; 1905 Ontario Rule 373. The 1913 revision drops this rule.

See notes to rules 302 (c), 344 and 567.

"It was held by Mr. Justice Perdue in Gardiner v. Bickley, 15 M.R. 354, that such an order (i.e. under this rrle) should not be made unless the determination of the question of law so raised would dispose of the action or at least decide some important principle involved in the action. The same rule ought to apply where there is a demurrer by one out of several defendants," per Mathers, C.J., K.B., Arenowski v. Veitch, 23 M.R. 755.

Under this rule it is only in respect of some question of law which is fundamental or goes to the root of the cause of action or defence set up that there should be a separate argument before the trial. As to all other matters in the pleadings which may be objectionable, an application in Chambers under rule 347 to strike them out is the proper remedy.

Makarsky v. C. P. R., 15 M.R. 53, followed in Gardiner v. Bickley, 15 M.R. 354.

Under the rule the question is largely one of convenience and the Court will not hear and determine piecemeal the various matters involved in a complicated suit, ibid. See the instructive judgment of Perdue, J., in this case citing the above cases and London, Chatham & Dover Ry. v. South Eastern Ry., 53 L.T. 109; Parr v. London Assurance Co., 8 T.L.R. 88, and Scott v. Mercantile Accident Insurance Company, ibid 431.

In an action of deceit it is not sufficient for a plaintiff to allege a misrepresentation by defendant as to something to take place in the future, as, for example that a store to be leased by the plaintiff would be vacant at a certain date. The defendant demurred to such a pleading, and it appearing that the plaintiff's inability to get possession of the store at such date was caused by the defendant having given a prior lease to another party, held that the statement of claim should specifically allege the concealment of such prior lease as the ground of action.

Leave to amend granted plaintiff on terms set out in judgment of the Court, Smythe v. Mills, 17 M.R. 349.

RULE 467.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — SPECIAL CASES—PREPARING AND FILING SPECIAL CASE.

1902 Rule 454; 1905 Ontario Rule 374 and see rule 365; 1913 Ontario revision drops this rule.

RULE 468.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — SPECIAL CASES—SPECIAL CASE WHERE PERSONS UNDER DISABILITY NOT TO BE SET DOWN WITHOUT LEAVE.

1902 Rule 455; 1905 Ontario Rule 375; 1913 Ontario revision drops this rule.

RULE 469.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — SPECIAL CASES—APPLICATION OF PRECEDING RULES.

1902 Rule 456. See 1905 Ontario Rule 372 (1) and 1913 Ontario Rule 126 part.

RULE 470.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—SUBPOENA.

1902 Rule 457; 1905 Ontario Rule 478. Compare 1913 Ontario Rule 273.

Writs of subpoena are not now tested in Manitoba, see forms 86 and 87.

For a form of "teste" see Holmested & Langton, p. 260,and Manitoba form 140 et seq.

For a form of subpoena for compelling attendance on examination for discovery, see Macdonald v. Domestic, etc. Co., 23 M.R. 512.

RULE 471.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—SUBPOENAS, ETC.—ORDER FOR CERTAIN SUBPOENAS DUCES TECUM.

1902 Rule 458; 1905 Ontario Rule 479.

See rule 494 as to proceedings and pleadings.

The Ontario Rule had not the last clause but the practice was the same. The new Ontario Rule 274 abolishes the subpoena in such case and production is obtained on the order itself, making the practice more simple. It also provides that no such order shall be made where a certified copy is admissible.

See the Evidence Act, R.S.M., 1913, cap. 65.

RULE 472.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—SUBPOENAS, ETC.—ANY NUMBER OF NAMES MAY BE INCLUDED IN ONE SUBPOENA.

1902 Rule 459; 1905 Ontario Rule 480; 1913 Ontario Rule 273 part.

RULE 473.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—SUBPOENAS, ETC.—CALLING OPPOSITE PARTY.

1902 Rule 460; 1905 Ontario Rule 481; 1913 Ontario Rule 275.

This rule is similar in form to Ontario Rule 481, before it was amended, and it would seem only applies to a party within the jurisdiction. Holmested, p. 704. The Ontario Rule 481 was amended to apply in the case of a party without the jurisdiction. The new rule (275) again changed the practice and is confined in terms to parties within the jurisdiction, and only requires 5 days' notice. The 8 days must be clear days. Rule 387.

RULE 474.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—SUBPOENAS, ETC.—EXAMINATION OF PARTY AS IF ON CROSS-EXAMINATION — ANSWERS NOT TO CONCLUDE PARTY CALLING WITNESS.

1902 Rule 460 A added by 5-6 Ed. VII., c. 17, s. 2 part, and amended by 9 Ed. VII., c. 14, s. 4. No Ontario counterpart.

Hostile witness may be contradicted by party calling him, Spenard v. Rutledge, 3 W.W.R. 1088; see Gunn v. Vinegratsky, 17 W.L.R. 54, at p. 59.

RULE 475.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—SUBPOENAS, ETC.—BENCH WARRANTS — FORM OF BENCH WARRANTS.

1902 Rule 461; 1905 Ontario Rule 482; 1913 Ontario Rule 276.

RULE 476.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE AT TRIALS AND REFERENCES—EVIDENCE ON TRIAL TO BE VIVA VOCE.

1902 Rule 462; 1905 Ontario Rule 483; 1913 Ontario Rule 269.

Rules 486 and 514 authorize proof of certain facts by affidavit.

RULE 477.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE AT TRIALS AND REFERENCES—TESTIMONY BEFORE MASTER TO BE VIVA VOCE, UNLESS OTHERWISE ORDERED.

1902 Rule 463; 1905 Ontario Rule 484; 1913 Ontario Rule 270.

RULE 478.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE AT TRIALS AND REFERENCES—DEPOSITIONS.

1902 Rule 464; 1905 Ontario Rule 485 (1); 1913 Ontario Rule 271.

This rule permits examinations de bene esse. Re Dunsford, 9 P.R. 172 and see rule 500 and notes.

Semble the order should not be made ex parte, Holmes v. C.P.R., 5 M.R. 346, even where witness leaving jurisdiction at once, ibid, sed quaere and see p. 709 Holmested & Langton. See notes to rule 498.

RULE 479.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—EVIDENCE AT TRIALS AND REFERENCES—AFFIDAVITS MAY BE USED BY CONSENT OR BY LEAVE.

1902 Rule 465; no Ontario counterpart. The practice is the same and compare Ontario Rule 269. See rules 480 and 481.

Agency allowed to be proved by affidavit in an action for agent's commission in Bell v. Rokeby, 1 W.L.R. 124.

RULE 480.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—EVIDENCE AT TRIALS AND REFERENCES—TIME PLAINTIFF TO FILE AFFIDAVIT EVIDENCE.

1902 Rule 466. This and the four following rules have no Ontario counterparts and must be read with rule 479 with which they form a code. See notes to rule 479.

RULE 481.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—EVIDENCE AT TRIALS AND REFERENCES—TIME DEFENDANT TO FILE AFFIDAVIT EVIDENCE.

1902 Rule 467. See notes to rules 479 and 480.

RULE 482.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—EVIDENCE AT TRIALS AND REFERENCES—TIME PLAINTIFF TO FILE AFFIDAVITS IN REPLY.

1902 Rule 468. See notes to rules 479-480.

RULE 483.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—EVIDENCE AT TRIALS AND REFERENCES—CROSS-EXAMINATION ON AFFIDAVIT EVIDENCE.

1902 Rule 469. See notes to rules 479 and 480.

RULE 484.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE AT TRIALS AND REFERENCES—COMPELLING ATTENDANCE OF DEPONENT.

1902 Rule 470. See notes to rules 479 and 480.

RULE 485.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—EVIDENCE AT TRIALS AND REFERENCES—EVIDENCE IN CHIEF IN MITIGATION OF DAMAGES IN LIBEL AND SLANDER WHEN ADMISSIBLE.

1902 Rule 471; 1905 Ontario Rule 488; 1913 Ontario Rule 158.

RULE 486.—Miscellaneous Proceedings in an Action—Evidence—Evidence at Trials and References—Evidence of Service of Notice to Produce.

1902 Rule 472; 1905 Ontario Rule 487; 1913 Ontario Rule 272.

The new Ontario Rule allows proof by admission also.

RULE 487.—Miscellaneous Proceedings in an Action—Evidence — Evidence on Motions — Evidence on Motion or Petition.

1902 Rule 473; 1905 Ontario Rule 489; 1913 Ontario Rule 226.

For requirements of affidavits, see rules 526 et seq.

Upon an application for a declaration of lunacy this rule applies. Re Bulger, 21 M.R. 702.

Rule 536 requires the affidavit to be filed before the notice of motion is served.

RULE 488.—Miscellaneous Proceedings in an Action—Evidence — Evidence on Motions — Cross-examination on Affidavits.

1902 Rule 474; 1905 Ontario Rule 490 and 492 (part); 1913 Ontario Rule 227.

As to affidavits on production, see rule 398 and notes.

As to affidavit evidence, rule 483.

Required to attend, rules 400, 401.

Semble a motion for prohibition is not "an action or proceeding" within this rule, and an affiant who has made an affidavit on such application is not subject to examination, re Buchanan, 23 M.R. 943.

RULE 489.—Miscellaneous Proceedings in an Action—Evidence—Evidence on Motions—Procuring Attendance of Witnesses for Examination on Motions.

1902 Rule 475; 1905 Ontario Rule 491 and 492 part; 1913 Ontario Rule 228.

Securing attendance, rule 400, 401.

As to scope of the examination under this rule and what questions are revelant, see Rickart v. Britton Mfg. Co., 3 O.W.N. 1272.

RULE 490.—Miscellaneous Proceedings in an Action—Evidence—Evidence on Motions—Orders for Production of Documents or Attendance of Witnesses upon Hearing of Motion.

1902 Rule 476; 1905 Ontario Rule 493; 1913 Ontario Rule 229.

RULE 491.—Miscellaneous Proceedings in an Action—Evidence—Evidence on Motions—Power by Order to Compel Attendance of Witness or Production of Documents.

1902 Rule 477. See 1905 Ontario Rule 493 and 1913 Ontario Rule 229.

The Ontario Rules have no counterpart of this rule, the same result being obtained under the rule corresponding to the preceding rule.

RULE 492.—Miscellaneous Proceedings in an Action—Evidence—Evidence on Motions—Disobedience to Order to be a Contempt of Court.

1902 Rule 478. The Ontario Rules have no counterpart to this rule other than the general rules 227 and 228 (see rules 488 and 489 above).

RULE 493.—Miscellaneous Proceedings in an Action—Evidence—Evidence on Motions—Examination of Prisoners.

1902 Rule 479; 1905 Ontario Rule 495; 1913 Ontario Rule 230.

RULE 494.—Miscellaneous Proceedings in an Action—Evidence—Evidence on Motions—Certified Copies of Proceedings as Evidence.

1902 Rule 480; 1905 Ontario Rule 496. The 1913 Ontario revision drops this rule but see 1913 Ontario Rule 274.

See rules 380-382.

See notes to rule 471.

RULE 495.—Miscellaneous Proceedings in an Action—Evidence—Evidence on Motions—Default in Paying Money into Bank, How Proved.

1902 Rule 481; 1905 Ontario Rule 497; 1913 Ontario Rule 231.

On application for a final order of foreclosure or sale the plaintiff's affidavit of default is also required. See also rule 252.

RULE 496.—Miscellaneous Proceedings in an Action—Evidence—Leave to Perfect Defective Material upon Payment of Costs.

1902 Rule 426. No Ontario counterpart, but see rules 362 and notes.

RULE 497.—Miscellaneous Proceedings in an Action—Evidence—Leave to Perfect Defective or Insufficient Material upon which Rule or Order Obtained.

1902 Rule 427. No Ontario counterpart, but see rules 362 and notes.

RULE 498.—Miscellaneous Proceedings in an Action—Evidence—Commissions to Examine Witnesses—Commission to Examine Party Resident Out of Manitoba.

1902 Rule 483; 1905 Ontario Rule 499 (1); 1913 Ontario Rule 277.

The new Ontario Rule applies where an order under the rule corresponding to rule 478 is insufficient.

The proviso as to good faith, etc., has been dropped from the Ontario Rule (Holmested 718), although the practice has not been altered.

What must be shown on application, Murray v. Plummer, 24, W.L.R. 371 (Sask.).

There is no provision in these rules or in the form (88) for taking commission evidence in shorthand—although there is in Ontario (rule 285). Quaere whether rules 415-416 apply to admit of this.

The plaintiff's right to be examined on commission is being more sparingly granted. McGowan v. Hunter, 3 W.W.R. 860; Park v. Schneider, 22 W.L.R. 70. (Alta.)

As to the Master's power to order, in respect of matters in his office, see rule 502.

On an application for a commission it is not necessary to show the nature of the evidence or the facts intended to be proved, Smith v. Murray, 20 W.L.R. 9.

A commission to take the evidence of the plaintiff's manager in Toronto was refused, although he was a material witness, and his absence from Toronto would entail great loss to the business and expense, the defendants having the right to cross-examine and test the demeanour of the witness. Toronto Mfg. Co. v. Ideal House Furnishers, 20 M.R., 17 W.L.R 621; Canadian R.W., etc., Co. v. Kelly, 17 M.R. 645, 8 W.L.R. 738. Special circumstances must be shown, Richard Beliveau Co. v. Tyerman, 16 W.L.R. 492 (Sask.).

In aid of a commission to take evidence letters rogatory formerly issued petitioning the Court of the place of domicile of the witness to enforce attendance when necessary.

The practice of issuing letters rogatory, or letters of request by which the Superior Courts of one power request the assistance of Superior Courts of another power in the taking of evidence in the country where the second power is paramount, for the use in the courts of the first power, has arisen gradually, and is one of the forms by which the comity between nations finds expression.

"The basis of the arrangements for letters rogatory lies in reciprocal treatment between the courts of civilized states, and the changes of method to which they have from time to time been subjected until the present uniform international practice was established within the last few years, reflect to some extent the political as well as juridical changes which have taken place in foreign countries and British Dominions. The inner history of the origin and the development of the present practice is not accessible to us, being contained in the records of diplomatic correspondence by the foreign office." "The British Governments have never raised any objection to foreigners being commissioned by the Courts of their own country to enter British territory and obtain such evidence as they might require for the purpose of civil proceedings, and this is still the practice. This freedom, which has always been accorded by the Dominion Government to friendly powers, was also accorded by most foreign governments to British subjects until about 1880. During the four years succeeding 1880,

an exchange of diplomatic representations took place between the different powers, with the result that in most cases, where evidence is desired to be taken for British tribunals in foreign countries, commissions rogatoires are issued in the place of the ordinary commission to take evidence. Commissions to take evidence abroad are now only issued by the British Courts to other British Dominions, or to the United States of America, where the commission to take evidence is preferred to the letters of request."

Where, however, it is desired to obtain the assistance of the courts of any of the States of the United States of America, to compel the attendance of a witness named in a commission to take evidence, the Superior Court of the British tribunal which desires to obtain the evidence of the foreign witness, besides issuing its commission to a private individual or to a member of the judiciary of the foreign country, issues in support thereof letters rogatory, by which the British Court prays that the Superior Court of the jurisdiction in which the witness resides will, if he should refuse to attend on the notice of the commissioner, issue its subpoena and compel the attendance of the witness before the commissioner.

"In aid therefore, of a commissioner, where the assistance of a foreign court is necessary to compel the attendance of a party for examination for discovery, or of a witness before the commissioner, letters rogatory may be ordered to issue." Holmested & Langton, Ontario Judicature Act, 3rd edition, 1905, pages 721 and 722. The above digest of the law is taken from the Encyclopedia of Laws of England, Vol. 5, sub. tit. Evidence for Foreign and Colonial Tribunals, and Vol. 8, sub. tit. Letters of Request.

The statute of the Imperial Parliament, known as the Foreign Tribunals Act of 1856, and being ch. 113 of 19-20 Victoria, provides for the giving of the assistance of the British Courts when prayed to do so by leters of request to a commissioner appointed by any foreign tribunal. This Act is in force in the Dominion of Canada, and is contained in the Dominion Statutes for 1906, and is in force in the different Provinces of the Dominion.

The effects of this Imperial statute have also been incorporated in the Rules of Practice of the Court of King's Bench for Manitoba, by Act of the Provincial Legislature, being ch. 46 of the Revised Statutes of Manitoba of 1913. The rules

being under the head of "obtaining evidence for foreign tribunals," and being rules 519 to 525, and see notes to these. The Province of Manitoba, therefore, extends to the different foreign States the privilege of the assistance of the Courts of the Province to compel the attendance of any witness whose evidence is sought on commission and it is in that light that the Courts of the foreign States are requested to extend the same privileges to Commissioners appointed by the Courts of the Province of Manitoba. This latter practice has now crystallized in the rule passed 25th February, 1914, as Number 500A, which apparently supersedes the former practice of a commission with letters rogatory in aid.

RULE 499.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—EFFECT OF REFUSAL TO ATTEND.

1902 Rule 484; 1905 Ontario Rule 500; 1913 Ontario Rule 278.

RULE 500.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES — COMMISSIONS TO EXAMINE AGED OR INFIRM PERSONS OR PERSONS ABOUT TO LEAVE MANITOBA.

1902 Rule 485. This rule has no Ontario counterpart, except in so far as rule 277 (M.R. 498) also seems to allow the examination of such or any party "who is residing without the limits thereof," i.e., of the jurisdiction.

See rule 478 as to examination de bene esse under which an order only is necessary; under this rule an order and a commission are required.

This rule was adopted 25th February, 1914:—

500A. If, in any case the court or a judge shall so order, there shall be issued a request to examine witnesses in lieu of a commission, the forms 161 and 162 in the schedule hereto, and hereby added to the schedule of forms appended to the Rules of Court, shall be used for such order and request respectively, with such variation as circumstances may require

Schedule to Rule 500A.

No. 161.—Order for Issue of Request for Commission, rule No. 500A.

In the King's Bench.

Between:

A. B., plaintiff, and

C. D., defendant.

Upon hearing

and upon reading the affidavit of .....,

filed the ..... day of ....., 19...

and

It is ordered that a letter of request do issue, directed to the proper tribunal, for the examination of the following witnesses, that is to say:

E. F. of

G. H. of

and I. J. of

And it is ordered that the depositions taken pursuant thereto, when received, be filed with of the Court of King's Bench for Manitoba, and be given in evidence on the trial of this action, saving all just exceptions.

And it is further ordered that the trial of this action be stayed until the said depositions have been filed.

Dated this ..... day of ....., 19

No. 162.—Request for Commission. Rule No. 500A.

(Heading, To the President and Judges of, etc., etc., as the case may be.)

WHEREAS an action is now pending in the Court of King's Bench for Manitoba, in which A.B. is plaintiff and C.D. is defendant. And in the said action the plaintiff claims (state briefly the cause of action).

AND WHEREAS it has been represented to the said Court that it is necessary, for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E. F. of

G. H. of

and I. J. of

And it appearing that such witnesses are resident within the jurisdiction of your Honourable Court.

Now I, , as the Chief Justice of the Court of King's Bench for Manitoba, have the honor to request, and do hereby request, that for the reasons aforesaid, and for the

assistance of the Court of King's Bench for Manitoba, you as president and judges of the said or some one or more of you, will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you, or such other person, as according to the procedure of your court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or viva voce) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honor to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses, through ..... for transmission to ..... of the Court of King's Bench for Manitoba.

Witness the Honourable Chief Justice of the Court of King's Bench for Manitoba, the ..... day of ..... in the year of Our Lord one thousand nine hundred and

RULE 501.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—NOTICE OF COMMISSION.

1902 Rule 486. Compare 1905 Ontario Rule 504; 1913 Ontario Rule 280.

RULE 502.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES — COMMISSIONS ON MASTER'S CERTIFICATE.

1902 Rule 487; 1905 Ontario Rule 499 (2); 1913 Ontario revision drops this rule. See Ontario Rule 277. See rule 502.

Semble the certificate is obtained by application on notice. See rule 508.

RULE 503.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—NOTICE OF MOTION FOR COMMISSION.

1902 Rule 488; 1905 Ontario Rule 501 part; 1913 Ontario Rule 279 part.

RULE 504.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—COMMISSION, TO WHOM TO BE DIRECTED.

1902 Rule 489; 1905 Ontario Rule 501 part; 1913 Ontario revision drops this provision.

RULE 505.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—PARTICULARS TO BE STATED IN ORDER FOR COMMISSION.

1902 Rule 490; 1905 Ontario Rule 501 (part) 502 part; 1913 Ontario Rule 280 part.

"Whether notice is to be given" only if required under rule 508. The Ontario Rule requires notice to be given unless otherwise ordered.

RULE 506.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—MODE OF EXAMINING WITNESSES.

1902 Rule 491; 1905 Ontario Rule 506 and 502 part; 1913 Ontario Rule 280 part.

RULE 507.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—EXAMINATIONS ON WRITTEN INTERROGATORIES.

1902 Rule 492; 1905 Ontario revision 503; 1913 Ontario revision 281.

RULE 508.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—EXAMINATION EX PARTE.

1902 Rule 493. See 1905 Ontario Rules 502 and 504; 1913 Ontario Rule 281 (2). See notes to rule 509.

RULE 509.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—NOTICE OF EXECUTION OF COMMISSION.

1902 Rule 494; 1905 Ontario Rule 504; 1913 Ontario Rule 280 part.

The four preceding rules and this rule are the same in effect as the Ontario Rules now simplified into rules 280 and 281.

RULE 510.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSION TO EXAMINE WITNESSES—COPIES OF DOCUMENTS PRODUCED AS EVIDENCE.

1902 Rule 495; 1905 Ontario Rule 507; 1913 Ontario Rule 284.

RULE 511.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—WITNESSES TO BE EXAMINED UNDER OATH.

1902 Rule 496; 1905 Ontario Rule 505; 1913 Ontario Rule 282.

RULE 512.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—INTERPRETER.

1902 Rule 497; 1905 Ontario Rule 507; 1913 Ontario Rule 283.

RULE 513.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—DEPOSITIONS TO BE SIGNED.

1902 Rule 498; 1905 Ontario Rule 511 (1); 1913 Ontario Rule 286 (1).

RULE 514.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—RETURN OF COMMISSION—USE OF DEPOSITIONS AS EVIDENCE AT TRIAL.

1902 Rule 499; 1905 Ontario Rule 512; 1913 Ontario Rule 287.

The opposite party may use these depositions if duly returned, Richardson v. McMillan, 18 M.R. 359.

RULE 515.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE — COMMISSIONS TO EXAMINE WITNESSES — PARTIES JOINING IN COMMISSION.

1902 Rule 500; 1905 Ontario Rule 513; 1913 Ontario Rule 288 part.

RULE 516.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—ORDER FOR COMMISSION TO BE READ AS INCLUDING ABOVE PARTICULARS.

1902 Rule 501; 1905 Ontario Rule 514; 1913 Ontario Rule 290.

RULE 517.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—OBJECTIONS TO VALIDITY OF COMMISSION TO BE BY MOTION TO SUPPRESS.

1902 Rule 502. This rule has no Ontario counterpart. See Jackson v. Hughes. See rule 518.

There is no procedure by motion to suppress in Ontario, Jackson v. Hughes, 16 O.W.R. 412.

The time for the return of a commission is the date on or before which it must be executed and dispatched by the commissioner, Jackson v. Hughes, 16 O.W.R. 412.

RULE 518.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—COMMISSIONS TO EXAMINE WITNESSES—OBJECTIONS TO LEADING QUESTIONS.

1902 Rule 503; no Ontario counterpart.

RULE 519.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—OBTAINING ENTRANCE FOR FOREIGN TRIBUNALS—APPLICATION.

1902 Rule 503 A (added by 7-8 Ed. VII., c. 11, s. 1 part). No Ontario counterpart. But see 1913 Ontario Rule 31. See Holmested & Langton, p. 722. See rules 500 A, and notes to rule 498. See the Manitoba Evidence Act, R.S.M. 1913, cap. 65, and Re Alberta and Great Waterways R. W. Co., 20 M.R. 697, 18 W.L.R. 15, holding the section of the Act dealing with the subject, intra vires.

RULE 520.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—OBTAINING EVIDENCE FOR FOREIGN TRIBUNALS — FORM OF ORDER.

1902 Rule 503 B. See notes to rule 519.

RULE 521.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—OBTAINING EVIDENCE FOR FOREIGN TRIBUNALS — WHO MAY TAKE THE EVIDENCE.

1902 Rule 503 (c). Rule 519 and notes.

RULE 522.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—OBTAINING EVIDENCE FOR FOREIGN TRIBUNALS — TRANSMISSION OF THE EVIDENCE WHEN TAKEN.

1902 Rule 503 (D). Rule 519 and notes.

RULE 523.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—OBTAINING EVIDENCE FOR FOREIGN TRIBUNALS — MODE OF CONDUCTING THE EXAMINATION OF THE WITNESSES.

1902 Rule 503 E. Rule 519 and notes.

RULE 524.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—OBTAINING EVIDENCE FOR FOREIGN TRIBUNALS—IN CASE OF REQUESTS FROM OTHER BRITISH TRIBUNALS.

1902 Rule 503 F. Rules 519 and 500 A and notes.

RULE 525.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—OBTAINING EVIDENCE FOR FOREIGN TRIBUNALS — DISPENSING WITH APPLICATIONS TO THE COURT BY ANY OF THE PARTIES.

1902 Rule 503 G. Rule 519 and notes.

RULE 526.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—AFFIDAVITS—FORM OF AFFIDAVITS.

1902 Rule 504; 1905 Ontario Rule 516; 1913 Ontario Rule 291.

RULE 527.—Miscellaneous Proceedings in an Action—Evidence—Affidavits—Form of Affidavits Made by Two or More Deponents.

1902 Rule 505; 1905 Ontario Rule 517 (1); 1913 Ontario Rule 292.

RULE 528.—Miscellaneous Proceedings in an Action—Evidence—Affidavits—Jurat.

1902 Rule 506; 1905 Ontario Rule 517 (2); 1913 Ontario revision drops the rule but retains the form as No. 17. Alterations in jurat, rule 531.

In cases where affiant illiterate, rule 532.

Not to be sworn before solicitor of party, rule 533.

RULE 529.—Miscellaneous Proceedings in an Action—Evidence—Affidavits—Affidavits, How Framed.

1902 Rule 507; 1905 Ontario Rule 518; 1913 Ontario Rule 293.

Exhibits. The Ontario Rules provide that exhibits, unless annexed to the affidavit, need not be filed.

An affidavit failing to set out the ground of belief is "irregular and inadmissible." In re Young (1900), 2 Ch. 753, but see Niemenen v. Dome Mines, 4 O.W.N. 301. Thompson v. Baldry, 22 M.R. 77. Motions under rules 740 and 741 are final motions. Canada Supply Co. v. Robb, 14 W.L.R. 306; Interlocutory Motion—Langevin v. Hebert, 4 W.L.R. 367 (Y.T.)

RULE 530.—Miscellaneous Proceedings in an Action—Evidence—Affidavits—Affidavits by Officers of Corporations.

1902 Rule 508; 1905 Ontario Rule 519; 1913 Ontario Rule 294.

RULE 531.—Miscellaneous Proceedings in an Action—Evidence — Affidavits — Alterations in Affidavits, How Verified.

1902 Rule 509; 1905 Ontario Rule 520; 1913 Ontario Rule 295.

RULE 532.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—AFFIDAVITS—AFFIDAVITS BY ILLITERATE PERSON.

1902 Rule 510; 1905 Ontario Rule 521; 1913 Ontario Rule 296.

RULE 533.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—AFFIDAVITS—AFFIDAVITS NOT TO BE SWORN BEFORE SOLICITOR OF PARTY.

1902 Rule 511; 1905 Ontario Rule 522; 1913 Ontario Rule 297.

The Ontario Rule excepts affidavits to be used on an application to arrest. See rule 811. See Gougeon v. Thompkins, 1 W.L.R. 114, holding similar rule to this peremptory.

RULE 534.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—AFFIDAVITS—FILING FEES.

1902 Rule 512; 1905 Ontario Rule 523 & 524; 1913 Ontario Rule 298 part.

Non-compliance the grounds of a valid objection to a motion, Peat v. Saxon, 22 W.L.R. 736 (Sask.).

RULE 535.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—AFFIDAVITS—FILING AFFIDAVITS.

1902 Rule 513; 1905 Ontario Rule 525.

See 1913 Ontario Rule 234.

RULE 536.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—EVIDENCE—AFFIDAVITS—TIME FOR FILING.

1902 Rule 514; 1905 Ontario Rule 524; 1913 Ontario Rule 298.

The Court has no power to waive compliance with this rule, Falconbridge, C.J. K.B. (Ont.); re Victor Varnish, Oct 1907, unreported, but noted in Parker & Clarke on Company Law, 1909 Edn., p. 364.

An affidavit filed after is irregular and inadmissible. Nieminen v. Dome Mines, 4 O.W.N. 301, where relief given under rule 312 (Manitoba Rule 365).

In case of motions under rule 625, the affidavit must be served with the notice of motion.

RULE 537.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—ADMISSIONS—CALLING FOR ADMISSIONS BY OPPOSITE PARTY.

1902 Rule 515 as framed by 7-8 Ed. VII., c. 12, s. 7. 1905 Ontario Rule 527 (part).

1913 Ontario revision drops this rule.

The Ontario Rule only went as to documents.

Secondary evidence by certified copies, copies, etc., R.S.M. 1913, cap. 65.

Failure to admit—costs occasioned by—rule 948.

See rule 586 as to admissions by counsel at trial.

RULE 538.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—ADMISSIONS—FORM OF NOTICE.

1902 Rule 516; 1905 Ontario Rule 527 part; 1913 Ontario revision drops this rule.

RULE 539.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—ADMISSIONS—PROOF OF ADMISSIONS.

1902 Rule 517; 1905 Ontario Rule 528; 1913 Ontario revision drops this rule.

RULE 540.—MISCELLANOEUS PROCEEDINGS IN AN ACTION — TRANSMISSION OF INTEREST PENDENTE LITE—ACTION NOT TO ABATE BY REASON OF MARRIAGE, ETC.

1902 Rule 518; 1905 Ontario Rule 394; 1913 Ontario Rule 304 part.

No order necessary if the cause of action survives in some person already before the Court. Holmested, p. 605.

Defendant may require plaintiff to proceed, rule 549.

Where an infant plaintiff dies after judgment, but before judgment on appeal, no order is necessary; a direction that the certificate of judgment be entered as of the date when the argument is concluded is proper, Gunn v. Harper, 3 O.L.R. 693; Young v. Town of Gravenhurst, 3 O.W.N. 10. See rule 646.

Execution, Rule 710 by leave of court.

RULE 541.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRANSMISSION OF INTEREST PENDENTE LITE—ASSIGNMENT PENDENTE LITE.

1902 Rule 519; 1905 Ontario Rule 395; 1913 Ontario Rule 300.

Rule 542 must be followed to give effect to this rule.

RULE 542.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRANSMISSION OF INTEREST PENDENTE LITE—ORDER TO ADD PARTIES ON CHANGE OF INTEREST.

1902 Rule 520; 1905 Ontario Rule 396; 1913 Ontario Rule 301.

Praecipe Order.

Service, rule 543; out of Manitoba, rule 547; by publication, rule 548.

Motion to discharge or vary within 14 days, rule 544 and see 546. The defendant may not apply, rule 549 and notes, but see rule 550.

Vacation not computed. Rule 395 (b).

RULE 543.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRANSMISSION OF INTEREST PENDENTE LITE—SERVICE OF SUCH ORDER.

1902 Rule 521; 1905 Ontario Rule 397; 1913 Ontario Rule 302 part.

RULE 544.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRANSMISSION OF INTEREST PENDENTE LITE—APPLICATION TO DISCHARGE ORDER.

1902 Rule 522; 1905 Ontario Rule 398; 1913 Ontario Rule 303.

The new Ontario Rule reduces to 10 days. See rule 546.

RULE 545.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRANSMISSION OF INTEREST PENDENTE LITE—ENDORSEMENT OF SUCH ORDER.

1902 Rule 523; 1905 Ontario Rule 399; 1913 Ontario Rule 302 part.

RULE 546.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRANSMISSION OF INTEREST PENDENTE LITE—APPLICATIONS BY PERSONS UNDER DISABILITY TO DISCHARGE ORDER.

1902 Rule 524; 1905 Ontario Rule 400; 1913 revision drops this rule leaving Rule 303 (544) to govern all cases. See rule 544.

RULE 547.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRANSMISSION OF INTEREST PENDENTE LITE—APPLICATIONS TO DISCHARGE ORDER WHEN SERVED OUT OF MANITOBA.

1902 Rule 525; 1905 Ontario Rule 401. The 1913 Ontario revision drops this and the following rule.

Time to apply, rule 183 and notes.

RULE 548.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRANSMISSION OF INTEREST PENDENTE LITE—APPLICATION TO DISCHARGE IN CASE OF ORDER ALLOWING SERVICE BY PUBLICATION.

1902 Rule 526; 1905 Ontario Rule 402.

RULE 549.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRANSMISSION OF INTEREST PENDENTE LITE — DEFENDANT IN CONTINUED ACTION MAY COMPEL PLAINTIFF TO PROCEED.

1902 Rule 527; 1905 Ontario Rule 403; 1913 Ontario Rule 305.

Semble the action may not be dismissed in the first instance. (Ruling of Mr. Patterson, Referee in Chambers in Siemens v. Angus, unreported, November, 1913). An order limiting the time must be first obtained and "in default (an application) for an order dismissing the action" should be made. See rule 404.

RULE 550.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRANSMISSION OF INTEREST PENDENTE LITE—COSTS.

1902 Rule 528; 1905 Ontario Rule 404. Compare 1913 Ontario Rule 306.

Semble the defendant may continue under these rules, but as plaintiff, and the representatives of the deceased plaintiff as defendants, Holmested, p. 616.

RULE 551.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRANSMISSION OF INTEREST PENDENTE LITE—WHEN EXECUTORS OF DECEASED DEFENDANT MAY BE SUED.

1902 Rule 529. No Ontario counterpart.

RULE 552.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PAYMENT INTO COURT IN SATISFACTION—WHEN DEFENDANT MAY PAY MONEY INTO COURT IN SATISFACTION.

1902 Rule 530; 1905 Ontario Rule 419, 420; 1913 Ontario Rule 307, 308.

Rule 133 et seq. govern the practice in cases of payment into Court.

Defendant must plead payment in, rule 553.

Plaintiff can only take out in satisfaction of very cause for which paid in, rule 554. Effect, rule 556.

Plaintiff must elect before action at issue, rule 555.

Plaintiff may pay in, in respect of a counterclaim, rule 558.

Plea of tender must be followed by payment into Court, rule 559. If paid in before defence under the Ontario Rules, notice of payment must be given, rule 311. There is no Manitoba counterpart, although such a rule might, it is submitted, save the costs of a statement of defence, but as to certain claims see rule 301 (c). See notes to rule 555.

RULE 553.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PAYMENT INTO COURT IN SATISFACTION—SUCH PAYMENT TO BE SIGNIFIED IN DEFENCE.

1902 Rule 531; 1902 Ontario Rule 421; 1913 Ontario Rule 310.

Receipt on pleading, rule 149.

RULE 554.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PAYMENT INTO COURT IN SATISFACTION—HOW PLAINTIFF MAY TAKE MONEY OUT.

1902 Rule 532; 1902 Ontario Rule 423 (1); 1913 Ontario Rule 312.

See note to rule 556 as to cases where tender is pleaded. Satisfaction Piece. See form 155 and rule 669.

RULE 555.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PAYMENT INTO COURT IN SATISFACTION—TIME FOR ELECTION.

1902 Rule 533; 1902 Ontario Rule 424; 1913 Ontario Rule 313.

The Ontario Rules require election within 4 days if the money is paid in before defence, otherwise before replying.

Issue. See rule 320.

RULE 556.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PAYMENT INTO COURT IN SATISFACTION—TAXING COSTS WHEN PLAINTIFF TAKES MONEY OUT.

1902 Rule 534; 1905 Ontario Rule 425; 1913 Ontario Rule 314.

The new Ontario Rule only applies where tender before action is not alleged; where it is, under new Ontario Rule 315 the defendant may tax his costs and their amount will be paid out to him from the amount paid into Court. There is no Manitoba counterpart of this rule (315), but see American Aristotype Co. v. Eakins, 7 O.L.R. 127, to give effect to which Ontario Rule 315 was probably passed. This case was considered by Mathers, J., in Nixon v. Betsworth, 2 W.L.R. 570, 16 M.R. 1, who held that while the defence of tender remained undisposed of, neither party had the right to tax his costs against the other.

Mode of taking out, rule 140.

RULE 557.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PAYMENT INTO COURT IN SATISFACTION—CASE OF MONEY PAID INTO COURT IN CONSOLIDATED ACTIONS.

1902 Rule 535; 1905 Ontario Rule 426; 1913 Ontario revision drops this rule.

The Ontario Rule has after the word "consolidated," the words "and the plaintiff proceeds to the trial of one and fails."

RULE 558.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PAYMENT INTO COURT IN SATISFACTION—WHEN PLAINTIFF MAY PAY IN.

1902 Rule 536; 1905 Ontario Rule 427; 1913 Ontario Rule 317. See rule 312.

RULE 559.—MISCELLANEOUS PROCEEDINGS IN AN ACTION—PAYMENT INTO COURT IN SATISFACTION—TENDER.

1902 Rule 537; 1905 Ontario Rule 428; 1913 Ontario Rule 309.

See notes to rule 552. By taking money out of court the plaintiff does not admit the plea of tender, an issue is raised and the right to tax costs depends upon its disposal, Nixon v. Betsworth, 16 M.R. 1, 2 W.L.R. 570, following American Aristo-

type v. Eakins, supra. Non-payment into court. Semble if the defendant wishes to object for that reason, he must move to strike out the defence on that ground. Horswell v. Campbell, 3 O.W.N. 28.

RULE 560.—Miscellaneous Proceedings in an Action — Discontinuance—Wholly or as to Part of Claim—As to One or More Defendants.

1902 Rule 538; 1905 Ontario Rule 430; 1913 Ontario Rule 321.

In Ontario the time is limited to before statement of defence filed, or after, if no further step taken.

Notice of trial. Rule 566.

Before Notice of Trial is Served. McInnes v. Norquist, 23 M.R. 817.

See rule 301 (e) for a case of discontinuance with costs, and rules 552 and 555.

Withdrawal after entry for trial on consent, Rule 577.

RULE 561.—Miscellaneous Proceedings in an Action—Discontinuance—Withdrawal of Defence or Counterclaim.

1902 Rule 539; 1905 Ontario Rule 431; 1913 Ontario Rule 322.

The new Ontario Rule allows such withdrawal by written notice filed and served; leave is not necessary.

RULE 562.—Miscellaneous Proceedings in an Action—Dismissal of Actions—For Want of Prosecution.

1902 Rule 540; 1905 Ontario Rule 433; 1913 Ontario Rule 325 (1).

Neither this nor any other rule permits the dismissal of an action for failure of the plaintiff to bring on a new trial ordered by the Court of Appeal, yet if there is a lengthy and unexplained delay the Court has inherent jurisdiction to make such an order. Davis v. Wright, 26 W.L.R. 517.

RULE 563.—Miscellaneous Proceedings in an Action — Consolidation of Actions.

1902 Rule 542; 1905 Ontario Rule 435; 1913 Ontario Rule 320.

See rule 245 as to ordering separate issues.

Allowed.

1. Where one plaintiff brings several actions against the same defendant in respect of matters which should have been included in one action, see rule 365.

2. Where the same plaintiff brings several actions against several defendants and the questions in dispute are substantially the same, the Court may stay proceedings in all the other cases if the defendants will undertake to be bound by the judgment in the one action.

3. In such cases a test action may be directed and proceedings stayed in the other actions without binding the defendants in the other actions.

Libel actions. R.S.M. 1913, cap. 113.

4. Where there are several plaintiffs and the same defendants.

Mechanics Lien Action, Olson & Johnson Co. v. McLeod, 25 W.L.R. 472 (Alta).

5. Cross Actions.

As to payment into Court and costs in such actions, rule 557.

RULE 564.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — PLACE OF TRIAL.

1902 Rule 543; 1905 Ontario Rule 529 part; 1913 Ontario Rule 245 part.

Under the Ontario Rule a venue must be laid, in the writ.

The former Rule provided there should be no local venue for trials, considered, First National Bank v. Curry, 16 W. L.R. 102; 20 M.R. 247.

Place of issue of statement of claim, rule 173; transfer of actions brought in wrong district, rule 174.

RULE 565.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—APPLICATION TO CHANGE PLACE OF TRIAL.

1902 Rule 544; 1905 Ontario Rule 529 (d); 1913 Ontario Rule 245 (d).

RULE 566.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—NOTICE OF TRIAL AFTER ACTION AT ISSUE.

1902 Rule 545; 1905 Ontario Rule 530; 1913 Ontario Rule 246.

Form of, rule 572.

Action at issue. At expiration of 10 days from delivery of last pleading, rule 320.

Ten days notice required, rule 573. Entry for trial 575.

Sittings, rule 166. Section 38 of the Act.

One defendant cannot serve notice of trial before the other is served. Sellick v. Selkirk, 22 M.R. 323.

RULE 567.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL — TRIAL OF DIFFERENT QUESTIONS IN DIFFERENT MODES.

1902 Rule 547; 1905 Ontario Rule 531; 1913 Ontario revision drops this rule.

This rule applies to issues of fact. As to preliminary questions of law, rule 466 and notes. Rule 302 (e) as to demurrers.

RULE 568.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—TRIAL BY JURY TO BE BEFORE SINGLE JUDGE, UNLESS OTHERWISE ORDERED.

1902 Rule 548; 1905 Ontario Rule 532. See Judicature Act (Ont.) 1913. Carrying out section 41 of the Act.

As to trial by jury, see sections 49, 50 and 51 of the Act and notes.

RULE 569.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—TRIAL AT BAR.

1902 Rule 549; 1905 Ontario Rule 533; 1913 Ontario revision drops this rule. Before 3 Geo. V., c. 12, s. 3 (Man.) the application was to the Court en banc.

Sittings of Court of Appeal. Court of Appeal Act, Section 10, R.S.M. 1913, cap. 43.

RULE 570.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—TRIAL AT BAR AT INSTANCE OF CROWN.

1902 Rule 550; 1905 Ontario Rule 534; 1913 Ontario revision drops this rule.

RULE 571.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—DAY TO BE FIXED BY COURT FOR TRIAL AT BAR.

1902 Rule 551; 1905 Ontario Rule 535; 1913 Ontario revision drops this rule.

Until amended by 3 Geo. V., c. 12, s. 3, the Court fixed the day of trial.

RULE 572.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—FORM OF NOTICE OF TRIAL.

1902 Rule 552; 1905 Ontario Rule 538 (1); 1913 Ontario Rule 248 part.

See rule 566; must be given before entry; see rule 575.

RULE 573.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—ORDINARY NOTICE 10 DAYS—SHORT NOTICE 5 DAYS.

1902 Rule 553; 1905 Ontario Rule 538 (b); 1913 Ontario Rule 248 part. See rule 566 and notes.

RULE 574.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—NOTICE OF TRIAL AT BAR.

1902 Rule 554; 1905 Ontario Rule 536; 1913 Ontario revision drops the rule.

RULE 575.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—ENTRY FOR TRIAL.

1902 Rule 555; 1905 Ontario Rule 538 (d); 1913 Ontario Rule 248 (b).

RULE 576.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—RECORD.

1902 Rule 556 added by 10 Ed. VII., c. 17, s. 11; 1905 Ontario Rule 539; 1913 Ontario Rule 249.

RULE 577.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—WITHDRAWAL OF RECORD.

1902 Rule 559; 1905 Ontario Rule 543; 1913 Ontario Rule 251.

See rule 560 and notes as to discontinuance.

Semble between the time of service of notice of trial, rule 560, and of entry for trial, an order is required to abandon an action.

RULE 578.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—ACTIONS NOT TRIED.

1902 Rule 560; 1905 Ontario Rule 544; 1913 Ontario Rule 252.

RULE 579.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—NON-APPEARANCE OF DEFENDANT.

1902 Rule 561; 1905 Ontario Rule 545; 1913 Ontario revision drops this rule.

As to setting aside, rule 678.

RULE 580.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—NON-APPEARANCE OF PLAINTIFF.

1902 Rule 562; 1905 Ontario Rule 546; 1913 Ontario Rule 253.

Setting aside, rule 678.

RULE 581.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—SETTING ASIDE JUDGMENT BY DEFAULT AT TRIAL.

1902 Rule 663; 1905 Ontario Rule 778; 1913 Ontario Rule 499.

Where the solicitor for the plaintiff only appears and then withdraws without intimating to the Judge he is doing so, an application under this rule will be refused, Barnes v. Ellis, 26 W.L.R. 187 (Sask.).

Sheahan v. Toronto R.W. Co., 2 O.W.N. 1262.

See also Rule 678 as to setting aside a default judgment.

RULE 582.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—EFFECT OF NON-SUIT.

1902 Rule 665; 1905 Ontario Rule 779; 1913 Ontario revision drops this rule.

RULE 583.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—JUDGMENT OF NON-SUIT WHERE JURY DISAGREE.

1902 Rule 667; 1905 Ontario Rule 780. Compare 1913 Ontario Rule 500. See notes to section 51 of the Act. The new Ontario Rule merely provides for a retrial of the action as directed.

Semble this rule only applies to cases which may properly be withdrawn from the jury, Holmested, p. 1018.

RULE 584.—Miscellaneous Proceedings in an Action — Trial—Witness May be Put Out of Court—Penalty for Returning Without Leave.

1902 Rule 563; 1905 Ontario Rule 547; 1913 Ontario Rule 254.

RULE 585.—Miscellaneous Proceedings in an Action — Trial—Evidence Omitted by Accident or Mistake, How Supplied—Rule Not to Apply to Action for Libel.

1902 Rule 564; 1905 Ontario Rule 549; 1913 Ontario Rule 257.

The new Ontario Rule excepts an "action for defamation."

Further evidence on appeals to Judge in Chambers, rule 680.

This rule is to apply in cases under the Overholding Tenants Act, R.S.M. 1913, cap. 109, s. 14.

RULE 586.—Miscellaneous Proceedings in an Action Trial—Counsel at Trial to Make Admissions—Penalty in Costs for Neglect or Refusal.

7-8 Ed. 7. c. 12, s. 8. No Ontario counterpart.

Penalty for failure to admit. Rule 948.

See rules 537 et seq.

RULE 587.—Miscellaneous Proceedings in an Action — Trial—Costs of Protests, etc., Recoverable.

1902 Rule 565. No Ontario counterpart. See rule 334.

RULE 588.—Miscellaneous Proceedings in an Action — Trial—Assessment of Damages in Respect of Continuing Cause of Action.

1902 Rule 566; 1905 Ontario Rule 552; 1913 Ontario Rule 260.

This rule was applied in Noble v. Rural Municipality of Turtle Mountain, 2 W.L.R. 145; a case of a claim for damages for non-repair of a highway by a land owner suffering special damage.

RULE 589.—Miscellaneous Proceedings in an Action — Trial—Adjournment of Trial.

1902 Rule 567; 1905 Ontario Rule 553. The 1913 Ontario revision drops this rule.

See section 39 of the Act permitting adjournment.

RULE 590.—Miscellaneous Proceedings in an Action — Trial—Judge May Direct Entry of Judgment, Adjourn or Reserve Judgment.

1902 Rule 568; 1905 Ontario Rule 554. The 1913 Ontario revision drops this rule, but see section 45 of the Judicature Act. See section 39 of the Act giving powers with reference to an adjourned cause.

RULE 591.—Miscellaneous Proceedings in an Action — Trial—Exhibits to be Marked.

1902 Rule 569; 1905 Ontario Rule 555; 1913 Ontario Rule 263 part.

RULE 592.—Miscellaneous Proceedings in an Action — Trial—Evidence Oral or Documentary Cannot be Withdrawn Without Leave.

1902 Rule 570. No Ontario counterpart.

RULE 593.—Miscellaneous Proceedings in an Action — Trial—Where Judgment Reserved Exhibits to be Left with Registrar, Aut. Al.

1902 Rule 571; 1905 Ontario Rule 557 part; 1913 Ontario Rule 263 (2).

The Ontario Rules provide for delivering exhibits out without an order after trial, if no appeal.

RULE 594.—Miscellaneous Proceedings in an Action — Trial—Solicitor May be Mulcted in Costs for a Non-Attendance Delaying Trial.

1902 Rule 572. No Ontario counterpart.

RULE 595.—Miscellaneous Proceedings in an Action — Trial—Entry of Findings.

1902 Rule 573; 1905 Ontario Rule 558; 1913 Ontario Rule 264.

Certificates, e.g. under rule 936.

RULE 596.—Miscellaneous Proceedings in an Action — Trial—Certificates to Sign Judgment.

1902 Rule 574; 1905 Ontario Rule 559; 1913 Ontario revision drops this rule.

RULE 597.—Miscellaneous Proceedings in an Action — Trial—Delivery of Record to Solicitor After Judgment.

1902 Rule 575. Compare 1905 Ontario Rule 560. No 1913 rule.

RULE 598.—Miscellaneous Proceedings in an Action — Trial—Vexatious Defences in Actions to Recover Land —Notice to Defendant to Show Legal Right to Possession of Land.

1902 Rule 576; 1905 Ontario Rule 567. The 1913 Ontario revision drops this rule and the two following.

RULE 599.—Miscellaneous Proceedings in an Action — Trial—Vexatious Defences in Actions to Recover Land —Formal Defects in Plaintiff's Title Not to Defeat Action.

1902 Rule 577; 1905 Ontario Rule 568.

RULE 600.—Miscellaneous Proceedings in an Action — Trial—Vexatious Defences in Actions to Recover Land —Verdict in Such Cases to be Endorsed as Rendered under the Foregoing Rules.

1902 Rule 578; 1905 Ontario Rule 569.

RULE 601.—Miscellaneous Proceedings in an Action — Trial—Protection of Defendant in Case of Erroneous Survey—Allowance to Defendant for Improvements—Relief Extended to Subsequent Purchasers.

1902 Rule 579; no Ontario counterpart.

Thordarson v. Akin, 15 W.L.R. 115. A mandamus will

not lie to compel the removal of an encroaching fence or building. See section 26 (o) of the Act.

RULE 602.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—PROTECTION OF DEFENDANT IN CASE OF ERRONEOUS SURVEY—WHEN DEFENDANT TO OBTAIN COSTS—DEFENDANT TO GIVE NOTICE TO PLAINTIFF.

1902 Rule 580. No Ontario counterpart.

RULE 603.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—IMPROVEMENTS UNDER MISTAKE OF TITLE—RELIEF OF PERSONS MAKING IMPROVEMENTS UNDER MISTAKE OF TITLE.

1902 Rule 580 (A) added by 10 Ed. VII., c. 17, s. 13. No similar Ontario Rule, but see Holmested, p. 889.

RULE 604.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—INSPECTION OF PROPERTY — JUDGE MAY INSPECT PROPERTY.

1902 Rule 581; 1905 Ontario Rule 570; 1913 Ontario Rule 265 (part).

Under the new Ontario Rule any person whose sanity is in question may be examined.

See rule 398 and notes.

RULE 605.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—INSPECTION OF PROPERTY — INSPECTION BY JURY, PARTIES OR WITNESSES.

1902 Rule 582; 1905 Ontario Rule 571; 1913 Ontario Rules 266 and 267.

See rule 891 as to order for detention and inspection of property.

RULE 606.—MISCELLANEOUS PROCEEDINGS IN AN ACTION — TRIAL—INSPECTION OF PROPERTY—PARTY REQUIRING VIEW TO DEPOSIT WITH SHERIFF SUMS TO PAY EXPENSES.

1902 Rule 583; 1905 Ontario Rule 572; 1913 Ontario revision drops this rule.

RULE 607.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—DEFAULT OF DEFENCE—PROCEEDINGS IN DEFAULT OF DEFENCE.

1902 Rule 584; 1905 Ontario Rule 574; 1913 Ontario Rule 36.

Time limited, rules 182 and 183.

Substituted service, rule 274 and notes.

Undertaking of solicitor, rules 267-186.

Affidavit of service must show rule 270 complied with.

This is a general rule and governs the special cases following.

See also rule 621 as to when judgment not to be signed.

RULE 608.—JUDGMENTS—MOTIONS FOR JUDGMENTS, ETC.—DEFAULT OF DEFENCE—PROCEEDINGS WHEN SOME DEFENDANTS DO NOT DEFEND OR THEIR DEFENCES ARE STRUCK OUT.

1902 Rule 585 as added by 1 Geo. V., c. 14, s. 4. No Ontario counterpart.

Does not apply to actions for recovery of land, rule 611, except as rule 613 provides.

The effect of the rule was formerly confined to default of defence in the first instance and did not apply where the defence was struck out under rule 410, Wilson v. Stuart, 20 M.R. 507, 16 W.L.R. 403; now the above amendment remedies this.

RULE 609.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—DEFAULT OF DEFENCE—JUDGMENT WHERE DEBT WHOLLY OR PARTLY FOR DEBT OR LIQUIDATED DEMAND.

1902 Rule 586; 1905 Ontario Rules 575 and 587; 1913 Ontario Rule 37 and see rule 355.

The Ontario Rules are duplicated owing to the fact that the action is commenced by writ and they must provide for judgment in default of (1) Appearance and (2) Defence.

See rules 611 and 613, actions for recovery of land

RULE 610.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—DEFAULT OF DEFENCE—JUDGMENT WHERE CLAIM OR SOME PART NOT FOR DEBT OR LIQUIDATED DEMAND.

1902 Rule 587. No Ontario counterpart.

See rules 611 and 613, actions for recovery of land.

On such an application the court may go behind the in-

terlocutory judgment and scrutinize the material (action for declaration of trusteeship of lands and transfer, substitutional service, judgment refused), Howard v. Lawson, 12 W.L.R. 213. Final judgment for default of defence cannot be signed against a defendant if there is an untried issue pending between the plaintiff and another defendant in the same action who has defended, Macdonald v. Fairchild Co., 19 M.R. 129, 11 W.L.R. 236.

RULE 611.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—DEFAULT OF DEFENCE—LAST THREE RULES NOT TO APPLY TO ACTION FOR LAND EXCEPT AS AFTERWARDS PROVIDED.

1902 Rule 588. No similar Ontario Rule, but the practice is the same. See also notes to rules 613 et seq.

See rule 693.

RULE 612.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—DEFAULT OF DEFENCE—PROVISIONS OF IMP. ACT 8 & 9 WM. III, C. 11, TO REMAIN IN FORCE.

1902 Rule 589; 1905 Ontario Rule 580. The 1913 revision drops this rule. The 1905 Rule had not the clause as to procedure. For history and effect of the statute see Holmested & Langton, p. 775.

RULE 613.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—DEFAULT OF DEFENCE—RECOVERY OF LAND—JUDGMENT BY DEFAULT IN ACTION FOR LAND.

1902 Rule 590; 1905 Ontario Rules 582 and 590; 1913 Ontario Rule 14 (1) and 355.

As to duplication of Ontario Rules, see notes to rule 609. The new Ontario Rule 355 instead of re-enacting each special rule in the case of default of pleading, makes the rule applicable in case of default of defence apply mutatis mutandis, and see 1913 Ontario Rule 356. Limited defence, see rule 193 and notes and see rules 187 et seq. generally.

As to the only claims which may be joined with such actions, rule 240.

Motions for judgment, rule 633, confession of, 617.

Motion for leave to sign, rule 602 and notes.

RULE 614.—Judgments—Motions for Judgment, Etc.—Default of Defence—Recovery of Land—Assessment for Damages in Action for Land.

1902 Rule 591; 1905 Ontario Rule 583; 1913 Ontario Rules 42 and 355.

Joinder, rule 240.

See rule 611 and notes.

See rules 613 and 609 and notes as to duplication of Ontario Rule.

RULE 615.—Judgments—Motions for Judgment, Etc.—Default of Defence—Recovery of Land—Costs Where Adverse Possession—Form of Judgment.

1902 Rule 592; 1905 Ontario Rule 585 and 591 as to first part of rule only.

1913 Ontario Rule 43 in part and 355.

See rules 613 and 609 and notes as to duplication of Ontario Rules.

RULE 616 (1).—Judgments—Motions for Judgment, Etc.—Mortgage Actions—Motion for Judgment in Undefended Mortgage Action Where Defendants or Some of Them are Infants.

1902 Rule 593; 1905 Ontario Rule 595; 1913 Ontario Rule 466.

The new Ontario Rule only applies to cases where default is made by some of the adult defendants and the Official Guardian does not desire to set up any defence.

RULE 616 (2).—Judgments—Motions for Judgment, Etc.—Mortgage Action—Judgments on Praecipe in Undefended Mortgage Actions.

1902 Rule 593 (A); 1905 Ontario Rule 596 (1); 1913 Ontario Rule 467.

The Ontario Rules also apply to cases where the defendant only disputes as to amount. See rule 194.

RULE 616 (3).—Judgments—Motions for Judgments, Etc.—Mortgage Actions.

1902 Rule 593 (b); 1905 Ontario Rule 596 (2); 1913 Ontario revision drops this rule.

RULE 616 (4).—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—MORTGAGE ACTIONS.

1902 Rule 593 (e); 1905 Ontario Rule 596 (6); 1913 Ontario Rule 468 (3).

Substituted service, see rule 274.

RULE 617.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—CONFESSION OF ACTION OR JUDGMENT—DEFENDANTS MAY CONFESS ACTION TO RECOVER LAND AS TO THE WHOLE OR PART OF THE PROPERTY.

1902 Rule 594; 1905 Ontario Rule 597 (1). The 1913 Ontario revision abolishes this practice except as to confessions given before 1st September, 1913. See 1913 Ontario Rule 397.

See rule 621 as to time of signing judgment.

RULE 618.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—CONFESSION OF ACTION OR JUDGMENT—CONFESSION OF ACTION BY ONE OF SEVERAL DEFENDANTS DEFENDING FOR A PART FOR WHICH OTHERS DO NOT DEFEND.

1902 Rule 595. Compare 1905 Ontario Rule 597 (1) and see notes to rule 617.

RULE 619.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—CONFESSION OF ACTION OR JUDGMENT—CONFESSION WHERE OTHERS DEFEND AS TO SAME PART.

1902 Rule 596. Compare 1905 Ontario Rule 597 (1) and see notes to rules 617 and 618.

RULE 620.—JUDGMENTS—MOTION FOR JUDGMENT, ETC.—CONFESSION OF ACTION OR JUDGMENT—EXCEPT AS PROVIDED IN 3 PRECEDING RULES, EVERY CONFESSION OF JUDGMENT, COGNOVIT ACTIONEM RELICTA VERIFICATIONE, ETC., INEFFECTUAL TO SUPPORT JUDGMENT—RULE NOT TO APPLY TO CONFESSIONS IN COURT OR UPON TRIAL.

1902 Rule 597. No Ontario counterpart.

RULE 621.—JUDGMENTS—MOTION FOR JUDGMENT, ETC.—CONFESSION OF ACTION OR JUDGMENT—JUDGMENT NOT TO BE SIGNED UNTIL STATEMENT OF CLAIM DULY ISSUED AND SERVED AND TIME FOR FILING DEFENCE EXPIRED.

1902 Rule 598. No Ontario counterpart.

RULE 622.—JUDGMENTS—MOTION FOR JUDGMENT, ETC.—CONFESSION OF ACTION OR JUDGMENT—ACTION TO SET ASIDE JUDGMENT FRAUDULENT AGAINST CREDITORS—MUST BE FOR BENEFIT OF PLAINTIFF AND OTHER CREDITORS.

1902 Rule 599. No Ontario counterpart.

Empire Sash & Door v. Maranda, 21 M.R. 605.

RULE 623.—JUDGMENTS—MOTION FOR JUDGMENT, ETC.—CONFESSION OF ACTION OR JUDGMENT—CASES WHERE PRECEDING RULES SHALL NOT APPLY.

1902 Rule 600. No Ontario counterpart.

RULE 624.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—INTERIM ALIMONY—SUBMISSION TO PAY INTERIM ALIMONY.

1902 Rule 601; 1905 Ontario Rule 370 (part) and 371; 1913 Ontario Rule 386 part. The last sentence of this rule was duplicated by a rule numbered 433 repealed by 3 Geo. V., Cap. 12, s. 3, as superfluous. See section 17 of the Act and notes.

Costs, rule 944, 945.

Will not be ordered if defendant has no ability to pay. Standall v. Standall, 22 M.R. 591, 22 W.L.R. 512. If the plaintiff alleges cruelty as well as desertion, the defendant's offer to resume co-habitation is no answer to the plaintiff's right to interim alimony, ibid.

Will only be ordered on the ground of necessity, Allison v. Allison, 23 W.L.R. 570 (Alta.), and not if a plaintiff is known to have sufficient property to maintain her until trial.

Power to give formerly exercised without statutory authority, Secrest v. Secrest (Alta.), 22 W.L.R. 51. Proof of marriage entitles the plaintiff to an order. Moon v. Moon, 22 W.L.R. 179 (Sask.). The defendant must then show cause why the order should not go. An order for interim alimony is one for payment of money, and will not be enforced by attachment, Galley v. Galley, 1 W.L.R. 155.

AMOUNT. One-fifth joint income of parties, Diebert v. Diebert, 7 W.L.R. 458 (Sask.).

The application may be made as soon as the defence is filed, or the time for filing one to the original statement of claim has lapsed. McArthur v. McArthur, 15 M.R. 151, 1 W.L.R. 1, decided under Rule 433, repealed by 3 Geo. V. c. 12, s. 3, but continued in last sentence of this rule which was also in rule 601.

RULE 625.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—LEAVE TO SIGN JUDGMENT—MOTION FOR LEAVE TO SIGN JUDGMENT.

1902 Rule 602; 1905 Ontario Rule 603. See 1913 Ontario Rule 57.

The new Ontario Rules introduced a radical change in the practice. Under 1913 Ontario Rule 56 in cases of a specially endorsed writ the defendant must verify his defence by affidavit upon which he may be examined by the plaintiff, who may move for judgment on his answers, rule 57. The Ontario practice was formerly similar to the present Manitoba practice, which it is to be noticed requires an order for leave to sign judgment and then a formal judgment. The 1905 rule required simply a motion for judgment, which was drawn up and signed in Chambers.

CLAIM FOR THE RECOVERY OF LAND. This clause was not in Ontario Rule 603, but was in 1905 Ontario Rule 138, referred to in 603. If any claim is added which does not come within rule 300 (d), may motion for judgment be made under this rule? From a consideration of the cases in Holmested & Langton, p. 796, it would seem not, as the Manitoba Rule does not contain clause (2) of rule 603.

In National Trust v. Campbell, 7 W.L.R. 755, the plaintiff obtained an order under this rule empowering it to sign judgment upon the covenant in an action for payment of mortgage moneys or foreclosure. The motion was undefended. Subsequently the referee refused to set aside the order but gave relief under rule 260. Mathers, J., considered but did not decide whether under this rule such an order could be made. No leave to proceed for foreclosure was reserved in the order allowing the plaintiff to sign judgment. Semble such an order could not properly be made.

See rule 630 as to where amount only disputed; rule 627 as to partial dispute.

Security for costs on motion by foreign plaintiff, Rule 995.

The defence must be definitely set up and be supported by affidavits giving full particulars, otherwise the order will be made, Canadian Moline Plow Co. v. Cook, 13 M.R. 439.

General statements in the affidavits are insufficient, ibid.

The order may be granted on terms of payment into Court of the claim or part in the discretion of the referee, and leave

to defend may be made conditional on terms, Law v. Neary, 10 M.R. 592.

In an action on a promissory note, where the defence was that it had been delivered over in fraud of the maker by a party to whom it was delivered in escrow, it was held that the defendant was entitled to defend without showing that the plaintiff was not a holder in due course, Flour City Bank v. Connery, 12 M.R. 305.

An assignee's claim on a foreign judgment may be endorsed and judgment ordered under this rule, Howland v. Codd, 9 M.R. 435.

CLAIMS SPECIALLY ENDORSED.

A claim on a covenant in a mortgage must clearly appear to be one made on a covenant to pay.

Manitoba & N.W. Loan Co. v. McPherson, 9 M.R. 210.

As to alleging performance of a condition precedent, Canada Settlers Loan Co. v. Fullerton, 9 M.R. 327, over-ruling Wyld v. Livingstone, 9 M.R. 109.

As to sufficiency of endorsement, London & Can. Loan v. Morris, 7 M.R. 128. Canada Settlers Loan Co. v. Fullerton supra.

In an action on a dishonored cheque the endorsement must allege either that notice of dishonour was given to the drawer or a statement of facts that would excuse the giving of such notice, Wyld v. Livingstone, 9 M.R. 109.

Judgment may be given for a claim on a guaranty where the amount is not liquidated, Union Bank v. McKillop, 4 O.W.N. 36, discussing the order in Sovereign Bank v. McPherson, 14 O.W.R. 59.

Affidavit must be made by a person who can swear positively to the debt or cause of action, Central Electric Co. v. Simpson, 8 M.R. 94.

Generally, Wilson v. National, 3 O.W.N. 28.

RULE 626.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—LEAVE TO SIGN JUDGMENT—HOW DEFENDANT TO SHOW CAUSE TO MOTION.

1902 Rule 603. No Ontario counterpart in 1905 sed vide Holmested, p. 800, and see now 1913 Ontario Rule 56 and also notes to rule 625.

RULE 627.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—LEAVE TO SIGN JUDGMENT—DEFENCE SHOWN AS TO PART.

1902 Rule 604; 1905 Ontario Rule 604; 1913 Ontario Rule 58.

RULE 628.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—LEAVE TO SIGN JUDGMENT—CASE OF SEVERAL DEFENDANTS, SOME ENTITLED TO DEFEND, OTHERS NOT.

1902 Rule 605; 1905 Ontario Rules 605 & 606 part; 1913 Ontario Rules 59 & 60 part.

RULE 629.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—LEAVE TO SIGN JUDGMENT—LEAVE TO DEFENL MAY BE ABSOLUTE OR CONDITIONAL.

1902 Rule 606; 1905 Ontario Rule 606 part; 1913 Ontario Rule 60 part.

RULE 630.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—LEAVE TO SIGN JUDGMENT — REFERENCE TO MASTER TO SETTLE AMOUNT OF CLAIMS WHEN DISPUTED.

1902 Rule 606 A added 5-6 Ed. VII., c. 17, s. 2; 1905 Ontario Rule 607; 1913 Ontario Rule 61.

RULE 631.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—MOTION FOR JUDGMENT—JUDGMENT OBTAINED BY MOTION.

1902 Rule 607; 1905 Ontario Rule 609; 1913 Ontario revision drops this rule, but see 1913 Ontario Rule 356. . . . . .

RULE 632.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—MOTION FOR JUDGMENT—NO JUDGMENT AT TRIAL ON PLEADING, IF FACTS PROVED NOT SUFFICIENT.

1902 Rule 608; 1905 Ontario Rule 610; 1913 Ontario Rule 261.

RULE 633.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—MOTION FOR JUDGMENT—JUDGMENT WHERE TITLE OF PLAINTIFF TO RECOVER LAND EXISTED WHEN STATEMENT OF CLAIM SERVED BUT HAS EXPIRED BEFORE TRIAL.

1902 Rule 609; 1905 Ontario Rule 611; 1913 Ontario Rule 262.

Under the new Ontario Rule he may by leave discontinue with costs in the discretion of the Court.

"According to the fact." These words are not in the Ontario Rule 611.

RULE 634.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—MOTION FOR JUDGMENT—MOTION FOR JUDGMENT WHEN EVIDENCE TAKEN BY AFFIDAVIT OR UNDER REFERENCE.

1902 Rule 610. No Ontario counterpart.

RULE 635.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—MOTION FOR JUDGMENT—NO MOTION FOR JUDGMENT AFTER ONE YEAR, EXCEPT BY LEAVE.

1902 Rule 611; 1905 Ontario Rule 612; 1913 Ontario Rule 357.

The new Ontario Rule only applies to motions for judgment for default.

RULE 636.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—MOTION FOR JUDGMENT—MOTION FOR JUDGMENT AFTER ISSUES HAVE BEEN TRIED.

1902 Rule 612; 1905 Ontario Rule 613; 1913 Ontario revision drops this rule. See rule 344 and notes and rule 613.

RULE 637.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—MOTION FOR JUDGMENT—AFTER SOME OF THE ISSUES HAVE BEEN TRIED.

1902 Rule 613; 1905 Ontario Rule 614; 1913 Ontario revision drops this rule.

RULE 638.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—MOTION FOR JUDGMENT—ON MOTION FOR JUDGMENT OR NEW TRIAL FINAL JUDGMENT MAY BE GIVEN.

1902 Rule 614; 1905 Ontario Rule 615; 1913 Ontario revision drops this rule.

The words "or new trial" in the side note should be dropped, as they were from the rule on the last revision.

Applications for new trial are now provided for by section 6 (2) of the Court of Appeal Act.

The rule applies to all or any of the parties, Cooper v Anderson, 20 W.L.R. 347, and whether the judgment would be final or interlocutory, ibid.

RULE 639.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—MOTION FOR JUDGMENT—SUMMARY RELIEF ON MOTION UPON ADMISSIONS IN PLEADINGS, ETC.

1902 Ontario Rule 615; 1905 Ontario Rule 616; 1913 Ontario Rule 222. See rule 616.

The plaintiff in an action by a vendor to remove a caveat filed by the assignee of the interest of one of two subpurchasers in the land, must join the two subpurchasers to obtain judgment against the assignee under this rule upon admissions in the pleadings or on examinations. It is not sufficient to add them under rule 40 (q.v.) Watson v. Cadwallader, 23 M.R. 760, 26 W.L.R. 1.

A judgment under this rule upon admissions in the defendant's pleadings, where the defence extended to all the matters in question, is final, and the action is at an end so that the plaintiff may not examine the defendant for discovery nor proceed for further relief, Smith v. Simpson, 23 W.L.R. 266, although semble where the admissions are only as to part of the matters in question, he may proceed after judgment disposing of that part. Kelly v. Kelly, 18 M.R. 362, 9 W.L.R. 509.

RULE 640.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—MOTION FOR JUDGMENT—PENDING APPLICATION MAY BE TURNED INTO MOTION FOR JUDGMENT.

1902 Rule 616; 1905 Ontario Rule 617; 1913 Ontario Rule 220.

The Ontario Rule 617 was not so detailed, and rule 220 merely gives power to turn any application into a motion for judgment; the practice will however be the same. In Cooper v. Anderson, 20 W.L.R. 347, by consent a motion to vacate a lis pendens was turned into an application under this rule.

RULE 641.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—MOTION FOR JUDGMENT—MOTION ON FURTHER DIRECTIONS.

1902 Rule 617; 1905 Ontario Rule 618; 1913 Ontario revision drops ths rule.

RULE 642 (1).—JUDGMENTS—MOTIONS FOR JUDGMENT ETC.—SETTLEMENT OF JUDGMENTS AND ORDERS—SETTLING JUDGMENTS.

1902 Rule 618; 1905 Ontario Rule 624; 1913 Ontario Rule 526.

The registrar is appointed under section 54 of the Act. The registrar is to act as judgment clerk, rule 17, and he performs some of the functions formerly performed by the Clerk of Records and Writs, rule 18. See also rules 20, 24 and 25.

See sub-section 2 as to "contrary direction."

As to signing and entry, see rules 645 et seq.

Form, rules 645 et seq.

Variation, rules 662 et seq.

RULE 642 (2).—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—SETTLEMENT OF JUDGMENTS AND ORDERS—SETTLING JUDGMENTS.

1902 618 (a); 1905 Ontario Rule 625; 1913 Ontario Rule 527 (1).

See rules 15, 16 and 23, and sections 57 and 71 of the Act for appointment and powers.

RULE 642 (3).—JUDGMENTS—MOTIONS FOR JUDGMENT ETC.—SETTLEMENT OF JUDGMENTS AND ORDERS—SETTLING JUDGMENTS.

1902 618 (b). No Ontario counterpart but similar practice.

RULE 642 (4).—JUDGMENTS—MOTIONS FOR JUDGMENTS, ETC.—SETTLEMENT OF JUDGMENTS AND ORDERS—SETTLING JUDGMENTS.

1902 618 (c); 1905 Ontario Rule 625 (2); 1913 Ontario Rule 527 (2).

RULE 643.—JUDGMENTS—MOTIONS FOR JUDGMENTS, ETC.—SETTLEMENT OF JUDGMENTS AND ORDERS — APPOINTMENT TO SETTLE JUDGMENT.

1902 Rule 619; 1905 Ontario Rule 626; 1913 Ontario Rule 528 slightly changes the rule.

RULE 644.—JUDGMENTS—MOTIONS FOR JUDGMENTS, ETC.—SETTLEMENT OF JUDGMENTS AND ORDERS—PROCEDURE WHERE PARTY MAKES DEFAULT.

1902 Rule 620; 1905 Ontario Rule 627; 1913 Ontario revision drops this rule.

As to attendance rule 393 requires one half hour.

RULE 645.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—SIGNING AND ENTRY OF JUDGMENT AND ORDERS—SIGNING JUDGMENT.

1902 Rule 621; 1905 Ontario Rule 628; 1913 Ontario Rule 531 (1).

As to signing and entry of Chamber Orders, rules 33, 457-458.

Where an order has not been issued the application may be re-heard, Coe v. Smiley, 16 W.L.R. 169, 486 (Sask.).

RULE 646.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—SIGNING AND ENTRY OF JUDGMENTS AND ORDERS—DATE OF JUDGMENT PRONOUNCED BY COURT.

1902 Rule 622; 1905 Ontario Rule 629 (1); 1913 Ontario Rule 512 (part). The judgment or order must show the day of the week and month it is given, rule 661.

RULE 647.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—SIGNING AND ENTRY OF JUDGMENTS AND ORDERS—DATE OF DEFAULT JUDGMENT.

1902 Rule 623; 1905 Ontario Rule 629 (2); 1913 Ontario revision drops this rule.

RULE 648.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—SIGNING AND ENTRY OF JUDGMENTS AND ORDERS — FORMS OF JUDGMENT.

1902 Rule 624. Compare 1905 Ontario Rule 1224 and 1913 Ontario Rule 772.

See rule 379.

RULE 649.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—SIGNING AND ENTRY OF JUDGMENT AND ORDERS—JUDGMENT MAY BE SIGNED IMMEDIATELY AFTER PRONOUNCED.

1902 Rule 625; 1905 Ontario Rule 630; 1913 Ontario revision drops this rule.

RULE 650.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—SIGNING AND ENTRY OF JUDGMENTS AND ORDERS—SIGNING JUDGMENT UPON FILING OF AFFIDAVIT.

1902 Rule 626; 1905 Ontario Rule 631; 1913 Ontario Rule 529.

RULE 651.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—SIGNING AND ENTRY OF JUDGMENTS AND ORDERS—SIGNING JUDGMENT ON ORDER.

1902 Rule 627; 1905 Ontario Rule 632; 1913 Ontario revision drops this rule.

RULE 652.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—SIGNING AND ENTRY OF JUDGMENTS AND ORDERS—CONDITIONAL ORDERS.

1902 Rule 628; 1905 Ontario Rule 638; 1913 Ontario Rule 530.

RULE 653.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—SIGNING AND ENTRY OF JUDGMENTS AND ORDERS—LIBERTY TO APPLY NEED NOT BE RESERVED.

1902 Rule 629; 1905 Ontario Rule 622; 1913 Ontario Rule 511.

The Ontario Rules have not the provisions as to payment out of court.

Payment out of court see rule 137.

RULE 654.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—SIGNING AND ENTRY OF JUDGMENT—ENTRY OF JUDGMENT.

1902 Rule 630; 1905 Ontario Ruel 635 (1) part; 1913 Ontario Rule 515 (1).

The Ontario Rules require all court orders to be entered, see rule 655.

Entry forthwith, rule 649.
Mode of entry, rule 657.
Place of entry, rules 16-14 (a).

RULE 655.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC—SIGNING AND ENTRY OF JUDGMENTS AND ORDERS—CERTAIN ORDERS NOT TO BE ENTERED.

1902 Rule 631. Compare 1905 Ontario Rule 636 part and 1913 Ontario Rule 516 part. See rule 656 and notes.

RULE 656.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—SIGNING AND ENTRY OF JUDGMENTS AND ORDERS—ORDERS REQUIRING ENTRY.

1902 Rule 632; 1905 Ontario Rule 636; 1913 Ontario Rule 516.

Rule 458 is similar.

RULE 657.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—SIGNING AND ENTRY OF JUDGMENTS AND ORDERS — MODE OF ENTRY.

1902 Rule 633; 1905 Ontario Rule 637; 1913 Ontario Rule 517.

RULE 658.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—FORM OF JUDGMENTS AND ORDERS, ETC.—GENERAL FORM OF JUDGMENTS FOR FORECLOSURE OR SALE.

1902 Rule 634; 1905 Ontario Rule 619; 1913 Ontario Rule 519.

See rule 118 and notes.

RULE 659.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—FORM OF JUDGMENTS AND ORDERS, ETC. — PARAGRAPHING JUDGMENTS AND ORDERS.

1902 Rule 635; 1905 Ontario Rule 620; 1913 Ontario Rule 510.

RULE 660.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—FORM OF JUDGMENTS AND ORDERS, ETC.—STATEMENT OF SUMS OF MONEY.

1902 Rule 636; 1905 Ontario Rule 621; dropped in 1913 Ontario revision.

RULE 661.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—FORM OF JUDGMENTS AND ORDERS, ETC.

1902 Rule 637; 1905 Ontario Rule 623 part; 1913 Ontario Rule 512.

As to date, rule 646.

RULE 662.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—VARIATION OF JUDGMENTS AND ORDERS—CORRECTING CLERICAL ERRORS IN JUDGMENTS AND ORDERS.

1902 Rule 638; 1905 Ontario Rule 640; 1913 Ontario Rule 521.

Until the judgment pronounced in an action is entered, the court has full power to rehear or review the case, but after entry the judge who made it has no power to amend or alter it if it correctly represents the actual decision, even although based on a misapprehension. Clerical mistakes or accidental slips may, however, be corrected under this rule, Munroe v. Heubach, 18 M.R. 547, 10 W.L.R. 416.

See Buchanan v. Winnipeg, 21 M.R. 101.

RULE 663.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—VARIATION OF JUDGMENTS AND ORDERS—AMENDMENT.

1902 Rule 639; 1905 Ontario Rule 641; 1913 Ontario Rule 522.

RULE 664.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—VARIATION OF JUDGMENTS AND ORDERS—PETITION TO VARY, REVERSE OR IMPEACH JUDGMENT OR ORDER.

1902 Rule 640; 1905 Ontario Rule 642 (1); 1913 Ontario Rule 523.

The new Ontario Rule provides for a motion made in the ordinary way, and drops the three following rules as unnecessary.

RULE 665.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—VARIATION OF JUDGMENTS AND ORDERS—VERIFICATION AND SERVICE OF PETITION.

1902 Rule 641; 1905 Ontario Rule 642 (2). See notes to rule 664.

RULE 666.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—VARIATION OF JUDGMENTS AND ORDERS—ENDORSEMENT ON PETITION.

1902 Rule 642. No Ontario counterpart.

RULE 667.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—VARIATION OF JUDGMENTS AND ORDERS—HEARING OF PETITION.

1902 Rule 643; 1905 Ontario Rule 642 (3). See notes to rule 664.

RULE 668.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—VARIATION OF JUDGMENTS AND ORDERS—EVIDENCE NECESSARY TO REVERSE OR VARY UPON NEW MATTER.

1902 Rule 644; 1905 Ontario Rule 642 (4). See notes to rule 664.

RULE 669.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—ENTRY OF SATISFACTION—SATISFACTION PIECE.

1902 Rule 645; 1905 Ontario Rule 643; 1913 Ontario Rule 532. Form 155.

RULE 670.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—ENTRY OF SATISFACTION—ENTRY OF SATISFACTION PIECE.

1902 Rule 646; 1905 Ontario Rule 644; 1913 Ontario Rule 532 (3).

RULE 671.—JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.—VACATING REGISTRATION OF LIS PENDENS—ORDER TO VACATE REGISTRATION OF LIS PENDENS.

This rule was added to the Act as sec. 41 (A) by 5-6 Ed. VII., c. 17, s. 1, and was introduced into the rules in the 1913 revision.

Compare section 98 of the Ontario Judicature Act of 1897, and section 37 of the Act of 1913.

As to issuing lis pendens in cases of motions to set aside fraudulent conveyances, see rule 745.

RULE 672.—APPEALS—APPEALS FROM SINGLE JUDGE.

1902 Rule 647; before it was amended by 5-6 Ed. VII., c. 18, s. 7, to meet the changed conditions caused by the coming into force of the Court of Appeal Act provided for an appeal to the Court en banc. As to the present jurisdiction of the Court en banc see section 6 (a) of the Court of Appeal Act, R.S.M. 1913, cap. 43, and sections 44 to 46, of the Act.

The practice in Ontario under the Judicature Act of 1897

was much more intricate than the Manitoba practice, providing, as it did in most cases, subject to rather involved exceptions, for appeals to a Divisional Court of the High Court of Justice, consisting of a Chief Justice and two puisne Judges, and from the decision of that Court in many cases to a Court of Appeal, consisting of a Chief Justice and four Judges of Appeal.

The practice introduced by the Judicature Act of 1913 was radically different. Shortly, the Supreme Court now consists of two branches, the Appellate Division, which is at present divided into two Divisional Courts of the Appellate Division; and the High Court Division. Trials are had before a single Judge of the High Court division with a single appeal to one or other of the Divisional Courts of the Appellate Division.

As many of the Ontario Rules are not helpful, no reference is made to them.

See also sections 6, 7, 8 and 9 of the Court of Appeal Act.

The following rules govern appeals from Chambers, rules 679 to 680, and appeals from Taxation 681 to 684. Rules 672 *et seq.* are supplemental to the provisions of the Court of Appeal Act, R.S.M. 1913, cap. 43, and provide for appeals to the Court of Appeal.

Appeals lie to the Court of Appeal from:—

I. County Court Judgments for $20.00 or more, or where the value of goods concerned amounts to that or where a question of law is in issue, R.S.M. 1913, cap. 44, ss. 334 and 335. The appeal is launched by filing with the County Court Clerk an affidavit of intention to appeal, ss. 336, within 10 days after the order appealed from is made; there is then a two weeks stay within which the appeal must be entered (338) on praecipe, and 4 copies of the evidence must be furnished within 6 days (now that the Court of Appeal consists of 5 Judges, 1 more copy of the evidence would be required, although no change has been made in the Act, s. 342). Rule 340 provides for security for the costs of the appeal.

II. Surrogate Court within 15 days of the order appealed from, R.S.M. 1913, cap. 47, s. 92.

Appeals to the Supreme Court of Canada are governed by the Supreme Court Act.

In an action against R. and R.'s agents, O. et al., to set aside a sale of land, judgment was given setting aside the sale and finding fraud upon the part of the agents. Both defen-

dants appealed, but before hearing, R. dropped the appeal and complied with the order. Then O. et al sought to continue to appeal as to the finding against them. Held that as the finding of fraud was not in the formal judgment but only in the reasons, no appeal would lie. No appeal lies from Reasons for Judgment. Wolfson v. Oldfield, 20 W.L.R. 484.

RULE 673.—APPEALS—APPEALS FROM JUDGMENT ENTERED ON FINDINGS OF JURY.

1902 Rule 648. See notes to rule 672.

RULE 674.—APPEALS—APPEAL AGAINST VERDICT—JUDGMENT OR DECREE OF SINGLE JUDGE.

1902 Rule 649; see notes to rule 672.

RULE 675.—APPEALS — CERTAIN ACTION NOT TO PREJUDICE RIGHT TO APPEAL.

1902 Rule 650. See notes to rule 672.

RULE 676.—APPEALS—MOTION TO COURT OF APPEAL AFTER TRIAL BY JURY.

1902 Rule 651. Added by 10 Ed. VII. c. 17, s. 7. Compare 1905 Ontario Rules 782, 783, & 785.

RULE 677.—APPEALS—NOTICE NOT TO STAY PROCEEDINGS—JUDGE MAY GRANT STAY.

1902 Rule 658. See notes to rule 672. Compare 1905 Ontario Rules 767 (5), 777 (2) and 1913 Ontario Rules 505 (3) and 507 (6).

As to the meaning of the term "usual stay," see Johnston v. Henry, 21 M.R. 700; it permits signing of judgment but neither issuing of execution nor the registering of a certificate of judgment until the lapse of the time allowed for appealing.

RULE 678.—APPEALS—SETTING ASIDE JUDGMENT BY DEFAULT.

1902 Rule 664; 1905 Ontario Rule 639; 1913 Ontario Rule 520 and compare 1905 Ontario Rule 778 and 1913 Ontario Rule 499. See rule 581 as to where one party does not appear, the judge at the sittings or a single judge may set aside a judgment.

The new Ontario Rule permits an application in chambers

On an application to set aside a regularly signed default judgment, a defence on the merits must be shown. McKay v. Rumble, 8 M.R. 86; McKay v. Johnston, 23 W.L.R. 531, and a mere affidavit of merits without disclosing grounds is insufficient, ibid.

The discretion of the referee rarely interfered with, McCaul v. Christie, 1 W.L.R. 332; Moore v. Kennedy, 12 M.R. 173. For disposition of the costs of such an application when the question is reserved for the judge at the trial and the plaintiff fails in his action, see Foley v. Hallett 6 W.L.R. 259.

A default judgment may not be set aside upon an ex parte application. Notice must be given to the opposite party, McKay v. Rumble, 8 M.R. 86.

RULE 679.—APPEAL—APPEALS FROM CHAMBERS—APPEALS TO SINGLE JUDGE.

1902 Rule 682; 1905 Ontario Rule 767; 1913 Ontario Rule 505.

The Ontario Rule has not clause (2).

This rule should be read with rule 969 (5), and is the rule to be applied in case of appeal from the certificate of the taxing officer on taxation of costs between solicitor and client, and not rule 681. Re Phillips and Whitla No. (1), 22 M.R. 150.

As to written objections, see rule 681 and notes.

Appeals from referee. The judge may review a discretion exercised by a referee. Hewitt v. Hudson's Bay Co., 20 M.R. 320, 17 W.L.R. 61, but will only do so if the referee was clearly wrong, ibid; Moore v. Kennedy, 12 M.R. 173, McCaul v. Christie, 15 M.R. 358.

By acting upon an order the right to appeal from it is lost, Royal City v. Woods, 6 M.R. 62, but compliance with one part of an order does not preclude an appeal against another part, Gowenlock v. Ferry, 11 M.R. 257.

RULE 680.—APPEALS—APPEALS FROM CHAMBERS—FURTHER EVIDENCE MAY BE RECEIVED UPON SUCH APPEALS.

1902 Rule 482; 1905 Ontario Rule 498; 1913 Ontario Rule 232.

The Ontario Rules apply to all appeals and are not confined to appeals to a judge in chambers, as is rule 680. See notes to rule 672.

RULE 681.—APPEALS—APPEALS FROM TAXATION—REVIEW OF TAXATION BY JUDGE.

1902 Rule 684; 1905 Ontario Rule 774; 1913 Ontario Rule 509 part.

No appeal lies in respect of items which have not been objected to under rule 972.

Caron v. Bannerman, 22 M.R. 24; 19 W.L.R. 881.

Quaere whether such objection must be in writing.

No! Cooney v. Jickling, 22 M.R. 468, 22 W.L.R. 509 sed vide Re Phillips & Whitla (No. 1), 22 M.R. 468, 20 W.L.R. 229, only necessary when items are objected to and not when a principle is involved. There must also be a review by the taxing office under rule 973 before an appeal, ibid. The court will not interfere unless the taxing officer's findings are "beyond all question improper," Re Solicitors, 3 O.W.N. 194, Riddell, J., adopting the decision in Re Solicitor, 12 O.W.R. 1074.

RULE 682.—APPEALS—APPEALS FROM TAXATION—WHEN APPEAL FROM TAXING OFFICER LIES.

1902 Rule 685; 1905 Ontario Rule 775; 1913 Ontario Rules 509 and 505.

The Ontario Rule has 10 days instead of 14.

RULE 683.—APPEALS—APPEALS FROM TAXATION—MATERIAL UPON APPEAL.

1902 Rule 686; 1905 Ontario Rule 776; 1913 Ontario revision drops this rule.

RULE 684.—APPEALS—APPEALS FROM TAXATION—APPEAL BY APPOINTMENT PENDING TAXATION.

1902 Rule 687; no Ontario counterpart.

RULE 685.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—INTERPRETATION OF "WRIT OF EXECUTION" AND "ISSUING EXECUTION AGAINST ANY PERSON."

1902 Rule 688; 1905 Ontario Rule 836; 1913 Ontario Rule 3 (k).

Receivers. See section 26 (o) of the Act and notes.

See the Executions Act, R.S.M. 1913, Cap. 66.

RULE 686.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—WRIT OF *Fi. Fa.*

1902 Rule 689. No Ontario counterpart.

This only applies to *fi. fa.* goods the *fi. fa.* lands is abolished. Rule 738. See the Judgment Act, sec. 3, et seq.

RULE 687.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—WRITS OF VEN. EX.

1902 Rule 690; 1905 Ontario Rule 845; 1913 Ontario Rule 539 part.

RULE 688.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—WRIT OF POSSESSION.

1902 Rule 691; 1905 Ontario Rule 848; 1913 Ontario revision drops this rule.

Rule 692 as to enforcing judgment to recover land by such writ.

RULE 689.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—SUING OUT FI. FA.

1902 Rule 692; 1905 Ontario Rule 843; 1913 Ontario Rule 538.

Stay of Proceedings. See rule 677 and notes.

Rule 649 allows judgment to be signed immediately after it is pronounced.

How obtained on praecipe, rule 712.

May not issue *fi. fa.* lands, rule 738.

As to judgment against lands, see the Judgments Act, ss. 3, 4, 5, 7, 8.

RULE 690.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—ENFORCEMENT OF ORDER.

1902 Rule 693; see 1905 Ontario Rule 835 (a); 1913 Ontario Rule 3 (g).

RULE 691.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—ENFORCING ORDER FOR PAYMENT INTO COURT.

1902 Rule 694; 1905 Ontario Rule 839; 1913 Ontario Rule 534 part.

RULE 692.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—WRIT FOR RECOVERY OF LAND.

1902 Rule 695; 1905 Ontario Rule 846; 1913 Ontario Rule 540.

See rule 688 as to effect of such a writ.

RULE 693.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—WRIT OF POSSESSION.

1902 Rule 696; 1905 Ontario Rule 847; 1913 Ontario Rule 541.

See rule 633 as to cases where the plaintiff's title expires before trial.

RULE 694.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—WRITS FOR RECOVERY OF LAND, MESNE PROFITS AND COSTS.

1902 Rule 697; 1905 Ontario Rule 849; 1913 Ontario Rule 542.

RULE 695.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—WRIT FOR SPECIFIC DELIVERY OF GOODS.

1902 Rule 698; 1905 Ontario Rule 852; 1913 Ontario Rule 544.

RULE 696.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—WRIT OF ATTACHMENT TO ENFORCE JUDGMENT TO DO OR LEAVE UNDONE.

1902 Rule 699; 1905 Ontario Rule 853; 1913 Ontario Rule 545.

See rules 701 et seq. and notes.

Rule 702 also provides that there shall be no attachment for non-payment of money. As to procedure to enforce such a judgment by sequestration, see rule 707.

RULE 697.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—WRIT ENFORCING JUDGMENT FOR CONDITIONAL RELIEF.

1902 Rule 700; 1905 Ontario Rule 841; 1913 Ontario Rule 537.

RULE 698.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—EXECUTION UPON JUDGMENT AGAINST PARTNERS IN FIRM NAME.

1902 Rule 701; 1905 Ontario Rule 228 (1); 1913 Ontario Rule 105.

Execution against one partner.

The only way to proceed against partnership property for a separate partner's debt is by application to a judge of the court under R. S. M. 1913, c. 151, s. 26, for a charging order, charging the partner's interest in the firm. The new (1913) Ontario Rule 556 is to the same effect. See also McInnes v. Norquist, 23 M.R. 816. See rule 213, joinder of partners. Rule 283, service.

RULE 699.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—EXECUTION AGAINST PERSON CLAIMED TO BE A PARTNER.

1902 Rule 702; 1905 Ontario Rule 228 (2); 1913 Ontario Rule 105 (2).

RULE 700.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—MONEY MADE ON EXECUTION ON BEHALF OF INFANT OR LUNATIC.

1902 Rule 703; 1905 Ontario Rule 840; 1913 Ontario Rules 535 and 536.

RULE 701.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—ATTACHMENT AND SEQUESTRATION—WRIT OF ATTACHMENT.

1902 Rule 704; 1905 Ontario Rule 854; 1913 Ontario revision drops this rule.

A writ of attachment lies to enforce any judgment requiring any person to do or abstain from doing any act, rule 696, but not a judgment for the payment of money, rule 696 and 702. Attachment lies to enforce the doing of an act to be done within a time limited by an order. Rule 704.

The writ only issues upon leave. Rule 703.

As to enforcing judgmnet for payment of money, Rule 707.

As to injunctions, see section 26 (o) of Act and notes.

The old Equity practice as to obtaining the order need

not be followed—the former practice was on ex parte application. Cotter v. Osborne, 6 M.R. 690.

May be dispensed with and sequestration obtained if party is out of the jurisdiction or has absconded, rule 706; sequestration in aid, rule 705.

For attachment of persons wrongfully obtaining possession of the books, etc., of a County Court, see R.S.M. 1913, Cap. 44, s. 49; it issues out of the King's Bench.

RULE 702.—Enforcement of Judgments and Orders—Executions—Attachment and Sequestration—No Attachment of Person for Non-Payment of Money.

1902 Rule 705; see 1905 Ontario Rule 853; see 1913 Ontario Rule 545.

See rule 701 and notes.

The proper proceeding is by sequestration, Rule 707.

RULE 703.—Enforcement of Judgments and Orders—Executions—Attachment and Sequestration—Leave to Issue Writ.

1902 Rule 706; 1905 Ontario Rule 855; 1913 Ontario Rule 546.

The referee in chambers has no jurisdiction, rule 27.

RULE 704.—Enforcement of Judgments and Orders—Executions—Attachment and Sequestration—Attachment or Non-Performance of an Act.

1902 Rule 707; 1905 Ontario Rule 856; 1913 Ontario Rule 545.

Leave required, rule 703. Commission directed to sheriff, rule 708. See rule 696.

RULE 705.—Enforcement of Judgments and Orders—Executions—Attachment and Sequestration—Upon Attachment of Contemnor Sequestration May Issue.

1902 Rule 708; 1905 Ontario Rule 857; 1913 Ontario Rule 547. Directed to sheriff, rule 708.

RULE 706.—Enforcements of Judgments and Order—Executions—Attachment and Sequestration—Issue of Commission of Sequestration.

1902 Rule 709; 1905 Ontario Rule 858; 1913 Ontario Rule 548.

RULE 707.—Enforcement of Judgments and Orders—Executions—Attachment and Sequestration—Sequestration May Issue on Default in Payment of Money upon Application in Chambers.

1902 Rule 710; 1905 Ontario Rule 859; 1913 Ontario Rule 549.

The amendment 3 Geo. V., c. 12, s. 3, substituted the word "Judge" for the word "Court."

A judgment for the recovery of costs is not within this rule, Romaniski v. Wolanchuk, 23 M.R. 615, 26 W.L.R. 42, 25 W.L.R. 385.

Semble the discretion of a judge under this rule is final, ibid.

This rule provides for the punishment of a party who has been ordered to pay money on or before a particular time, the non-performance of which would be a contempt of court, ibid.

RULE 708.—Enforcement of Judgments and Orders—Executions—Attachment and Sequestration—Commission to be Directed to Sheriff.

1902 Rule 711; 1905 Ontario Rule 860; 1913 Ontario Rule 550.

RULE 709.—Enforcement of Judgments and Orders—Executions—Issue and Form of Writ—When Execution May Issue of Course.

1902 Rule 712; 1905 Ontario Rule 863; 1913 Ontario Rule 565.

Definition of execution, rule 685.

RULE 710.—Enforcement of Judgments and Orders—Executions—Issue and Form of Writ—Execution by Leave of Court.

1902 Rule 713; 1905 Ontario Rule 864; 1913 Ontario Rule 566.

Rule 710 (b) until amended by 3 Geo. V, c. 12, s 3, read "upon a judgment or order for or against his wife." The new Ontario Rule drops clause (b) entirely. The Ontario Rules permit the judge to "amend any execution already issued." Quaere whether this rule permits of that?

RULE 711.—ENFORCEMENTS OF JUDGMENTS AND ORDERS—EXECUTIONS—ISSUE AND FORM OF WRIT—EXECUTION IN CASE OF PERSONS NOT PARTIES.

1902 Rule 714; 1905 Ontario Rule 865; 1913 Ontario Rule 555 as amended only corresponds to the latter half of this rule.

RULE 712.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—ISSUE AND FORM OF WRIT—PRAECIPE FOR WRIT.

1902 Rule 715; 1905 Ontario Rule 866; 1913 Ontario revision drops this rule.

See forms 78 et seq. as to praecipes.

The Ontario Rule only has the first sentence and refers to the form.

RULE 713.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—ISSUE AND FORM OF WRIT — ENDORSEMENT OF NAME AND ADDRESS OF SOLICITOR.

1902 Rule 716; 1905 Ontario Rule 868; 1913 Ontario Rule 567.

Endorsements on Writ. Rule 715, 716 (as to costs).

Teste of Writ and Duration of Renewal, rule 718. Date of Writ, the date of issue, rule 717.

RULE 714.—ENFORCEMENTS OF JUDGMENTS AND ORDERS—EXECUTIONS—ISSUE AND FORM OF WRIT—POUNDAGE, ETC.

1902 Rule 717; 1905 Ontario Rule 871; 1913 Ontario Rule 570.

RULE 715.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—ISSUE AND FORM OF WRIT—DIRECTION TO SHERIFF TO BE ENDORSED.

1902 Rule 718; 1905 Ontario Rule 869; 1913 Ontario Rule 568.

Before it was amended by 3 Geo. V., c. 12, s. 3, the rule had for the words "legal rate" the words "rate of 6%," and for

"specified rate" the words "more than 6%." Semble if the specified rate were less than the legal, the former would be all that could be recovered, formerly if the rate were less, the 6% might still be levied.

The legal rate is 5%, 63-64 Vict., cap. 29 (Canada), since July 7th, 1900.

Interest runs from the date of the pronouncement of the judgment. See rule 646 and Holmested, p. 1123; notes to rule 689.

Cost of writs must be endorsed, rule 716.

RULE 716.—ENFORCEMENTS OF JUDGMENTS AND ORDERS—EXECUTIONS—ISSUE AND FORM OF WRIT—ENDORSEMENTS OF AMOUNTS TO BE PAID FOR COSTS OF WRITS.

1902 Rule 719; 1905 Ontario Rule 870; 1913 Ontario Rule, 569.

RULE 717.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—ISSUE AND FORM OF WRIT—DATE AND FORM.

1902 Rule 720; 1905 Ontario Rule 867; 1913 Ontario revision drops this rule.

RULE 718.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—DURATION AND RENEWAL—WRITS OF EXECUTION, WHEN TO BE TESTED—IN FORCE FOR TWO YEARS—FORM OF RENEWAL—PRIORITY OF RENEWED WRIT.

1902 Rule 721; 1905 Ontario Rule 872; 1913 Ontario Rule 571.

Teste notes to rule 470, and for a form of Teste see forms 140 et seq. The Ontario Rule is confined to writs of fi. fa., and also permitted renewal by notice of renewal given by the party, now superseded by a provision for a certificate of renewal.

RULE 719.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—DURATION AND RENEWAL—PROOF OF RENEWAL.

1902 Rule 722; 1905 Ontario Rule 873; 1913 Ontario revision drops this rule.

RULE 720.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—DURATION AND RENEWAL—TRANSCRIPT OF JUDGMENT TO A COUNTY COURT.

1902 Rule 722 A added by 10 Ed. VII., c. 17, s. 14, and

amended by 3 Geo. V., c. 12, s. 3 (which inserted the word "as" in the last line). No Ontario counterpart.

The provisions governing sale are contained in the Execution Act, R.S.M. 1913, cap. 66, and are much similar to those in 1905 Ontario Rules 875-882 both inclusive, 1913 Ontario Rules 557-564, both inclusive.

RULE 721.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC. — ORDERS TO RETURN WRITS.

1902 Rule 723; 1905 Ontario Rule 885 part; 1913 Ontario Rule 574 part.

Issues on Praecipe, rule 722.

A demand is necessary, rule 726—and the Ontario Rule 574 requires it to be filed with proof of service before the order will issue.

RULE 722.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC.—SUCH ORDERS TO ISSUE ON PRAECIPE.

1902 Rule 724; 1905 Ontario Rule 885 part; 1913 Ontario Rule 574 part.

RULE 723.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC.—RETURN TO ORDER.

1902 Rule 725; 1905 Ontario Rule 886; 1913 Ontario Rule 579.

The Ontario Rule 886 was similar to the former rule (725) and only required the writ to be filed.

Since the amendment by 3 Geo. V., c. 12, s. 3, the sheriff must also file his return with the writ. Under Ontario Rule 579 the sheriff is to file the writ or a certificate of return.

Penalty for disobedience. Attachment, rules 690 and 696. See also rules 703 and 704.

RULE 724.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC.—RETURN ORDERS MAY BE ISSUED BY DEPUTY CLERKS.

1902 Rule 726; no Ontario counterpart.

RULE 725.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC.—SHERIFF'S FEES WHEN RETURN ORDERED.

1902 Rule 727; 1905 Ontario Rule 887; 1913 Ontario revision drops this rule. The Ontario Rule has 15 days instead of 30.

RULE 726.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC.—DEMAND FOR RETURN BY PARTY WHO DELIVERED WRIT.

1902 Rule 728; 1905 Ontario Rule 888; 1913 Ontario Rule 573 part.

The new Ontario Rule permits giving of a certificate of return.

RULE 727.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC.—OTHER PARTY TO RETURN MAY PROCEED IN LIKE MANNER.

1902 Rule 729; 1905 Ontario Rule 889; 1913 Ontario Rule 573.

RULE 728.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC.—LIABILITY OF SHERIFF FOR COSTS FOR NOT RETURNING WRITS.

1902 Rule 730; 1905 Ontario Rule 890; 1913 Ontario Rule 576.

RULE 729.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC.—PERSONAL SERVICE ON SHERIFF NOT NECESSARY.

1902 Rule 731; 1905 Ontario Rule 891; 1913 Ontario Rule 575.

Service, i.e., of the demand, rule 726, or the order, 722, but not of the notice of motion to attach, rule 703. The Ontario Rule 575 is limited expressly to the demand or order.

RULE 730.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC.—APPLICATION OF ABOVE RULES TO CORONERS, DISTRICT REGISTRARS, ET AL.

1902 Rule 732; 1905 Ontario Rule 892; 1913 Ontario Rule 3 (h).

RULE 731.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC.—ATTACHMENT FOR NON-RETURN OF WRITS.

1902 Rule 733; 1905 Ontario Rule 893; 1913 Ontario Rule 577.

RULE 732.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC.—ISSUE OF WRIT AFTER EXTENSION OF TIME FOR RETURN.

1902 Rule 734; 1905 Ontario Rule 894; 1913 Ontario Rule 578.

The new Ontario Rule allows its issue on an ex parte application.

RULE 733.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC.—UPON RETURN OF SUCH ATTACHMENT JUDGE IN CHAMBERS MAY DIRECT ISSUE OF HABEAS CORPUS.

1902 Rule 735; 1905 Ontario Rule 895; 1913 Ontario revision drops this rule and the three following rules.

RULE 734.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC.—SUCH WRITS MAY BE RETURNABLE ON A DAY CERTAIN.

1902 Rule 736; 1905 Ontario Rule 896; no 1913 Ontario counterpart.

RULE 735.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC.—NEGLECT OF SHERIFF'S OFFICER TO RETURN PROCESS TO SHERIFF.

1902 Rule 737; 1905 Ontario Rule 897; no Ontario counterpart.

RULE 736.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXECUTIONS—RETURN OF WRITS, ETC. — ORDER COMPELLING SHERIFF'S OFFICER TO DELIVER PROCESS.

1902 Rule 738; 1905 Ontario Rule 898; Dropped in Ontario revision.

RULE 737.—Enforcement of Judgments and Orders—Executions—Lands—Writ of Elegit Abolished.

1902 Rule 739. No Ontario counterpart.

RULE 738.—Enforcement of Judgments and Orders—Executions—Lands—No More Fi. Fa. Lands to be Issued.

1902 Rule 740. No Ontario counterpart.

RULE 739.—Enforcement of Judgments and Orders—Executions—Lands—Enforcing Judgment against Lands.

1902 Rule 741. No Ontario counterpart.

The Judgments Act:—

Section 3. Provides for registration of a judgment ordering payment of money.

Section 4. Ordering payment of money, costs, charges and expenses by instalments.

Section 5. Effect of registration in Land Titles office.

Section 7. Must be renewed before the expiration of 2 years.

Section 8. Sale of lands of deceased without revivor in certain cases.

RULE 740.—Enforcement of Judgments and Orders—Executions—Lands—Motion for Judgment Debtor and Guarantee to Show Cause—Why Fraudulent Conveyance Should Not be Set Aside.

1902 Rule 742; 1905 Ontario Rule 1015. The 1913 revision drops this and the following rules.

The 1905 Ontario Rule applies only to a judgment creditor.

A motion under this or the following rule is a final and not an interlocutory motion, and affidavits on information and belief may not be used. Canada Supply Co. v. Robb, 20 M.R. 33, 14 W.L.R. 306.

RULE 741.—Enforcement of Judgments and Orders—Executions—Lands—Motion for Judgment Debtor to Show Cause Why His Interest in Land Should Not be Sold.

1902 Rule 743; 1905 Ontario Rule 1016. See notes to rule 740.

As to sale under attaching order, see rule 824.

A final motion. See note to rule 740.

McGregor v. Withers, 15 M.R. 434, 1 W.L.R. 429, as to effect of a registered certificate of a County Court judgment.

RULE 742.—Enforcement of Judgments and Orders—Executions—Lands—County Court Judgments.

1902 Rule 744 part. No Ontario counterpart. This rule (744) had formerly a clause (a) declaring the rule retroactive in its application except as to "orders or judgments" attacked before March 30th, 1897, clearly an error.

This rule changes the practice from that laid down in Proctor v. Parker, 11 M.R. 485.

RULE 743.—Enforcement of Judgments and Orders—Executions—Land—Proceedings upon Such Motions.

1902 Rule 745; 1905 Ontario Rule 1017 part. See notes to rule 740.

RULE 744.—Enforcement of Judgments and Orders—Executions—Lands—Order for Sale.

1902 Rule 746; 1905 Ontario Rule 1019. No Ontario counterpart.

RULE 745.—Enforcement of Judgments and Orders—Executions—Lands—Certificate of Lis Pendens May be Registered.

1902 Rule 747; 1905 Ontario Rule 1020. No 1913 Ontario Rule.

Vacating Lis Pendens. Rule 671.

RULE 746.—Enforcement of Judgments and Orders—Executions—Lands—Pro Rata Distribution of Proceeds of Sale of Lands under Registered Judgment against a Municipality or a School District.

1902 Rule 747 (a) added 1 Geo. V., c. 14, ss. 5 and 6. No Ontario counterpart.

RULE 747.—Enforcement of Judgments and Orders—Examination of Judgment Debtors—With and Without Order.

1902 Rule 748; 1905 Ontario Rule 900; 1913 Ontario Rule 760.

The Ontario Rules expressly apply in the case of a judgments for costs only. As to the question whether this rule permits an examination in such a case, Holmested, p. 1136, and see rule 756. Semble a judgment for costs is not within this rule. The debtor is entitled to expenses and conduct money, Galt v. Stacey, 5 M.R. 120. These rules apply to the examination of an assignor under the Assignment Act, R.S.M. 1913, cap. 12, s. 51.

The examination should not take place until after the sheriff has made or is ready to make a return of nulla bona to a fi. fa., Carscaden v. Zimmerman, 9 M.R. 102. Semble, the rule permits questions being put to a debtor as to his willingness to pay and his reasons for refusing to pay, refusal to answer which would be ground for committal, Bateman v. Svenson, 18 M.R. 493; 42 S.C.R. 146 (appeal quashed).

A debtor may refuse to answer questions as to his wife's property, Monkman v. Robinson, 3 M.R. 640, and see Macdonald v. McArthur, 4 M.R. 56.

Questions relating to the debtor's property and his transactions respecting it must be answered, Ross v. Van Etten, 7 M.R. 598, and the fact that the information is to be used in a suit against third parties is no ground for refusing to answer, ibid.

Quaere whether under this rule an individual judgment debtor resident abroad may be examined out of the jurisdiction? Grey v. Manitoba & N.W.R. Co., 12 M.R. 32.

RULE 748.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXAMINATION OF JUDGMENT DEBTORS—EXAMINATION OF OFFICERS OF JUDGMENT DEBTOR CORPORATION.

1902 Rule 749; 1905 Ontario Rule 902; 1913 Ontario Rule 581.

Judgment for costs only. See rule 747 and notes.

Past officers held to be examinable under the Ontario Rule although not specially mentioned.

Semble, no order may be made under this rule for the examination out of the jurisdiction of a judgment debtor corporation, Grey v. Manitoba & N.W.R. Co., 12 M.R. 32.

It should distinctly appear that the person named is an officer of the corporation and what office he holds, Jykes v. Winnipeg and H.B. Ry. Co., 7 M.R. 457.

RULE 749.—Enforcement of Judgments and Orders—Examination of Judgment Debtors—Examination of Certain Persons as to Judgment Debtor's Means.

1902 Rule 750; 1905 Ontario Rule 903; 1913 Ontario Rule 582.

RULE 750.—Enforcement of Judgments and Orders—Examination of Judgment Debtors—Examination in Other Cases.

1902 Rule 751; 1905 Ontario Rule 910; 1913 Ontario Rule 584.

RULE 751.—Enforcement of Judgments and Orders—Examination of Judgment Debtors—Compelling Attendance.

1902 Rule 752; 1905 Ontario Rule 905; 1913 Ontario Rule 585.

Mode of obtaining attendance, etc., rules 398-400, and see rule 489.

Appointment, rule 752.

An order is necessary in cases under rule 749, and if it is desired to hold the examination before some officer other than one of those named in rule 747.

Penalty for non-attendance, Committal, rule 754.

Conduct money and expenses must be paid. Galt v. Stacey, 5 M.R. 120.

In Jykes v. Winnipeg & H.B. Ry. Co., 7 M.R. 457, it was held that an order may not be made that an officer do produce the books of a corporation, but the corporation may be ordered to produce them, Mann v. Winnipeg & H.B. Ry. Co., 7 M.R. 457.

RULE 752.—Enforcements of Judgments and Orders—Examination of Judgment Debtors—Service of Appointment.

1902 Rule 753; 1905 Ontario Rule 906 part; 1913 Ontario Rule 586.

RULE 753.—Enforcement of Judgments and Orders—Examination of Judgment Debtors—Service of Appointment.

1902 Rule 754; 1905 Ontario Rule 906, part; see 1913 Ontario Rule 585.

See Rules 398 et seq. and notes.

RULE 754.—Enforcement of Judgments and Orders—Examination of Judgment Debtors—Committal for Failure to Attend or Make Disclosure.

1902 Rule 755; 1905 Ontario Rule 907; 1913 Ontario Rule 587.

See notes to rule 747.

In the case of an officer of a corporation the Ontario Rule (588) limits the period of committal to 6 months.

In Bateman v. Svenson, 18 M.R. 493, a defendant who admitted she had with her more than enough money to pay the debt, but refused to say whether she would or would not pay it, was committed for 12 months, her answers not being "satisfactory" within this rule. Witness has no right to read over a document given to him to identify unless he states that to be his only means of identification, Brock v. D'Aoust, 9 M.R. 195.

A reply that the debtor does not know or has forgotten is not unsatisfactory within this rule, even though thought to be untruthful, Monkman v. Robinson, 3 M.R. 640, distinguished, Macdonald v. McArthur, 4 M.R. 56.

For a further definition of satisfactory, Ross v. Van Etten, 7 M.R. 598.

Conduct of Examination. The examiner may use his discretion in deciding how much of debtor's replies shall be taken down, and may omit anything irrelevant unless properly given by way of explanation, and the debtor should not converse with his counsel during the examination, especially in a foreign language, Brock v. D'Aoust, 9 M.R. 195.

Motion to Commit. Must be supported by examiner's certificate, which may be settled and given ex parte, Brock v. D'Aoust.

RULE 755.—Enforcement of Judgments and Orders—Examination of Judgment Debtors—Provision for Order for Payment by Judgment Debtor After Examination, and Imprisonment for Disobedience of Orders.

1902 Rule 755 (a) added by 1 Geo. V., c. 14, s. 7. No Ontario counterpart.

RULE 756.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXAMINATION OF JUDGMENT DEBTORS—INTERPRETATION, "JUDGMENT," "DEBTOR."

1902 Rule 756. No Ontario counterpart. Compare 1905 Ontario Rule 835 and 1913 Ontario Rule 3 (e) & (f). See notes to rule 747.

RULE 757.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXAMINATION OF JUDGMENT DEBTORS—PERSON HAVING CARRIAGE OF JUDGMENT TO BE DEEMED PERSON TO RECEIVE PAYMENT.

1902 Rule 757; 1905 Ontario Rule 838; 1913 Ontario Rule 534 part.

RULE 758.—ENFORCEMENT OF JUDGMENTS AND ORDERS—EXAMINATION OF JUDGMENT DEBTORS—APPLICATION OF RULES 747-757 TO PROCEEDINGS UNDER ACTS OF PARLIAMENT OF CANADA.

1902 Rule 758. No Ontario counterpart.

RULE 759.—ENFORCEMENT OF JUDGMENTS AND ORDERS—ATTACHMENT OF DEBTS—GARNISHMENT—DEPUTY CLERK TO HAVE JURISDICTION IN OUTSIDE JUDICIAL DISTRICTS.

1902 Rule 759 amended by 1 Geo. V., c. 14, s. 8; 1905 Ontario Rule 911; 1913 Ontario Rule 590.

The Ontario Rule only applies to a judgment creditor and therefore only allows garnishee proceedings after judgment. The Manitoba Rule is available to:—

I. Any judgment creditor or person entitled to enforce a judgment or order who is entitled to examine under rule 747.

II. Any plaintiff whose action is pending. The application may be made at any time after the issue of the statement of claim.

Where an order made under this rule is served and at the same time execution placed in the sheriff's hands, who makes a seizure, payment by the defendant to the sheriff does not entitle the defendant to have the order discharged as the sheriff, (under the Executions Act), must retain the money three months, and the plaintiff might only receive part of his claim, owing to other creditors coming in. Kolega v. Genser, 22 W.L.R. 197.

A debt due to a debtor jointly with a third person is not attachable, Lekas v. Zappas, 23 W.L.R. 560.

May not attach monies paid to a Clerk of a County Court by a garnishing order, Otto v. Connery, 5 W.L.R. 403; a charging or receiving order might be made, ibid; nor may a promissory note be attached before maturity, ibid; Halsted v. Hirschmann, 18 M.R. 103.

This rule does not give any right to attach debts before judgment in cases of unliquidated damages, whether arising out of tort or contract. Hart v. Dubrule, 20 M.R. 234, 15 W.L.R. 602; McIntyre v. Gibson, 17 M.R. 423, 8 W.L.R. 202; Nagenast v. Miller, 3 M.R. 241.

RULE 760.—ENFORCEMENTS OF JUDGMENTS AND ORDERS—ATTACHMENT OF DEBTS—FORM OF AFFIDAVIT.

1902 Rule 760. No Ontario counterpart.

For requisites of affidavit, Johnson v. Chalmers, 19 M.R. 255, 12 W.L.R. 506.

RULE 761.—ENFORCEMENT OF JUDGMENTS AND ORDERS—ATTACHMENT OF DEBTS—MEANING OF DEBTS, OBLIGATIONS AND LIABILITIES.

1902 Rule 761. No Ontario counterpart, but see Holmested, p. 1152.

Where a purchaser of the assets of a joint stock company agrees to assume the liabilities of the company, he is bound to indemnify the company against the liability for payment of future calls on partially paid up shares of stock in another company, and such liability is attachable at the suit of such other company under this rule and 759. Victoria Montreal Fire Insurance Company v. Strome Whyte Co., 15 M.R. 645.

RULE 762.—ENFORCEMENTS OF JUDGMENTS AND ORDERS—ATTACHMENT OF DEBTS—OPERATION OF ATTACHING ORDER.

1902 Rule 762; 1905 Ontario Rule 913; 1913 Ontario Rule 592.

RULE 763.—ENFORCEMENT OF JUDGMENTS AND ORDERS—ATTACHMENT OF DEBTS—ENFORCING PAYMENT BY GARNISHEE.

1902 Rule 763; 1905 Ontario Rule 914; 1913 Ontario Rule 594 (1).

RULE 764.—ENFORCEMENT OF JUDGMENTS AND ORDERS—ATTACHMENT OF DEBTS—MATURING CLAIMS.

1902 Rule 764; 1905 Ontario Rule 915; 1913 Ontario Rule 594 (2).

Under this rule an order was made for the attachment of future payments coming due to the judgment debtor under an agreement by which he had sold land to the garnishee, Smith v. Van Buren, 17 M.R. 49, 6 W.L.R. 12. Money payable in respect of a promissory note is not attachable by garnishment before maturity, Halsted v. Hirschmann, 18 M.R. 103.

RULE 765.—ENFORCEMENT OF JUDGMENTS AND ORDERS—ATTACHMENT OF DEBTS—ISSUE WHERE GARNISHEE DISPUTES LIABILITY.

1902 Rule 765; 1905 Ontario Rule 916; 1913 Ontario Rule 595.

The Referee has jurisdiction under this rule. See rule 27 (f), but not to try the issue.

An order made on an application to set aside a garnishee order is final and not interlocutory, Braun v. David, 9 M.R. 539.

RULE 766.—ENFORCEMENTS OF JUDGMENTS AND ORDERS—ATTACHMENT OF DEBTS—ORDER FOR THIRD PERSON TO APPEAR.

1902 Rule 766; 1905 Ontario Rule 920 (1); 1913 Ontario Rule 596 (1). See rule 770 and notes.

Where a judgment debtor had sold lands to the garnishee for a price payable in future instalments, and the latter attempted to oppose the order on the grounds that he had assigned his interest to one T., who was to make the payments; Held he was still liable on his covenant and was ordered to pay over to the plaintiff, Smith v. Van Buren, 6 W.L.R. 12.

RULE 767.—ENFORCEMENT OF JUDGMENTS AND ORDERS—ATTACHMENT OF DEBTS—PROCEEDINGS AS TO CLAIMS OF THIRD PERSON.

1902 Rule 767; 1905 Ontario Rule 920 (2); 1913 Ontario Rule 596 (2).

See rule 27 (q) as to the referee's jurisdiction.

RULE 768.—ENFORCEMENT OF JUDGMENTS AND ORDERS—ATTACHMENT OF DEBTS—JUDGE MAY TAKE EVIDENCE—FURTHER POWERS OF JUDGE IN GARNISHMENT PROCEEDINGS.

1902 Rule 768. No Ontario counterpart. Clause (2) added by 7-8 Ed. VII., c. 12, s. 14.

The Referee has no jurisdiction. Rule 27 (g).

Where the claimant does not know of the existence of the creditor, the rule does not apply, Coppey v. Lear, 15 W.L.R. 354.

RULE 769.—ENFORCEMENT OF JUDGMENTS AND ORDERS—ATTACHMENT OF DEBTS—COSTS OF GARNISHEE.

1902 Rule 769. No Ontario counterpart.

RULE 770.—ENFORCEMENT OF JUDGMENTS AND ORDERS—ATTACHMENTS OF DEBTS—GARNISHEE DISCHARGED BY PAYMENT.

1902 Rule 770; 1905 Ontario Rule 921; 1913 Ontario Rule 599.

The new Ontario Rule also discharges him as against an assignee or claimant of whose claim he has given notice, and who has been called upon to show cause. This would cover cases arising under rule 766. Semble, the same result would follow in Manitoba, and the garnishee would not be released by payment into court if he did not suggest the claim of a third party of which he had notice.

RULE 771.—ENFORCEMENT OF JUDGMENTS AND ORDERS—ATTACHMENT OF DEBTS—DEBT ATTACHMENT BOOK.

1902 Rule 771. No Ontario counterpart.

RULE 772.—PETITIONS—ENDORSEMENT ON PETITION.

1902 Rule 772; 1905 Ontario Rule 937; 1913 Ontario revision drops this rule.

A petition in lunacy under R.S.M. 1913, cap. 120, must be endorsed under this rule, Re Bulger, 21 M.R. 702, 19 W.L.R. 573 followed, Re G.G., 3 W.W.R. 743.

As to material needed on such an application, Re Bulger supra; Re George, 22 W.L.R. 885 (Sask.).

RULE 773.—Administration—Who May Apply for Administration Order.

1902 Rule 776; 1905 Ontario Rule 944; 1913 Ontario Rule 608.

The new Ontario Rule requires procedure by originating notice.

See Ontario Rule 947 for Local Master's Jurisdiction.

Rule 928 infra permits certain matters to be disposed of on motion commenced by originating notice in administration (all proceedings other than actions to be commenced by originating notice, new Ontario Rule 10).

Judge in Chambers. The Referee has jurisdiction if the application is unopposed. Rule 27 (i). If opposed the application should be adjourned before a Judge, rule 32, and see rule 28.

Local Judge. See section 77 of the Act and rule 34. In Ontario his jurisdiction is ousted by disputing it; not so in Manitoba.

Parties. Rules 204-216.

The Court has a discretion to grant or refuse the order, although more than a year has passed since the death of the testator, and when the executors are doing their best to realize the assets and are in no default, the application should be refused, Re O'Connor, 12 M.R. 325.

RULE 774.—Administration—Notice of Motion.

1902 Rule 777; 1905 Ontario Rule 945; 1913 Ontario revision drops this rule the proceedings being governed by the general rules regarding originating notices. See notes to rule 773.

Fourteen Clear Days. Rule 387.

Service. In case of infants, rule 278.

As to applications by the personal representative, rule 777.

RULE 775.—Administration—Order for Administration.

1902 Rule 778; 1905 Ontario Rule 946; 1913 Ontario revision drops this rule. See notes to rule 774.

Form 137.

RULE 776.—Administration—Special Directions as to Carriage of Order.

1902 Rule 779; 1905 Ontario Rule 949; 1913 Ontario revision drops this rule. See notes to rule 774.

RULE 777.—Administration—Administration Order May be Obtained by Personal Representative.

1902 Rule 780; 1905 Ontario Rule 950; 1913 Ontario Rule 610.

As to form of proceedings in such cases, Holmested, 1196.

RULE 778.—Administration—Master to Have Full Power to Deal with Estate and Costs.

1902 Rule 781; 1905 Ontario Rule 953 (2); 1913 Ontario Rule 611 (2).

Subject to special directions under rule 796.

As to proceedings in the master's office, rule 38 et seq.

The matter is referred to the master, form 137, clause (2).

RULE 779.—Administration—Moneys Realized to be Paid into Court.

1902 Rule 782; 1905 Ontario Rule 953 (3); 1913 Ontario Rule 611 (3).

Costs. See rules 946 and 947.

RULE 780.—Administration—Master to Enquire as to Outstanding Estate—To Compute Interest on Debts and Legacies.

1902 Rule 783; 1905 Ontario Rule 703; 1913 Ontario Rule 435.

The Ontario Rules do not contain the clause as to the outstanding estate, although it seems the practice is the same.

RULE 781.—Administration—Advertisement for Creditors Holmested, p. 919.

—Form.

1902 Rule 784; 1905 Ontario Rule 701; see 1913 Ontario Rule 412.

RULE 782.—ADMINISTRATION—CREDITOR NEED NOT ATTEND UNLESS NOTIFIED.

1902 Rule 785; 1905 Ontario Rule 704; 1913 Ontario revision drops this rule.

Mode of service, rule 793, by post.

RULE 783.—ADMINISTRATION—CREDITORS TO PRODUCE SECURITIES AND OTHER DOCUMENTS, IF NOTIFIED.

1902 Rule 786; 1905 Ontario Rule 705; 1913 Ontario revision drops this rule.

RULE 784.—ADMINISTRATION—PENALTY FOR REFUSING TO PRODUCE.

1902 Rule 787; 1905 Ontario Rule 706; dropped in 1913.

RULE 785.—ADMINISTRATION—EXAMINATION OF CLAIMS.

1902 Rule 788; 1905 Ontario Rule 707; 1913 Ontario Rule 414.

RULE 786.—ADMINISTRATION—AFFIDAVIT BY EXAMINER OF CLAIMS.

1902 Rule 789; 1905 Ontario Rule 708; 1913 Ontario Rule 415.

The new Ontario Rule only provides for filing on or before the day appointed to consider.

RULE 787.—ADMINISTRATION—TIME FOR MAKING AFFIDAVITS MAY BE POSTPONED.

1902 Rule 790; 1905 Ontario Rule 709; dropped in 1913.

RULE 788.—ADMINISTRATION—ADJUDICATION ON CLAIMS.

1902 Rule 791; 1905 Ontario Rule 710; dropped in 1913.

RULE 789.—ADMINISTRATION—NOTICE TO CREDITORS, WHERE CLAIM ALLOWED WITHOUT PROOF, WHERE PROOF OF CLAIM REQUIRED.

1902 Rule 792; 1905 Ontario Rule 711; dropped in 1913.

RULE 790.—ADMINISTRATION—CREDITOR MAY SEND IN PARTICULARS OF CLAIM 7 DAYS PRIOR TO ADJOURNED ADJUDICATION.

1902 Rule 793; 1905 Ontario Rule 712; 1913 Ontario revision drops this rule.

RULE 791.—ADMINISTRATION—RECEPTION OF CLAIMS AFTER DATE FIXED IN ADVERTISEMENT.

1902 Rule 794; 1905 Ontario Rule 713; dropped in 1913.

RULE 792.—ADMINISTRATION—CREDITORS TO BE NOTIFIED WHEN THEIR CLAIMS PAYABLE.

1902 Rule 795; 1905 Ontario Rule 714; 1913 Ontario Rule 436.

RULE 793.—ADMINISTRATION—MODE OF GIVING NOTICE.

1902 Rule 796; 1905 Ontario Rule 715; 1913 Ontario Rule 437.

RULE 794.—PARTITION.

1902 Rule 797; 1905 Ontario Rule 956; 1913 Ontario Rule 615.

The new Ontario Rule requires an originating notice. See rule 773 and notes.

INFANT. Guardian ad litem appointed under rules 238, 280 and 281, and see rule 278. Service on the official guardian makes him guardian ad litem.

Note this rule uses words Local Master, Rule 773 Local Judge. As to Local Master, see section 70 of the Act.

The proceedings under this rule are alternative to action under the Partition Act, R.S.M. 1913, Cap. 150 (see sec. 16.).

See also section 23 (e).

RULE 795.—PARTITION — CASE OF LANDS DISCOVERED IN ANOTHER DISTRICT AFTER JUDGMENT.

1902 Rule 798; 1905 Ontario Rule 957; 1913 Ontario revision drops this rule.

RULE 796.—PROPERTY OF INFANTS—APPLICATION TO SELL, ETC., INFANT'S ESTATE.

1902 Rule 799; 1905 Ontario Rule 960; 1913 Ontario Rule 618 part.

To carry out sections 13 (b) and 21 of the Act.

See the Infants Act, R.S.M., 1913, Cap. 94, ss. 37, et seq., as to infants' property.

The referee in chambers has no jurisdiction, rule 27 (g), except to examine witnesses and infants under rule 805. Rule 806.

RULE 797.—PROPERTY OF INFANTS—OFFICIAL GUARDIAN TO BE NOTIFIED.

1902 Rule 800; 1905 Ontario Rule 961; 1913 Ontario Rule 618 part.

RULE 798.—PROPERTY OF INFANTS—PETITION, HOW INSTITUTED

1902 Rule 801; 1905 Ontario Rule 962; 1913 Ontario revision drops this rule.

RULE 799.—PROPERTY OF INFANTS—PETITION PRESENTED IN NAME OF INFANT.

1902 Rule 802; 1905 Ontario Rule 963; dropped from 1913 Rules.

RULE 800.—PROPERTY OF INFANTS—STATEMENTS IN PETITION.

1902 Rule 803; 1905 Ontario Rule 964 (1) and (2); 1913 Ontario Rule 619 (1) and (2).

Semble, rule 772 applies.

RULE 801.—PROPERTY OF INFANTS—PETITION MAY PRAY FOR APPOINTMENT OF GUARDIAN.

1902 Rule 804; 1905 Ontario Rule 964 (3); 1913 Ontario Rule 619 (3).

RUE 802.—PROPERTY OF INFANTS—INFANT TO BE PRODUCED UPON ALL PETITIONS FOR SALE OF HIS ESTATE.

1902 Rule 805; 1905 Ontario Rule 965; 1913 Ontario Rule 620 (1) part.

The Manitoba Rule follows the Ontario Rule as to form. In Manitoba the master would, it seems, only have jurisdiction under the order of a judge, but the referee has without an order, Rule 806.

No local master has jurisdiction to entertain a reference unless by order in Manitoba, rule 796.

As to examination of witnesses and infants, see rules 805 and 806.

RULE 803.—PROPERTY OF INFANTS—EXAMINATION OF INFANT IF OVER 14 YEARS.

1902 Rule 806; 1905 Ontario Rule 966 (1), (3); 1913 Ontario Rule 620 (1) part.

The Ontario Rules contain provision for cases where an infant is out of jurisdiction.

RULE 804.—PROPERTY OF INFANTS—INFANT UNDER 14 NEED NOT BE EXAMINED.

1902 Rule 807; 1905 Ontario Rule 967; 1913 Ontario Rule 620 (3).

RULE 805.—PROPERTY OF INFANTS—WITNESSES IN SUPPORT OF PETITION.

1902 Rule 808; 1905 Ontario Rule 968; 1913 Ontario Rule 621.

RULE 806.—PROPERTY OF INFANTS—REFEREE MAY EXAMINE INFANT AND WITNESSES WITHOUT ORDER.

1902 Rule 809; 1905 Ontario Rule 969; 1913 Ontario Rule 621 in part.

See notes to rules 796 and 802.

The referee would not otherwise have the jurisdiction, rule 27 (g).

RULE 807.—PROPERTY OF INFANTS—RELIEF MAY BE GRANTED OR FURTHER EVIDENCE REQUIRED.

1902 Rule 810. No Ontario counterpart. This rule expresses the inherent power of the court.

RULE 808.—PROPERTY OF INFANTS—SETTLING CONVEYANCES.

1902 Rule 811; 1905 Ontario Rule 970; 1913 Ontario Rule 457.

Does this rule apply in all cases where infants are interested, even other than under this series of rules? See rule 4.

RULE 809.—EXTRAORDINARY REMEDIES—BAILABLE PROCEEDINGS—ARREST FOR DEBT.

1902 Rule 812. The opening words of this rule containing the exception were added by 3 Geo. V, c. 12, s. 3, to remove the repugnancy formerly existing. This and the following rule have no Ontario counterpart. The 1905 Ontario Rules 1021 to 1066, dealing with bailable proceedings and absconding debtors, have been dropped in the 1913 revision. As to attachment of the person, rule 701 and notes; of property, rules 810 et seq.

RULE 810.—EXTRAORDINARY REMEDIES—ATTACHMENT—ISSUE AND EFFECT OF—INTERPRETATION OF "DEBTOR," "CREDITOR." AMOUNT OF DEBT NOT LESS THAN $100—"JUDGMENT CREDITOR," "JUDGMENT DEBTOR."

1902 Rule 813. See notes to rule 809.

County court attachment where the amount involved is between $10 and $500. 1913 R.S.M., c. 44, ss. 241 et seq.

RULE 811.—EXTRAORDINARY REMEDIES—ATTACHMENT — ISSUE AND EFFECT OF—ORDER FOR ATTACHMENT TO TAKE PLACE OF WRIT OF ATTACHMENT.

1902 Rule 814; 1905 Ontario Rule 1058 part; dropped in 1913.

The Ontario Rule is expressly limited to proceedings against absconding debtors. See rule 812 (a).

A judge in chambers may make the order. Rule 813.

RULE 812.—EXTRAORDINARY REMEDIES—ATTACHMENT—ISSUE AND EFFECT OF—WHAT MAY BE ATTACHED—WHEN ATTACHMENT MAY ISSUE — DEBTOR DEPARTING TO DEFRAUD CREDITOR—NON-RESIDENT DEBTOR LIABLE TO RESIDENT CREDITOR—DEBTOR HAVING TRANSFERRED OR INTENDING TO TRANSFER PROPERTY TO DEFRAUD CREDITORS.

1902 Rule 815. See 1905 Ontario Rule 1059 and notes.

The procedure is not applicable to an action for tort, Hime v. Coulthard, 15 W.L.R. 288, 20 M.R. 164.

See Emperor of Russia v. Proskouriakoff, 8 W.L.R. 461 and notes to rule 814.

RULE 813.—Extraordinary Remedies—Attachment—Issue and Effect of—Order Made by Judge in Chambers Upon Affidavit.

1902 Rule 816; 1905 Ontario Rule 1058 part.

Form of order. Rule 817.

RULE 814.—Extraordinary Remedies—Attachment—Issue and Effect of—Statement in all Cases in Affidavit—in Case of Absconding or Concealed Debtor—in Case of Non-Resident Debtor—in Case of Debtor Having Transferred or Intending to Transfer Property to Defraud Creditors.

1902 Rule 817. See notes to 1905 Ontario Rule 1059, Holmested, p. 1277.

If the affidavit shows the debtor is out of the jurisdiction, it must show such facts and circumstances as would indicate a right of service out of the jurisdiction under rules 290 and 291. Emperor of Russia v. Proskouriakoff, 8 W.L.R. 461.

Defective affidavits may not be supplemented by further affidavits in answer on a motion to set aside the order, Newton v. Bergman, 13 M.R. 563.

Non-disclosure is good cause for setting aside an ex parte order, even though full disclosure would support it, ibid.

RULE 815.—Extraordinary Remedies—Attachment—Issue and Effect of—Affidavit to Show if Possible Where Debtor is and Whether a Corporation or Not.

1902 Rule 818. See Holmested, p. 1278.

This rule is not applicable to a claim arising out of tort, Hime v. Coulthard, 20 M.R. 164, 15 W.L.R. 288; at any rate to a claim for damages for criminal conversation, ibid.

Statement as to corporation, also required by, McMaster v. Jones, 6 M.R. 186.

RULE 816—Extraordinary Remedies—Attachment—Issue and Effect of—Order for Attachment—Time for Filing Defence.

1902 Rule 819. No Ontario counterpart.

RULE 817.—Extraordinary Remedies—Attachment — Issue and Effect of—Form.

1902 Rule 820. No Ontario counterpart.

The order is addressed to the sheriff, form 116.

RULE 818.—Extraordinary Remedies—Attachment—Issue and Effect of—Operation of Order for Attachment.

1902 Rule 821. The Ontario practice is otherwise and a levy must be made, Holmested, p. 1280.

Delivery does not bind lands, rule 819, but registration of a certificate, form 117, does. Rule 822.

RULE 819.—Extraordinary Remedies—Attachment—Issue and Effect of—Order not to Bind Lands.

1902 Rule 822. See notes to rule 818 and 822 as to the Ontario practice.

To bind lands, rule 821 and 822 must be applied.

RULE 820.—Extraordinary Remedies—Attachment—Issue and Effect of—Certificate for Registration.

1902 Rule 823. No Ontario counterpart, and the following rules as to attachment have no Ontario counterpart, except rules 832, 833, 836 to 840 and rules 841, et seq.

RULE 821.—Extraordinary Remedies—Attachment—Issue and Effect of—Execution of Certificate Registration.

1902 Rule 824. No Ontario counterpart.

RULE 822.—Extraordinary Remedies—Attachment—Issue and Effect of—Effect of Registration.

1902 Rule 825. No Ontario counterpart.

In Ontario, as in Manitoba, the delivery of the order does not bind lands. In Ontario there must be actual seizure, Holmested. In Manitoba following the idea of registration of certificates of judgment, the fi. fa. lands being abolished in Manitoba,

although retained in Ontario, a certificate of the order, following rules 820 and 821, must be registered, when under this rule it binds.

The interest of a mortgagee in lands is not affected, rule 823.

Vacation of certificate, rule 824. Enforcing by sale, ibid, and rule 741.

Lapse if not proceeded upon for 1 year, rule 826.

Effect of, what may be seized under, rules 827 et seq.

RULE 823.—Extraordinary Remedies—Attachment—Issue and Effect of—Mortgagee's Interest Not Affected.

1902 Rule 826. No Ontario counterpart.

RULE 824.—Extraordinary Remedies—Attachment—Issue and Effect of—Order Cancelling Certificate—Enforcing Certificate.

1902 Rule 827.

RULE 825.—Extraordinary Remedies—Attachment—Issue and Effect of—Application of Proceeds.

1902 Rule 828.

RULE 826.—Extraordinary Remedies—Attachment—Issue and Effect of—When Certificate of Attachment to Lapse.

1902 Rule 829. A clause as to certificates in force at the passing of the Act was dropped in revision.

RULE 827.—Extraordinary Remedies—Attachment—Issue and Effect of—What May Be Seized under Order for Attachment—Inventory.

1902 Rule 830.

The defendant may recover his property by giving special bail under rules 839 and 837.

RULE 828.—Extraordinary Remedies—Attachment—Issue and Effect of — Case of Horses, Cattle, Perishable Property, etc., Being Seized.

1902 Rule 831.

RULE 829.—EXTRAORDINARY REMEDIES—ATTACHMENT—ISSUE AND EFFECT OF—SHERIFF TO BE SECURED IN SUCH CASE.

1902 Rule 832.

RULE 830.—EXTRAORDINARY REMEDIES—ATTACHMENT—ISSUE AND EFFECT OF—PROPERTY OR PROCEEDS THEREOF IN HANDS OF COUNTY COURT OFFICER, HOW TO BE DEALT WITH.

1902 Rule 833.

RULE 831.—EXTRAORDINARY REMEDIES—ATTACHMENT—ISSUE AND EFFECT OF—INVENTORY ON FIRST ORDER SUFFICIENT IN RESPECT OF SAME PROPERTY.

1902 Rule 834.

RULE 832.—EXTRAORDINARY REMEDIES—ATTACHMENT—ISSUE AND EFFECT OF—ORDERS TO BE IN DUPLICATE.

1902 Rule 835; 1905 Ontario Rule 1059.

3 Geo. V., c. 12, s. 3, part, added the word "such," striking out the words "against an absconding debtor," which occurred after the word "action."

RULE 833.—EXTRAORDINARY REMEDIES—ATTACHMENT—ISSUE AND EFFECT OF—DATE.

1902 Rule 836; 1905 Ontario Rule 1060.

There is no Manitoba counterpart to the 1905 Ontario Rule 152, which provides that a writ shall remain in force for 12 months, but see rule 176 requiring a statement of claim to be served within 6 months from its date.

RULE 834.—EXTRAORDINARY REMEDIES—ATTACHMENT—ISSUE AND EFFECT OF—FURTHER ORDERS WITHIN SIX MONTHS.

1902 Rule 837; 1905 Ontario Rule 1061.

See notes to rule 833. This rule is more consistent than the Ontario Rule, which also allows 6 months, although the currency of the writ is 12 months.

RULE 835.—EXTRAORDINARY REMEDIES—ATTACHMENT—ISSUE AND EFFECT OF—SERVICE.

1902 Rule 838. The rule applied to "actions against ab-

seconding debtors" before 3 Geo. V., c. 12, s. 3, and see notes to rule 832.

RULE 836.—Extraordinary Remedies—Attachment—Issue and Effect of—Plaintiff to Prove Claim.

1902 Rule 839; 1905 Ontario Rule 1062.

RULE 837.—Extraordinary Remedies—Attachment—Issue and Effect of—Defendant May be Let in.

1902 Rule 840; 1905 Ontario Rule 1063.

Given to recover his property under rule 839.

RULE 838.—Extraordinary Remedies—Attachment—Issue and Effect of—Special Bail.

1902 Rule 841; 1905 Ontario Rule 1064.

RULE 839.—Extraordinary Remedies—Attachment—Issue and Effect of—Return of Property upon Perfecting Special Bail.

1902 Rule 842; 1905 Ontario Rule 1065.

RULE 840.—Extraordinary Remedies—Attachment—Issue and Effect of—Motion against Order for Attachment.

1902 Rule 843; 1905 Ontario Rule 1066.

RULE 841.—Extraordinary Remedies — Attachment—Attaching Property in Hands of Third Parties—Effect of Serving Notice of Order for Attachment.

RULE 842.—Extraordinary Remedies — Attachment—Attaching Property in Hands of Third Parties—What Proceeding a Person Notified under Next Preceding Rule May Take.

RULE 843.—Extraordinary Remedies — Attachment—Attaching Property in Hands of Third Parties—Collection of Accounts by Sheriff.

RULE 844.—Extraordinary Remedies — Attachment—Attaching Property in Hands of Third Parties—Compromise of Claims by Sheriff.

RULE 845.—Extraordinary Remedies — Attachment—Attaching Property in Hands of Third Parties—Proceedings by Sheriff against Debtors of Debtor Where Attached Property Insufficient.

RULE 846.—Extraordinary Remedies—Attachment — Attaching Property in Hands of Third Parties—Form of Statement of Claim under Preceding Rule.

RULE 847.—Extraordinary Remedies—Attachment — Attaching Property in Hands of Third Parties—Sheriff Not Bound to Bring Action until Secured.

RULE 848.—Extraordinary Remedies—Attachment — Attaching Property in Hands of Third Parties—Action Not to Abate on Death, etc., of Sheriff.

RULE 849.—Extraordinary Remedies—Attachment—Priority as between Different Attaching Orders—Distribution Where Several Attaching Creditors.

RULE 850.—Extraordinary Remedies—Attachment—Priority as between Different Attaching Orders—Order Required—Preliminary Requirements for Issue of Order —Rateable Distribution.

RULE 851.—Extraordinary Remedies—Attachment—Priority as between Different Attaching Orders—Attaching Creditors in County Court to Share in Distribution.

RULE 852.—Extraordinary Remedies—Attachment—Priority as between Different Attaching Orders—Case of Property Being Insufficient.

RULE 853.—Extraordinary Remedies—Attachment—Priority as between Different Attaching Orders—Case of a Plaintiff Wishing to Prosecute Action against Defendant in Attachment.

RULE 854.—Extraordinary Remedies—Attachment—Return of Attached Property to Debtor—Return of Attached Property upon Security being Given.

RULE 855.—Extraordinary Remedies—Attachment—Return of Attached Property to Debtor—After One Month Following Return of Execution, or After One Month from Distribution, Overplus to be Restored.

RULE 856.—Extraordinary Remedies—Replevin — When Goods May be Replevied.

1902 Rule 859. There is no similar Ontario Rule, but see Holmsted, p. 1284, for the similar law on the subject.

Replevin will lie where goods, etc., are merely wrongfully detained. Holmested, p. 1284, and note the use in Rule 859 (a) of the words "wrongful taking or detention."

As to replevin in the County Court, see R.S.M. 1913, cap. 44, sec. 222. (A writ of replevin is issued in the County Court, it is abolished in the King's Bench, rule 858.)

RULE 857.—Extraordinary Remedies—Replevin—Goods Seized under Process Not to be Replevied.

1902 Rule 860. No similar Ontario Rule, but see Holmested, p. 1284, citing R.S.O. 1897, c. 66, s. 3.

RULE 858.—Extraordinary Remedies—Replevin—Writ of Replevin Abolished—Order to Replevy.

1902 Rule 861; 1905 Ontario Rule 1067; 1913 Ontario revision dropped this rule, and quaere whether it is now necessary in Ontario to bring an action to obtain replevin, but see rule 364 referring to a writ and Ontario Rule 10; form of order, rule 862, form 112.

RULE 859.—Extraordinary Remedies—Replevin—When Motion for Order Required—Order on Praecipe—Order on Praecipe Where Destrained—Except as Above Mentioned No Order to Issue.

1902 Rule 862; 1905 Ontario Rule 1068; 1913 Ontario Rule 359.

Order on Praecipe. Procedure after seizure governed by rule 866. Sheriff may not deliver goods to plaintiff, ibid, and

Schatsky v. Bateman, 7 W.L.R. 526, and an order containing a direction that he do, was set aside with costs, the goods ordered delivered to the defendants and the sheriff protected.

Motion. The Referee in Chambers has jurisdiction, rule 27.

RULE 860.—EXTRAORDINARY REMEDIES—REPLEVIN—DISCRETIONARY POWER OF COURT OR JUDGE WHEN MOTION MADE FOR ORDER.

1902 Rule 863; 1905 Ontario Rule 1069; 1913 Ontario Rule 360.

MOTION. Under rule 859 (a).

BOND. Essentials of, rule 863.

RULE 861.—EXTRAORDINARY REMEDIES — REPLEVIN—APPLICATION TO DISCHARGE ORDER.

1902 Rule 864; 1905 Ontario Rule 1070; 1913 Ontario Rule 361.

RULE 862.—EXTRAORDINARY REMEDIES—REPLEVIN — FORM OF REPLEVIN ORDER.

1902 Rule 865; 1905 Ontario Rule 1071 part; 1913 Ontario revision drops this rule.

RULE 863.—EXTRAORDINARY REMEDIES—REPLEVIN—SHERIFF'S SECURITY—ASSIGNMENT OF BOND—BONDS SUBJECT TO 8 & 9 WM. 3, C. 11, S. 8.

1902 Rule 866; 1905 Ontario Rule 1072-1073; 1913 Ontario Rule 362 part.

The words "unless otherwise provided by the order," were added by 3 Geo. V., c. 12, s. 3 part.

The new Ontario Rule drops clause (3) (1905 Ontario Rule 1073).

See rule 870 as to security on order in Withernam

RULE 864.—EXTRAORDINARY REMEDIES—REPLEVIN—INDEMNITY OF DEFENDANT.

1902 Rule 867; 1905 Ontario Rule 1074; 1913 Ontario Rule 363.

For any damage sustained by reason of the order of replevin, recourse must be had to the replevin bond, Oliver v. Slater, 16 W.L.R. 107.

RULE 865.—Extraordinary Remedies—Replevin—Sheriff Not to Serve Copy Order Till He Has Replevied.

1902 Rule 868; 1905 Ontario Rule 1075; 1913 Ontario Rule 364.

RULE 866.—Extraordinary Remedies—Replevin—Action of Sheriff When Order Issues on Praecipe.

1902 Rule 869; 1905 Ontario Rule 1076; 1913 Ontario Rule 365.

The new Ontario Rule only allows 7 days and only applies to praecipe orders under the rule similar to 859 (b), and is silent as to cases under the rule similar to 859 (c), from which it would seem that the general practice should be followed in such cases. The Manitoba Rule applies in both cases.

RULE 867.—Extraordinary Remedies—Replevin—Property Concealed in House.

1902 Rule 870. No Ontario counterpart.

RULE 868.—Extraordinary Remedies—Replevin—Property Concealed About the Person.

1902 Rule 871. No Ontario counterpart.

RULE 869.—Extraordinary Remedies—Replevin—Return to Order.

1902 Rule 872; 1905 Ontario Rule 1077; 1913 Ontario Rule 366.

RULE 870.—Extraordinary Remedies — Replevin—Elongnment of Property—Order in Withernam.

1902 Rule 873; 1905 Ontario Rule 1078 (1); 1913 Ontario Rule 367 (1).

This rule permits taking by way of reprisal property of the defendant not mentioned in the order, that is property to which the plaintiff makes no claim except under his order in Withernam.

There is no Manitoba counterpart to the Ontario Rule permitting the plaintiff in such cases to serve his writ with a claim for the return of the goods and damages for detention, or in the alternative for damages for conversion.

RULE 871.—Extraordinary Remedies—Replevin—Judgment Where No Defence.

1902 Rule 874; 1905 Ontario Rule 1079; 1913 Ontario Rule 368.

RULE 872.—Extraordinary Remedies—Mandamus — Mandamus May be Asked in Statement of Claim—Joinder of Claim for Mandamus with Other Claims.

1902 Rule 875; 1905 Ontario Rule 1081; 1913 Ontario revision drops this rule.

See notes to section 26 (o) of the Act.

This mandamus is not the High Prerogative Writ (see rule 876), but is in the nature of an execution to give relief to a plaintiff damaged by failure on the part of a defendant to fulfil a duty when his adequate remedy is specific performance of the duty and is "in fact the Common Law equivalent of a mandatory injunction." Holmested, 1293. The Ontario Rule had not the exceptions in clause (2). This rule should be read with rules 873, 874 and 877 to 880, the latter five of which are general rules.

See rule 883 providing a simpler form of application to obtain a High Prerogative Writ, also obtainable under rule 876.

Referee in Chambers or local Judges have no jurisdiction, rule 886.

The motion should be made in the name of the Sovereign ex rel. the applicant, otherwise it is irregular. Re Frankel & City of Winnipeg, 22 W.L.R. 597.

RULE 873.—Extraordinary Remedies—Mandamus — Judgment.

1902 Rule 876; 1905 Ontario Rule 1086.

See rule 872, notes.

RULE 874.—Extraordinary Remedies—Mandamus—Writ of Mandamus Abolished.

1902 Rule 877; 1905 Ontario Rule 1080; 1913 Ontario Rule 622 part.

This rule is separated from the others in the former Ontario Rules as it applies to the three different classes of mandamus under rules 872, 876 and 883.

See also rules 877 to 880, to which the same would apply.

The new Ontario practice provides only for summary application on originating notice.

RULE 875.—Extraordinary Remedies—Mandamus—Procedure in Mandamus Cases.

1902 Rule 878. No Ontario counterpart, the practice is the same. See notes to rule 874.

RULE 876.—Extraordinary Remedies—Mandamus—Jurisdiction Not Affected.

1902 Rule 879; 1905 Ontario Rule 1084; 1913 Ontario revision drops this rule.

This is the Old Prerogative Writ, except that it now takes the form of an order. Rule 874 and notes. The provision as to leave is not in the 1905 Ontario Rule.

For the new Ontario practice, rule 874 and notes.

Will only lie where no other remedy. See Holmested, pp. 76, et seq., for the history of this writ.

Referee in Chambers or local Judges have no jurisdiction, rule 886.

RULE 877.—Extraordinary Remedies—Mandamus — Determination of Application.

1902 Rule 880. No Ontario counterpart.
See rule 874 and notes.

RULE 878.—Extraordinary Remedies—Mandamus — Person Commanded to do an Act to File Affidavit Showing Compliance or Reasons for Non-Compliance.

1902 Rule 881. See 1905 Ontario Rule 1085.
This is a general rule. See notes to 874.

RULE 879.—Extraordinary Remedies—Mandamus—In Case of Corporation Commanded, Who Shall Make Above Affidavit.

1902 Rule 882. No Ontario counterpart.
General rule. See 874 and notes.

RULE 880.—Extraordinary Remedies—Mandamus — Adding Parties.

1902 Rule 883. No Ontario counterpart.

See rule 874 and notes.

This rule applies to applications under rules 876 and 882.

RULE 881.—Extraordinary Remedies—Mandamus — Order May Issue in First Instance.

1902 Rule 884; 1905 Ontario Rule 1090 part.

The Ontario Rule has not the last two clauses.

This rule applies to applications under rules 876-882.

RULE 882.—Extraordinary Remedies—Mandamus — Motion for Order to be Supported by Affidavit.

1902 Rule 885; 1905 Ontario Rule 1091.

The Ontario Rule permits an application to a Judge in Chambers. This rule provides a simple practice for obtaining a High Prerogative Writ of Mandamus. See rule 876 and notes.

This rule is subject to general rules 873-874 and 877 to 881, both inclusive.

The Referee in Chambers or local Judges have no jurisdiction, rule 886.

RULE 883.—Extraordinary Remedies—Mandamus — Service of Motion.

1902 Rule 886. No Ontario counterpart.

RULE 884.—Extraordinary Remedies—Mandamus—Order.

1902 Rule 887. No Ontario counterpart.

RULE 885.—Extraordinary Remedies—Mandamus—Enforcement of Order.

1902 Rule 888; 1905 Ontario Rule 862; 1913 Ontario Rule 552.

RULE 886.—Extraordinary Remedies—Mandamus—Referee or Local Judges Not to Grant Order of Mandamus.

1902 Rule 889; 1905 Ontario Rule 42 (12) 47; 1913 Ontario Rule 208 (9) and 210.

The Local Judge has jurisdiction in certain cases.

RULE 887.—Extraordinary Remedies—Injunctions — Writ of Injunction Abolished—Order for Injunction.

1902 Rule 890; 1905 Ontario Rule 1094; 1913 Ontario revision drops this rule.

See notes to section 26 (o) of Act.

RULE 888.—Extraordinary Remedies—Interim Preservation of Property.

1902 Rule 891; 1905 Ontario Rule 1094; 1913 Ontario Rule 369.

Time of application, rule 890.

RULE 889.—Extraordinary Remedies—Interim Preservation of Property—Sale of Perishable Goods.

1902 Rule 892; 1905 Ontario Rule 1097; 1913 Ontario Rule 371.

RULE 890.—Extraordinary Remedies—Interim Preservation of Property—Application for Injunction Order.

1902 Rule 893. See 1905 Ontario Rule 361; 1913 Ontario revision drops that rule.

RULE 891.—Extraordinary Remedies—Interim Preservation of Property—Order for Detention and Inspection of Property.

1902 Rule 894; 1905 Ontario Rule 1096; 1913 Ontario Rule 370.

See rule 605 as to inspection by juries, parties, or witnesses.

An order was made under this rule for retaining property (the subject of an attaching order, which was set aside) as being the subject of an action, the sheriff being required to store and insure the goods at the plaintiff's expense, to be kept paid one week in advance and in default of payment of which, the goods were to be restored to the defendant, Emperor of Russia v. Proskouriakoff, 7 W.L.R. 766.

RULE 892.—Extraordinary Remedies—Interim Preservation of Property—Amount of Lien Claimed May be Paid into Court and Property Delivered to Plaintiff.

1902 Rule 895; 1905 Ontario Rule 1099; 1913 Ontario Rule 372.

RULE 893.—EXTRAORDINARY REMEDIES—PROHIBITION—APPLICATION FOR PROHIBITION.

1902 Rule 896; 1905 Ontario Rule 1100 part; 1913 Ontario Rules 622, 623 in part.

In Ontario the application is heard by a Judge in Chambers, rule 207 (11); the Master has no jurisdiction, rule 208 (9). In Manitoba the motion is to a Judge in Court, rule 894. Re Landsborough, 21 M.R. 708, 18 W.L.R. 601. Watson v. Lillico, 6 M.R. 59.

Where a magistrate has given himself jurisdiction by an erroneous conclusion on a point of law, prohibition will lie, Re Rex v. Sparks, 23 W.L.R. 613.

"Where want of jurisdiction is apparent upon the face of the proceedings, prohibition goes at any time after service of the process." Curlewis v. Edwards cited in Re Buchanan, 23 M.R. 943, 26 W.L.R. 447.

An application for an order to prohibit a magistrate from hearing a criminal charge is a civil proceeding and properly brought under this rule, Rex v. Suck Sin, 20 M.R. 720.

Will lie to prevent a municipal corporation from proceeding in a matter ultra vires the corporation. Re Devitt and City of Winnipeg, 16 M.R. 398; 4 W.L.R 369. No prohibition ex debito justitiae, but only as an extreme measure, Rex v. Hamlin, 3 O.W.N. 1260.

RULE 894.—EXTRAORDINARY REMEDIES—PROHIBITION—JUDGE TO BE PROHIBITED NEED NOT BE NOTIFIED.

1902 Rule 897. No Ontario counterpart. See notes to rule 893.

"OTHER APPLICATIONS TO A JUDGE SITTING IN COURT." The use of these words excludes application to a Judge in Chambers.

RULE 895.—EXTRAORDINARY REMEDIES—PROHIBITION—WRIT OF PROHIBITION ABOLISHED—ORDER FOR PROHIBITION.

1902 Rule 898; 1905 Ontario Rule 1100 part; 1913 Ontario Rule 623 part.

RULE 896.—EXTRAORDINARY REMEDIES—INTERPLEADER—INTERPLEADER RELIEF.

1902 Rule 899; 1905 Ontario Rule 1103; 1913 Ontario Rule 625.

The new Ontario Rules require the application to be made on originating notice, rule 10.

The Ontario Rules have not the latter part of clause (b) after the words "process issued." The former part would seem to be wide enough to cover all special cases enumerated in the latter.

THIRTY DAYS. No such limitation in Ontario.

Referee in Chambers has no jurisdiction under rule 903, see rule 27 (q), but may order issue under this rule and 902, and see Galt v. McLean, 6 M.R. 424.

HOW OBTAINED. By motion under rule 900.

Costs, County Court, rule 920, if value $400 or under. See R.S.M. 1913, cap. 44, s. 289, et seq.

SHERIFF. Must show valid seizure, Dodd v. Vail (Sask.), 23 W.L.R 62, following Dixon v. McKay, 21 M.R. 762. Abandonment, what is? ibid.

Relief may be granted under this rule to a vendor of land when two agents claim the same amount of commission on the sale of land, the vendor admitting it is due to one or other. Webb v. Rodney, 19 M.R. 120.

RULE 897.—EXTRAORDINARY REMEDIES—INTERPLEADER—MATTER TO BE PROVED BY APPLICANT.

1902 Rule 900; 1905 Ontario Rule 1104; 1913 Ontario Rule 626.

As to essentials of sheriff's affidavit, see rule 920.

RULE 898.—EXTRAORDINARY REMEDIES—INTERPLEADER — APPLICANT ENTITLED TO RELIEF THOUGH TITLES OF CLAIMANTS INDEPENDENT.

1902 Rule 901; 1905 Ontario Rule 1105; 1913 Ontario Rule 627.

RULE 899.—EXTRAORDINARY REMEDIES—INTERPLEADER— WHEN APPLICATION MAY BE MADE BY DEFENDANT.

1902 Rule 902; 1905 Ontario Rule 1106 part; 1913 Ontario Rule 628 part.

Stay of proceedings may be ordered in such a case, rule 901.

RULE 900.—EXTRAORDINARY REMEDIES—INTERPLEADER — MOTION BY APPLICANT.

1902 Rule 903; 1905 Ontario Rule 1107; 1913 Ontario Rule 629.

RULE 901.—EXTRAORDINARY REMEDIES—INTERPLEADER—STAY OF PROCEEDINGS IN ACTION WHEN DEFENDANT APPLICANT.

1902 Rule 904; 1905 Ontario Rule 1106 part; 1913 Ontario Rule 628 part.

Such application may be made at any time after service of the statement of claim, rule 899.

RULE 902.—EXTRAORDINARY REMEDIES—INTERPLEADER—ORDER.

1902 Rule 905; 1905 Ontario Rule 1109; 1913 Ontario Rule 631.

Non- appearing claimant may be barred, rule 909.

For form and effect of order, rule 919.

RULE 903.—EXTRAORDINARY REMEDIES—INTERPLEADER — EVIDENCE.

1902 Rule 906; 1905 Ontario Rule 1110; 1913 Ontario Rule 632.

The Ontario Rule requires consent of both claimants or upon the request of one the Judge may exercise his discretion.

The Referee in Chambers has no jurisdiction, rule 27 (q).

RULE 904.—EXTRAORDINARY REMEDIES—INTERPLEADER—QUESTIONS OF LAW.

1902 Rule 907; 1905 Ontario Rule 1111; 1913 Ontario Rule 633.

RULE 905.—EXTRAORDINARY REMEDIES—INTERPLEADER—ISSUES MAY BE TRIED BY A JURY.

1902 Rule 908. No Ontario counterpart, but trial by jury may, it seems, be had in Ontario. Holmested, p. 1318.

See section 49 of the Act. Fee $15.00 (ss. 2).

RULE 906.—EXTRAORDINARY REMEDIES—INTERPLEADER—SHERIFF'S INTERPLEADER APPLICATIONS.

1902 Rule 909. No Ontario Rule similar.

If County Court fi. fa.'s are returned unsatisfied for $100

or more, the Clerk may issue a writ directed to the sheriff. R.S.M. 1913, c. 44, s. 209. Where writs issue from both County Court and King's Bench, see rule 914. For form of affidavit, rule 920.

RULE 907.—Extraordinary Remedies—Interpleader—Judgment Final, Subject to Appeal or Motion.

1902 Rule 910. No Ontario counterpart.

RULE 908.—Extraordinary Remedies—Interpleader—Failure of Claimant to Appear or Obey Order.

1902 Rule 911; 1905 Ontario Rule 1108; 1913 Ontario Rule 630.

RULE 909.—Extraordinary Remedies—Interpleader—Order for Sale of Goods Seized in Execution.

1902 Rule 912; 1905 Ontario Rule 1112; 1913 Ontario Rule 634.

The changes made in rule 634 do not seem to alter the practice under the rule.

RULE 910.—Extraordinary Remedies—Interpleader — Exclusion of Execution Creditor Not Joining in Contestation.

1902 Rule 913; 1905 Ontario Rule 1113; 1913 Ontario Rule 635.

RULE 911.—Extraordinary Remedies—Interpleader—Final Disposition of all Matters by Court or Judge.

1902 Rule 914. See 1905 Ontario Rule 1114 and 1913 Ontario Rule 636.

The Ontario Rules have not the latter sentence. This rule does not apply to County Court Interpleaders. See rule 923.

RULE 912.—Extraordinary Remedies—Interpleader—Title Where One Order Made in Several Actions.

1902 Rule 915; 1905 Ontario Rule 1117; 1913 Ontario revision drops this rule.

RULE 913.—Extraordinary Remedies — Interpleader—In Case of Several Executions Sheriff May Embrace all in One Application.

1902 Rule 916; 1905 Ontario Rule 1118; 1913 Ontario Rule 639.

RULE 914.—Extraordinary Remedies—Interpleader—Application in Case of Executions from Different Courts.

1902 Rule 917; 1905 Ontario Rule 1119; 1913 Ontario Rule 640.

Rule 1119 has not the last clause. Rule 640 is to the same effect as 1119, although simplified. Where all writs are from the County Court, see rule 906.

County Court Writs. See notes to rule 906.

RULE 915.—Extraordinary Remedies—Interpleader—Orders as to Sale, etc., in Cases under Last Two Rules.

1902 Rule 918. No Ontario counterpart.

RULE 916.—Extraordinary Remedies—Interpleader—When Issue Directed Sheriff May Tax His Costs and Serve Allocatur on Each Party.

1902 Rule 919; 1905 Ontario Rule 1120; 1913 Ontario Rule 641.

The Ontario Rules give the sheriff a lien on the property for his costs. Under the Ontario Rule the costs are only payable upon receipt, not "forthwith," as under 916. The sheriff may not issue execution on default, but may obtain an order for payment.

RULE 917.—Extraordinary Remedies—Interpleader—Liability for Sheriff's Costs Where Case Compromised.

1902 Rule 920; 1905 Ontario Rule 1120 (4); 1913 Ontario Rule 641 (4).

RULE 918.—Extraordinary Remedies—Interpleader—Sheriff's Possession Money Where Goods Remain in His Custody Pending Determination of Issue.

1902 Rule 921; 1905 Ontario Rule 1121; 1913 Ontario Rule 642.

RULE 919.—Extraordinary Remedies—Interpleader—Interpleader Order.

1902 Rule 922. No Ontario counterpart.

RULE 920.—Extraordinary Remedies—Interpleader—Trial of Interpleader in County Courts—List and Value of Goods to be Set Out in Sheriff's Affidavit.

1902 Rule 923. This series of rules has no Ontario counterpart, but see 1905 Ontario Rules 1123 and 1124, providing the practice in County Court Interpleaders. See also R.S.M. 1913, cap. 44, s. 289, as to County Court Interpleaders.

RULE 921.—Extraordinary Remedies—Interpleader—Trial of Interpleader in County Courts—Trial of Issue in County Court.

1902 Rule 924. Compare 1905 Ontario Rule 1125; 1913 Ontario Rule 646.

RULE 922.—Extraordinary Remedies—Interpleader—Trial of Interpleader in County Courts—Filing Copy of Order for Such Issue in County Court.

1902 Rule 925. Compare 1905 Ontario Rule 1124. 1913 Ontario Rule 645.

RULE 923.—Extraordinary Remedies—Interpleader—Trial of Interpleader in County Courts—Taxation of Costs—Filing Copy of County Court Judgment in Court of King's Bench.

1902 Rule 926.

Time for appealing, 10 days. R.S.M. 1913, cap. 44, s. 336 and rule 927.

RULE 924.—Extraordinary Remedies—Interpleader—Trial of Interpleader in County Courts—Appeal from County Court.

1902 Rule 927.

RULE 925.—Extraordinary Remedies—Interpleader—Interpleader by Bailees and Carriers.

1902 Rule 928. There is no Ontario counterpart, the

former rules being dropped, as rule 1103 (a) (Manitoba 896) was considered to provide for such cases, Holmested, 1312.

RULE 926.—Extraordinary Remedies—Interpleader—Interpleader by Bailees and Carriers—Barring Claimant.

1902 Rule 929.

RULE 927.—Extraordinary Remedies—Interpleader—Interpleader by Bailees and Carriers — Satisfaction of Bailee's Lien May be Provided for.

1902 Rule 930.

RULE 928.—Originating Notices—Who May Give Notice—In What Cases.

Added to 1902 Rules by 3 Geo. V., c. 12, s. 10, as 994; 1905 Ontario Rule 938; 1913 Ontario Rule 600.

See notes to rule 455.

The new Ontario Rule also allows the fixing of the compensation of any Executor, Administrator or Trustee under originating notice, rule 600 (i).

Under this rule the construction of a will may be determined. Re Rally, 25 O.L.R. 112; Re Dion, 23 M.R 549; Re Crichton 23 M.R. 595, R.S.M. 1913, cap. 200, s. 42 (Trustee Act), does not give the right, see Re Rally, 25 O.L.R. 113; Re Dion, 23 M.R. 549; Re Crichton, 23 M.R. 595, 25 W.L.R. 18; although an application for advice may be made under that Act upon certificate of counsel.

The Referee has no jurisdiction, rule 27 (U).

RULE 929.—Originating Notices—Who to be Served.

Added to the 1902 Rules by 3 Geo. V., c. 12, s. 10, part. 1905 Ontario Rule 939; 1913 Ontario Rule 601.

Rule 215 permits the court to proceed, although some of the parties are not before it.

Rules 211 and 212 should be followed in the case of absent parties.

Semble, service out of the jurisdiction may not be ordered, as the Manitoba Rules have no counterpart to 1905 Ontario Rule 162 (3), dropped however in the 1913 revision.

The new Ontario practice requires all proceedings other than an action or proceeding ex parte to be commenced by originating notice, rule 10.

RULE 930.—ORIGINATING NOTICES—WHO TO BE SERVED.

3 Geo. V., c. 12, s. 10 part; 1905 Ontario Rule 940; 1913 Ontario Rule 601 (2) 1.

The new Ontario Rule drops clause (2), which permits the court to appoint a representative person, so that all parties may be bound, rules 211 and 212.

RULE 931.—ORIGINATING NOTICE—JUDGE'S POWERS.

3 Geo. V., c. 12, s. 10 part; 1905 Ontario Rule 941; 1913 Ontario Rule 606 (1).

RULE 932.—ORIGINATING NOTICE—SPECIAL DIRECTIONS.

3 Geo. V., c. 12, s. 10 part; 1905 Ontario Rule 942; 1913 Ontario Rule 606 (2).

RULE 933.—ORIGINATING NOTICE—EFFECT OF NOTICE.

3 Geo. V., c. 12, s. 10 part; 1905 Ontario Rule 943; 1913 Ontario Rule 607.

RULE 934.—COSTS—COSTS TO BE IN DISCRETION OF COURT.

1902 Rule 931; 1905 Ontario Rule 1130; 1913 Ontario Juricature Act, 74.

Where the defendant succeeds on the main issue and the plaintiff on a small and almost undefended item in his claim, the defendant should have his costs of the action and the plaintiff his costs of such issue, Hill v. Stait, 23 M.R. 832. See Matheson v. Kelly, 26 W.L.R. 691, 5 W.W.R. 1140.

The plaintiffs were given one-half costs in Emerson v. Wright, 6 W.L.R. 493. Costs of a partnership action are payable out of the assets unless some good reason to the contrary. Clark v. Wilson, 23 M.R. 10, 23 W.L.R. 258. If no such assets there should be no order as to costs, even if one party unsuccessfully asserts some right, unless one partner guilty of misconduct or negligence, ibid. The jury has nothing to do with costs, Davis v. Wright, 21 M.R. 716, 19 W.L.R. 762.

Under this rule a successful plaintiff may be ordered to pay costs, Matheson v. Kelly, supra.

BLOCK SYSTEM OF COSTS. It is to be noted this was adopted in Ontario in 1913.

Costs to and against the Crown, R.S.M. 1902, c. 152, ss. 17, 18, Rules 265 and 266.

Semble, that in libel actions where a plaintiff recovers nominal damages only, costs will only be entered on a judgment of the trial Judge or perhaps of the Court, per Howell, C.J.A., in Shillinglaw v. Whillier, 12 W.L.R. 128, p. 131, considering rule 934 (2); and the Libel Act, R.S.M. 1913, cap. 113. Formerly a judgment for nominal damages was held not to entitle the plaintiff to costs, Manitoba, etc., Co. v. Stovel Co., 14 M.R. 55.

In all actions tried by jury, the costs are in the discretion of the Judge, Shillinglaw v. Whillier, 19 M.R. 149, 18 M.L.R. 149, 12 W.L.R. 128; Campbell v. Joyce, 15 W.L.R. 29.

By taking an exaggerated view of his own damages, a plaintiff may not entitle himself to costs on a larger scale than the rules allow, Fredkin v. Glines 11 W.L.R. 318.

A certificate to prevent set-off will be given and was given in Moody v. McDonald, 4 W.L.R. 303, the defendant not having pleaded the partial defence upon which he was partially relieved.

King's Bench costs allowed in an action in which the plaintiff recovered an amount greater than would have originally been within the County Court jurisdiction, but where that jurisdiction was increased during the pendency of the action, Rosenberg v. Tymchorak, 18 M.R. 319, 9 W.L.R 110; Todd v. Union Bank, 6 M.R. 457, distinguished.

RULE 935.—Costs — Case of One of Several Plaintiffs Failing.

1902 Rule 932; 1905 Ontario Rule 1131; 1913 Ontario revision drops this rule. Joinder, see rule 195.

RULE 936.—Costs—Case in Which County Court Costs Only Allowed.

1902 Ontario Rule 933; 1905 Ontario Rule 1132; 1913 Ontario Rule 649.

Where unsuccessful party guilty of flagrant deceit and falsehood, full costs given in discretion of trial Judge without set off, MacKissock v. Brown, 23 M.R. 348.

The certificate to prevent set off was allowed where the plaintiff only recovered $344, the trial Judge being satisfied the plaintiff's solicitor honestly believed that the plaintiff would recover an amount beyond that jurisdiction, but he allowed the

plaintiff no costs, Rose v. Clark, 21 M.R. 635, 19 W.L.R. 456.

As to the jurisdiction of a County Court, see R.S.M. 1913, cap. 44.

King's Bench costs granted where plaintiff justified in bringing his action (by conduct of defendant) in that Court, Lewis v. Bucknam, 20 W.L.R 4.

Rule 936 does not apply in the case of an action against a County Court Bailiff, and King's Bench costs may be given if damages are over $10.00, Campbell v. Joyce, 15 W.L.R. 29, if under, see R.S.M. 1913, cap. 44, s. 40.

RULE 937.—COSTS—COSTS WHERE SEVERAL ACTIONS ON ONE BOND, NOTE, BILL, ETC.

1902 Rule 934; 1905 Ontario Rule 1135; 1913 Ontario Rule 656.

RULE 938.—COSTS—COSTS OF GUARDIANS.

1902 Rule 935; 1905 Ontario Rule 1138; 1913 Ontario Rule 655.

RULE 939.—COSTS—COSTS OF ATTACHING DEBTS.

1902 Rule 936; 1905 Ontario Rule 1139; 1913 Ontario revision drops this rule.

RULE 940.—COSTS—INTERLOCUTORY COSTS.

1902 Rule 937; Compare 1905 Ontario Rules 1154 and 1136; 1913 Ontario Rules 654 and 670.

RULE 941.—COSTS—COSTS OF EXAMINATIONS FOR DISCOVERY.

1902 Rule 938. No Ontario counterpart.

See rule 975 (a).

The costs of the examination out of the jurisdiction of a past officer of the plaintiffs after the engineer of the plaintiffs had been examined, were disallowed as unnecessary, City of Winnipeg v. Winnipeg Elec. Ry. Co., 23 M.R. 533, 23 W.L.R. 49.

If plaintiff succeeds only on a point disclosed in the pleadings, he is not entitled to the costs of an examination for discovery, Matheson v. Kelly, 26 W.L.R. 691.

RULE 942.—COSTS—COSTS FROM ONE DEFENDANT TO ANOTHER.

1902 Rule 939; 1905 Ontario Rule 1140; dropped in 1913.

RULE 943.—COSTS—COSTS OF SHORTHAND WRITER.

1902 Rule 940; 1905 Ontario Rule 1143; 1913 Ontario Rule 673.

RULE 944.—COSTS—COSTS IN ALIMONY ACTIONS.

1902 Rule 942; 1905 Ontario Rule 1144; 1913 Ontario Rule 387.

No sum for counsel fees should be allowed unless the employment of counsel was necessary, Standall v. Standall, 22 M.R. 591.

RULE 945.—COSTS—COSTS IN ALIMONY ACTIONS.

1902 Rule 943; 1905 Ontario Rule 1145; 1913 Ontario Rule 388.

RULE 946.—COSTS—COSTS IN ADMINISTRATION AND PARTITION ACTIONS.

1902 Rule 944; 1905 Ontario Rule 1146; 1913 Ontario Rule 653.

RULE 947.—COSTS—COSTS OF UNNECESSARY ADMINISTRATION, PARTITION OR SALE ACTIONS—PARTY TO PAY HIS OWN COSTS WHERE HE REFUSES TO BE REPRESENTED BY SOLICITOR FOR CLASS.

1902 Rule 945; 1905 Ontario Rule 1147 and 1148; 1913 Ontario Rule 657 only corresponds to the second portion of the rule; the first portion was dropped in 1913.

RULE 948.—COSTS—COSTS OCCASIONED BY NOT ADMITTING.

1902 Rule 946 as added by 7-8 Ed. VII, c. 12, s. 9; 1905 Ontario Rule 1149; 1913 Ontario Rule 671.

The Ontario Rules are wider, applying "to anything in the course of an action or reference."

RULE 949.—COSTS—TENDER OF COSTS ON SERVICE OF PETITION.

1902 Rule 947; 1905 Ontario Rule 1153; 1913 Ontario revision drops this rule.

RULE 950.—COSTS—COSTS OF UNNECESSARY APPEARANCE AT COURT OR IN CHAMBERS.

1902 Rule 948. No Ontario counterpart. Semble, the practice would be the same.

RULE 951.—COSTS—COSTS OF SUIT TAXABLE AGAINST UNSUCCESSFUL PARTY LIMITED TO $300 AND DISBURSEMENTS—SUBJECT TO INCREASE WHERE SPECIALLY ORDERED BY TRIAL JUDGE. . . . . .

Added to 1902 Rules by 7-8 Ed. VII, c. 12, s. 1. No Ontario counterpart.

"Proceeding," defined in Traders Bank v. Wright, 8 W.L.R. 747. This rule covers costs of an application for an injunction until the trial of the action and of an appeal from the order granting it, ibid.

Special importance and difficulty, Brandon Electric Light Co. v. Brandon, 22 M.R. 500.

Trial Judge. Quaere, whether this means a judge before whom a matter comes on further directions. Buchanan v. City of Winnipeg, 21 M.R. 101.

The plaintiff obtained judgment and a reference with costs up to and including trial and further directions and costs reserved, and the trial judge refused an application under this rule and the plaintiff taxed costs to the limit. The reference proceeded before another judge and the plaintiff obtained a large amount and costs, but no application was made for costs under this rule, and the judgment on further directions was drawn up and entered. He then applied to the trial judge under this rule. Held he must abide by the judgment as entered, unless he could amend under rules 662, 663.

Buchanan v. Winnipeg, supra, 17 W.L.R. 631, and see 19 W.L.R. 761.

RULE 952.—COSTS—COURTS TO HAVE ABSOLUTE DISCRETION OVER COSTS AND MAY ORDER PAYMENT OF COSTS BY SOLICITOR OR COUNSEL PERSONALLY.

The clause was added to the practice by 7-8 Ed. VII, c. 12, s. 3. No Ontario counterpart, but see notes to rule 534.

RULE 953—COSTS—TAXATION—COSTS MAY BE TAXED WITHOUT REFERENCE.

1902 Rule 950; 1905 Ontario Rule 1157; 1913 Ontario Rule 661.

See rule 934 and notes.

A counterclaim is to be regarded as a separate claim on taxation of costs, Les Soeurs, etc., v. Forrest, 20 M.R. 301, 16 W.L.R. 395-647.; Cox v. Canadian Bank of Commerce, 23 M.R. 25, 23 W.L.R. 376; Kelly v. City of Winnipeg, 12 W.L.R. 49. A defendant who has succeeded in respect of both the claim and counterclaim should receive his costs of opposing the claim and, as well, his additional costs incurred by reason of his counterclaim, Cox v. Canadian Bank of Commerce, supra.

In taxing the costs of a counterclaim, the taxing officer should not take into account the fact that there has been a reduction of the defendants taxable costs of defending the plaintiff's action by reason of the statutory limit fixed by sec. 1 of 7-8 Ed. VII, c. 12 (rule 951), ibid.

The costs of a successful party represented by a solicitor paid by salary may be taxed and collected, Stephens v. City of Calgary, 12 W.L.R. 379 (Alta.).

RULE 954.—COSTS—TAXATION—ONE DAY'S NOTICE OF TAXATION.

1902 Rule 951; 1905 Ontario Rule 1159; 1913 Ontario Rule 662.

RULE 955.—COSTS—TAXATION—NOTICE OF TAXATION UNNECESSARY WHEN DEFENDANT HAS NOT APPEARED.

1902 Rule 952; 1905 Ontario Rule 1160; 1913 Ontario revision drops this rule.

RULE 956.—COSTS—TAXATION—PARTIES TO ATTEND TAXATION.

1902 Rule 953; 1905 Ontario Rule 1161; 1913 Ontario Rule 663.

RULE 957.—COSTS—TAXATION—NEGLECT TO BRING IN OR TAX COSTS.

1902 Rule 954; 1905 Ontario Rule 1163; 1913 Ontario Rule 664.

RULE 958.—COSTS—TAXATION—SET-OFF OF COSTS.

1902 Rule 955; 1913 Ontario Rule 1164; 1913 Ontario Rule 665.

RULE 959.—COSTS—TAXATION—SET-OFF OF DAMAGES OR COSTS NOT TO PREJUDICE SOLICITOR'S LIEN.

1902 Rule 956; 1913 Ontario Rule 1165; 1913 Ontario Rule 666.

See rule 296 as to change of solicitor.

A solicitor has a lien on funds preserved to his client, preserved by the solicitor, which cannot be defeated by a charging order in favour of a creditor of his client; there is no such lien for services performed as barrister, Coupez v. Lear, 16 W.L.R. 401. There is no counterpart in the Manitoba Rules of 1905, Ontario Rule 1129, declaring such a lien, but see notes to rule 968.

In case of settlement of an action, the court will interfere to protect a solicitor if there is shown collusion or conspiracy between the parties to deprive him of his costs, Stewart v. Hall, 17 M.R. 653, 8 W.L.R. 479.

On settlement of an alimony action in the office of a firm of solicitors acting for the wife, the husband agreed as a term of settlement to pay directly to the solicitors for the wife her costs of the action. Held that the solicitors might recover on a claim by way of equitable assignment (of the wife's claim for costs to her solicitors) the money which the husband agreed to pay, Andrews v. Moodie, 17 M.R. 1, 6 W.L.R. 185.

RULE 960.—COSTS—TAXATION—REVISION OF CERTAIN COSTS.

1902 Rule 957; 1913 Ontario Rule 1167; 1913 Ontario Rule 678 part.

RULE 961.—COSTS—TAXATION—REVISION OF TAXATION BY LOCAL OFFICERS.

1902 Rule 958; 1905 Ontario Rule 1170; 1913 Ontario Rule 679.

RULE 962.—COSTS—TAXATION—DUTY OF TAXING OFFICER ON RECEIPT OF BILL FOR REVISION.

1902 Rule 959; 1905 Ontario Rule 1171; 1913 Ontario Rule 680.

RULE 963.—Costs—Taxation—In Any Such Case no Sum to be Inserted For Costs Until After.

1902 Rule 960; 1905 Ontario Rule 1168; 1913 Ontario Rule 678 part.

RULE 964.—Costs—Taxation—But Execution May Issue.

1902 Rule 961; 1905 Ontario Rule 1169; 1913 Ontario Rule 678 part.

RULE 965.—Costs—Taxation—Mileage.

1902 Rule 962; 1905 Ontario Rule 1172 (part); dropped in 1913.

The Ontario Rule contained a provision that no fees for service should be allowed unless the service was made by a sheriff, except upon the sheriff's default.

RULE 966.—Costs—Taxation—Affidavits of Increase.

1902 Rule 963; 1905 Ontario Rules 1173 and 1174; 1913 Ontario Rule 672.

Expenses of qualifying proposed witnesses for trial are not taxable between party and party, Barry v. Sullivan, 10 W.L.R. 640, neither this rule nor 967 being wide enough to cover the case, ibid.

Counsel fees in Mechanics Lien actions should not be taxed as actual disbursements unless actually paid, Leibrock v. Adams, 17 M.R. 575, 7 W.L.R. 700; Robock v. Peters, 13 M.R. 124.

RULE 967.—Costs—Taxation—Certain Costs Taxable Between Party and Party As Are Taxable Between Solicitor and Client.

1902 Rule 964; 1905 Ontario Rule 1177; 1913 Ontario revision drops this rule.

See notes to rule 966.

RULE 968.—Costs—Taxation — Praecipe Orders on Application of Client—For Delivery and Taxation of Solicitor's Bill.—For Taxation of Bill Delivered.

1902 Rule 964A added by 10 Ed. VII, c. 17, s. 12; 1905 Ontario Rule 1184 dropped in 1913 leaving the client to his relief under the Solicitors' Act, which is obtained very much

in the same way. The Ontario Rule permitted the solicitor also to obtain an order on praecipe at the expiration of one month after delivery, if no order sooner taken out. In Manitoba no such order may be obtained, rule 971.

See also the Law Society Act.

An order was refused in Saskatchewan upon an application for it, on the ground that the employment was not terminated. Re Solicitor, 19 W.L.R. 249. Would this be a ground to set aside a praecipe order under this rule?

The order should be entitled in the matter of the solicitor or it is irregular, Desaulniers v. Johnston, 20 M.R. 431, 17 W.L.R. 634. It is improper to require a submission to pay before granting the order, and to insert it in an order applied for within one month after the bill has been delivered. Semble, there would be authority to impose such a condition if the order is sought after one month from delivery and within 12 months, but in no case may it be imposed where only delivery of a bill is sought, ibid, and see Myers v. Munroe, 4 W.L.R. 221, 16 M.R. 112. The order need not clearly admit the retainer, ibid. The registrar may issue an order for delivery of a bill merely, ibid.

See Myers v. Munroe, 4 W.L.R. 221, in notes to rule 969. Semble, 6-7 Vic. Ch. 73 (Imp.) is in force in Manitoba, and under it a solicitor may obtain an order referring his bill for taxation, ibid, but the order should exclude any provision for payment by the client after taxation. Semble, the referee has jurisdiction, ibid.

Leave granted to deliver an amended bill in Myers v. Munroe, supra.

The court has jurisdiction to entertain a client's action against his solicitor for an account and taxation of costs, especially if a special agreement is in question, ibid.

RULE 969.—Costs—Taxation—Solicitor and Client Taxation.

1902 Rule 965; 1905 Ontario Rule 1185; 1913 Ontario revision drops this rule. See notes to rule 968.

As to what is a Bill, Fee on settlement, lump sum, Tariff—general fee, properly allowed. Re Phillips & Whitla, 23 W.L.R. 161, 20 W.L.R. 533.

For the history and effect of clause 5 see Re Phillips & Whitla, (No. 1), 22 M.R. 150.

See rule 681 and notes.

Clause 7, discussed in Myers v. Munroe, 4 W.L.R. 221.

RULE 970.—COSTS—TAXATION—CONTENTS OF ORDER TO TAX SOLICITOR'S BILL.

1902 Rule 966; 1905 Ontario Rule 1186; dropped in 1913. See notes to rule 968.

Considered in Meyers v. Munroe, 4 W.L.R. 221.

RULE 971.—COSTS—TAXATION—ORDER, WHEN OF COURSE, TO ISSUE ON PRAECIPE.

1902 Rule 967. See 1905 Ontario Rule 1184 and notes to rule 968.

RULE 972.—COSTS—TAXATION—OBJECTION TO TAXATION.

1902 Rule 968; 1905 Ontario Rule 1182; 1913 Ontario Rule 681.

The Ontario Rules contain a proviso that the taxing officer shall upon request hold the taxation open for a reasonable time to allow such objections to be delivered.

See rule 681 as to appeal.

No right to appeal from any items unless objections filed under this rule, Caron v. Bannerman, 22 M. R. 25, unless very special circumstances, ibid; where a certificate was vacated and the objections allowed to be taken. See notes to rule 681 as to whether the objections must be in writing to allow of appeal.

RULE 973.—COSTS—TAXATION—REVIEW OF TAXATION BY TAXING OFFICER.

1902 Rule 969; 1905 Ontario Rule 1183; 1913 Ontario Rule 682.

See notes to rule 681.

RULE 974.—COSTS—TAXATION—DISALLOWANCE OF COSTS OF ANYTHING UNNECESSARY OR IMPROPER, AND OF ANY PLEADING, ETC., OF UNNECESSARY LENGTH.

1902 Rule 969A added by 7-8 Ed. VII, c. 12, s. 11 part;

1905 Ontario Rule 1154; 1913 Ontario Rule 670. The new Ontario Rule casts the duty upon the taxing officer.

RULE 975.—COSTS—TAXATION—TAXATION OF COSTS BETWEEN PARTY AND PARTY—BETWEEN SOLICITOR AND CLIENT.

1902 Rule 969B as framed by 7-8 Ed. VII, c. 12, s. 11 part; 1905 Ontario Rule 1176; 1913 Ontario Rule 667 part.

Unnecessary proceeding.

City of Winnipeg v. Winnipeg Elec. Ry. Co., 23 M.R. 533.

Overcaution.

City of Winnipeg v. Winnipeg Elec. Ry. Co., 23 M.R. 533.

Clause 2. Principle of Taxation, lump sum. Re Phillips & Whitla, 24 W.L.R. 10.

RULE 976.—COSTS—SHERIFF'S FEES.

1902 Rule 970; 1905 Ontario Rule 1190 (1); 1913 Ontario Rule 686 (1).

RULE 977.—COSTS—SHERIFF'S FEES—APPLICATION TO COURT RESPECTING SHERIFF'S FEES.

1902 Rule 971; 1905 Ontario Rule 1192; 1913 Ontario Rule 688.

RULE 978.—COSTS—SHERIFF'S FEES—TAXING SHERIFF'S COSTS

1902 Rule 972; 1905 Ontario Rule 1193; 1913 Ontario Rule 683 (1).

RULE 979.—COSTS—SHERIFF'S FEES—SHERIFF NOT TO COLLECT FEES AFTER REQUEST FOR TAXATION.

1902 Rule 973; 1905 Ontario Rule 1195; 1913 Ontario Rule 683 (2).

RULE 980.—COSTS—SHERIFF'S FEES—TAXATION AND ALLOCATUR.

1902 Rule 974; 1905 Ontario Rule 1194; 1913 Ontario Rule 684 in part.

RULE 981.—COSTS—SHERIFF'S FEES—DUTY OF TAXING OFFICER.

1902 Rule 975; 1905 Ontario Rule 1196; 1913 Ontario Rule 684 in part.

RULE 982.—COSTS—SHERIFF'S FEES—APPEAL FROM TAXATION.

1902 Rule 976; 1905 Ontario Rule 1197; 1913 Ontario Rule 685.

RULE 983.—COSTS—SHERIFF'S FEES — PROCEEDINGS AGAINST SHERIFFS ET AL. FOR WILFUL OVERCHARGE.

1902 Rule 977. No Ontario counterpart.

RULE 984.—SECURITY FOR COSTS.

Security may be ordered.

1. On Praecipe under rule 984 when cause appears on the statement of claim, Rae v. Parr, 23 W.L.R. 40; if it does not appear by the statement of claim but is otherwise disclosed, e.g., by examination for discovery, it may be obtained on application under rule 985, Rae v. Parr, supra.

2. On application to the Referee, etc., under rules 985 to 988.

Time for application, any time up to trial. See notes to rule 985. After action set down, Dodd v. Matheson, 23 W.L.R. 711.

RULE 984.—COSTS—SECURITY FOR COSTS—ORDER FOR SECURITY FOR COSTS.

1902 Rule 978; 1905 Ontario Rule 1199; 1913 Ontario Rule 375 in part, 373 see sections (g) to (j).

As to counterclaim. See section 2 (e) of the Act and Cartwright v. Pratt, 3 O.W.N. 1279, where a defendant was ordered to give security for the costs of his counterclaim. The order operates as a stay of proceedings until complied with, rule 389. Computation of, ibid.

To show a company resides within the jurisdiction, it must be shown that it is incorporated and has its head and controlling office within the jurisdiction, and that there its business is carried on, Canadian Railway Accident v. Kelly, 16 M.R. 608, 5 W.L.R. 413, nor does a license under the Foreign Corporations Act put a company in the same position as though incorporated in Manitoba, ibid. Frost & Wood v. Howes, 21 W.L.R. 335, 2 W.W.R. 321, and see Dobson v. Leask, 11 M.R. 426; Caston v. Scott, 1 M.R. 117, not followed in Wood v. Guillett, 10 M.R. 570. Upon proof of non-compliance with a praecipe order under this rule the defendant may obtain an ex

parte order dismissing the action. Moore v. Vietel, 5 W.W.R. 1226, Thomas v. Clarke, 2 W.L.R. 126 (Y.T.).

Taking out an order under this rule is not a bar to a motion for additional security if defendant could not have anticipated the need for it, Moore v. Scott, 16 M.R. 428, distinguishing Charlebois v. G.N.W.C.R., 9 M.R. 60.

The Court will not set aside an order for security if the plaintiff has an interest in encumbered real estate in the Province under a contract to purchase from the registered owner, Ranney v. Stirrett (Sask.), 18 W.L.R. 5.

Land, the subject of the litigation, is not sufficient security upon which to set aside the order, Walters v. Duggan, 33 C.L.J. 362.

Where a plaintiff returns to reside permanently within the Province, he must satisfy the Court on an application to set aside an order for security, that his residence will be permanent, Cordingly v. Johnston, 11 M.R. 4, and semble, the order will not be set aside if security has been given, Brown v. Schantz, 7 M.R. 42.

An application to set aside an order is an interlocutory one, and affidavits on information and belief stating the grounds of belief are admissible, Dobson v. Leask, 11 M.R. 620.

The order stays proceedings. See 1905 Ontario Rule 1204, and 1913 Ontario Rule 377.

RULE 985.—COSTS—SECURITY FOR COSTS—WHEN ORDER FOR SECURITY MAY BE MADE.

Added to 1902 rules by 3 Geo. V., c. 12, s. 3 part; 1905 Ontario Rule 1198 (1) (a) (b); 1913 Ontario Rule 373, part.

ADDITIONAL SECURITY. See rule 994. Order for, made on application at trial on affidavit showing costs incurred to date far exceeded amount paid into Court under praecipe order, The Scandinavian, etc., Bank v. Kneeland, 23 M.R. 480, 24 W.L.R. 139, and see Adcock v. Manitoba Free Press, infra.

Order made after judgment and pending appeal to the Court of Appeal, Moore v. Scott, 5 W.L.R. 147, and see notes to rule 984.

This rule was passed to obviate the difficulty pointed out in Rae v. Parr, 23 W.L.R. 40, 3 W.W.R. 790, where the examination of a plaintiff showed he was only a resident of the Province for the purpose of the action, but an order for security for costs was refused. It would now be granted under this rule.

and see the new Ontario Rule 373(g). In an action on a foreign judgment the Court will not on an application for an order for security for costs go into the merits of the defence. Joshua Handy Machine Works v. Pace, 1 W.L.R. 156 (Alta.).

Semble, no order will be made where the plaintiff is brought in by an administrator, Forbes v. Forbes, 23 O.L.R. 518.

LIBEL ACTIONS. Security may be ordered upon application supported by affidavit that the plaintiff has no property and there is a good defence on the merits, R.S.M. 1913, cap. 113, s. 10, unless the plaintiff sues in forma pauperis, ibid. The Act will not benefit any person who has not complied with the Newspaper Act (R.S.M. 1913, cap. 143), sec. 15, of cap. 113; and compliance after action brought is of no avail, Daly v. White, 5 M.R. 55.

There is no limit to the amount of security that may be ordered. Rule 951 does not necessarily limit the costs of an action to $300, nor is the amount limited to the $200 mentioned in the rules.

Additional Security ordered on an application made after an abortive trial. The order may provide for the dismissal of the action upon default in compliance. Adcock v. Manitoba Free Press, 12 W.L.R. 142, 19 M.R. 160. A Corporation may have such an order, same case, 12 W.L.R. 362.

In an action for imputing unchastity to a woman, the defendant may obtain an order for security, R.S.M. 1913, cap. 113, sec. 12.

Time for application, Carruthers v. Waterous, 4 M.R. 402.

Semble, that a defendant has no right to the order unless he has a defence on the merits, Western Electric v. McKenzie, 2 M.R. 51; British Linen Co. v. McEwan, 6 M.R. 29.

RULE 986.—COSTS—SECURITY FOR COSTS—ADDITIONAL CASES IN WHICH DEFENDANT MAY OBTAIN SECURITY FOR COSTS.

1902 Rule 979; 1905 Ontario Rule 1198 (c) (d); 1905 Ontario Rule 373 (c) (d).

In Stewart v. Jackson, 3 M.R. 568, an order staying proceedings was refused, the first action being to set aside a contract entered into through fraud, which had been affirmed by the plaintiff after discovery, the second being for damages for deceit.

As to costs of former action, see McMicken v. Ontario Bank, 6 M.R. 155.

RULE 987.—COSTS—SECURITY FOR COSTS—PERSONS SUING FOR PENALTIES MAY BE ORDERED TO GIVE SECURITY.

1902 Rule 980; 1905 Ontario Rule 1200; 1913 Ontario Rule 373 (e).

RULE 988.—COSTS—SECURITY FOR COSTS—ACTION BY NOMINAL PLAINTIFF ONLY.

1902 Rule 981. No 1905 Ontario counterpart, but see Holmested, p. 1429, laying down a similar practice; 1913 Ontario Rule 373 (f). See Boyle v. McCabe, 24 O.L.R. 313, as to who is the real actor in an action, and Martindale v. Conklin, 1 M.R. 338.

RULE 989.—COSTS—SECURITY FOR COSTS—AMOUNT OF SECURITY.

1902 Rule 982; 1905 Ontario Rule 1201. See new 1913 Ontario Rule 374, fixing the amount.

This and the following rules apply to applications in Libel actions, Adcock v. Manitoba Free Press, 12 W.L.R. 362.

RULE 990.—COSTS—SECURITY FOR COSTS—TIME FOR GIVING SECURITY.

1902 Rule 983; 1905 Ontario Rule 1202-1203; 1913 Ontario Rule 374 & 376.

RULE 991.—COSTS—SECURITY FOR COSTS—SECURITY BY BOND.

1902 Rule 984; 1905 Ontario Rule 1205; 1913 Ontario Rule 379.

RULE 992.—COSTS—SECURITY FOR COSTS—MONEY MAY BE PAID INTO COURT IN LIEU OF GIVING BOND.

1902 Rule 985; 1905 Ontario Rule 1207 (1); 1913 Ontario Rule 381 (1).

RULE 993.—COSTS — SECURITY FOR COSTS — NOTICE WHEN MONEY SO PAID IN.

1902 Rule 986; 1905 Ontario Rule 1207 (2); 1913 Ontario Rule 381 (2).

RULE 994.—COSTS—SECURITY FOR COSTS—CHANGING AMOUNT OF SECURITY.

1902 Rule 987; 1905 Ontario Rule 1208; 1913 Ontario Rule 382.

As to additional security, see notes to rule 985.

See Stow v. Currie, 20 O.L.R. 353, as to reduction of costs or increase and stay of proceedings.

RULE 995.—COSTS—SECURITY FOR COSTS—SECURITY ON MOTION FOR JUDGMENT BY FOREIGN PLAINTIFF.

1902 Rule 988; 1905 Ontario Rule 1209; 1913 Ontario Rule 383 (2).

The Ontario Rule provides that such payment in, shall not prejudice any motion to set aside the order for security. The Manitoba practice is the same, and this rule does not apply in the case of an application to set aside the order, Copelin v. Cairns, 19 M.R. 509, 13 W.L.R. 707.

RULE 996.—COSTS—SECURITY FOR COSTS—JUDGMENT FOR PART OF CLAIM IN SUCH CASE.

1902 Rule 989; 1905 Ontario Rule 1209 (4); 1913 Ontario Rule 383 (5).

RULE 997.—COSTS—TARIFF OF COSTS—TARIFF OF FEES TO BE PROMULGATED BY JUDGES—SPECIAL EXAMINER'S FEES.

1902 Rule 990. See 1905 Ontario Rule 1178 and 1913 Ontario Rule 676 part.

This tariff provides the only measure of remuneration of a solicitor for litigious business in the absence of a special agreement per Robson, J., Re Phillips & Whitla, 20 W.L.R. at p. 535, but see same case 23 W.L.R. 161 as to interpretation of tariff.

See the Law Fees Act in notes to section 65 of the Act.

RULE 998.—GENERAL PROVISIONS—FUSION OF LAW AND EQUITY.

1902 Rule 992. No Ontario counterpart.

RULE 999.—GENERAL PROVISIONS—APPLICATION OF LAW AND PRACTICE.

1902 Rule 993. No Ontario counterpart.

Province of Manitoba

The Court of King's Bench

Chapter 46, R.S.M., 1913

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The Court of

King's Bench

Chapter 46, R.S.M., 1912

CHAPTER 46.

An Act respecting the Court of King's Bench.

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

SHORT TITLE.

1. This Act may be cited as "The King's Bench Act." R.S.M. c. 40, s. 1.

INTERPRETATION.

2. In this Act and the rules enacted therewith or which may hereafter be made hereunder, unless the context otherwise requires,—

"Rules of court." (*a*) the expression "rules of court" includes the rules appended to this Act, as well as any further rules to be made by the judges under the authority of this Act, and also includes forms;

"Cause." (*b*) the expression "cause" includes any action, suit or other original proceeding between a plaintiff and a defendant;

"Action." (*c*) the expression "action" includes suit, set-off or counterclaim, and means a civil proceeding commenced by statement of claim or in such other manner as may be prescribed by rules of court;

"Matter." (*d*) the expression "matter" includes every proceeding in the court not in a cause;

"Plaintiff." (*e*) the expression "plaintiff" includes every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons or otherwise;

"Petitioner." (*f*) the expression "petitioner" includes every person making any application to the court either by petition, motion or summons otherwise than as against any defendant;

(*g*) the expression "defendant" includes every person served with any statement of claim or process, or served with notice of or entitled to attend any proceedings; "Defendant."

(*h*) the expression "party" includes every person served with notice of or attending any proceeding, although not named on the record; "Party."

(*i*) the expression "pleading" includes any petition or summons, but not writ of summons, and also includes the statement in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counterclaim of a defendant; "Pleading."

(*j*) the expression "judgment" includes decree; "Judgment."

(*k*) the expression "order" includes rule; "Order."

(*l*) the expression "oath" includes solemn affirmation and statutory declaration; "Oath."

(*m*) the expression "proper officer," unless and until any rule to the contrary is made, means an officer to be ascertained as follows:— "Proper officer."

(i) where any duty to be discharged under this Act is a duty which has been discharged by any officer, the proper officer to discharge such duty shall be such officer as has previously discharged analogous duties or, in the event of doubt, as may be directed by the chief justice to discharge the same or, in the absence of the chief justice, by one of the other judges;

(ii) where any new duty has, under this Act, to be discharged, the proper officer to discharge the same shall be such officer having previously discharged analogous duties, as may from time to time be directed by the chief justice to discharge the same;

(*n*) the expression "court" means His Majesty's Court of King's Bench for Manitoba; "Court."

(*o*) the expression "judge" means a judge of His Majesty's Court of King's Bench for Manitoba, and includes the chief justice; "Judge."

(*p*) the expression "verdict" includes the finding of a jury and the decision of a judge; "Verdict."

(*q*) the expression "vacation" comprises the vacations provided for in rule 397. R.S.M. c. 40, s. 2; 7-8 Ed. 7, c. 12, s. 17. "Vacation."

ORGANIZATION.

Court of King's Bench continued.

3. His Majesty's Court of King's Bench for Manitoba shall exist and continue under the name and style of "His Majesty's Court of King's Bench for Manitoba"; and all commissions, rules, orders and regulations granted or made in, by or respecting the court, or the judges or officers thereof, now existing or being in force, shall remain and continue in force until altered, changed, rescinded or otherwise determined according to law, except as provided in this Act. R.S.M. c. 40, s. 3.

Orders, etc., to remain in force as at present.

How styled

4. The said Court of King's Bench shall, during the reign of a king, be called "His Majesty's Court of King's Bench for Manitoba," and, during the reign of a queen, "Her Majesty's Court of Queen's Bench for Manitoba"; and in all writs, pleadings, petitions, notices, documents and proceedings in the court, the court shall be sufficiently designated and described by the words "In the King's Bench," or "In the Queen's Bench," according as the time shall be in the reign of a king or a queen. R.S.M. c. 40, s. 4.

Where court shall sit.

5. The court shall sit at the City of Winnipeg in the Province of Manitoba. R.S.M. c. 40, s. 6.

Seal.

6. The seal at present in use shall be and continue to be the seal of the court, which seal, however, may, from time to time, be renewed, changed or altered, or a new seal substituted therefor, by order of the Lieutenant-Governor-in-Council. R.S.M. c. 40, s. 7.

JUDGES.

Judges.

7. The court shall consist of a chief justice, who shall be styled "the chief justice of the King's Bench," and five puisne justices, who shall be called and be the judges of the court; and the chief justice and justices of the court shall have, use, exercise and enjoy all the powers, rights, incidents, privileges and immunities of a judge of a superior court of record, and all other powers, rights, incidents, privileges and immunities, as amply and as fully to all intents and purposes as the same were, on and prior to the fifteenth day of July in the year 1870, used, exercised and enjoyed by any of the judges of any of the superior courts of law or equity in England. R.S.M. c. 40, s. 8; 5-6 Ed. 7, c. 18, s. 2; 2 Geo. 5, c. 15, s. 1.

Powers of judges.

8. Every judge of the court, previous to entering upon the duties of his office, shall take the following oath, to be administered by the Lieutenant-Governor, the chief justice of the court or any puisne judge of the court:— Oath to be taken by judges.

I, , solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and knowledge, exercise the powers and trusts reposed in me as chief justice (or one of the puisne judges) of the Court of King's Bench for Manitoba. So help me God. R.S.M. c. 40, s. 10.

9. It shall be lawful for the judges of the court, or any one of them, to hold in or for the North-West Territories any court or courts which may be created under the authority of the Governor-General, or of any Act of the Parliament of Canada, and in and for such Territories, or in respect of matters arising or transpiring therein, to discharge all such judicial functions as may be assigned to them, or one or more of them, by the Governor-General or the Parliament aforesaid. R.S.M. c. 40, s. 11. Judges may hold courts in and for North-West Territories.

JURISDICTION.

10. The court is and shall continue to be a court of record of original jurisdiction, and shall possess and exercise all such powers and authorities as by the laws of England are incident to a superior court of record of civil and criminal jurisdiction in all matters civil and criminal whatsoever, and shall have, use, enjoy and exercise all the rights, incidents and privileges of said courts as fully to all intents and purposes as the same were, on the fifteenth day of July in the year 1870, possessed, used, exercised and enjoyed by any of Her late Majesty's superior courts of common law at Westminster, or by the Court of Chancery at Lincoln's Inn, or by the Court of Probate, or by any other court in England having cognizance of property and civil rights, and of crimes and offences. R.S.M. c. 40, s. 23. Jurisdiction of court.

11. The court shall hold plea in all and all manner of actions, suits and proceedings, cause and causes of action, matters, suits and proceedings, whether at law, in equity or probate, or howsoever otherwise, as well criminal as civil, real, personal and mixed or otherwise howsoever; and may and shall proceed in all such actions, suits, proceedings and causes by such process and course of proceedings as are provided by law, and as shall tend with justice and despatch to determine the same, and the said court may and shall hear, decide and determine all issues of law or of fact when the issue of fact is submitted to it by law, and the court may and shall, with or without a jury, as provided by law, de- Of what court may hold plea.

cide and determine all matters of controversy relative to property and civil rights, both legal and equitable, according to the laws existing or established and being in England, as such were, existed and stood on the fifteenth day of July in the year 1870, so far as the same can be made applicable to matters relating to property and civil rights in this Province; and all matters relative to testimony and legal proof in the investigations of fact and the forms thereof, and the practice and procedure in the court, may and shall be regulated and governed by the rules of evidence, and the modes of practice and procedure as they were, existed and stood in England on the day and year aforesaid, except as the said laws and the said rules of evidence and the said practice and procedure and the forms thereof may have been already changed or altered or shall hereafter be changed or altered by any Act or Acts of the Legislature of Manitoba, or of the Parliament of Canada, or by any Act or Acts of the Parliament of the United Kingdom affecting this Province, already passed or that shall hereafter be passed within their respective powers, or by any rule or rules, order or orders, of the court lawfully made or that shall hereafter be made, or by this Act:

Proviso as to rights acquired under laws of Assiniboia.

Provided, always, that nothing herein contained shall affect any civil rights lawfully acquired or existing under the laws of Assiniboia on the day and in the year aforesaid. R.S.M. c. 40, s. 24.

Effect of judgments and process of court.

12. The judgment of the court in all and singular the matters in the two last preceding sections mentioned referred to or intended, and the execution, writ, warrant, decree or process thereon awarded, shall have all the force and effect which, on the fifteenth day of July in the year 1870, a like or analogous judgment, execution, writ, warrant, decree or process would have had, if at that time pronounced, made or issued by, in or from any of the courts in England mentioned in section 10 of this Act, and shall also have such force and effect as the same is declared to have by this Act. R.S.M. c. 40, s. 25.

Removal of doubts as to jurisdiction.

13. For the purpose of removing doubts and ambiguity, it is declared and enacted that the court shall have the like jurisdiction and powers as by the laws of England were, on the fifteenth day of July in the year 1870, possessed and exercised by the Court of Chancery in England in respect of the matters hereinafter enumerated or referred to, that is to say,—

(*a*) fraud, mistake and accident; Fraud and accident.

(*b*) in all matters relating to trusts, executors and administrators, co-partnerships and accounts, mortgages and awards, or to infants, idiots or lunatics and their estates; Trusts, etc.

(*c*) the staying of waste; Waste.

(*d*) the compelling of the specific performance of agreements and contracts; Specific performance.

(*e*) the compelling of the discovery of concealed papers or evidence, or such as may be wrongfully withheld from the party claiming the benefit of the same; Discovery.

(*f*) the preventing of multiplicity of actions or suits; Multiplicity of actions.

(*g*) the decreeing of the issue of letters patent from the Crown to rightful claimants; Decreeing issue of letters patent.

(*h*) the decreeing of the repeal and of the making void of letters patent issued erroneously, or by mistake, or improvidently, or through fraud; Avoiding letters patent.

(*i*) the administration of justice in all cases in which there exists no adequate remedy at law; Powers in cases not provided for.

(*j*) the granting of injunctions to stay waste in a proper case, notwithstanding that the party in possession claims by an adverse legal title. R.S.M. c. 40, s. 26. Injunction staying waste.

14. The court shall have power to relieve against forfeiture for breach of a covenant or condition in any lease to insure against loss or damage by fire, where no loss or damage by fire has happened, and the breach has in the opinion of the court been committed through accident or mistake or otherwise without fraud or gross negligence, and there is an insurance on foot at the time of the application to the court in conformity with the covenant to insure, upon such terms as to the court may seem fit. R.S.M. c. 40, s. 27. Relieving against forfeiture.

15. The court, where relief is granted, shall direct a record of such relief having been granted to be made by endorsement on the lease or otherwise. R.S.M. c. 40, s. 28. Record of relief mentioned in last section.

16. The two last preceding sections shall be applicable in the case of leases for a term of years absolute, or determinable on a life or lives or otherwise, and also in the case of a lease for the life of the lessee, or the life or lives of any other person or persons. R.S.M. c. 40, s. 29. Application of preceding two sections.

Alimony.

17. The court shall have jurisdiction to grant alimony to any wife who would be entitled to alimony by the law of England, or to any wife who would be entitled by the law of England to a divorce, and to alimony as incident thereto, or to any wife whose husband lives separate from her without any sufficient cause and under circumstances which would entitle her by the law of England to a decree for the restitution of conjugal rights; and alimony, when granted, shall continue until the further order of the court. R.S.M. c. 40, s. 30.

Criminal conversation.

18. The court shall have jurisdiction to entertain an action for criminal conversation. The law applicable to such actions shall be as the same was in England prior to the abolition of such action in England; and the practice shall be the same as in other actions in the court, so far as it is applicable. R.S.M. c. 40, s. 31.

Registration of judgment for alimony.

19. An order or judgment for alimony may be registered in any registry office or land titles office in Manitoba, and the registration shall, so long as the order or judgment registered remains in force, bind the estate and interest of every description which the defendant has in any lands in the registration division or land titles district where the registration is made, and operate thereon in the same manner, and with the same effect, as the registration of a charge by the defendant of a life annuity on his lands. R.S.M. c. 40, s. 32.

Vesting orders.

20. In every case in which the court has authority to order the execution of a deed, conveyance, transfer or assignment of any property, real or personal, the court may by order vest such real or personal estate in such person or persons, and in such manner, and for such estates, as would be done by any such deed, conveyance, assignment or transfer, if executed; and thereupon the order shall have the same effect as if the legal or other estate or interest in the property had been actually conveyed by deed or otherwise for the same estate or interest to the person in whom the same is so ordered to be vested or, in the case of a *chose in action*, as if such *chose in action* had been actually assigned to said last mentioned person. R.S.M. c. 40, s. 33.

Leases and sales of settled estates, etc.

21. The court shall have the same jurisdiction as the Court of Chancery had in England, on the fifteenth day of July in the year 1870, in regard to leases and sales of settled estates, and in regard to enabling infants, with the approbation of the court, to make binding settlements of their real and personal estate on marriage, and in regard to questions

submitted for the opinion of the court in the form of special cases on the part of such persons as may by themselves, their committees or guardians, or otherwise, concur therein.

Examination of married women.

(2) The examination of a married woman apart from her husband as to her knowledge of the nature and facts of an application for the sale or leasing of any settled estate, or as to her consent thereto, shall in no case be necessary, unless expressly directed by the court or a judge.

Service of infants.

(3) Infants and persons of unsound mind (not so found), for whom there is no committee, required to be served with notice of any application to the court, may be served by delivery to the official guardian *ad litem* of a copy of the petition or other proceeding required to be served; and from the time of such service the said official guardian shall be the guardian *ad litem* of the infant or person of unsound mind, unless and until the court or judge otherwise orders; and the said official guardian or any other guardian appointed by the court for the infant or person of unsound mind shall take all such proceedings as he may think necessary for the protection of the interests of the infant or person of unsound mind in the proceeding in which he is so appointed guardian.

Service in case of more than one infant, etc.

(4) In case there be more than one infant or person of unsound mind (not so found), for whom service is made on the official guardian *ad litem,* one copy only of the petition or other proceeding need be so served, but the name of each person on whose behalf the official guardian is served is to be stated on the copy served.

Application of moneys realized.

(5) Money realized from the sale or leasing of any settled estate, or any interest therein, shall be paid, applied or invested as the court or a judge shall direct. R.S.M. c. 40, s. 34.

Wills.

22. The court shall have jurisdiction to try the validity of last wills and testaments, whether the same refer to real or personal estate, and whether probate of the will has been granted or not, and to pronounce such wills and testaments to be void for fraud and undue influence or otherwise, in the same manner and to the same extent as the court has jurisdiction to try the validity of deeds and other instruments. R.S.M. c. 40, s. 35.

23. The court shall also have jurisdiction—

Testamentary matters.

(*a*) in matters testamentary, as provided by "The Surrogate Courts Act";

Lunatics and infants.

(*b*) in respect of lunatics and infants and their property and estates, as provided by "The Infants Act" and "The Lunacy Act";

Partitions and sales of real estate.

(*c*) in respect of partitions and sale of real estate as provided in "The Partition Act," and otherwise as provided by any statute of the Province of Manitoba, or by the law of England as the same stood upon the fifteenth day of July in the year 1870. R.S.M. c. 40, s. 36.

Jurisdiction to be exercised as provided by this Act or rules of court.

24. The jurisdiction of the court shall be exercised, so far as regards procedure and practice, in the manner provided by this Act, or by rules and orders of the court to be made pursuant to this Act; and where no special provision is contained in this Act, or in any such rules or orders with reference thereto, it shall be exercised as nearly as may be in the same manner as prior to the passing of "The Queen's Bench Act, 1895." R.S.M. c. 40, s. 37.

RULES OF LAW.

Law and equity to be administered concurrently.

25. In every civil cause or matter commenced in the court, law and equity shall be administered by the court according to the rules following:—

Equitable rights.

(*a*) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim whatsoever, asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right which heretofore could only have been given by a court of equity, the said court and every judge thereof shall give the said plaintiff or petitioner such and the same relief as ought to have been given by the Court of Queen's Bench, on its equity side, in a suit or proceeding for the same or the like purpose properly instituted before the passing of "The Queen's Bench Act, 1895";

Declaration as to validity of Provincial statute.

(*b*) The court shall have jurisdiction to entertain an action at the instance of either the Attorney-General for the Dominion or the Attorney-General of this Province, for a declaration as to the validity of any statute or any provision in any statute of the Legislature of Manitoba, though no further relief should be prayed or sought; and the action shall be deemed sufficiently constituted if the two officers aforesaid are parties thereto; a judgment in the action shall be appealable like other judgments of the said court;

Relief against penalties, etc.

(*c*) Subject to appeal as in other cases, the court shall have power to relieve against all penalties, forfeitures and agreements for liquidated damages, and in granting such relief to impose such terms as to costs, expenses, damages, compensations and all other matters as the court thinks fit;

Appointments under power.

(*d*) No appointment which is hereafter made in exercise of a power to appoint any property, real or personal, among several objects, shall be adjudged to be invalid on the ground that any object of the power has been altogether excluded, and an appointment shall be valid and effectual notwithstanding that one or more of the objects shall not thereby or in default of appointment take a share or shares of the property which is subject to the power; but nothing in this sub-section shall prejudice or affect any provision in any deed, will or other instrument creating a power, which shall declare the amount or the share or shares from which no object of the power shall be excluded, or shall declare some one or more object or objects of the power who shall not be excluded;

Declaratory judgments and orders.

(*e*) No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is or can be claimed or not;

Relief that may be granted.

(*f*) The court and every judge thereof shall also have power to grant to any defendant in respect of any equitable estate or right or other matter of equity, and also in respect of any legal estate, right or title, claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the court or any judge thereof might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of court or any order of the court, or any provision of this Act, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant;

Equitable rights appearing incidentally in cause to be recognized.

(*g*) The court and every judge thereof shall recognize and take notice of all equitable estates, titles and rights, and of all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Queen's Bench, on its equity side, would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the passing of "The Queen's Bench Act, 1895";

Restraining proceedings.

(*h*) No cause or proceeding at any time pending in the court shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained prior to the passing of this Act, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto:

Proviso.

Provided, always, that nothing in this Act contained shall disable the court from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter who would have been entitled, prior to the passing of "The Queen's Bench Act, 1895," to apply to any court to restrain the prosecution thereof, or who may be entitled to enforce by attachment or otherwise any judgment, decree, rule or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the court by motion in a summary way for a stay of proceedings in such cause or matter either generally or so far as may be necessary for the purposes of justice, and the court shall thereupon make such order as shall be just;

Stay of proceedings if action for same cause is pending out of Manitoba.

(*i*) If any action is brought in the court for any cause of action for which any suit or action has been brought and is pending between the same parties or their representatives, in any place or country out of Manitoba, the court or any judge thereof may make an order to stay all proceedings in the court until satisfactory proof is offered to the court or judge that the suit or action so brought in such other place or country out of Manitoba is determined or discontinued;

Giving effect to legal claims.

(*j*) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and the other express provisions of this Act, the court and every judge thereof shall recognize and give effect to all legal claims and demands, and all estates, rights, duties, obligations and liabilities, existing by the common law or created by any statute, in the same manner as the

same would have been recognized and given effect to by the Court of Queen's Bench for Manitoba prior to the passing of "The Queen's Bench Act, 1895";

Multiplicity of proceedings to be avoided.

(*k*) The court in the exercise of the jurisdiction vested in it by this Act, in every cause or matter pending before it, shall have power to grant and shall grant, either absolutely or on such reasonable terms and conditions as to it shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter, so that as far as possible all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided;

Defendant in action on foreign judgment may plead on the merits.

(*l*) A defendant in any action upon a judgment obtained in any court out of the Province, or upon a foreign judgment, may plead to the action on the merits, or set up any defence which might have been pleaded to the original cause of action for which such judgment has been recovered:

Opposite party may apply to have defence struck out.

Provided, always, that the opposite party shall be at liberty to apply to the court or a judge to strike out any such pleading or defence upon the ground of embarrassment or delay;

Limitation of actions on causes of action arising out of Manitoba.

(*m*) In all actions, suits, causes and proceedings in the courts of this Province upon a foreign judgment or upon any other cause of action which arose outside of Manitoba, the right to enforce such foreign judgment or such other cause of action shall be deemed to have accrued in Manitoba at the time when the right to enforce the same first accrued in the country where such foreign judgment was recovered or where such cause of action arose, and the time within which any such actions, suits, causes or proceedings must be commenced shall run and be computed from the date herein provided for the accrual of the right to commence the same, notwithstanding that the person against whom such action, suit, cause or proceeding is brought was not, at the time of the recovery of such foreign judgment or at the time of the accrual of such cause of action, within or resident or domiciled within Manitoba. R.S.M. c. 40, s. 38; 4-5 Ed. 7, c. 6, s. 1.

26. The law to be administered in Manitoba as to the matters next hereinafter mentioned shall be as follows:—

Statute of limitation not to apply to express trusts.

(*a*) No claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations;

Equitable waste.

(*b*) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such an estate;

Merger.

(*c*) There shall not be any merger by operation of law only of any estate the beneficial interest in which would not, prior to the passing of "The Queen's Bench Act, 1895," have been deemed merged or extinguished in equity;

Actions by mortgagors for possession of land.

(*d*) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possesion, or to enter into the receipt of the rents and profits thereof, shall have been given by the mortgagee, may sue for such possession, or sue or distrain for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person, and in that case he may sue or distrain jointly with such other person;

Debts and *choses in action* arising out of contract assignable at law.

(*e*) Every debt and any *chose in action* arising out of contract shall be assignable at law by any form of writing which shall contain apt words in that behalf, but subject to such conditions or restrictions in respect of the right of transfer as may appertain to the original debt or as may be connected with or be contained in the original contract; and the assignee thereof may bring an action thereon in his own name, as the party might to whom the debt was originally owing, or to whom the right of action originally arose; or he may proceed in respect of the same as though this Act had not been passed;

Assignments subject to defence and set-offs existing as between debtor and assignor.

(*f*) Every assignment of a debt or *chose in action* arising out of contract, and not assignable by delivery, shall be subject to any defence or set-off, in respect of the whole or any part of such debt or *chose in action*, existing at the time of the notice of assignment to the debtor or person sought to be made liable, in the same manner and to the same extent as such defence or set-off would be effectual in case there had been no assignment thereof; and every such defence or set-off shall apply as between the debtor and any assignee of such debt or *chose in action;*

(*g*) If an assignment is made in conformity with the provisions hereof, and notice thereof is given to the debtor or person liable in respect of the subject of such assignment, the assignee shall have, hold and enjoy the same, free from any claims, defences or equities, which may have arisen subsequent to such notice by any act of the assignor or otherwise; Assignee shall hold free from claims arising subsequent to notice.

(*h*) In the three last preceding paragraphs of this section the expression "assignee" means any person now being or hereafter becoming entitled, by any first or any subsequent assignment or transfer or any derivative or other title, to a debt or *chose in action,* and possessing at the time the action or suit is brought the right to receive the subject matter or proceeds thereof and to give an effectual discharge thereof; "Assignee," meaning of.

(*i*) If the debtor, trustee or other person liable in respect of a debt or *chose in action* shall have had notice that any assignment thereof is disputed by the assignor or any person claiming under him, or of any other opposing or conflicting claims to such debt or *chose in action,* he shall be entitled if he think fit to call upon the several persons making claim thereto to interplead concerning the same; Interpleader in cases of assignment of debt, etc.

(*j*) The bonds or debentures of corporations made payable to bearer, or to any person named therein or bearer, may be transferred by delivery alone; and such transfer shall vest the property in such bonds or debentures in the transferee or in the holder thereof; and any such holder may bring any action or suit on or in respect of any such bonds or debentures in his own name; Certain bonds and debentures transferable by delivery.

(*k*) The provisions of the six last preceding paragraphs of this section shall not be construed to apply to bills of exchange or promissory notes, or to instruments which apart from the provisions of such paragraphs are negotiable, or in respect of which the property therein passes by mere delivery; Paragraphs (*e*) to (*j*) not to apply to negotiable instruments.

(*l*) No order or assignment of any moneys due or accruing due or to be payable to any person or corporation by the Government of Manitoba shall be valid or binding upon the said Government, or as against any person or corporation garnishing said Government, unless and until accepted in writing by the Provincial Treasurer; and such orders or assignments shall be in writing and filed with the Provincial Treasurer; Assignments of moneys due by Government of Manitoba must be accepted by Treasurer.

Stipulations as to time.

(*m*) Stipulations in contracts as to time or otherwise which would not, before the passing of "The Queen's Bench Act, 1895," have been deemed to be or to have become of the essence of such contracts in a court of equity shall receive in all courts the same construction and effect as they would, prior to the passing of "The Queen's Bench Act, 1895," have received in equity;

Satisfaction of obligations by part performance.

(*n*) Part performance of an obligation, either before or after a breach thereof, when expressly accepted in writing, by the creditor in satisfaction or rendered in pursuance of an agreement for that purpose, though without any new consideration, shall be held to have extinguished the obligation;

Mandamus, injunction, receivers.

(*o*) A mandamus or an injunction may be granted, or a receiver appointed, by an interlocutory order of the court in all cases in which it shall appear to the court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the court shall think just; and if an injunction is asked, at or before or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any color of title, and whether the estates claimed by both or by either of the parties are legal or equitable;

Damage in lieu of injunction, etc.

(*p*) In all cases in which the court has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract or agreement, or against the commission or continuance of any wrongful act, or for the specific performance of any covenant, contract or agreement, the court, if it thinks fit, may award damages to the party injured either in addition to or in substitution for such injunction or specific performance, and such damages may be ascertained in such manner as the court may direct, or the court may grant such other relief as it may deem just;

Custody and education of infants.

(*q*) In questions relating to the custody and education of infants the rules of equity shall prevail;

Effect of giving time to a principal debtor.

(*r*) Giving time to a principal debtor, or dealing with or altering the security held by the principal creditor, shall not of itself discharge a surety or guarantor; in such cases a surety or guarantor shall be entitled to set up such giving of time or dealing with or alteration of the security as a

defence, but the same shall be allowed in so far only as it shall be shown that the surety has thereby been prejudiced;

In cases of conflict, rules of equity to prevail.

(*s*) Generally, in all matters not hereinbefore particularly mentioned in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail. R.S.M. c. 40, s. 39.

Rules of law enacted by this Act to apply to all courts.

27. The several rules of law enacted and declared by this Act shall be in force and receive effect in all courts whatsoever in Manitoba, so far as the matters to which such rules relate shall be respectively cognizable by such courts. R.S.M. c. 40, s. 40.

Notice to be given to Minister of Justice and Attorney-General of Manitoba before any Act declared invalid.

28. When, in any action or other civil proceeding, the constitutional validity of any Act of the Parliament of Canada, or of the Legislature of Manitoba, comes into question, the same shall not be adjudged to be invalid until a notice thereof has been served on the Minister of Justice, and the Attorney-General of Manitoba, or at their offices, respectively.

Form of notice.

(2) The notice in such case shall be entitled in the cause, shall state what the Act or section of an Act is, which is in question, and the day on which the case or the said question is to be argued, and shall give such other particulars as are necessary to show the constitutional point proposed to be argued.

Length of.

(3) The notice shall be served six clear days before the day of the argument, unless a judge authorizes a shorter notice.

Minister of Justice and Attorney-General to be heard.

(4) Upon every such question the said Minister of Justice and the said Attorney-General shall be entitled, as of right, to be heard either in person or by counsel, notwithstanding that the Crown is not a party to the action or proceeding. R.S.M. c. 40, s. 41.

SITTINGS AND DISTRIBUTION OF BUSINESS.

Sittings of court.

29. Subject to the rules of the court, the court, and the judges thereof respectively, shall have power to sit and act at any time and at any place for the transaction of any part of the business of such court or of such judges, or for the discharge of any duty which by any statute or otherwise is required to be discharged. R.S.M. c. 40, s. 42, *part.*

King's Bench judges to take jury trials hereafter.

30. The judges, or a majority of them, shall fix dates as often in every year as the due despatch of business and the public convenience may require for the sitting of the court in the respective judicial districts of the Province for the trial of causes, matters and issues which are to be tried with a jury and for the trials of criminal matters and proceedings before juries. 1 Geo. 5, c. 12, s. 1.

Dates of sittings of judges outside of Winnipeg.

31. The judges shall hold sittings of the court at Portage la Prairie, Morden, Minnedosa and Brandon, commencing as follows: At Minnedosa, on the fourth Tuesday in January, the third Tuesday in May, the last Tuesday in June, and on the first Tuesday in October; at Portage la Prairie, on the second Tuesday in January, the second Tuesday in May, the first Tuesday after the first day of July, and on the fourth Tuesday in September; at Brandon, on the first Tuesday after the sixth day of January, the first Tuesday in May, the last Tuesday in June, and the third Tuesday in September; at Morden, on the third Tuesday in January, the fourth Tuesday in May, the first Tuesday after the first day of July, and on the third Tuesday in September, for the trials of causes which are to be tried by a judge without a jury, and for hearing and disposing of all motions and applications which may be tried, heard or disposed of before a single judge sitting in court or chambers, and any such trials, motions or applications may be postponed or adjourned to any other day, either at the same place or at any other place. 9 Ed. 7, c. 13, s. 2.

Sittings at places other than those above mentioned.

32. The judges shall also hold sittings of the court at places, other than those named in the next preceding section, in any judicial district of the Province appointed for that purpose by order or orders of the Lieutenant-Governor-in-Council from time to time for the trials of causes which are to be tried by a judge without a jury, and for hearing and disposing of all motions and applications which may be tried, heard of or disposed of before a single judge sitting in court or chambers, and any such trials, motions or applications may be postponed or adjourned to any other day, either at the same place or at any other place.

(2) Trials and hearings under this section may be had upon application to any judge by any party to the action showing to his satisfaction that it would be more convenient and less expensive to have the trial or hearing take place at such other place in the judicial district, and the judge, upon granting any such application, shall fix the time for

such trial or other hearing, and appoint an officer to act as clerk of the court at such trial or hearing, and make all necessary orders for the transmission of papers and records to and from such other place.

(3) A verdict or judgment of the judge at such trial or hearing shall have the same effect as if the trial or hearing had taken place at the assize city or town in the judicial district.

(4) Sections 34, 36, 39 and 40 of this Act shall apply to the sittings of the court provided for in this section. 3 Geo. 5, c. 12, s. 1.

Separate sittings for civil and criminal matters.

33. The said sittings of the court for the trial of civil causes, matters and issues may, in the discretion of the judges appointing the days therefor, or of the judge who has been appointed to preside or is presiding thereat, be held separate and apart from the sittings for the trial of criminal matters and proceedings, either on the same day or on a different day. R.S.M. c. 40, s. 46.

Place where court to be held.

34. Such sittings may, at the discretion of the court or of the judge who is to hold the same, be held in the court house of the place in which the same are appointed to be held, or at such other place in the town or city as the judge selects; and the judge shall in all respects have the same authority as a judge formerly had when sitting at nisi prius in regard to the use of the court house, gaol and other buildings or apartments set apart for the administration of justice. R.S.M. c. 40, s. 47.

Non-jury cases not to be tried at assizes.

35. No civic cases to be tried by a judge without a jury shall be set down or entered for trial at any sitting of the court of assize, and nisi prius, oyer and terminer and general gaol delivery. 5-6 Ed. 7, c. 18, s. 15.

Case of judge not arriving on day appointed for opening court provided for.

36. Where the judge whose duty it is to hold any court of assize and nisi prius, of oyer and terminer or general gaol delivery, or sittings of the court for the trial of causes, matters and issues, does not arrive in time, or is not able to open said court on the day appointed for that purpose, the sheriff of the judicial district in which such court should be holden, or in his absence his deputy or a constable authorized by the sheriff, may, after the hour of six of the clock in the afternoon of such day, adjourn by his proclamation the court which should have been holden on that day to an hour on the following day to be by him named, and so on from day to day until the judge arrives to open such court, or until such sheriff or other officer receives other direction from a judge in that behalf. R.S.M. c. 40, s. 51.

Commission of assize and other commissions.

37. Commissions of assize, or any other commissions, either general or special, may be issued by the proper authority, assigning to the person or persons to be therein named the duty of trying and determining, within any place or district specially fixed for that purpose by such commission, any causes or matters or any questions or issues of fact, or of law, or partly of fact and partly of law, in any cause or matter pending in the said court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the court; and any commission so issued shall be of the same validity as if it were enacted in the body of this Act; and any commissioner or commissioners shall, when engaged in the exercise of any jurisdiction so assigned to him or them, be deemed to constitute a sitting of the court. R.S.M. c. 40, s. 52.

Single judge's court.

38. A judge shall sit in court at Winnipeg on Tuesday in each week, or such other day as the court or judge shall appoint for that purpose, except in vacation, for the purpose of hearing, trying and disposing of all causes, matters and issues which may be tried or disposed of before a judge without a jury; and at such sittings such judge shall have all the powers that were formerly possessed by a judge at assize and nisi prius and by a judge presiding at the equity sittings:

Provided that, if any Tuesday be a holiday, the judge shall so sit as aforesaid on the next succeeding juridical day. R.S.M. c. 40, s. 48.

Such judge may adjourn trial or hearing at any time.

39. A judge sitting under the last preceding section may adjourn the trial of any cause or the hearing or determination of any matter before him to any other day or days, or from day to day, and shall then have the same power with reference thereto as if the same were tried, heard or determined on the day on which the same was first properly before him. R.S.M. c. 40, s. 49.

Who may preside.

Powers of presiding judge.

40. The sittings mentioned in sections 30, 31, 32, 33, 34, 38 and 39 shall be presided over by one of the judges of the court, and while holding the said sittings such judge shall possess, exercise and enjoy all the powers and authorities of a judge of the court, and in civil proceedings may reserve the giving of his decision on questions raised at the trial, and such decision shall have like force and effect when given as the decision of a judge given at the sittings of the court. R.S.M. c. 40, s. 50.

41. Every action and proceeding in the court, and all business arising out of the same, except as hereinafter provided, shall, so far as is practicable and convenient, be heard, determined and disposed of before a single judge. Business to be disposed of by one judge as far as practicable.

(2) A judge sitting alone is to decide all questions coming properly before him, and is not to reserve any case, or any point in the case, for the consideration of the court in banc, except as provided in this Act.

(3) In all such cases any judge sitting in court shall be deemed to constitute the court. R.S.M. c. 40, s. 53.

42. All causes and matters in the court shall be distributed among the several judges in such manner as may, from time to time, be determined by any rules of the court, or orders or arrangements to be made under the authority of this Act. R.S.M. c. 40, s. 55. Distribution of business.

42. All causes and matters in the court shall be distri- Judges' chambers.
may agree among themselves, sit in chambers or elsewhere, and shall transact all such business as may be transacted by a single judge out of court, subject to the right of appeal as provided in this Act and the rules from time to time in force. R.S.M. c. 40, s. 56.

SITTINGS IN BANC.

44. The court shall sit in banc for the purpose of hearing any applications and disposing of any matters that may properly come or be brought before it, at any time when called together by the chief justice or, in case of his absence from the Province or illness, by the senior puisne justice of said court. 5-6 Ed. 7, c. 18, s. 9. When court to sit in banc.

45. The court for the purpose of sitting in banc shall be constituted by three or more of the judges thereof: Constitution of court in banc.

Provided, always, that any two judges of the court sitting in banc may enlarge the hearing of any matter before the court. R.S.M. c. 40, s. 19.

46. Subject to the provisions of section 29, the sittings of the court in banc shall be held at the City of Winnipeg. R.S.M. c. 40, s. 42. Where to be held.

APPEALS.

Orders which are not appealable.

47. No order made by the court, or any judge thereof, by the consent of parties, or as to costs only which by law are left to the discretion of the court, shall be subject to any appeal, except by leave of the court or judge making such order. R.S.M. c. 40, s. 57.

Orders, judgments, etc., appealable.

48. Save as provided in the next preceding section, every rule, order, verdict, judgment, decree or decision, made, given, rendered or pronounced by a judge of the court, may be set aside, varied, amended or discharged on appeal, upon notice, by the Court of Appeal. R.S.M. c. 40, s. 58; 5-6 Ed. 7, c. 18, ss. 7, 14.

TRIAL AND PROCEDURE.

Jury actions.

49. Actions for libel, slander, breach of promise of marriage, illegal or excessive distress, illegal or excessive seizure, criminal conversation, seduction, malicious arrest, malicious prosecution, false imprisonment, breach of warranty, and for the recovery of damages under "The Employers' Liability Act," shall be tried by jury, unless the parties in person or by their solicitors or counsel expressly waive such trial.

Right to jury waived by non-payment of jury fees.

(2) Except in cases of libel and slander, the right to a jury shall be held to be abandoned and the case shall be tried without a jury, unless a jury fee of fifteen dollars be paid to the prothonotary or deputy clerk of the Crown and pleas. The officer shall require payment of such fee before entering the case.

Non-jury actions.

(3) Subject to the provisions of this section, all actions, causes, matters and issues shall be tried by a judge without a jury, unless otherwise ordered by a judge. R.S.M. c. 40, s. 59.

Trial judge may direct action to be tried by jury.

50. Notwithstanding anything in the next preceding section contained, a judge presiding at a trial may, in his discretion, direct that the action or issues shall be tried or the damages assessed by a jury.

Exclusion of public from certain trials.

(2) At the trial of any action for seduction or criminal conversation, the court or judge may order that the public, or any particular class or classes of the public, be excluded from the room or place in which the court is held during such trial; and such order may also be made in any other case in which the court or judge may be of opinion that the same will be in the interest of public morals.

(3) Nothing in the foregoing sub-section shall be construed by implication or otherwise as limiting any power heretofore possessed at common law by the presiding judge or other presiding officer of any court of excluding the general public, or any particular class of persons, from the court room in any case when such judge or officer deems such exclusion necessary or expedient. R.S.M. c. 40, s. 60; 3 Ed. 7, c. 11, s. 1. Common law power not affected.

VERDICT.

51. Upon a trial by jury where the court or presiding judge otherwise directs, it shall not be lawful for the jury to give a general verdict, and it shall be the duty of the jury to give a special verdict if the court or presiding judge so directs; and, unless the court or presiding judge otherwise directs, the jury may give either a general or a special verdict. This section shall not apply to actions of libel. R.S.M. c. 40, s. 61. Court or judge may direct jury to give special verdict, except in actions for libel.

INTEREST.

52. Unless it is otherwise ordered by the court, a verdict or judgment shall bear interest at the legal rate per annum from the time of the rendering of the verdict, or of giving the judgment, as the case may be, notwithstanding that the entry of judgment upon the verdict, or upon the giving of the judgment, shall have been suspended by any proceedings in the action, whether in the court in which the action is pending or in appeal to the Court of Appeal or to the Supreme Court of Canada or to His Majesty: Interest on judgments.

Provided that, in cases where there is an agreement between the parties that a specified rate of interest shall be secured by the judgment, then the judgment shall bear interest at the rate so agreed. R.S.M. c. 40, s. 62; 3 Geo. 5, c. 12, s. 3, *part.*

RULES OF COURT.

53. The court may at any time, with the concurrence of a majority of the judges thereof present at any meeting held for that purpose, alter or annul any rules of court for the time being in force, and may make any further or additional rules of court for the purpose of carrying this Act into effect, or for the purpose of providing for any matters not fully or sufficiently provided for in this Act, and in particular for any or all of the following matters, that is to say,— Judges may make rules

(*a*) for regulating the sittings of the court, and of the judges of the said court sitting in court or chambers; Regulating sittings.

Regulating pleading, etc.

(*b*) for regulating the pleading, practice and procedure in the court;

Prescribing matters that may be dealt with by referee or County Court judges.

(*c*) for empowering the referee in chambers, or any referee sitting for him, or the local judges, or the local masters in respect of actions brought in their judicial districts, 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 rules or practice of the court, are now or may be hereafter done, transacted or exercised by a judge of the court sitting in chambers, and as shall be specified in any such rule, except in respect of matters relating to—

(i) the liberty of the subject;

(ii) appeals and applications in the nature of appeals;

(iii) proceedings under "The Lunacy Act";

(iv) applications for advice by trustees and executors;

(v) matters affecting the custody of children;

(vi) proceedings under section 21 of this Act;

Regulating procedure generally.

(*d*) generally, for regulating any matters relating to the practice and procedure of the court, or to the duties of the officers thereof, or to the costs of proceedings therein; and every other matter deemed expedient for better attaining the ends of justice, advancing the remedies of suitors and carrying into effect the provisions of this Act and of all other Acts now or hereafter in force respecting the said court. R.S.M. c. 40, s. 63.

OFFICERS AND OFFICES.

Appointment of officers.

54. The Lieutenant-Governor-in-Council may, from time to time, appoint during pleasure a prothonotary, a deputy prothonotary, a master, a registrar, an accountant, a referee in chambers (two or more of which offices may be held by one person), and such other officers and clerks and assistants as the business of the court may, from time to time, require. R.S.M. c. 40, s. 64.

Deputies.

55. The Lieutenant-Governor-in-Council may appoint a deputy of any of the officers or clerks provided for by the last preceding section, or of any deputy clerk of the Crown and pleas or deputy registrar, and such deputy shall have all the powers of the officer or clerk whose deputy he is, whether such powers are conferred by statute, rule of court, order or otherwise. R.S.M. c. 40, s. 65.

Duties of officers.

56. The officers, clerks and assistants appointed as aforesaid shall, in addition to the regular duties assigned to them respectively, and usually and properly appertaining to their respective positions, perform such other duties as any judge of the court shall direct, and in the event of conflicting directions those of the senior judge shall prevail. R.S.M. c. 40, s. 66.

Officers for outside districts.

57. The Lieutenant-Governor-in-Council may, from time to time, appoint, during pleasure, for any judicial district other than the Eastern Judicial District, a deputy clerk of the Crown and pleas, and such other officers and clerks as the business of the said districts respectively may, from time to time, require; and such officers and clerks shall, in addition to any of the duties usually performed by the like officers and clerks, perform such other duties as the court may, from time to time, direct. R.S.M. c. 40, s. 67.

Oaths of office.

58. Every officer of the court, before he enters upon his duties, shall take and subscribe the following oath, which oath shall be administered by a judge of the court, or a judge of the County Courts:—

Form of oath.

I, A. B., of , do hereby solemnly swear that I will, according to the best of my skill, learning, ability and judgment, well and faithfully execute and fulfil the duties of the office of *(as the case may be)*, without favor or affection, prejudice or partiality, to any person or persons whomsoever. So help me God. R.S.M. c. 40, s. 68.

Prothonotary, how styled.

59. The prothonotary of the court shall be styled "prothonotary," and "clerk of the Crown and pleas," and "clerk of the peace," or simply "clerk," according to the nature of the proceeding in the court in which he shall intervene; in civil proceedings "prothonotary" or "clerk"; in criminal proceedings, "clerk of the Crown and pleas" or "clerk of the peace"; and in each capacity he shall possess and enjoy all the powers, rights and privileges appertaining to or exercisable by the prothonotary, the clerk and the clerk of the Crown and pleas and clerk of the peace, respectively, in any of His Majesty's courts of law in England; and the said clerk shall perform all duties appertaining to his office as clerk of the court and appertaining to the office of prothonotary and the clerk of the Crown and pleas and clerk of the peace aforesaid, respectively. R.S.M. c. 40, s. 69.

Officers of court to have power to administer oaths, etc.

60. Any officer of the court shall, for the purposes of any proceedings directed by the court to be taken before him, have full power to administer oaths, to take affidavits, to receive affirmations, and to examine witnesses and parties as the court may direct. R.S.M. c. 40, s. 70.

Confirmation of certain decrees in equity.

61. All decrees or orders on the equity side of the court of Queen's Bench for Manitoba, issued or signed by the prothonotary, registrar or master in equity, or by any deputy prothonotary, deputy registrar or deputy master, or by any such deputy for or on behalf of or purporting to be for or on behalf of any of the officers herein mentioned, are hereby declared to be valid and to have been and to be in as full force and effect and as legally binding as if the same had been properly issued and signed by the judge or other officer of the said court, having the proper authority to issue or sign any such decree or order. R.S.M. c. 40, s. 71; 3-4 Ed. 7, c. 8, s. 3.

COMMISSIONERS FOR ADMINISTERING OATHS.

Judges may appoint commissioners for administering oaths.

62. The judges may, from time to time, under the seal of the court, appoint and at their discretion remove commissioners for administering oaths and taking affidavits and depositions in the said court, either within or without the Province, with the powers formerly possessed by masters extraordinary and examiners. R.S.M. c. 40, s. 72.

When no chief justice commissions may be issued by three judges.

63. Whenever, from death, resignation or absence, there is no chief justice in the Province, such commissions may be issued by any three of such judges. R.S.M. c. 40, s. 73.

SPECIAL EXAMINERS.

Appointment of special examiners.

64. The Lieutenant-Governor-in-Council may appoint at discretion and remove special examiners for the court, who shall have power to administer oaths, take affidavits and depositions in the said courts, either within or without the Province, with the powers formerly possessed by masters extraordinary and examiners, and with authority to take depositions of parties and persons wherever the examination of parties and persons is authorized by the practice of the court, or by this Act. R.S.M. c. 40, s. 74.

FEES—SALARIES.

Officers to see fees paid.

65. The officers of the court shall see that all legal fees and charges payable on all writs, summonses, process, proceedings, documents, papers, matters and things whatsoever, issued, moved, taken, filed, entered, had, made, done or transacted in the offices of the court, or otherwise by or through them or the said offices, or howsoever otherwise within their control or supervision, are paid according to the statute or statutes, rules of court, orders and orders-in-council from time to time in force in that behalf.

(2) No fees shall be payable by any Department of the Government of the Province upon any proceedings in the courts which the Government or any Department thereof is prosecuting or concerned in. R.S.M. c. 40, s. 75; 2 Geo. 5, c. 14, s. 1. No fees to be charged Government.

66. Unless specially authorized, no officer or clerk shall take for his own use or benefit, directly or indirectly, any fee or emolument whatever, save the salary which he may be entitled to by law; and all the fees which were formerly payable upon proceedings and otherwise in the said offices shall continue to be payable until changed or altered according to law, and as provided by law. R.S.M. c. 40, s. 76. No officer to take fees for his own use, unless specially authorized.

67. There shall be paid, as and for the salaries of officers and clerks under this Act, such sums as the Lieutenant-Governor-in-Council may from time to time determine. R.S.M. c. 40, s. 77. Salaries.

DUTIES OF PRESENT OFFICERS.

68. Subject to any order-in-council in that behalf, the business to be performed in the court, or in the chambers of any judge, other than that performed by the judges, shall be distributed among the several officers of the court in the manner provided by this Act, and in such manner as may be further directed by rules of court; and such officers shall perform such duties as may be directed by rules of court under section 53 of this Act. R.S.M. c. 40, s. 78. Distribution of business among officers.

NEGLECT TO GIVE SECURITY.

69. The neglect by any officer of the court to give security for the due performance of the duties of his office according to law shall not affect or impair the validity of any act done by him during the time he actually continues to perform the duties of his office. R.S.M. c. 40, s. 79. Consequences of officer neglecting to give security.

LOCAL MASTERS.

70. Each judge of County Courts in any judicial district, except the Eastern Judicial District, shall be a local master of the court within his judicial district. County Court judge a local master except in E.J.D.

(2) Where a County Court judge is the local master, the deputy clerk of the Crown and pleas shall be deputy registrar for the court. Deputy registrars for local masters.

(3) Where a reference is made to a local master, he shall be entitled to take and receive to his own use the fees on such reference. Fees of local masters.

Fees of local masters.

(4) Every local master shall be entitled, while actually engaged as such in or upon any suit, cause, matter, reference or proceeding in the court, to a fee of two dollars per hour, or portion of an hour, for the time during which he is so engaged; and it shall be the duty of the deputy registrar to collect such fees from suitors, or their solicitors, and pay the same to the local master. R.S.M. c. 40, s. 80.

OFFICE OF DEPUTY CLERK OF THE CROWN AND PLEAS.

Office of deputy clerk of Crown and pleas to be in court house.

71. Each deputy clerk of the Crown and pleas, if proper accommodation is afforded him, shall keep his office in the court house of his district.

Fees of deputy clerks.

(2) Where an examination is taken by a deputy clerk of the Crown and pleas, he may retain the fees for his own use.

Seals of office of deputy registrars and deputy clerks of Crown and pleas.

(3) In the office of every deputy registrar and deputy clerk of the Crown and pleas, there shall be one seal for the court, which shall be provided and approved by the Lieutenant-Governor-in-Council; such seal shall be impressed on every writ and other document issued out of or filed in such offices; and all such writs or documents and all exemplifications and copies thereof purporting to be sealed with such seal shall, in all courts of this Province, be received in evidence without further proof thereof. R.S.M. c. 40, s. 81.

OFFICIAL GUARDIANS.

Appointment of official guardians.

72. The Lieutenant-Governor-in-Council may appoint one official guardian *ad litem* of infants for the Province, or one for each of the judicial districts in the Province. A company may be appointed as such official guardian, but if an individual is appointed he shall be a barrister-at-law and solicitor of this Province of not less than two years' standing in each branch of the profession.

Duties.

(2) An official guardian, besides acting as guardian *ad litem* of infants under rules of court and other orders, shall perform such other duties as the court or a judge may from time to time direct.

Costs.

(3) The same costs as hitherto shall be paid to a guardian by any party; and the same costs as hitherto shall be paid to a guardian out of funds in court. R.S.M. c. 40, s. 82.

INSPECTOR OF OFFICES.

Appointment of inspector of offices.

73. The Lieutenant-Governor-in-Council may, from time to time, appoint one of the officers of the court, or some other officer, to inspect the offices of the sheriffs, and all or any of the offices of the court; and the person so appointed to inspect the said offices shall be paid such sum therefor as the Lieutenant-Governor-in-Council may direct. R.S.M. c. 40, s. 83.

COURT STENOGRAPHERS.

Court stenographers.

74. Stenographic writers hitherto appointed, or who shall hereafter be appointed, to report trials at sittings of the court, shall be officers of the court, and shall hold office during the pleasure of the Lieutenant-Governor-in-Council, and shall perform such other duties as may be assigned to them by rule or order of court or order of the Lieutenant-Governor-in-Council.

Oath of office.

(2) Every such reporter shall take the following oath before one of the judges, and the same shall be filed:—

I, A. B., do solemnly and sincerely promise and swear that I will faithfully report the evidence and proceedings at the trial in each case in which it may be my duty to act as shorthand reporter. So help me God. R.S.M. c. 40, s. 84.

SHERIFFS.

Duties of sheriffs *et al.*

75. Sheriffs, deputy sheriffs, gaolers, constables and other peace officers shall aid, assist and obey the court and the judges thereof respectively in the exercise of the jurisdiction conferred by this Act. R.S.M. c. 40, s. 85.

Gaols to be prisons of court.

76. All gaols in Manitoba shall be prisons of the court. R.S.M. c. 40, s. 86.

LOCAL JUDGES.

Powers of local judges.

77. The judges of the several County Courts, other than the judges of County Courts for the Eastern Judicial District, or any portion thereof, shall be judges of the Court of King's Bench for the purposes of their jurisdiction in connection with the court, and in the exercise of such jurisdiction may be styled local judges of the court, and shall, in all causes and actions in the court, have, subject to rules of court, power and authority to do and perform all such acts, and transact all such business in respect to matters and causes in and before the court as they are by statute or rule of court in that behalf from time to time empowered to do and perform. R.S.M. c. 40, s. 87.

Power of local judges to grant interlocutory injunctions.

78. A local judge may, in cases of emergency, grant interlocutory injunctions in any action in the court brought in his judicial district, on proof to his satisfaction that the delay required for an application to the court is likely to involve failure of justice; such injunction to remain in force for such period, not exceeding eight days, as such local judge may direct, unless continued by the court; such injunction shall be by order, signed, sealed and issued by the deputy clerk of the Crown and pleas of said district, upon the direction or fiat of such local judge, and such injunction shall have the same force and effect, and may be continued, varied, dissolved and otherwise dealt with, as if it had been originally granted by order of the court. R.S.M. c. 40, s. 88.

FEES OF WITNESSES AND CRIERS.

Fees of witnesses and criers.

79. The Lieutenant-Governor-in-Council may from time to time fix and determine the fees and allowances to be paid by the Government of Manitoba to criers in Crown or criminal cases and Crown witnesses. R.S.M. c. 40, s. 89.

TRANSFER OF COUNTY COURT CASES TO KING'S BENCH.

Transfer of County Court cases to King's Bench.

80. In a case before any County Court, where the defence or counterclaim of the defendant involves matters beyond the jurisdiction of the County Court, the County Court, or the Court of King's Bench, or a judge of either court, may, on the application of any party to the proceeding, order that the whole proceeding be transferred from such County Court to the Court of King's Bench; and in such cases the papers in such proceedings shall be transmitted by the clerk of the County Court to the proper officer of the Court of King's Bench, and the same shall thenceforth be continued and prosecuted in the Court of King's Bench as if it had been originally commenced therein. R.S.M. c. 40, s. 90.

INSPECTION OF COURT BOOKS.

Books of court to be open to inspection.

81. Every person shall hereafter have access to and be entitled to inspect the several books of the court containing records or notices of the writs issued and judgments entered; and no person desiring such access or inspection shall be required, as a condition of his right thereto, to furnish the names of the parties or the style of the causes or matters in respect of which such access or inspection is sought; and the officers of the court respectively shall, upon demand or request, produce for inspection any statement of claim or defence or copy thereof and any judgment roll so issued or entered in their respective offices, or of which records or entries are by law required to be kept in such books of the court. R.S.M. c. 40, s. 91.

MISCELLANEOUS.

This Act not to apply to criminal and other matters.

82. Nothing in this Act shall affect the practice or procedure in criminal matters, or matters connected with Dominion controverted elections, or proceedings on the Crown or revenue side of the court. R.S.M. c. 40, s. 92.

Proceedings to be taken if practicable according to this Act.

83. Where a statute of Manitoba or any law in force in Manitoba provides for proceedings being taken, or allows of proceedings being taken, in the court, such proceedings in all cases, when practicable, shall be taken according to the methods and forms provided for by this Act. R.S.M. c. 40, s. 93.

Statute providing that anything be done before a judge.

84. Where any statute of Manitoba or any law in force in Manitoba provides that any proceeding, matter or thing shall be done by or before a judge, the term "judge" shall in all such cases mean a judge of the court mentioned or referred to in such statute; and any such proceeding, matter or thing, when properly commenced before a judge, may be continued or completed before any other judge of the same court. R.S.M. c. 40, s. 94.

Procedure provided for by this Act to be in lieu of former procedure.

85. The procedure provided by this Act shall in all cases prevail over and be adopted in lieu of procedure provided by the practice of the court in use before the coming into force of "The Queen's Bench Act, 1895," and by statutes of this Province theretofore in force, where the procedure provided by this Act can be reasonably and conveniently applied. R.S.M. c. 40, s. 95.

Appended rules, forms, tariffs and schedules a portion of this Act.

86. The rules hereinafter set forth and all forms, tariffs and schedules appended thereto are a portion of this Act. R.S.M. c. 40, s. 96.

Amending rules to be published.

87. All amendments or additions to the said rules, forms, tariffs and schedules, made by the court under the powers conferred by section 53 hereof, shall be published forthwith after the making thereof in *The Manitoba Gazette*. 10 Ed. 7, c. 17, s. 1; 3 Geo. 5, c. 12, s. 2.

RULES OF COURT.

Division I.

INTERPRETATION.

Criminal, Crown or revenue, election or winding-up proceedings not affected.

1. Nothing in these rules shall be construed as intended to affect the practice or procedure in criminal proceedings, or proceedings on the Crown or revenue side of the court, or upon election petitions, or under the Winding-up Acts. R.S.M. c. 40, r. 1.

"Judge."

2. A "judge" in these rules means a judge of the court or a judge having the authority for the time being of a judge of the court, unless there is something in the context indicating a different meaning. R.S.M. c. 40, r. 2.

3. In these rules, unless the context otherwise requires—

"Master."

(*a*) the word "master" includes a local master;

"Schedule."

(*b*) the word "schedule" means the schedule of forms appended to this Act. R.S.M. c. 40, r. 3.

Former practice superseded.

4. All practice inconsistent herewith is hereby abolished, and as to all matters not provided for in these rules and in this Act the practice is, as far as may be, to be regulated by analogy to this Act and these rules. R.S.M. c. 40, r. 4.

5. The interpretation clauses of "The King's Bench Act" shall apply to these rules, unless there is anything in the subject or context repugnant thereto. R.S.M. c. 40, r. 5.

Division of rules.

6. The division of these rules into titles and headings is for convenience only, and is not to affect their construction. R.S.M. c. 40, r. 6.

Promulgation of new rules.

7. Every rule hereafter made by the court under the powers conferred by section 53 of this Act, shall be construed as intended to come into force on the seventh day after the day of its publication in *The Manitoba Gazette*. R.S.M. c. 40, r. 7; 3 Geo. 5, c. 12, s. 3, *part*.

Division II.

OFFICERS AND OFFICES.

GENERALLY.

Office hours.

8. Except as hereinafter mentioned, the offices of the court shall be kept open on Saturdays from ten o'clock in the forenoon until one o'clock in the afternoon, and every

day except Saturday from ten o'clock in the forenoon until four o'clock in the afternoon. Except as hereinafter mentioned, the offices of the court shall be kept open every day during the vacations from ten o'clock in the forenoon until twelve o'clock noon. R.S.M. c. 40, r. 8.

Holidays.

9. The offices of the court shall not be open on any holiday, as the same is defined by "The Manitoba Interpretation Act" and any amendments thereof. R.S.M. c. 40, r. 9.

Who may transact business in offices.

10. No business shall be transacted in any of the offices of the court for procuring or issuing out a process or in entering judgment or taking any proceeding whatever in a cause, unless upon the personal attendance of the party in whose behalf such business is required to be transacted or of the counsel or solicitor of such party, or the clerk or agent of the solicitor, or the clerk of the agent. R.S.M. c. 40, r. 10.

Officers to be auxiliary to one another.

11. All officers shall be auxiliary to one another for promoting correct, speedy and convenient administration of business. R.S.M. c. 40, r. 11.

PROTHONOTARY—REGISTRAR—DEPUTY CLERKS.

Issue by prothonotary of statement of claim.

12. The prothonotary shall, on receiving a copy of the statement of claim to be filed by him, issue any statement of claim required for the commencement of an action. R.S.M. c. 40, r. 12.

Sealing process.

13. The prothonotary and each deputy clerk of the Crown and pleas shall have a seal for sealing writs, statements of claim and process, to be approved by the judges, and he shall seal therewith and sign all writs, statements of claim and process issued by him. R.S.M. c. 40, r. 13.

Duties of prothonotary.

14. In all actions, suits and proceedings in the court, the prothonotary shall perform the same duties as before the coming into force of "The Queen's Bench Act, 1895," except as provided in this Act, and shall

(*a*) receive, file and have custody of all pleadings, petitions, reports, affidavits, bonds and other papers and proceedings in every action, suit, matter and proceeding in the court, and shall make or cause to be made entries thereof in the proper books;

(*b*) have the care and custody of all documents ordered to be deposited for safe keeping or produced under any order of the court;

(*c*) have the care and custody of the books and papers filed and kept under the provisions of "The Real Property Act," and make all necessary entries in reference thereto;

(*d*) set down all actions for trial and motions for the court in banc;

(*e*) set down all motions, special cases and other business coming before the court or a single judge, and all appeals in chambers;

(*f*) amend pleadings, certify proceedings, examine and authenticate office copies of pleadings and other proceedings, prepare and sign certificates for registration and issue the same, attend the opening of commissions;

(*g*) procure from the judges the several precepts for the return of the panels of grand and petit jurors which may from time to time be required and transmit the same to the sheriffs to whom the returns of such precepts severally belong. R.S.M. c. 40, r. 14.

Duties of deputy clerks of the Crown and pleas and deputy registrars.

15. Deputy clerks of the Crown and pleas and deputy registrars are to perform the duties of their offices in the same manner, and under the same regulations, as the like duties are performed by the prothonotary and the registrar respectively; and all orders, rules and regulations in force respecting the prothonotary and the registrar and respecting the regulation of their offices respectively are to be in force and applicable to the deputy clerks of the Crown and pleas and deputy registrars in relation to such duties as they are hereby required to perform; and the like sums and fees payable to the prothonotary and the registrar are to be payable to the deputy clerks of the Crown and pleas and deputy registrars in relation to similar matters. R.S.M. c. 40, r. 15.

Powers of deputy clerks of the Crown and pleas.

16. Subject to the foregoing rules, where an action is commenced in the office of a deputy clerk of the Crown and pleas, such officer shall have all such powers and authorities in relation to the action as the prothonotary and registrar have respectively in the case of an action commenced in the office of the prothonotary, and all such orders in the action as require to be entered shall be entered in the office of such deputy clerk of the Crown and pleas. R.S.M. c. 40, r. 16.

Entry of orders.

17. The registrar shall, in addition to his other duties, be judgment clerk of the court for the purpose of settling the form and terms of special judgments and orders. R.S.M. c. 40, r. 17. Registrar to act as judgment clerk.

18. There shall be no clerk of records and writs; but all duties and functions formerly performed by the clerk of records and writs, and not by this Act assigned to any other officer, shall be performed by the registrar. R.S.M. c. 40, r. 18. Registrar to perform duties of clerk of records and writs.

19. The prothonotary shall make out and post up in a conspicuous place in his office a list of all actions and matters set down for trial or argument as soon as the time for setting down the same has elapsed. R.S.M. c. 40, r. 19. Posting up trial and argument lists.

20. The registrar shall have access to the books of the prothonotary at all times during office hours. When any officer other than the prothonotary requires possession of any pleading, papers or documents, he shall requisition the prothonotary for the same. R.S.M. c. 40, r. 20. Registrar to have access to books of prothonotary. Requisition for papers.

21. All orders of course, which by the practice in Manitoba prior to the passing of "The Queen's Bench Act, 1895," might be had as a matter of course upon signature of counsel at side bar or upon præcipe, are to be issued by the registrar on præcipe. R.S.M. c. 40, r. 21. Orders of course.

22. The deputy clerks of the Crown and pleas in the several judicial districts, except the Eastern Judicial District, shall ex-officio be and act as clerks at the sittings of the court for the trial of causes, matters and issues and all criminal matters or proceedings, appointed to be holden by commission or otherwise, in their respective judicial districts, and shall have all the powers and perform all the functions incident to the same as such clerks. R.S.M. c. 40, r. 22. Clerks in other districts

23. The said deputy clerks of the Crown and pleas respectively shall, immediately after each sitting of such courts, forward to the prothonotary at Winnipeg every recognizance, indictment, paper or proceeding in any criminal matter in their custody as such officers respectively, and also the usual and proper returns as such clerks. R.S.M. c. 40, r. 23. Return of criminal proceedings to prothonotary.

24. The registrar or the prothonotary, by himself or some other official or employee in his office, shall act as clerk of the court or to a judge at any sitting for the trial of civil or criminal causes, matters or proceedings in the Eastern Judi- Registrar or prothonotary to act as trial clerk in E.J.D.

cial District, and shall have all the powers and authority, both of the prothonotary and of the registrar in equity under the former practice, as well as those of the clerk and marshal of assize. 3 Geo. 5, c. 12, s. 3, *part*.

Division of work between registrar and prothonotary.

25. The duties under the last preceding rule shall be divided between the registrar and the prothonotary, as shall from time to time be provided by rules of court, and, in the absence of such provision, as the court or a judge shall direct or allow. R.S.M. c. 40, r. 25.

Absence of regular officer provided for.

26. In the event of any clerk of the court, registrar or deputy registrar being absent or being prevented by illness or other cause from performing his duties as such officer, the presiding judge at such sitting or court may authorize some person to act in the place of such officer, and the person so acting shall have all the powers of the officer for whom he acts. R.S.M. c. 40, r. 26.

REFEREE IN CHAMBERS.

Duties and powers of referee in chambers.

27. The referee in chambers, in regard to all actions and matters in court, shall be and hereby is empowered and required to do such things, transact all such business and exercise all such authority and jurisdiction in respect to the same as by virtue of any statute or custom or by the rules or practice of the court or any of them respectively are or may be done, transacted or exercised by him or by any judge of court sitting in chambers, save and except in respect to the matters following,—

(*a*) all matters relating to criminal proceedings or the liberty of the subject;

(*b*) appeals and applications in the nature of appeals and applications concerning the hearing of appeals, and applications to vary or rescind an order made by a judge;

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

(*d*) all matters in respect of which the jurisdiction of a judge in chambers is not derived from legislation of the Legislature of Manitoba;

(*e*) proceedings as to lunatics under any statute of Manitoba;

(*f*) applications for advice under "The Manitoba Trustee Act";

(*g*) applications as to the custody of infants, or for the sale, leasing or other disposition of the lands of an infant;

(*h*) applications for the lease or sale of settled estates, or to enable minors with the approbation of the court to make binding settlements of their real or personal estate at marriage, and in regard to questions submitted for the opinion of the court in the form of special cases on the part of such persons as may by themselves, their committees, guardians or otherwise concur therein;

(*i*) opposed applications for administration orders;

(*j*) the referring of causes or matters to arbitration;

(*k*) reviewing taxation of costs;

(*l*) applications for leave to appeal or re-hear, or to move against a verdict or judgment, or to move to reverse or vary an order of a judge, after the time limited for so appealing, re-hearing or moving has elapsed;

(*m*) applications for payment of money out of court or dispensing with payment of money into court;

(*n*) proceedings under "The Manitoba Controverted Elections Act";

(*o*) proceedings under "The Landlords and Tenants Act";

(*p*) proceedings under "The Manitoba Railway Act";

(*q*) the taking of evidence upon and hearing and disposing of any question summarily, in chambers, as to the liability of a garnishee where such liability is disputed, or the disposing of a claim of a third party, without directing the trial of an issue;

(*r*) the taking of evidence upon and summarily disposing of a claim in chambers under rule 903;

(*s*) proceedings under "The Manitoba Expropriation Act";

(*t*) applications for the allowance of fees to attorneys, solicitors or counsel greater than those taxable by the taxing officer without special order, except fees in respect of matters before the referee in chambers;

(*u*) applications under the rules contained in division xiii, originating notices. R.S.M. c. 40, r. 27; 3 Geo. 5, c. 12, s. 3, *part.*

Referee may adjourn certain matters.

28. If the judges of the court are absent from Winnipeg, or there is no judge sitting in chambers upon the day on which any application in respect of any of the above excepted matters from (*e*) to (*t*), both inclusive, in the last preceding rule is returnable, the referee in chambers may adjourn such application upon such terms as he may consider proper. R.S.M. c. 40, r. 28.

Jurisdiction of referee declared.

29. It is hereby declared to be the meaning of rule 27 that the referee in chambers has, and has had since the coming into force of "The Queen's Bench Act, 1895," in regard to all actions and matters in court, full authority and jurisdiction to transact all such business and exercise all such authority and jurisdiction in respect to the same as, by virtue of any statute or custom, or by the rules or practice of the court, or by rule 27 or any rule under this Act, are now or heretofore have been or hereafter may be done, transacted or exercised by him, or by any judge of the court sitting in chambers, save in respect of the matters in rule 27 excepted. R.S.M. c. 40, r. 29, *part.*

Referee's powers under Real Property Act.

30. The referee in chambers shall have all the powers given to the court or a judge by the rules in schedule L to "The Real Property Act," except in regard to the trial of issues in respect to any petition filed. R.S.M. c. 40, r. 30.

Judge may hear any application which may be made to referee.

31. All applications which may be made to the referee in chambers shall be so made; but at any time a judge may in his discretion hear and determine any application which may be made to or which is returnable before the referee in chambers. R.S.M. c. 40, r. 31.

Reference to judge.

32. The referee may refer any matter pending before him to a judge for decision, and the judge may dispose of the same in whole or in part, or refer back the whole or part. R.S.M. c. 40, r. 32.

Signature and entry of referee's orders.

33. The referee shall sign all orders made by him and shall cause such as require entry to be entered in a book to be kept for that purpose. R.S.M. c. 40, r. 33.

LOCAL JUDGES.

Local judges.

34. A local judge shall, in all actions brought in his judicial district, have concurrent jurisdiction with and the same power and authority as the referee in chambers in all proceedings in the court. R.S.M. c. 40, r. 34.

35. A local judge may refer any matter pending before him in chambers to a judge in chambers for decision, and the judge may dispose of the same in whole or in part or refer back the whole or a part. R.S.M. c. 40, r. 35. Reference by local judge to judge of court.

36. Every local judge shall have all the powers of the referee in chambers in respect to all interpleader applications and all matters incidental thereto and the disposal of the same, when such application is made by or on behalf of the sheriff of his judicial district, whether the action in respect of which the application is made was commenced in the judicial district of such judge or not. An interpleader application by or at the instance of a sheriff may in every case be made to the local judge for the judicial district which, or part of which, constitutes such sheriff's bailiwick, and such local judge shall have the aforesaid powers in reference thereto. R.S.M. c. 40, r. 36. Interpleader applications to local judges.

37. Each local judge shall have all the powers given to the court or a judge by the rules in Schedule L of "The Real Property Act," in respect of matters affecting land in his judicial district, except in regard to the trial of issues under any petition filed. R.S.M. c. 40, r. 37. Real Property Act applications to local judges.

MASTER'S OFFICE.

General Rules.

38. In all cases where a reference might be directed, the court may dispose of all matters itself without a reference, any may direct proceedings to be taken in court or in chambers, as it finds it expedient. R.S.M. c. 40, r. 38. Court may dispose of matters without reference.

39. Every order of reference is to be brought into the proper office for prosecution within fourteen days after the same is drawn up, by the party having the carriage of the same; otherwise any other party to the cause, or any party having an interest in the reference, may assume the carriage of the order. Carriage of order of reference.

(2) A copy of the judgment or order of reference certified by a proper officer of the court shall be sufficient warrant for the master to proceed thereon, and it shall not be necessary to bring in the original judgment or order. R.S.M. c. 40, r. 39; 3 Geo. 5, c. 12, s. 3, *part.* Copy of judgment sufficient for master.

40. When, in proceedings before the master, it appears to him that some persons not already parties ought to be made parties, and ought to attend or be enabled to attend the Master may add parties.

proceedings before him, he shall make an order adding such persons as parties to the action, directing that a copy of the judgment or order be served upon such parties and appointing a time for any further proceedings to be taken, and, upon due service of the master's order and of the judgment or order, such parties are to be treated and named as parties to the action, and are to be bound by the judgment or order in the same manner as if they had been originally made parties. 3 Geo. 5, c. 12, s. 3, *part*.

Endorsement on copy served.

41. The copy of the master's order made under rule 40, and served upon any such person, is to be endorsed with a notice to the effect set forth in form No. 16 in the schedule, with such variations as circumstances require. 3 Geo. 5, c. 12, s. 3, *part*.

Parties added may move to discharge judgment.

42. A party served with a copy of a judgment or order under rule 40 may apply to the court, at any time within fourteen days from the date of such service, to discharge the judgment or order, or to add to, vary or set aside the same. R.S.M. c. 40, r. 42; 3 Geo. 5, c. 12, s. 3, *part*.

Master may classify interests and regulate their representation.

43. Where, at any time during the prosecution of a reference, it appears to the master, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor; and where the parties constituting such class cannot agree upon the solicitor to represent them, the master may nominate such solicitor for the purpose of the proceedings before him. R.S.M. c. 40, r. 43.

Master may change conduct of reference.

44. If a party prosecuting a reference does not proceed with due diligence, the master is to be at liberty, upon the application of any other party interested, either as a party to the suit or as one who has come in and established his claim under the judgment or order, to commit to him the prosecution of the reference; and thenceforth neither the party making default nor his solicitor is to be at liberty to attend the master as the prosecutor of the judgment or order. R.S.M. c. 40, r. 44.

Master may close reference in case of undue delay.

45. If there is undue delay in prosecuting a reference in the office of a master, he may issue his warrant to the solicitors or parties interested, which may be transmitted by post, calling upon them to show cause why the reference should not be duly proceeded with. In default of sufficient cause being shown to excuse the delay, or upon default being

made in attending upon the return of the warrant, the master is to certify to the court the circumstances of the case; and thereupon the reference in his office is to be deemed closed, and is not to be resumed until further order. R.S.M. c. 40, r. 45.

Reference to be proceeded with *de die in diem*, unless otherwise ordered.

46. Unless the master in his discretion thinks fit to postpone the same, every reference is to be called on and proceeded with at the day and time fixed; and so *de die in diem*, without interruption, and without a fresh warrant, unless he is of opinion that an adjournment other than *de die in diem* would be proper and conducive to the ends of justice; and when an adjournment is ordered, the master is to note in his book the time and reason thereof. R.S.M. c. 40, r. 46.

Noting adjournments.

Reference not to be unnecessarily adjourned to take up other cases.

47. No matter is to be discontinued or adjourned for the mere purpose of proceeding with any other matter, unless that course becomes necessary. R.S.M. c. 40, r. 47.

Warrant to consider.

48. Upon the bringing in of a judgment or order, the solicitor bringing in the same is to take out a warrant (unless the master dispenses therewith) appointing a time, which is to be settled by the master, for the purpose of taking into consideration the matter referred by the judgment or order, and is to serve the same upon the parties or their solicitors, unless the master dispenses therewith. R.S.M. c. 40, r. 48.

Proceedings upon return of warrant.

49. Upon the return of the warrant to consider, or upon the bringing in of the reference where the warrant is dispensed with, the master is to fix a time at which to proceed to the hearing and determining of the reference, and is to regulate in all other respects the manner of proceeding with the reference, and is to give any special directions he thinks fit as to—

(*a*) the parties who are to attend on the several accounts and inquiries;

(*b*) the time at which, or within which, each proceeding is to be taken;

(*c*) the mode in which any accounts referred to him are to be taken or vouched;

(*d*) the evidence to be adduced in support thereof;

(*e*) the manner in which each of the accounts and inquiries is to be prosecuted;—

and such directions may be afterwards varied or added to, as may be found necessary. R.S.M. c. 40, r. 49.

No statement in pleading or evidence at trial necessary to enable master to exercise his powers.

50. To enable the master to exercise all or any of the powers conferred upon him by, or to take the accounts and make the inquiries referred to in, the following rules, it shall not be necessary that any of the matters therein mentioned shall have been stated in the pleadings, or that evidence thereof shall have been given before the judgment or order of reference, or that the judgment or order shall contain any specific direction in respect thereof. R.S.M. c. 40, r. 50.

Powers of master upon reference.

51. Under a judgment or order of reference, the master shall have power—

(*a*) to take the accounts with rests or otherwise;

(*b*) to take accounts of rents and profits received, or which, but for wilful neglect or default, might have been received;

(*c*) to set occupation rent;

(*d*) to take into account necessary repairs, and lasting improvements, and costs and other expenses properly incurred otherwise, or claimed to be so;

(*e*) to make all just allowances;

(*f*) to report special circumstances;

(*g*) and generally, in taking the accounts, to inquire, adjudge and report as to all matters relating thereto, as fully as if the same had been specially referred. R.S.M. c. 40, r. 51.

Examination of witnesses upon reference.

52. Under a judgment or order of reference, witnesses may be examined before any examiner of the court. R.S.M. c. 40, r. 52.

Examination of witnesses and production of documents.

53. The master may cause parties to be examined, and to produce books, papers and writings, as he thinks fit, and may determine what books, papers and writings are to be produced, and when and how long they are to be left in his office; or if he does not deem it necessary that such books and papers or writings should be left or deposited in his office, he may give directions for the inspection thereof, by the parties requiring the same, at such time and in such manner as he deems expedient. R.S.M. c. 40, r. 53.

Advertisements for creditors.

54. The master may cause advertisements for creditors and, if he thinks it necessary but not otherwise, for heirs or next of kin, or other unascertained persons, and the representatives of such as are dead, to be published as the cir-

cumstances of the case require; and in such advertisements he is to appoint a time within which such persons are to come in and prove their claims, and within which time, unless they so come in, they are to be excluded from the benefit of the judgment or order. R.S.M. c. 40, r. 54.

Dealing with creditors' claims.

55. The master is to proceed on the claims brought in before him pursuant to such advertisement, without further notice, and may examine witnesses in relation thereto at the time appointed in the advertisement or thereafter, as he sees fit; and he is to allow or disallow or adjourn the claims, as to him seems just. R.S.M. c. 40, r. 55.

Settling conveyances.

56. Under every order whereby the delivery of deeds or execution of conveyances is directed, the master is to give directions as to delivery of such deeds, and to settle conveyances where the parties differ, and to give directions as to the parties to the conveyances and as to the execution thereof. R.S.M. c. 40, r. 56.

Form and mode of verifying accounts.

57. Where any account is to be taken, the accounting party is, unless the master otherwise directs, to bring in the same in the form of a debtor and creditor account, verified by affidavit. The items on each side of the account are to be numbered consecutively and the account is to be referred to by the affidavit as an exhibit, and not to be annexed thereto. R.S.M. c. 40, r. 57.

Books of account as prima facie evidence.

58. The master, if he thinks fit, may direct that, in taking accounts, the books of account in which the accounts required to be taken have been kept, or any of them, be taken as prima facie evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objection thereto as they may be advised. R.S.M. c. 40, r. 58.

No state of facts, etc., to be brought in. Copies of deeds, etc.

59. No state of facts, charges or discharges are to be brought into the master's office; and where original deeds or documents can be brought in, no copies are to be made without special direction. R.S.M. c. 40, r. 59.

Copies of documents to be supplied as master directs.

60. Where directed, copies or abstracts of, or extracts from, accounts, deeds or other documents and pedigrees, and concise statements, are to be supplied; and, where so directed, copies are to be delivered as the master may direct. R.S.M. c. 40, r. 60.

Parties bound by master's direction without warrant.

61. A party directed by the master to bring in an account, or do any other act, is to be held bound to do the same in pursuance of the direction of the master, without any warrant or written direction being served for that purpose. R.S.M. c. 40, r. 61.

Ascertaining matters contested before proceeding with reference.

62. Before proceeding to the hearing and determining of a reference, the master may appoint a day in the meantime, if he thinks fit, for the purpose of entering into the accounts and inquiries, with a view to ascertaining what is admitted and what is contested between the parties. R.S.M. c. 40, r. 62.

Warrant to ascertain matters contested.

63. Where the master has omitted to appoint a day for the purposes mentioned in the last preceding rule, he may grant to the party bringing in accounts a warrant to proceed on the same, for the purposes aforesaid; such warrant to be underwritten as follows: "On leaving the accounts of, etc., etc., and take notice that you are required to admit the same, or such parts thereof as you can properly admit." R.S.M. c. 40, r. 63.

Party seeking to charge accounting party must give notice of particulars.

64. A party seeking to charge an accounting party beyond what he has in his account admitted to have received is to give notice thereof to the accounting party, stating, so far as he is able, the amount so sought to be charged, and the particulars thereof in a short and succinct manner. R.S.M. c. 40, r. 64.

Master's book.

65. The master is to keep in his office a book, to be called the "Master's Book," in which, upon the bringing in of a judgment or order of reference, are to be entered the style of the cause, the name of the solicitor prosecuting the reference, the date of the judgment or order being brought in, and the proceedings then taken; and the master is also to enter therein, from time to time, the proceedings taken before him, and the directions which he gives in relation to the prosecution of the reference or otherwise. R.S.M. c. 40, r. 65.

Master to certify proceedings in his office.

66. Upon the application of any person, the master is to certify, as shortly as he conveniently can, the several proceedings had in his office in any cause or matter, and the dates thereof. R.S.M. c. 40, r. 66.

Simplest and speediest methods of prosecuting reference to be adopted.

67. In giving directions, and in regulating the manner of proceedings before him, the master is to devise and adopt the simplest, most speedy and least expensive method of prosecuting the reference, and every part thereof, and, with that

view, to dispense with any proceedings ordinarily taken, but which he conceives to be unnecessary, and to shorten the periods for taking any proceedings, or to substitute a different course of proceedings for that ordinarily taken. R.S.M. c. 40, r. 67.

Appointments for several days may be included in one warrant.

68. Where the master directs parties not in attendance before him to be notified to attend at some future day, or for different purposes at different future days, it shall not be necessary to issue separate warrants, but the parties shall be notified by one appointment, signed by the master, of the proceedings to be taken, and of the times by him appointed for the taking of the same. R.S.M. c. 40, r. 68.

Parties notified by master not to be served with warrant.

69. Where parties are notified by appointment from the master, of procedings to be taken before him, no warrants are to be issued as to such parties, in relation to the same proceedings. R.S.M. c. 40, r. 69.

Parties notified liable for default.

70. Parties making default upon such appointments are to be subject to the same consequences as if warrants had been served upon them. R.S.M. c. 40, r. 70.

Closing hearing of reference.

71. As soon as the hearing of any matter pending before the master is completed, he shall so inform the parties to the reference then in attendance, and make a note to that effect in his book; and after such an entry no further evidence is to be received or proceedings had, without the special permission of the master; and the master may proceed to prepare his report or certificate without further warrant, except the warrant to settle, which is to be served on the parties as the master directs. R.S.M. c. 40, r. 71.

Master's report.

Warrant to settle.

Points intended to be raised upon appeal to be taken before master.

72. Parties are to raise before the master, in respect of any matters presented in his office for his decision, all points which may afterwards be raised upon appeal. R.S.M. c. 40, r. 72.

Accounts, etc., not to be set out in report.

73. In the master's report no part of any account, charge, affidavit, deposition, examination or answer, brought in or used in the master's office, is to be stated or recited, but instead thereof the same may be referred to by date or otherwise, so as to inform the court as to the paper or document so brought in or used. R.S.M. c. 40, r. 73.

Method of preparing reports affecting money in court.

74. Reports affecting money in court, or to be paid into court, are to be set forth in figures in a schedule, with a brief summary of the sums found by the report, and which

may be paid or payable into or out of court, and the funds or shares to which the sums of money are respectively chargeable. R.S.M. c. 40, r. 74.

Delivery of report.

75. As soon as the master's report or certificate is prepared, it is to be delivered out to the party prosecuting the reference, or, if he declines to take the same, then, in the discretion of the master, to any other party applying therefor; and a common attendance is to be allowed to the party taking the same. R.S.M. c. 40, r. 75.

Objections to report.

76. No written objections or exceptions need be taken before the master previously to an appeal. R.S.M. c. 40, r. 76.

Filing report.

77. Any party affected by a report may file the same or a duplicate thereof, and the filing of a duplicate shall have the same effect as the filing of the report.

Notice of filing.

(2) Notice of the filing shall be given forthwith thereafter, by the party filing the report, to all other parties who have appeared upon the reference. R.S.M. c. 40, r. 77.

Place of filing.

78. In case of a reference to a local master, the report shall be filed in the office of such local master, but may, at the request of any party to the proceedings, after having been so filed, be forwarded to the office of the prothonotary. In all other cases the report shall be filed in the proper office in Winnipeg. R.S.M. c. 40, r. 78.

When report becomes absolute.

79. Every report shall become absolute at the expiration of fourteen days from the day of the serving of notice of filing the same, including such day, unless notice of appeal is served within that time. R.S.M. c. 40, r. 683.

How money to be paid.

80. Where the master is directed to appoint money to be paid at some time and place, he is to appoint the same to be paid into some bank at its head office, or at some branch or agency office of such bank, to the joint credit of the party to whom the same is made payable and of the accountant; the party to whom the same is made payable to name the bank into which he desires the same to be paid, and the master to name the place for such payment. R.S.M. c. 40, r. 79.

Payment of money into bank.

81. Where money is paid into a bank, in pursuance of such appointment, the party paying may pay the same either to the credit of the party to whom the same is made payable, or to the joint credit of the party and the accountant; and if the same be paid to the sole credit of the party, such party shall be entitled to receive the same without the order of the court. R.S.M. c. 40, r. 80.

Form of reports in administration suits.

82. In administration suits reports are, as far as possible, to be in the form No. 25 in the schedule to these rules. R.S.M. c. 40, r. 81.

Jurisdiction of master upon references.

83. The master shall have the same power, authority and jurisdiction as the referee in chambers, in respect of all causes and matters referred to him, or which may arise in his office.

Fees.

(2) Where he acts as a referee in chambers in matters within his jurisdiction as master, the fees payable shall be the same as if he were acting as master. R.S.M. c. 40, r. 82.

Sales.

Mode of sale.

84. Where a sale is ordered, the master may cause the property, or a competent part thereof, to be sold either by public auction, private contract or tender, or part by one mode and part by another, as he may think best for the interest of all parties. R.S.M. c. 40, r. 83.

Conduct of sale under trusts of will or settlement.

85. Where the trusts of any will or settlement are being administered, and a sale is ordered of any property vested in the trustees of such will or settlement upon trust for sale or with power of sale by the trustees, the conduct of the sale shall be given to the trustees, unless the court or a judge otherwise directs. R.S.M. c. 40, r. 84.

Appointment to settle advertisement.

86. An appointment or warrant in respect of the sale is to be obtained from the judge or master, and served upon all necessary parties. R.S.M. c. 40, r. 86.

Draft advertisement.

87. At the time appointed thereby, the party having the conduct of the sale is to bring into chambers or the master's office a draft advertisement, but no particulars or conditions of sale, or any draft or copy thereof. R.S.M. c. 40, r. 87.

Advertisements.

88. The advertisement is to contain the following particulars,—

(*a*) the short style of cause;

(*b*) that the sale is in pursuance of a judgment or order of the court;

(*c*) the time and place of sale;

(*d*) a short and true description of the property to be sold;

(*e*) the manner in which the property is to be sold, whether in one lot or several, and, if in several, in how many and what lots;

(*f*) what proportion of the purchase money is to be paid down by way of deposit, and at what time or times, and whether the residue of such purchase money is to be paid with or without interest;

(*g*) any particulars in which the proposed conditions of sale differ from the standing conditions. R.S.M. c. 40, r. 88.

Settling advertisement and arranging for sale.

89. At the time named in the appointment or warrant, the judge or master is to settle the advertisement; to fix the time and place of sale; to name an auctioneer, where one is to be employed; and to make every other necessary arrangement preparatory to the sale, so that nothing may remain to be done but to insert the advertisement; and all the beforementioned matters must be done at one meeting, namely, upon the return of the appointment or warrant, where it is practicable; and no adjournment of such meeting is to take place, and no new meeting is to be appointed for the aforesaid purposes, unless it is unavoidable. R.S.M. c. 40, r. 89.

Standing conditions of sale.

90. The standing conditions of sale are to be those set forth in form No. 26 in the schedule to these rules. R.S.M. c. 40, r. 90.

Upset price or reserved bidding.

91. The judge or master may, without further order, fix an upset price or reserve bidding, where it is thought expedient; but this must be done at the meeting held for the purpose of settling the advertisement, and it must be notified in the conditions of sale. R.S.M. c. 40, r. 91.

Parties that may bid.

92. All parties may bid, without taking out an order for the purpose, except the party having the conduct of the sale, and except any trustees, agents and other persons in a fiduciary situation; and where any parties are to be at liberty to bid it must be notified in the conditions of sale. R.S.M. c. 40, r. 92.

Publication of advertisement.

93. The advertisement is to be inserted by the party conducting the sale, at such times and in such manner as the judge or master appointed at the meeting before mentioned. R.S.M. c. 40, r. 93.

Conduct of sale.

94. The master or some person appointed by him is to conduct the sale, where no auctioneer is employed. R.S.M. c. 40, r. 94.

95. Biddings need not be in writing, but a written agreement is to be signed by the purchaser at the time of sale. R.S.M. c. 40, r. 95. Biddings.

96. The deposit is to be paid to the vendor if present, or, if not, to his solicitor, at the time of sale, and is forthwith to be paid by him into court. R.S.M. c. 40, r. 96. Deposit at sale.

97. After the sale is concluded, the auctioneer, where one is employed, is to make the usual affidavit; and where no auctioneer is employed, the master or person who conducts the sale is to certify to the same effect. R.S.M. c. 40, r. 97. Verifying sale.

98. The report on sale is to be in the form No. 27 in the schedule to these rules, or as near thereto as circumstances permit. R.S.M. c. 40, r. 98. Form of report on sale.

99. A sale must be objected to by motion to the court or a judge to set aside the same; and notice of the motion must be served upon the purchaser, and on the other parties to the cause; but the biddings are only to be opened on special grounds, whether the application is made before or after the report stands confirmed. R.S.M. c. 40, r. 99. Objections to sale.

100. At any time after the confirmation of the sale the purchaser may pay his purchase money and interest, if any, or the balance thereof, into court without further order, upon notice to the party having the conduct of the sale; and when he is entitled to be let into possession of the estate, he may, if possession is wrongfully withheld from him, proceed at his own expense to obtain an order against the party in possession for the delivery thereof to him, or may call upon the vendor to cause possession to be delivered to him. R.S.M. c. 40, r. 100. Payment of purchase money into court. Possession of estate.

101. The master is to settle all necessary conveyances for the purpose of carrying out the sale in case the parties differ, or in case there are any persons under any disability interested in such sale. R.S.M. c. 40, r. 101. Settling conveyances.

102. After a sale under an order is confirmed, the vendor is, forthwith upon demand, to deliver an abstract of title to the purchaser; and if the purchaser does not serve objections within seven days he is to be deemed to have accepted the abstract as sufficient. If objections are served, the vendor is to answer them within fourteen days, and, if the purchaser is still dissatisfied and if the parties cannot otherwise agree, either party may obtain from the master a warrant to consider the abstract. R.S.M. c. 40, r. 102. Delivery of abstract, objections to abstract.

Determination of questions upon abstract

103. The master is to determine all questions upon the abstract and the sufficiency thereof, and, if desired by the purchaser, may require the vendor to make the same as perfect as he can; and if the vendor neglects or refuses to do so, he may permit the purchaser to supply defects therein, at the vendor's expense. R.S.M. c. 40, r. 103.

Master not to report on abstract.

Making objections.

Certifying abstract.

104. The master is not to make a report on the abstract, but is to mark the objections as allowed or disallowed, as the case may be; and when he finds the abstract perfect, or as perfect as the vendor can make it, he is to certify to that effect at the foot or on the back; and such finding is to be final without filing, unless appealed from in the same manner as from a master's report. R.S.M. c. 40, r. 104.

No objections allowed after confirmation or acceptance of abstract.

105. After an abstract is confirmed, or is accepted by the purchaser as sufficient, no objection to the abstract is to be allowed. R.S.M. c. 40, r. 105.

Verification of abstract.

106. After acceptance or confirmation of the abstract, the verification is to be proceeded with, and the vendor is with all diligence to afford the purchaser all the means of verification in his power, in the manner and according to the practice usual with conveyancers; and after having done so, he may serve a notice on the purchaser to make his objections or requisitions, if any, within seven days, or that otherwise he will be deemed to have accepted the title. R.S.M. c. 40, r. 106.

Service of objections and requisitions.

107. Upon being served with such notice, the purchaser, if dissatisfied, is to serve his objections or requisitions within the time thereby limited; and the like course is to be followed upon such objections or requisitions as is prescribed by the foregoing rules in relation to the abstract. R.S.M. c. 40, r. 107.

Verification of abstract in case of vendor's neglect.

108. If the vendor refuses or neglects to verify any portion of the abstract to the best of his ability, or to furnish any necessary proof or documents in his power, the master may authorize the purchaser to do so at the vendor's expense. R.S.M. c. 40, r. 108.

Application of rules 102-108.

109. The foregoing rules, 102 to 108, are to apply to all cases of references to the master as to title, as well as to sales by the court. R.S.M. c. 40, r. 109.

Receivers, Committees, etc.

Warrant for appointment of receiver.

110. The party prosecuting the order for a receiver is to obtain an appointment or a warrant from the master, and to serve the same on all the necessary parties, naming in the copy thereof served the proposed receiver and his sureties. R.S.M. c. 40, r. 110.

Bringing in bond.

111. At the time appointed, the party prosecuting the order is to bring into the master's office the bond or recognizance proposed as security. R.S.M. c. 40, r. 111.

Party desiring another receiver to give notice.

112. Any other party desirous of proposing another person as receiver is to serve notice of his intention so to do upon the other parties, naming in the notice the person proposed by him as receiver and his sureties, and is then, in like manner, to bring into the master's office the bond or recognizance proposed by him as security. R.S.M. c. 40, r. 112.

Appointment of receiver.

Settling security.

113. At the time named in the appointment or warrant the master is, in the presence of those who attend, to consider the appointment of the receiver, and to determine respecting the same, and to settle and approve of the proposed security. R.S.M. c. 40, r. 113.

Master not to make report.

Form of appointment.

114. The master is to make no report approving of or appointing the receiver, but is to appoint such receiver by signing a written appointment to the following effect, viz.: "In the King's Bench (*style of cause*). I hereby appoint (*receiver's name*) receiver in this action. (*Signature of master*)," which appointment is to be signed without any warrant or attendance for that purpose. R.S.M. c. 40, r. 114.

Filing appointment.

115. After the execution and filing of the securities settled and approved by the master, the appointment is to be filed by the party who has procured the person named by him as receiver to be appointed, and may be moved against within ten days by any party interested. R.S.M. c. 40, r. 115.

Appointment of committees of lunatics, *et al.*

116. Committees of the persons and estates of lunatics, idiots and persons of unsound mind, and guardians, excepting guardians *ad litem*, are to be appointed in the same manner as receivers, as nearly as circumstances will permit. R.S.M. c. 40, r. 116.

Fixing time for receivers *et al.* to pass accounts.

117. Where an order directs the appointment of a receiver, committee of the person and estate of a lunatic, idiot or person of unsound mind, or a guardian other than a guardian *ad litem*, and does not regulate the matter herein provided for, the master is to fix the time or times in each year when the person appointed is to pass his accounts and pay his balances into court; and in default of compliance with such direction, the person appointed may, on the passing of his accounts, be disallowed any salary or compensation for his services, and may be charged with interest upon his balances. R.S.M. c. 40, r. 117.

Foreclosure, Sale and Redemption.

Inquiries as to encumbrances.

118. Upon a reference under a judgment for foreclosure or sale, the master is to inquire and state whether any person or persons, and who other than the plaintiff, has or have any lien, charge or encumbrance upon the land and premises embraced in the mortgage security of the plaintiff, in the pleadings mentioned, subsequent thereto. R.S.M. c. 40, r. 118.

Bringing in certificates as to encumbrances.

119. The plaintiff is to bring into the master's office certificates from the registrar or district registrar of the registration district or land titles district wherein the lands lie, setting forth all the encumbrances which affect the property in the proceedings or pleadings mentioned, and such other evidence as he may be advised. R.S.M. c. 40, r. 119.

Encumbrancers to be made parties.

Notice to encumbrancers.

120. The master is to direct all such persons as appear to him to have any lien, charge or encumbrance upon the estate in question, to be made parties to the action, and to be served with a notice in the form No. 18 in the schedule to these rules. R.S.M. c. 40, r. 120.

Parties added may move against order.

121. Any party served with a notice under the last preceding rule may apply to the court, at any time within fourteen days from the date of the service, to discharge the order making him a party, or to add to, vary or set aside the judgment. R.S.M. c. 40, r. 121.

Encumbrancers to be served with appointment.

122. The master, before he proceeds to hear and determine, is to require an appointment to the effect set forth in form No. 19 in the schedule to these rules, to be served upon encumbrancers made parties before the judgment. R.S.M. c. 40, r. 122.

Parties duly served and not attending to be foreclosed.

123. Where any person who has been duly served with notice under rule 120, or with an appointment under rule 122, neglects to attend at the time appointed, the master is to treat such non-attendance as a disclaimer by the party so making default; and the claim of such party is to be thereby foreclosed, unless the court orders otherwise upon application duly made for that purpose. R.S.M. c. 40, r. 123.

Taking accounts.

124. When all parties have been duly served, the master is to take an account of what is due to the plaintiff and to such other encumbrancer or encumbrancers (if any) for principal money and interest; and to tax to them their costs, and to settle their priorities; and also to appoint a time and place, or times and places, for payment, according to the present practice of the court.

Twelve months to be given for payment.

(2) The time first appointed for payment shall be twelve months from the date of the master's report, but this subsection shall only apply to contracts made on or after the twenty-ninth day of February, 1908. R.S.M. c. 40, r. 124; 7-8 Ed. 7, c. 13, ss. 1, 3.

Master's report.

125. The master's report must state the names of all persons who have been made parties in his office, and who have been served with the notice or appointment hereinbefore provided, and the names of such as have made default, and must settle the priorities, etc., of such as have attended, and these latter are to be certified as the only encumbrancers upon the estate. R.S.M. c. 40, r. 125.

Subsequent accounts.

126. All subsequent accounts are, from time to time, to be taken, subsequent costs taxed, and necessary proceedings had, for redemption by, or foreclosure of, the other party or parties entitled to redeem the mortgaged premises, or for sale of premises, whether mortgaged or not, as if specific directions for all these purposes had been contained in the judgment. R.S.M. c. 40, r. 126.

Sale, proceedings on judgment for.

127. If the judgment directs a sale, instead of foreclosure, on default in payment, then, on default being made and an order for sale being obtained, the premises are to be sold, with the approbation of the master, and he is to settle the conveyance to the purchaser in case the parties differ about the same; and the purchaser is to pay his purchase money into court, to the credit of the action, subject to the further order of the court. R.S.M. c. 40, r. 127.

Application of purchase money.

128. The purchase money, when so paid, is to be applied in payment of what has been found due to the plaintiff and the other encumbrancer or encumbrancers (if any), according to the priorities, together with subsequent interest and subsequent costs. R.S.M. c. 40, r. 128.

Judgment for redemption.

129. Upon a reference under a judgment for redemption, the master is, without any special direction, to take an account of what is due to the defendant for principal money and interest, and his costs are to be taxed, and a time and place, or times and places appointed for payment, according to the present practice of the court in that behalf.

Twelve months to be given for payment.

(2) The time first appointed for payment shall be twelve months from the date of the master's report, but this subsection shall only apply to contracts made on or after the twenty-ninth day of February, 1908. R.S.M. c. 40, r. 129; 7-8 Ed. 7, c. 13, ss. 2, 3.

Redemption or foreclosure or redemption and sale.

130. Where the order is for redemption or foreclosure, or redemption or sale, such proceedings are in such case to be thereupon had, and with the same effect, as in an action for foreclosure or sale, and in such case the last encumbrancer is to be treated as the owner of the equity of redemption. R.S.M. c. 40, r. 130.

Conveying property when payment made.

131. In an action for foreclosure or sale upon payment by the defendant, or in an action for redemption upon payment by the plaintiff, of the amount found due, the plaintiff or defendant shall, unless the judgment otherwise directs, assign and convey the mortgaged premises in question to the defendant (or plaintiff, as the case may be) making the payment, or to whom he may appoint, free and clear of all encumbrances done by him, and deliver up all deeds and writings in his custody or power relating thereto, upon oath; and in case of a corporation the affidavit shall be made by the officer thereof having the custody of such deeds and writings. R.S.M. c. 40, r. 131.

ACCOUNTANT.

General Rules.

Accountant to have charge of suitors' accounts.

132. The suitor's accounts in the court shall be in charge of the accountant. R.S.M. c. 40, r. 132.

Payment into Court.

Bank to receive money.

133. All money paid into court by any person is to be paid into such bank as may be designated by the Lieutenant-Governor-in-Council from time to time, to the credit of the Treasurer of the Province. R.S.M. c. 40, r. 133.

134. A person desiring to pay money into court is to produce to the accountant the order, if any, under which the same is payable, and is to file a præcipe requiring a direction to the bank to receive the amount of money so payable into court to the credit of the cause. R.S.M. c. 40, r. 134. Præcipe for direction to bank.

135. The bank, on receiving money to the credit of any cause or matter, is to prepare a receipt therefor in triplicate, and one copy is to be delivered to the party making the deposit, another is to be posted or delivered on the same day to the accountant, and a third copy is to be posted or delivered on the same day to the Provincial Treasurer. 3 Ed. 7, c. 11, s. 3, *part*. Receipt in triplicate.

Payment out of Court.

136. Money is to be paid out of court by cheque counter-signed by one of the judges, and issued by the accountant upon a judge's order authorizing the same. Before presenting a cheque for such counter-signature by a judge the accountant shall write in red ink upon the face of the order, upon which such cheque is being issued, a memorandum of the issue of such cheque, stating the number thereof, the amount thereof, the name of the party to whom the cheque is payable and the date of such countersigning, and the judge, when countersigning such cheque, shall also sign the said memorandum. 3 Ed. 7, c. 11, s. 3, *part*. How money to be paid out.

137. No order for payment out of court is to be made without the production by the party applying of a certificate from the accountant as to the state of the account against which the order is asked to be made, or such part thereof as may be necessary. R.S.M. c. 40, r. 137. Payment out of court.

138. Cheques are to be issued payable to the order of the person or persons entitled thereto; but if a power of attorney duly verified is produced and filed, the cheque may be issued payable to the order of the person authorized by the power of attorney to receive the same. R.S.M. c. 40, r. 138. To whom cheques payable.

139. Cheques are to be ready to be issued after two o'clock in the afternoon of the day following that upon which the præcipe has been left with the accountant. R.S.M. c. 40, r. 139. Time for issue of cheques.

140. The person entitled to the cheque is to produce and leave with the accountant the orders and reports entitling such person to the money, and is to file a præcipe requiring such cheque. R.S.M. c. 40, r. 140. Documents to be left with accountant.

Countersigned by Provincial Treasurer.

141. If the accountant finds the person entitled, he is to prepare the cheque, after which the same is to be countersigned by the judge and delivered to the person or his solicitor, who shall thereupon present the same at the office of the Provincial Treasurer to be countersigned. 3 Ed. 7, c. 11, s. 3, *part.*

Order to be filed.

142. The order produced, as provided by rule 140, shall, upon the issue of any cheque thereunder, become the property of the court and be filed with the accountant's papers having reference to the cause or matter in connection with which such cheque is issued. 3 Ed. 7, c. 11, s. 3, *part.*

Books of account.

143. The following books of account are to be kept relating to money in court: (*a*) a book of directions to the bank to receive money; (*b*) a money journal; (*c*) a money ledger; (*d*) a balance book. The accountant shall keep the accounts and books of his office, except the book of directions, in such manner as he shall from time to time be directed by the Department of the Attorney-General. He shall also, in the money ledger, enter, under the heading of each account to the credit of which money is paid in or on which any cheque is drawn, a memorandum of the number and page of the book in which, under rule 458, each order is entered, pursuant to which such money is paid in or such cheque issued. 3 Ed. 7, c. 11, s. 3, *part.*

How to be kept.

Entries in the money ledger.

Form of book of directions.

144. The book of directions is to be in such form as the judges may from time to time direct or approve, and the directions shall be numbered consecutively. R.S.M. c. 40, r. 144.

Money journal.

145. The money journal is to show the sum paid into and out of court from day to day, and is to be so arranged and kept that the foot of each page will show the balance in the bank, assuming that all cheques have been presented. R.S.M. c. 40, r. 145.

Money ledger.

146. The money ledger is to show a separate account for every cause or matter for which there is money in court, and the general bank interest account according to the terms of "The Suitors Fund Act," each of which accounts shall show the state and condition thereof for the time being R.S.M. c. 40, r. 146.

Keeping suitors' accounts.

147. In each of the suitors' accounts there are from time to time to be entered the dates and the purport, or short material contents, of all orders and reports affecting the same, also every sum paid into or out of court, and by whom paid,

and for what paid, and under what authority. There is also to be credited to the account the interest computed or included in any order or report, and a corresponding transfer of interest is to be made or directed. There is likewise to be entered in the account a statement or memorandum of any other matters material for the information of the court, or its officers, or any of the parties. R.S.M. c. 40, r. 147.

Balance book.

148. The balance book is to contain a statement, entered therein half-yearly, of the balances to the credit of the various accounts in the two ledgers at the date of each such statement; such balances are to be made up to the thirtieth day of June and the thirty-first day of December in each and every year. Balances from the money ledger are to be so entered, after a comparison of the accounts in the ledger with the accounts of the Provincial Treasurer and of the bank, which comparison is to be made by the accountant, and the list thereupon entered in the balance book to be signed by him. R.S.M. c. 40, r. 148.

Receipt upon pleading.

149. Where money is paid into court under a pleading, the required receipt upon the pleading shall be given by the accountant, and no receipt shall be required to be given by any other officer. R.S.M. c. 40, r. 149.

Moneys deemed in court.

150. Moneys, stock and securities for money, in the hands of the Provincial Treasurer for suitors, are deemed to be in court. R.S.M. c. 40, r. 150.

Payment to representatives of person entitled.

151. Where moneys or stock or securities in court are directed to be paid out of court or transferred to the legal personal representative of any person, or to persons to be named in an order or report, and such moneys, stock or securities are reported or found to be due to any persons as legal personal representatives, the same or any portion thereof for the time being remaining unpaid or untransferred may, upon proof to the satisfaction of the officers signing and countersigning the cheque of the death of any of them, whether before, on or after the day of the date of the order, be paid to the survivors or survivor of them. R.S.M. c. 40, r. 151.

Payment to representatives of person entitled.

152. Where moneys, stock or securities in court are directed to be paid out or transferred by the accountant to any person named in the order or judgment, or named or to be named in any report, the same, or any portion thereof for the time being remaining unpaid or untransferred, may, on proof to the satisfaction of the officers signing and countersigning the cheque of the death of such person, whether

before, on or after the date of the order or judgment, and that his legal personal representatives are entitled thereto, be paid or transferred to the legal personal representatives of such deceased person, or the survivors or survivor of them. R.S.M. c. 40, r. 152.

Not to be paid to representatives after six years.

153. No principal sum of money, nor any stocks, funds, shares or securities shall under rule 151 or rule 152 be paid, transferred or delivered out of court to the legal personal representatives of any person under any probate or letters of administration, purporting to have been granted at any time subsequent to the expiration of six years from the day of the date of the order or judgment directing such payment, transfer or delivery. R.S.M. c. 40, r. 153.

Interest not to be paid after six years.

154. No interest or dividends shall, under rule 152, be paid out of court to the legal personal representatives of any person under any probate or letters of administration purporting to have been granted at any time subsequent to the expiration of six years after the day of the date of the order or judgment directing such payment, or after the last receipt of such interest or dividends under such order or judgment, whichever shall have last happened. R.S.M. c. 40, r. 154.

Payments to partners.

155. Where money is directed to be paid out of court to any persons named or to be named in an order or report, and the money is by the order or report found to be due them as partners, the same may be paid to any one or more of the partners by cheque payable to the firm. R.S.M. c. 40, r. 155.

Stop Orders.

Person liable to pay costs.

156. When any stock, debentures, funds, securities or moneys are standing in court to the credit of any action, or to the account of any class of persons or of any officer of the court, and an order is made to prevent the transfer or payment of such stock, debentures, funds, securities or moneys, or any part thereof, without notice to the assignee of any person entitled in expectancy or otherwise to any share or portion of such stock, debentures, funds, securities or moneys, the person by whom such order is obtained, or the share of such stock, debentures, funds, securities or moneys affected by such order, shall be liable at the discretion of the court or a judge, as the case may be, to pay any costs, charges and expenses which, by reason of any such order having been obtained, shall be occasioned to any party to the action or matter, or any person interested in any such stock, debentures, funds, securities or moneys. R.S.M. c. 40, r. 156.

157. A person applying for such order shall not be required to serve notice thereof upon the parties to the cause, or upon the persons interested in such parts of the stock, debentures, funds, securities or moneys as are not sought to be affected by the order. R.S.M. c. 40, r. 157. Notice of application for stop order.

TAXING OFFICERS.

158. The prothonotary and the registrar shall be taxing officers of the court at Winnipeg. R.S.M. c. 40, r. 158. Taxing officers at Winnipeg.

159. Every deputy registrar and deputy clerk of the Crown and pleas is a local taxing officer. Every local master is a local taxing officer in respect of business transacted before him as such local master. R.S.M. c. 40, r. 159. Local taxing officers.

160. Every local taxing officer shall, subject to the provisions of this Act, in actions begun or pending in his office, be entitled to tax all bills of costs, including counsel fees, subject only to appeal to a judge. This rule shall not apply to cases in which infants are concerned, unless the official guardian is the guardian *ad litem* for the infants. R.S.M. c. 40, r. 160. Costs taxable by local taxing officers.

161. All taxing officers shall, for the purpose of any taxations, have power to administer oaths and take evidence, and direct production of books and documents, make certificates and give general directions for the conduct of taxation before them. Where the words "taxing officer" are used in this Act, except in rule 158, the same shall include local taxing officer. R.S.M. c. 40, r. 161. Powers of taxing officers.

SOLICITORS' AGENTS.

162. A book, to be called "The Solicitors' and Agents' Book," shall be kept by the registrar of the court in Winnipeg, to be there inspected by any solicitor or his clerk without fee; and every solicitor practising in the said court outside the City of Winnipeg shall enter in the said book his name and place of business, and also in an opposite column the name of some solicitor having an office and carrying on business in the City of Winnipeg, as his agent. R.S.M. c. 40, r. 162; 2 Geo. 5, c. 14, s. 4, *part*. "Solicitors' and Agents' Book." Entries in said book.

163. Every deputy clerk of the Crown and pleas or local registrar shall keep in his office a book, to be called "The solicitors' and agents' book," in which every solicitor residing elsewhere than in the city or town where the office of the court is, and not having an office there, may specify Solicitor's and agent's books in other judicial districts than the Eastern.

the name of an agent, being a solicitor of the court and having an office in such city or town, upon whom all pleadings, notices, orders, warrants and other documents, proceedings and written communications in relation to business conducted in the office of such deputy clerk of the Crown and pleas or local registrar, or local master, may be served. 2 Geo. 5, c. 14, s. 4, *part*.

SHORTHAND WRITERS.

Fees of stenographers.

164. All moneys received by a shorthand writer for copies of evidence shall belong to and be the property of such shorthand writer. R.S.M. c. 40, r. 163.

EXPERTS.

165. For the purposes of any trial or of any reference before the master, a judge or master may obtain the assistance of accountants, merchants, actuaries and other scientific or professional persons in such way as he thinks fit, the better to enable him to determine any matter in issue in any cause or proceeding. 3 Geo. 5, c. 12, s. 3, *part*.

Division III.

SITTINGS OF THE COURTS.

WEEKLY SITTINGS.

Weekly sittings.

166. A judge shall sit at the Court House in Winnipeg every week (except during vacation), on Monday, Tuesday, Wednesday and Thursday, for the purpose of disposing of all business which may be transacted by a single judge. The business of such weekly sittings shall be taken as follows—(unless the court or judge otherwise orders): Monday and Thursday, chambers; Tuesday, sittings for trials; Wednesday, court, including appeals other than those held in chambers, and all applications and motions in the nature of appeals, and all such other matters as may properly be brought before a single judge sitting in court; if the list of matters entered for disposal on any day be not disposed of upon such day by the judge sitting on that day, the same or any judge may take up the business so undisposed of on the following day or upon any day to which the same may be adjourned. R.S.M. c. 40, r. 165.

167. All cases entered for argument on the list shall be called in the order in which the same are entered on the list. R.S.M. c. 40, r. 166. Order in which cases to be called.

OTHER SITTINGS FOR TRIALS.

168. Subject to the discretion of the court or judge, in addition to the provisions of rule 166, a judge shall sit for the trial of actions at such other times as may be fixed, from time to time, by the judges. R.S.M. c. 40, r. 167. Additional sittings for trial.

VACATION JUDGES.

169. One or more of the judges may be selected on the commencement of each long vacation for the hearing in Winnipeg, during vacation, of all such applications as may require to be immediately or promptly heard. R.S.M. c. 40, r. 168. Long vacation judges.

170. Any other judge may sit in vacation for any vacation judge. R.S.M. c. 40, r. 169. Any judge may sit for vacation judge.

COURT IN BANC.

171. The following proceedings and matters shall be heard and determined before the court in banc, but nothing herein contained shall be construed so as to take away or limit the power of a single judge to hear and determine any such proceedings or matters in any case in which he has heretofore had power to do so, or so as to require any interlocutory proceeding therein, heretofore taken before a single judge, to be taken before the court in banc,— Proceedings before court in banc.

(*a*) proceedings directed by any statute to be taken before the court, and in which the decision of the court is final;

(*b*) all other motions and proceedings by this Act or any statute provided or directed to be heard or disposed of by the court in banc. R.S.M. c. 40, r. 170, *part*.

Division IV.

ACTIONS.

COMMENCEMENT OF ACTIONS.

172. All actions which, prior to the passing of "The Queen's Bench Act, 1895," were commenced by any form of writ, and all suits which were commenced by bill or information, shall be commenced by the issue of a statement of claim which shall be prepared by the plaintiff. R.S.M. c. 40, r. 172. Statement of claim.

Where action to be commenced.

173. The plaintiff shall issue his statement of claim in the judicial district in which the cause of action arose, or in which the defendant, or one of the several defendants, resides or carries on business at the time the action is brought, except in the following cases:—

Cases relating to land

(*a*) Where the subject matter of the action is land, or the recovery thereof (with or without rents or profits), in which case the statement of claim shall issue in the judicial district in which the land, or any part of the land, is situate;

Breach of contract.

(*b*) Where the action is founded on any breach or alleged breach of contract within any judicial district other than that in which the defendant, or one of the several defendants, resides or carries on business, in which case the statement of claim may issue in the judicial district where such breach occurs;

Tort.

(*c*) Where the action is founded upon a tort committed or partially committed, or alleged to have been committed or partially committed, in any place other than the judicial district in which the defendant or one of the defendants resides or carries on business, in which case the statement of claim may issue in either one of the judicial districts where any one of the acts or omissions constituting a part of the cause of action occurred; and where any one of such acts or omissions occurred elsewhere than in a judicial district of this Province, and the defendant or one of the several defendants is not a resident or carrying on business in any judicial district in this Province, the statement of claim may issue in any judicial district in this Province. 9 Ed. 7, c. 14, s. 1, *part*.

Actions brought in wrong district.

174. In any case in which an action has been brought by error or mistake in a judicial district other than that in which it should have been brought a judge may, by order and upon terms as to costs to be settled by him, transfer such cause or action to the district in which the same should have been brought, and thereupon the same shall become an action in such district, and all papers and proceedings shall be transmitted by the proper officer to such district as may be so ordered. 9 Ed. 7, c. 14, s. 1, *part*.

Form for outside service.

175. The same form of statement of claim shall be used and service thereof shall be made in the same manner whether the service is to be made in Manitoba or outside of Manitoba, and whether the defendant is or is not a British subject. R.S.M. c. 40, r. 175.

Issue of statement of claim.

176. A plaintiff desiring to issue a statement of claim is to present the same to the prothonotary or deputy clerk of the Crown and pleas, who shall thereupon sign and seal the same, and one or more duplicates thereof if required by the plaintiff. When the statement of claim is signed and sealed the plaintiff shall, before it is delivered out to him, file a copy thereof. Such statement of claim shall be served within six months from the date thereof, or within such further time as a judge shall allow. R.S.M. c. 40, r. 176.

Time for service.

Entry of.

177. The officer issuing the statement of claim shall make an entry of all statements of claim issued by him, in a book to be called the "Procedure Book," which is to be kept in the manner in which procedure books have heretofore been kept, and the action shall be distinguished by a number in the manner in which actions are now distinguished in such last-mentioned books; the numbering of actions shall begin afresh on the second day of January in each year. R.S.M. c. 40, r. 177.

SUBSEQUENT PROCEEDINGS, WHERE TO BE TAKEN.

Office in which proceedings to be carried on.

178. All proceedings in actions to final judgment shall be carried on in the office from which the statement of claim issued. R.S.M. c. 40, r. 206.

Proceedings in issues.

179. When an issue is directed to be tried, the order therefor shall, forthwith after it is issued, be filed in the judicial district in which it is directed to be tried, and thereafter the proceedings in the issue shall be carried on in the said judicial district in the same manner as the proceedings in an action commenced in such judicial district, but the court or a judge may order otherwise, and may change the place of trial in the same manner and subject to the same rules as in an action. R.S.M. c. 40, r. 207.

DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

Declaration by plaintiff's solicitor.

180. Every solicitor whose name is endorsed on any statement of claim shall, on demand in writing made by or on behalf of any defendant who has been served therewith, declare forthwith in writing whether the statement of claim has been issued by him or with his authority or privity.

Disclosure of residence, etc., of plaintiff.

(2) If he answers in the affirmative, then he shall also, in case the court or a judge so directs, disclose in writing, within a time to be limited by the court or judge, the profession or occupation, and the place of abode, of the plaintiff, on pain of being guilty of a contempt of court.

Stay of proceedings.

(3) If the solicitor declares that the statement of claim was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the court or a judge. R.S.M. c. 40, r. 178.

Declaration as to names, etc., of partners.

181. Where a statement of claim is sued out by partners in the name of their firm, the plaintiffs shall, on demand in writing by or on behalf of any defendant, declare forthwith in writing the names and places of residence of all the persons constituting the firm.

Stay of proceedings.

(2) If the plaintiffs fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the court or a judge may direct.

Effect of disclosing names.

(3) Where the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as the plaintiffs in the statement of claim, but all proceedings shall, nevertheless, continue in the name of the firm. R.S.M. c. 40, r. 179.

DEFENCE, ETC.

General Rules.

Time within which defendant served in Manitoba to file defence.

182. When a defendant is served with a statement of claim within Manitoba, he shall file his statement of defence within sixteen days from the day of service. R.S.M. c. 40, r. 204.

Time within which defendant served out of Manitoba to file defence.

183. Where a defendant is served out of Manitoba he shall have the time following for filing his statement of defence,—

(*a*) if served within any part of the Dominion of Canada or the United States of America, four weeks after the service;

(*b*) if served within any part of the United Kingdom (including the Isle of Man and the Channel Islands) or Newfoundland, eight weeks after the service;

(*c*) if served elsewhere than within the limits above designated, twelve weeks after the service. R.S.M. c. 40, r. 205.

184. Any defendant whose time for filing a statement of defence expires in a vacation, and who files a statement of defence within such time, shall be at liberty, within eight days immediately following such vacation, to file an amended statement of defence and counterclaim, or either, and the plaintiff shall have the right of reply thereto within eight days after the service of the defendant's amended pleading. Nothing in this rule contained shall interfere with applications under rule 625. 7-8 Ed. 7, c. 12, s. 15. Amending statement of defence filed in vacation. Reply thereto.

185. A defendant may file his defence at any time before judgment. R.S.M. c. 40, r. 208. Defence may be filed at any time before judgment.

186. A solicitor not filing a statement of defence, in pursuance of his written undertaking so to do, on behalf of any defendant, shall be liable to attachment. R.S.M. c. 40, r. 209. Solicitor not filing defence pursuant to undertaking liable to attachment.

Recovery of Land.

187. Any person not named as a defendant in a statement of claim for the recovery of land may, without leave, appear and defend, by filing with his statement of defence an affidavit stating that he is in possession of the land either by himself or his tenant (as the case may be), and stating further, in case the possession is by his tenant, that the defendant named in the statement of claim is his tenant. The affidavit may be in the form of affidavit numbered 29 in the schedule to these rules. R.S.M. c. 40, r. 210. Defence without leave by person not named as defendant.

188. Where such affidavit is not filed, any person not named as a defendant in a statement of claim for the recovery of land may, by leave of the court or judge, appear and defend, on filing an affidavit showing that he is in possession of the land, either by himself or his tenant. R.S.M. c. 40, r. 211. Defence by leave by person not named as defendant.

189. Any person defending an action for the recovery of land as landlord, in respect of property whereof he is in possession in person or by his tenant, shall state in his statement of defence that he appears as landlord. R.S.M. c. 40, r. 212. Defence by landlord.

190. Where a person not named as defendant in a statement of claim for the recovery of land defends an action according to any of the foregoing rules, he shall in all subsequent proceedings be named as a party defendant to the action. R.S.M. c. 40, r. 213. Party so defending afterwards to be named as party defendant.

When action brought by several persons as joint tenants, etc.

191. If an action for the recovery of land has been brought by some or one of several persons entitled as joint tenants, tenants in common or coparcenery, any joint tenant, tenant in common or coparcener in possession may show in his statement of defence that he defends as such and admits the right of the plaintiff to an undivided share of the property (stating what share), but denies any actual ouster of him from the property; and upon the trial the additional question of whether an actual ouster had taken place shall be determined. R.S.M. c. 40, r. 214.

Proceedings on trial in such case.

192. If upon any trial in an action such as last aforesaid, it be found that the defendant is joint tenant, tenant in common or coparcener with the plaintiff, then the question whether an actual ouster had taken place shall be tried, and unless such actual ouster be proved the defendant shall be entitled to judgment; but if it be found either that the defendant is not such joint tenant, tenant in common or coparcener, or that an actual ouster has taken place, then the plaintiff shall be entitled to judgment for the recovery of possession. R.S.M. c. 40, r. 215.

Limiting Defence.

Limited defence in land cases.

193. Any person defending an action for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the statement of claim, describing that part with reasonable certainty in his statement of defence. R.S.M. c. 40, r. 216.

Limited defence in other cases.

194. Any person defending an action in other cases may limit his defence to the question of the amount to which the plaintiff is entitled, or to any part or parts of the plaintiff's claim or claims. R.S.M. c. 40, r. 217.

PARTIES.

Generally.

Joinder of plaintiffs.

195. All persons may be joined in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise:

Provided that, if upon the application of any defendant it shall appear that such joinder may embarrass or delay the trial of the action, the court or a judge may order separate trials, or make such other order as may be expedient, and judgment may be given for such one or more of the plain-

tiffs as may be found to be entitled to relief for such relief as he or they may be entitled to without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the court or a judge, in disposing of the costs, shall otherwise direct. R.S.M. c. 40, r. 218.

Joinder of defendants.

196. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. And, without any amendment, judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities. R.S.M. c. 40, r. 219.

Case of defendant not interested in all the relief prayed.

197. It shall not be necessary that every defendant to an action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein; but the court or a judge may make such order as may appear just, to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in the action in which he may have no interest. R.S.M. c. 40, r. 220.

Joinder of all parties liable on one contract.

198. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract; and all parties to bills of exchange and promissory notes, whether they are makers, drawers, acceptors or endorsers, may be joined in the one action. R.S.M. c. 40, r. 221.

Joinder of mortgagor and surety.

199. Where any person is surety for the payment of a mortgage debt, such person may be made a party to an action for the sale of the mortgaged property. R.S.M. c. 40, r. 222.

Prior mortgagee not to be joined except under special circumstances.

200. Where the plaintiff prays a sale or foreclosure, subject to a prior mortgage, the prior mortgagee is not to be made a party either originally or in the master's office, except under special circumstances to be alleged in the statement of claim. R.S.M. c. 40, r. 223.

Direction that parties interested in equity of redemption be added in master's office.

201. Where it appears conducive to the ends of justice that parties interested in the equity of redemption should be allowed to be made parties in the master's office, by reason of the parties so interested being numerous or otherwise, the court may direct that parties so interested be made parties in the master's office upon such terms as to the court or

judge seems fit; such order to be made only where one or more parties interested in the equity of redemption is or are already before the court. R.S.M. c. 40, r. 224.

Officers of corporations not to be made parties for discovery only.

202. Where an action is brought against a corporation aggregate, no officer of the corporation is to be made a defendant for discovery only. R.S.M. c. 40, r. 225.

Joinder of several defendants in case of doubt.

203. Where in any action the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties to the action. R.S.M. c. 40, r. 226.

Trustees, executors and administrators as parties.

204. Trustees, executors and administrators may sue and be sued on behalf of, or as representing, the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the court or a judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto. R.S.M. c. 40, r. 227.

Appointing representative of deceased person.

205. Where, in any action or other proceeding, it is made to appear that a deceased person who was interested in the matters in question has no legal personal representative, the court or a judge may either proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent such estate for all the purposes of the action or other proceeding, on such notice to such person or persons, if any, as the court thinks fit, either specially or by public advertisement, and notwithstanding that the estate in question may have a substantial interest in the matters, or that there may be active duties to be performed by the person so appointed, or that he may represent interests adverse to the plaintiff, or that there may be embraced in the matter an administration of the estate whereof representation is sought; and the order so made and any orders consequent thereon shall bind the estate of such deceased person in the same manner in every respect as if there had been a duly appointed legal personal representative of such person, and such legal personal representative had been a party to the action or proceeding and had duly appeared and had submitted his rights and interests to the protection of the court. R.S.M. c. 40, r. 228.

Appointing administrator to represent estate interested in action.

206. Where probate of the will of a deceased person, or letters of administration to his estate, have not been granted by a Surrogate Court, or the executor or administrator is dead or incapable of representing the estate, and representation of such estate is required in any action or proceeding in the court, the court may appoint one of the official administrators to represent the estate, and the said official administrator shall thereupon have the rights, authority and responsibility of an administrator or administrator *pendente lite* (as the case may be) appointed by the Surrogate Court.

(2) Where an administrator is appointed under this rule, the same fees shall be payable as would be payable to the Crown, or to the judge of the Surrogate Court, under any Act then in force, upon the grant of administration of an estate of the same value made by the Surrogate Court.

(3) Where administration is granted by the court under this rule, the registrar shall forthwith transmit by mail to the surrogate clerk a certified copy of the grant; and in case the grant is with will annexed, he shall, at the same time, also transmit to the said clerk a certified copy of the will; and the surrogate clerk shall make similar entries in respect of the documents so transmitted as he makes in respect of particulars furnished to him under "The Surrogate Courts Act." R.S.M. c. 40, r. 229.

Order for account against executor *de son tort.*

Appointment of receiver.

207. Where no order for general administration is asked or required, or where it is shown that an executor *de son tort* has taken possession of the bulk of the personal assets belonging to the estate of a deceased person, such executor *de son tort* may, on the application of any one interested in the estate of the deceased, and without the appointment of any other personal representative of the estate, be required to account for any assets of the estate which have come to his hands; and where a proper case is made for the appointment by the court of a receiver of the estate of a deceased person who has no legally appointed personal representative, the estate may be administered under the direction of the court, without the appointment of any person other than the receiver to represent the estate. R.S.M. c. 40, r. 230.

Parties to administration proceedings.

208. In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave, be entitled to appear either in court or in chambers or in a master's office, on the claim of any person not a party to the cause against the estate of the deceased in respect of any debt or liability. The court, judge or master, as the case may be, may direct any

other party to the cause to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as he shall think fit. R.S.M. c. 40, r. 251.

Infants as parties.

209. An infant may sue as plaintiff by his next friend, and may defend any action by his guardian appointed for that purpose or by the official guardian, as the case may be. R.S.M. c. 40, r. 231.

Married women as parties.

210. A married woman may sue, or defend, or become a party to any proceeding or matter in the court in all cases, without a next friend. R.S.M. c. 40, r. 232.

Representative party where parties numerous.

211. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorized by the court to defend, in such action, on behalf of, or for the benefit of, all parties so interested. R.S.M. c. 40, r. 233.

Appointment of representative of heirs at-law, next of kin or a class.

212. In any case in which the right of an heir-at-law, or of the next of kin, or of a class, depends upon the construction which the court may put upon an instrument, and it is not known or is difficult to ascertain who is or are such heir-at-law, or next of kin, or class, and the court considers that, in order to save expense or for some other reason, it will be convenient to have the question or questions of construction determined before such heir-at-law, next of kin or class, shall have been ascertained by means of inquiry or otherwise, the court may appoint some one or more person or persons to represent such heir-at-law, next of kin or class, and the judgment of the court in the presence of such person or persons shall be binding upon the party or parties or class so represented. R.S.M. c. 40, r. 234.

Partners may sue or defend in firm name.

213. Any two or more persons claiming or sought to be made liable as co-partners may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply to the court or a judge for a statement of the names of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the court or a judge may direct:

Provided that, in the case of a co-partnership which has been dissolved, to the knowledge of the plaintiff, before the commencement of the action, the statement of claim shall be served upon every person sought to be made liable. R.S.M. c. 40, r. 235.

Persons trading in firm name may be so sued.

214. Any person carrying on business in the name of a firm, apparently consisting of more than one person, may be sued in the name of such firm. R.S.M. c. 40, r. 236.

Court may proceed though some of the parties interested are not before it.

215. Where questions arise between parties who are some only of those interested in the property respecting which the question arises, or where the property in question is comprised with other property in the same settlement, will or other instrument, or is the property of an intestate, the court may adjudicate on the questions arising between such parties without making the other parties interested in the property respecting which the question arises, or interested under the settlement, will or other instrument, parties to the action, and without requiring the whole trusts and purposes of the settlement, will or instrument, or the whole estate of the intestate, to be executed or administered under the direction of the court, and without taking the accounts of the trustees or other accounting parties, or ascertaining the particulars or amount of the property touching which the question or questions have arisen, or of the whole estate or assets; but where the court is of opinion that the application is fraudulent or collusive, or that for some other reason the application ought not to be entertained, it may refuse to make the order asked. R.S.M. c. 40, r. 237.

Cases where one of a class may sue without joining others

216. It shall not be competent to a defendant to take an objection for want of parties in any case to which the seven sub-clauses next hereinafter set forth apply:—

(*a*) A residuary legatee or next of kin may have a judgment for the administration of the personal estate of a deceased person, without serving the remaining residuary legatees or next of kin;

(*b*) A legatee interested in a legacy charged upon real estate, or a person interested in the proceeds of real estate directed to be sold, may have a judgment for the administration of the estate of a deceased person, without serving any other legatee or person interested in the proceeds of the estate;

(*c*) A residuary devisee or heir may have the like judgment, without serving any co-residuary devisee or co-heir;

(*d*) One of several *cestuis que trustent,* under a deed or instrument, may have a judgment for the execution of the trusts of the deed or instrument, without serving any other of such *cestuis que trustent;*

(*e*) In all cases of actions for the protection of property pending litigation, and in all cases in the nature of waste, one person may move on behalf of himself and of all persons having the same interest;

(*f*) An executor, administrator or trustee may obtain a judgment against any one legatee, next of kin or *cestui que trust* for the administration of the estate or the execution of the trusts;

(*g*) An assignee of a *chose in action* may institute an action in respect thereof, without making the assignor a party thereto. R.S.M. c. 40, r. 238.

In above cases court may require persons to be joined.

217. In all the above cases the court, if it sees fit, may require any other person to be made a party to the action, and may, if it sees fit, give the conduct of the action to such person as it deems proper, and may make such order in any particular case as it deems just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matter in question. R.S.M. c. 40, r. 239.

Persons necessary parties, except for rule 216, to be served with copy of judgment.

218. In all the above cases, the persons who, but for rule 216, would have been necessary parties to the action, are to be served with a copy of the judgment (unless the court or master dispenses with such service), endorsed with the notice set forth in form No. 17 in the schedule to these rules; and after such service they shall be bound by the proceedings in the same manner as if they had been originally made parties to the action; and upon service of notice upon the plaintiff they may attend the proceedings under the judgment. Any party so served may, within fourteen days from the date of such service, apply to the court to add to, vary or set aside the judgment. R.S.M. c. 40, r. 240; 3 Geo. 5, c. 12, s. 3, *part.*

Upon objection at hearing for want of parties, judgment may be given saving rights of absentees.

219. Where a defendant, at the trial or on motion for judgment, objects that an action is defective for want of parties, the court, if it thinks fit, may pronounce a judgment saving the rights of the absent parties. R.S.M. c. 40, r. 241.

220. No action shall be defeated by reason of the misjoinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Misjoinder.

(2) The court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and upon such terms as may appear to the court or judge to be just, order that the name of any party, whether as plaintiff or defendant, improperly joined, be struck out, and that the name of any party, whether plaintiff or defendant, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the action, be added. Adding, striking out and substituting parties.

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

(4) All parties whose names are so added or substituted as defendants shall be served with a pleading in manner hereinafter mentioned, or in such manner as may be prescribed by any special order; and the proceedings as against them shall be deemed to have begun only on the service of such pleading. R.S.M. c. 40, r. 242.

221. Any application to add, or strike out, or substitute, a plaintiff or defendant may be made to the court or a judge at any time before trial by motion, or at the trial of the action in a summary manner. R.S.M. c. 40, r. 243. How and when application may be made.

222. Where a defendant is added or substituted the statement of claim shall be amended in such manner as the making of the new defendant a party may render desirable; and a copy of the amended statement of claim shall be delivered to the new defendant, who shall, unless the court or judge otherwise orders, have the same time in which to file his statement of defence as is allowed in ordinary cases of service of statement of claim upon a defendant. R.S.M. c. 40, r. 244. Amending statement of claim where defendant added or substituted.

Third Party Procedure.

223. Where (*a*) a defendant is, or claims to be, entitled to contribution or indemnity, or any other remedy or relief, over against any other person, not a party to the action, or where (*b*) it appears to the court or a judge that a question in the action should be determined, not only as be- Order for determination of question of contribution or indemnity between parties and other persons.

tween the plaintiff and defendant or defendants, but as between the defendants or between the plaintiff or defendant or defendants and any other person, or between any of them, the court or a judge may, on notice being given to such other person, and all parties to the action, make such order as may be proper for having the question so determined. 10 Ed. 7, c. 17, s. 2 (245).

Notice to such persons.

224. Where a defendant is, or claims to be, entitled to contribution or indemnity, or other remedy or relief, over against any person not a party to the action, he may serve a notice to that effect.

Filing and service of.

(2) A copy of such notice shall be filed with the proper officer, and served on such person and on all other parties to the action, accompanied, in the case of such person, with a copy of the statement of claim, according to the rules relating to the service of statements of claim.

Contents of notice.

(3) The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court or a judge, be served within the time limited for delivering his statement of defence.

Form of.

(4) Such notice may be in the form or to the effect of the form No. 5 in the schedule to these rules, with such variations as circumstances may require. 10 Ed. 7, c. 17, s. 2 (246).

Defence by persons served with notice under rule 224.

225. If a person, not a party to the action, who is served as mentioned in rule 224, desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, he must file his statement of defence in the action within the time, after service of the notice, limited for filing a defence in rules 182 and 183, and in default of his so doing he shall be deemed to admit the validity of any judgment obtained or that may be obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify or give the remedy or relief, as the case may be, to the extent claimed in the notice in rule 224 mentioned; provided always, that a person so served and failing to file his statement of defence within the prescribed time may apply to the court or a judge for leave to defend, and such leave may be given upon such terms, if any, as the court or judge shall think fit. 10 Ed. 7, c. 17, s. 2, (248).

Consequences of failure to enter defence.

Leave to defend after prescribed time.

Entry of judgment against person in default and in favor of defendant giving notice.

226. Where a person, not a party to the action, makes default in filing a statement of defence as in the last preceding rule is provided, if the defendant giving the notice in rule 224 suffer judgment by default, he shall be entitled at any time after satisfaction of the judgment against himself, or before such satisfaction by leave of the court or a judge, to enter judgment against such person not a party to the action as aforesaid, to the extent of the contribution or indemnity, or other remedy or relief, claimed in the notice in rule 224 mentioned; provided that it shall be lawful for the court or a judge to set aside or vary such judgment upon such terms as may seem just. 10 Ed. 7, c. 17, s. 2 (248A).

Entry of judgment against persons in default by order of judge made at or after the trial.

227. Where a person not a party to the action makes default in filing a statement of defence as in rule 225 is provided, if the action is tried and results in favor of the plaintiff, the judge who tries the action may, at or after the trial, enter such judgment as the nature of the case may require for the defendant giving the notice in rule 224 mentioned; provided that execution thereon shall not be issued without leave of the judge until after satisfaction by such defendant of the judgment against him. If the action is finally decided in the plaintiff's favor, otherwise than by trial, the court or a judge may, on motion, direct such judgment as the nature of the case may require to be entered for the defendant giving the said notice at any time either before or after satisfaction by the defendant of the judgment recovered by the plaintiff against him. 10 Ed. 7, c. 17, s. 2 (248B).

Court may direct notice to be given.

228. Where it is made to appear to the court or a judge, at any time, before or at the trial, that a question in the action should be determined, not only as between the plaintiff and defendant or defendants, but as between the defendants or between the plaintiff or defendant or defendants and any other person, or between any of them, the court or judge, before or at the time of making the order for having such question determined, shall direct a notice to be given by any party to the action to any other party to the action or to such other person at such time and in such form and manner as may be thought proper; and, if made at the trial, the judge may postpone such trial as he may think fit. 10 Ed. 7, c. 17, s. 2 (247).

Defendant served with notice to file defence to

229. If a party or person who is served with such last-mentioned notice desires to dispute the claim in such notice mentioned as against the party on whose behalf such notice

notice; in default, he shall be deemed to admit liability.

has been given, he must file his statement of defence to such notice, in the action, within the time after service of the notice limited for filing a defence in rules 182 and 183, and, in default of his so doing, he shall be deemed to admit the validity of any judgment obtained, or that may be obtained, against such party, whether obtained by consent or otherwise, and his own liability to contribute or indemnify or give the remedy or relief, as the case may be, to the extent claimed in the notice in rule 228 mentioned; provided always that a party or person so served and failing to file his statement of defence within the prescribed time may apply to the court or a judge for leave to defend, and such leave may be given upon such terms, if any, as the court or judge shall think fit. 10 Ed. 7, c. 17, s. 2 (247A).

Leave to defend though not done in time.

Entry of judgment against party in default under rule 229.

230. Where a party or person makes default in filing a statement of defence as in rule 229 is provided, in case the party giving the notice suffer judgment by default, such party shall be entitled at any time after satisfaction of the judgment against himself, or before such satisfaction, by leave of the court or a judge, to enter judgment against such party or person so making default as aforesaid, to the extent of the contribution or indemnity or other remedy or relief claimed in the notice mentioned; provided that it shall be lawful for the court or a judge to set aside or vary such judgment upon such terms as may seem just. 10 Ed. 7, c. 17, s. 2 (247B).

Entry of judgment against party in default by order of judge at or after the trial.

231. Where a party or person makes default in filing a statement of defence as in rules 229 and 230 is provided, if the action is tried and results in favor of the plaintiff, the judge who tries the action may, at or after the trial, enter such judgment as the nature of the case may require for the party giving the notice in rule 228 mentioned; provided that execution thereon shall not be issued without leave of the judge until after satisfaction by such party of the judgment against him; and if the action is finally decided in the plaintiff's favor, otherwise than by trial, the court or a judge may, on motion, direct such judgment as the nature of the case may require to be entered for the party giving the said notice at any time, either before or after satisfaction by the said party of the judgment recovered by the plaintiff against him. 10 Ed. 7, c. 17, s. 2 (247C).

Directions as to mode of determining questions.

232. If a person, not a party to the action, served under these rules, files his statement of defence pursuant to the notice, the party giving the notice may apply to the court or a judge for directions as to the mode of having the questions in the action determined.

(2) The court or judge, upon the hearing of such application, may give to the person so served liberty to appear at the trial and take such part therein as may seem proper, and may direct such pleadings and documents to be delivered, or such amendments in any pleadings to be made, and generally may direct such proceedings to be taken, and give such directions, as to the court or judge shall appear proper, for having the questions most conveniently determined, and with respect to the mode and extent in or to which the person so served shall be bound or made liable by the judgment in the action. General directions.

(3) The court or judge may decide all questions of costs as between the third party and the other parties to the action, and may order any one or more to pay the costs of any other or others, or give such directions as to costs as the justice of the case may require. 10 Ed. 7, c. 17, s. 2 (249). And as to costs.

233. A plaintiff is not to be prejudiced or unnecessarily delayed in recovering his claim by reason of questions between defendants, or between defendants or a defendant and a person not a party to the action in which the plaintiff is not concerned, and the court or judge shall give such directions as may be necessary to prevent such delay or prejudice of the plaintiff, where this can be done, on terms or otherwise, without injustice to the defendant or defendants; and judgment may be given and entered for or against the plaintiff before the determination of the question or questions in which the plaintiff is not concerned. Plaintiff not to be prejudiced or unnecessarily delayed.

(2) All the rules applying to the conduct of actions where a defence is filed to a statement of claim shall apply, *mutatis mutandis,* to the subsequent proceedings between the plaintiff and defendant or defendants and any other person, or between any of them. 10 Ed. 7, c. 17, s. 2 (250). What rules govern subsequent proceedings.

Committees, Guardians, or Next Friends.

234. In all cases in which lunatics and persons of unsound mind, not so found by inquisition or judicial declaration, might respectively, before the passing of "The Queen's Bench Act, 1895," have sued as plaintiffs, or would have been liable to be sued as defendants, in any action or suit, they may respectively sue as plaintiffs in any action by their committees or next friends, in manner practised in the Court of Queen's Bench on its equity side before the passing of said Act, and may in a like manner defend any action by their committees or guardians appointed for that purpose. R.S.M. c. 40, r. 252. Insane persons as parties.

Appointment of guardian to file defence for person of unsound mind

235. Where no statement of defence has been filed to a statement of claim for a defendant who is a person of unsound mind not so found by inquisition or judicial declaration in lieu of an inquisition, the plaintiff may apply to the court or a judge for an order that a guardian of such defendant be appointed, by whom he may appear and defend the action.

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

(3) Upon such application the official guardian shall be so appointed, unless a judge for special reasons otherwise orders. R.S.M. c. 40, r. 253.

Appointment of guardians *ad litem* to infants *et al.*, made parties after judgment.

236. Where infants, or persons of unsound mind not so found by inquisition, are served with any office copy of a judgment or order in any proceedings, or are made parties to actions after judgment, guardians *ad litem* are to be appointed for them in like manner as before judgment. R.S.M. c. 40, r. 254.

Service of infant or lunatic with copy of judgment.

237. Where a person required to be served with an office copy of a judgment or order is an infant, or a person of unsound mind not so found by inquisition, the service is to be effected upon such person or persons, and in such manner, as the master, before whom the reference under the judgment or order is being prosecuted, directs. R.S.M. c. 40, r. 255.

Application for appointment of guardian for applicant.

238. A person desirous of appointing a guardian for himself, other than the official guardian, to defend an action or matter, may go before a judge or master, with the proposed guardian, but he must satisfy the judge or master by affidavit that the proposed guardian is a fit person, and has no interest adverse to that of the person of whom he is to be the guardian in the matter in question; and if the affidavit is not sufficient for this purpose, the judge or master may examine the proposed guardian, or the person making the affidavit, viva voce, or require further evidence to be adduced until he is satisfied of the propriety of the appointment. R.S.M. c. 40, r. 256.

JOINDER OF CAUSES OF ACTION.

239. Subject to the following rules, the plaintiff may unite, in the same action and in the same statement of claim, several causes of actions. R.S.M. c. 40, r. 257. Joinder of causes of action.

240. No cause of action shall, unless by leave of the court or a judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are or is held, or for any wrong or injury to the premises claimed. Actions for recovery of land.

(2) Nothing in these rules contained shall prevent any plaintiff in an action of foreclosure or redemption, or for the immediate payment of the mortgage moneys, from asking for or obtaining a judgment or order against the defendant for delivery of the possession of the mortgaged property to the plaintiff, either forthwith or on or after a final order for foreclosure or redemption, as the case may be; and such an action shall not be deemed an action for the recovery of land within the meaning of these rules. R.S.M. c. 40, r. 258.

241. Claims by an assignee for the benefit of creditors, as such, shall not, unless by leave of the court or a judge, be joined with any claim by him in any other capacity. R.S.M. c. 40, r. 259. Claims by assignee for benefit of creditors.

242. Claims by or against husband and wife may be joined with claims by or against either of them separately. R.S.M. c. 40, r. 260. Claims by or against husband or wife.

243. Claims by or against an executor or administrator, as such, may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator. R.S.M. c. 40, r. 261. Claims by or against executor.

244. Claims by plaintiffs jointly may be joined with claims by them, or any of them separately, against the same defendant. R.S.M. c. 40, r. 262. Joint and several claims

245. If it be made to appear to the court or a judge that several causes of action joined in the same action are such as cannot all be conveniently disposed of in one action, the court or a judge may order any of such causes of action to Order for separate issues.

be excluded, or may direct the issues respecting the separate causes of action to be tried separately, and may direct the statement of claim to be amended accordingly, and may make such order as to costs as may be just. R.S.M. c. 40, r. 263.

MORTGAGE ACTIONS.

Mortgagee may have sale instead of foreclosure.

246. Instead of a foreclosure, a mortgagee may pray for a sale of the mortgaged premises, and that any balance of the mortgage debt remaining due after such sale may be paid by the mortgagor or by any surety for the payment of the mortgage debt who is a party to the action, and the same may be adjudged accordingly. R.S.M. c. 40, r. 264.

Terms on which sale instead of foreclosure directed.

247. The court may direct a sale of the property, instead of a foreclosure of the equity of redemption, on such terms as the court thinks fit, and, if the court thinks fit, without previously determining the priorities of encumbrances, or giving the usual or any time to redeem. R.S.M. c. 40, r. 265.

Deposit where sale requested by subsequent encumbrancer or mortgagor.

248. If a request for a sale is made by a subsequent encumbrancer, or by the mortgagor, or by any person claiming under them respectively, the party making the request is to deposit in court the sum of eighty dollars for the purpose of covering expenses, unless otherwise ordered by the court or a judge. R.S.M. c. 40, r. 266.

Encumbrancer made party in master's office may apply for sale.

249. An encumbrancer made a party in the master's office, and entitled to and desiring a sale of the mortgaged premises, is to make the necessary deposit therefor before the master's report is settled, whereupon an order may be issued on præcipe directing a sale of the mortgaged premises instead of a foreclosure, and thereupon the master is to compute subsequent interest and appoint a time and place, or times and places, for payment; and all subsequent proceedings are to be taken and had as if the judgment had been in the first instance a judgment for sale. R.S.M. c. 40, r. 267.

Plaintiff may notify defendant asking sale, to conduct it.

250. If before or upon the deposit to obtain a sale being made the plaintiff prefers that the sale be conducted by the defendant desiring the sale, he may so elect; and he is thereupon to notify the defendant of such election. The notice may be to the effect set forth in form No. 15 in the schedule to these rules. R.S.M. c. 40, r. 268.

Return of deposit to defendant.

251. Upon the plaintiff's filing, in the office in which the proceedings are pending, a note of such election and proof of service of such notice, the defendant making the deposit is to be entitled to a return thereof. R.S.M. c. 40, r. 269.

Final order of foreclosure.

252. In default of payment being made according to the report in a foreclosure or redemption action, a final order of foreclosure may be granted against the party making default on an *ex parte* application. R.S.M. c. 40, r. 270.

One day to be appointed for redemption by all parties.

253. There shall be one day appointed for redemption by all parties, and no appointment of a new day shall be made unless the court or a judge so orders for special reasons. R.S.M. c. 40, r. 271.

Order for payment of deficiency.

254. If the purchase money be insufficient to pay what has been found due to the plaintiff for principal, interest and costs, subsequent interest and subsequent costs, in an action for sale, the plaintiff is to be entitled (where the mortgagor is a defendant, and such relief is prayed for) to an order *ex parte* for the payment of the deficiency. R.S.M. c. 40, r. 272.

Notice of credit where account changed after report or order.

255. Where the state of the account ascertained by an order, or by the report of the master, is changed by payment of money, by receipt of rents and profits, by occupation rent, or otherwise, before the final order for foreclosure or sale is obtained, the plaintiff, or other party to whom the mortgage money is payable, may give notice to the party by whom the same is payable that he gives him credit for a sum certain, to be named in the notice, and that he claims that there remains due in respect of such mortgage money a sum certain, to be also named in the notice. R.S.M. c. 40, r. 273.

Final order after such notice.

256. Upon the final order for foreclosure or sale being applied for, if the judge thinks the sum named in the notice proper to be allowed and paid under the circumstances, the order for final foreclosure is to go without further notice, unless the judge directs notice to be given. R.S.M. c. 40, r. 274.

Party receiving sums after report, etc., may apply for new day for payment.

257. The party to whom the mortgage money is payable may apply in chambers for a reference to a master, or for an appointment, to fix such sums respectively; and in the latter case either upon notice or *ex parte*, as the judge thinks fit; and the order to be made thereupon is to be served, or service thereof to be dispensed with, as the judge directs. R.S.M. c. 40, r. 275.

Party served with notice of credit may apply.

258. The party to whom such notice is given may apply in chambers for an appointment to ascertain and fix the amounts proper to be allowed and paid, instead of the amounts mentioned in such notice, or for a reference to a master for the like purpose; and in case the judge thinks a reference to a master proper, the same may be made *ex parte* unless the judge otherwise directs. R.S.M. c. 40, r. 276.

Acceleration clauses in mortgages or agreements for sale.

259. In any action for the foreclosure or sale of the equity of redemption in any mortgaged property, or for recovery of possession thereof for default in the payment of interest or an instalment of principal, and in actions for the foreclosure of the rights and interests of a purchaser under an agreement of sale of land, the defendant or other person entitled to redeem may before judgment move to dismiss the action upon paying into court the amount then due for principal, interest and costs, according to the terms of the mortgage or other instrument, without reference to and notwithstanding any provision therein for the acceleration of the time or times for payment of any subsequent instalment or instalments of such principal in case of default of payment of an overdue instalment of principal or interest, and he shall thereupon be relieved from the consequences of non-payment of so much of the principal money and interest as may not then have become payable by reason of lapse of time. 3 Geo. 5, c. 12, s. 3, *part.*

Same.

260. In any action for the purposes and under the circumstances mentioned in the last preceding rule, a defendant or party interested in the land may move to stay proceedings in the action after judgment, but before sale or final foreclosure or recovery of possession of the property by the plaintiff, upon paying into court the amount then due for principal, interest and costs, according to the terms of the mortgage or other instrument, without reference to and notwithstanding any provision therein for the acceleration of the time or times for payment of any subsequent instalment or instalments of such principal in case of default of payment of an overdue instalment of principal or interest, and he shall thereupon be relieved from the consequences of non-payment of so much of the principal money and interest as may not then have become payable by reason of lapse of time. 3 Geo. 5, c. 12, s. 3, *part.*

Judgment may be enforced upon subsequent default.

261. Where an application is made to stay the proceedings under the last preceding rule, the judgment may afterwards be enforced by order of the court, upon subsequent default in the payment of a further instalment of the principal or of the interest. R.S.M. c. 40, r. 279.

Order on default in redemption action.

262. In a redemption action, in default of payment being made according to the report, the defendant is to be entitled, on an *ex parte* application in chambers, to a final order of foreclosure against the plaintiff, or to an order dismissing the action with costs to be paid by the plaintiff to the defendant forthwith after taxation thereof. R.S.M. c. 40, r. 280.

Directions where plaintiff in redemption action is foreclosed.

263. In a redemption action, where the plaintiff is declared foreclosed, directions may be given, either by the final order foreclosing the plaintiff or by subsequent orders, that all necessary inquiries be made, accounts taken and proceedings had for redemption or foreclosure, or redemption or sale, as against any subsequent encumbrancers, or for the adjustment of the relative rights and liabilities of the original defendants as among themselves; and such order shall have the same force and effect as a judgment obtained by the original defendant. R.S.M. c. 40, r. 281.

CROWN ACTIONS.

Procedure in Crown actions.

264. The procedure and forms which are from time to time in force for the prosecution of rights, claims or demands, or for the recovery of the possession of any lands, deeds or personal property, between subject and subject, shall be used in the like cases for the prosecution of rights, claims or demands which His Majesty may have against any person or persons, body or bodies corporate, or for the recovery of the possession of any lands, deeds or personal property whereto His Majesty claims to be entitled; but the right of reply shall be always allowed to the Attorney-General, and to any King's counsel having written authority from him for that purpose. R.S.M. c. 40, r. 282.

Costs of Crown in Crown actions.

265. In case, in any action or other proceeding before any court or tribunal in Manitoba, by or on behalf of the Crown, against any corporation or person, in respect of any lands, tenements or hereditaments, or of any goods or chattels, belonging to or accruing to the Crown, or standing or being in the name of His Majesty, or in respect of any sum of money due and owing to His Majesty by virtue of any vote of the Legislature for the service of the Crown, or by virtue of any statute relating to the public revenue, or in any manner whatsoever, judgment is given for the Crown, His Majesty's Attorney-General may recover costs in the same manner as and under the same rules, regulations and provisions that apply to the payment or receipt of costs in proceedings between subject and subject. R.S.M. c. 40, r. 283.

Costs against Crown.

266. If in any information, action or other proceeding judgment is given against the Crown, the defendant is entitled to costs, subject to the same rules as though such proceeding had been had between subject and subject. R.S.M. c. 40, r. 284.

Division V.

SERVICE OF PAPERS.

Statement of Claim.

Personal service of statement of claim when not necessary.

267. No personal service on a defendant of a statement of claim or other document by which an action or proceeding may be commenced shall be required, where the defendant by his solicitor accepts service and undertakes to file a statement of defence. R.S.M. c. 40, r. 180.

Ordinary method of service.

268. A statement of claim shall be served by leaving with the defendant a copy of such statement of claim and of all the endorsements thereon. R.S.M. c. 40, r. 181.

Substitutional service.

269. Where service is required, the service thereof, whenever practicable, shall be personal; but if it be made to appear to the court or judge on affidavit that the plaintiff is from any cause unable to effect prompt personal service, the court or judge may make such order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise, as may seem just. R.S.M. c. 40, r. 182.

Endorsing on statement of claim a memorandum of service.

270. The person serving a statement of claim shall, within three days at most after the service, endorse thereon the day of the month and week of the service thereof; otherwise the plaintiff shall not be at liberty, in case of no statement of defence being filed, to proceed by default without the leave of a judge, such leave to be obtained at the cost of the plaintiff and such cost to be in no event charged against the defendant.

Affidavit of service to mention day such indorsement made.

(2) Every affidavit of service of such statement of claim shall mention the day on which such endorsement was made. R.S.M. c. 40, r. 184.

Papers Generally.

271. When any party sues or defends in person, the other parties may serve all papers and proceedings in the action by leaving a copy of the same in the office from which the statement of claim issued. In such cases the copies so left shall be delivered out to the party suing or defending in person on application therefor. R.S.M. c. 40, r. 185. Service of papers when party sues or defends in person.

272. Unless otherwise provided by statute or rule of court, pleadings and notices required to be served in any action may be served in any judicial district. R.S.M. c. 40, r. 359. Where pleadings, etc., may be served.

273. It shall not be necessary to the regular service of an order that the original shall be shown, except in the cases of attachment. R.S.M. c. 40, r. 367. Mode of serving order.

Substitutional Service.

274. It shall be lawful for the court or judge, on application for that purpose, on proper grounds, upon such conditions and in such manner as shall seem just and right under the circumstances, to order substitutional or other service of all statements of claim, petitions, papers and proceedings, attaching or garnishing orders, summonses and proceedings, upon all persons, partnerships, associations, companies and firms, and upon all corporations, whether domestic or foreign, and whether domiciled within or without the Province, and upon all persons, whether resident within or without the Province; and the service made in pursuance of any such order shall be good and effectual service and shall have the same effect as though personally effected within the Province; and previous service so made may be homologated by a subsequent order, any statute, usage, custom or law to the contrary thereof notwithstanding. R.S.M. c. 40, r. 183. Order for. Effect of. Homologating previous service.

275. In actions relating to caveats registered under the provisions of "The Real Property Act," the court or judge may, upon application supported by an affidavit or affidavits showing difficulty in effecting personal service after diligent efforts, order substitutional service of the statement of claim or other proceeding by serving the agent or agents named in the caveat and by publication in one or more newspapers. 3 Geo. 5, c. 12, s. 3, *part*. "Real Property Act" proceedings.

Dispensing with service.

276. Where it appears, upon the hearing of any matter that by reason of absence, or for any other sufficient cause, the service of notice of the application or of the appointment cannot be made, or ought to be dispensed with, such service may be dispensed with, or any substituted service or notice, by advertisement or otherwise, may be ordered. R.S.M. c. 40, r. 368.

Substituted service.

Married Women, Infants, Lunatics.

Service on married women.

277. A married woman shall be served in the same manner as a party to an action or matter not under disability; and the like proceedings may be had on such service, and with the like effect, as if the married woman were a *feme sole*. R.S.M. c. 40, r. 188.

Service upon official guardian of infants.

278. Where the action is in respect of an estate in which an infant is interested, service on the official guardian shall be good service on the infant defendant.

If more than one infant one copy only need be served.

(2) If in such case there are more than one infant defendant, for whom service is to be made on the official guardian, one copy only need be so served.

Official guardian after such services becomes guardian *ad litem*.

(3) From the time of such service the official guardian shall become and be the guardian *ad litem* of the infant, unless and until the court otherwise orders; and it shall be his duty forthwith to attend actively to the interests of the infant in the action, and for that purpose to communicate with all proper parties, including the father or guardian (if any) of the infant, and also the person with whom or under whose care the infant resides, in case such person is not the infant's father or guardian; and the guardian is to make such other inquiries and to take such other proceedings as the interests of the infant may require. R.S.M. c. 40, r. 189.

Service upon infant personally.

279. Where an action is brought against an infant defendant for the recovery of lands, goods or chattels of which he is personally in possession, service shall be made on the infant personally, and one copy of the statement of claim shall also be delivered at the office of the official guardian.

Service on infant personally

(2) When the action is against the infant in respect of a personal tort or for mere recovery of money, the infant shall be served as in the case of an adult defendant. R.S.M. c. 40, r. 190, 191.

When guardian to be appointed.

280. When the infant is personally served and is not represented by the official guardian, there may be a guardian appointed for the infant as in actions at common law before the passing of "The Queen's Bench Act, 1895." R.S.M. c. 40, r. 192.

Motion for appointment of guardian.

281. Any person interested may move before a judge in chambers for an order appointing a guardian other than the official guardian, whereupon such order as may be considered most conducive to the interests of the infant shall be made. R.S.M. c. 40, r. 193.

Service upon lunatics.

282. Where a lunatic, or where a person of unsound mind not so found by inquisition or judicial declaration, is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides, or under whose care he or she is, shall, unless the court or a judge otherwise orders, be deemed good service on such defendant.

Guardian *ad litem* for lunatic without committee.

(2) No further proceedings are to be taken against such a defendant who has no committee, until a guardian *ad litem* is appointed. R.S.M. c. 40, r. 194, 195.

Partners.

Service upon partners sued in firm name.

283. Where partners are sued in the name of their firm, the statement of claim shall be served either upon any one or more of the partners or, at the principal place within Manitoba of the business of the partnership, upon any person having at the time of service the control or management of the partnership business there; and, subject to the rules hereinafter contained, such service shall be deemed good service upon the firm. R.S.M. c. 40, r. 196.

Service where person carries on business in firm name.

284. Where one person, carrying on business in the name of a firm apparently consisting of more than one person, is sued in the firm name, the statement of claim may be served at the principal place within Manitoba of the business so carried on, upon any person having at the time of service the control or management of the business there; and, subject to any rules of court, such service shall be deemed good service on the person so sued. R.S.M. c. 40, r. 197.

Corporations.

Service upon corporations.

285. In all actions, suits or proceedings, every statement of claim, petition, order, writ or other proceeding against a corporation aggregate, and, in the absence of its appearance by a solicitor, all papers and proceedings in the action, suit or proceeding before and to final judgment or order, and all

attaching or garnishing orders, summonses or proceedings, whether before or after final judgment or order, may be served on the mayor, warden, chairman, reeve, president or other head or chief officer, or on the municipal, town, village or city clerk, or on the cashier, treasurer, manager, secretary, clerk or agent of such corporation or agency thereof in Manitoba, whether the principal or head office thereof is within or without Manitoba, and whether such corporation be domestic or foreign. R.S.M. c. 40, r. 198.

Service upon railway companies, etc.

286. A statement of claim issued against a railway, telegraph or express corporation, and all subsequent papers and proceedings in the event of statement of defence not having been duly filed, may be served on the agent of such corporation at any branch or agency thereof, or on any station-master of any railway company, or on any telegraph operator or express agent having charge of any telegraph or express office belonging to such corporation; and any such station-master, operator or express agent shall, for the purpose of being served with a statement of claim issued against such corporation, or any paper or proceeding as aforesaid, in the event of no defence being put in by the corporation, be deemed the agent thereof. R.S.M. c. 40, r. 199.

Service of process, etc., upon general agent of non-resident.

287. Every person who, within Manitoba, transacts or carries on any business as the general agent for any person or partnership, company or firm not incorporated, or for any corporation, whether domestic or foreign, whose chief place of business or head office is without the said Province, shall, for the purpose of being served with the statements of claim, petitions, orders, writs, papers or other proceedings aforesaid, be deemed the agent of such person, partnership, company or firm; and service on such agent of any statement of claim, petition, order, writ, paper or other proceeding shall be treated as personal service upon such person, partnership, company, firm or corporation. R.S.M. c. 40, r. 186.

Certain corporations, etc., deemed within jurisdiction in attaching and garnishing proceedings.

288. Every corporation aggregate or partnership company, whether domestic or foreign, and whether the principal or head office is within or without the Province of Manitoba transacting or carrying on any business within said Province by or through any branch or agency thereof situate within said Province, shall, in respect of any matter or thing arising within the said Province be deemed to be and shall be within the jurisdiction of the courts of the said Province in all attaching or garnishing orders or other proceedings, to the same extent as if the principal or head office were within the said Province. R.S.M. c. 40, r. 187.

289. Where, by any statute, provision is made for service of any writ of summons, bill, petition, or other process upon any corporation, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, a statement of claim may be served in the manner so provided. R.S.M. c. 40, r. 200. Service as provided by any special statute.

Service out of Manitoba.

290. Service out of the jurisdiction of a statement of claim, or other document by which a matter or proceeding is commenced, may be made, whenever— Service out of jurisdiction.

(*a*) the whole subject matter of the action is land situate within Manitoba (with or without rents or profits); or

(*b*) any act, deed, will, contract, obligation or liability affecting land or hereditaments situate within Manitoba is sought to be construed, rectified, set aside or enforced in the action; or

(*c*) any relief is sought against any person domiciled or ordinarily resident within Manitoba; or

(*d*) the action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument of which the person to be served is a trustee, which ought to be executed according to the law of Manitoba; or

(*e*) the action is founded on any breach or alleged breach within Manitoba of any contract wherever made, which, according to the terms thereof, ought to be performed within Manitoba; or the action is founded on any tort committed within Manitoba; or

(*f*) any injunction is sought as to anything to be done within Manitoba, or any nuisance within Manitoba is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or

(*g*) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction. R.S.M. c. 40, r. 201.

291. Service out of the jurisdiction of a statement of claim or other document by which a matter or proceeding is commenced may be allowed by the court or a judge, where the action is not for any matter within any of the classes Where defendant has assets in Manitoba.

for which service out of the jurisdiction is provided by the last preceding rule, but it appears to the satisfaction of the court or judge that the plaintiff has a good cause of action against the defendant upon a contract or judgment, and that the defendant has assets in Manitoba of the value of two hundred dollars at least, which may be rendered liable to the judgment in case the plaintiff should recover judgment in the action; and if the defendant does not appear, the court or a judge is to give any directions which the court or judge from time to time sees fit as to the manner of proceeding in the action and the conditions on which the same may be proceeded with, and shall require the plaintiff, before obtaining judgment, to prove his claim and the amount of debt or damages claimed by him in the action in the usual mode, having regard to the nature of the case, as the court or judge may direct. R.S.M. c. 40, r. 202.

Other modes of proceeding against absent defendant.

292. Where a party to any action or matter is absent from the Province or cannot be found therein to be served, the court may authorize proceedings to be taken against him according to the practice of the court in the case of a defendant whose residence is unknown, or in any other manner that may be provided or ordered, if the court, under the circumstances of the case, deems such mode of proceeding conducive to the ends of justice. R.S.M. c. 40, r. 203.

Service on Solicitor.

Solicitor's admission or acceptance of service.

293. Admissions and acceptances of the service of an order, pleading, notice of motion or other paper upon the opposite solicitor need not be verified by affidavit. R.S.M. c. 40, r. 360.

Service upon solicitor.

294. All writs, pleadings, notices, orders, appointments, warrants and other documents and written communications, which do not require personal service upon the party to be affected thereby, shall be served upon his solicitor when residing in Winnipeg, or, if his solicitor does not reside in Winnipeg, then either upon his solicitor, or, if such solicitor does not reside in the city or town in which is situated the office of the court where the proceedings are being conducted, and has not an office in such city or town, upon the agent, if any, named in the book provided for by rule 163, or upon the Winnipeg agent of such solicitor named in the book provided for by rule 162, unless the court or a judge or a master, before whom any such proceeding is had, shall give any direction as to the manner in which any such notice, appointment, warrant or other document or written com-

Service upon solicitor's agent.

Unless otherwise ordered.

munication is to be served. Where any solicitor has not caused such entry to be made in either of the books, provided for by rules 162 and 163, then the posting up of a copy of any such notice, appointment, warrant or other document or written communication, for such solicitor, in the office in which the proceedings are being conducted, is to be deemed sufficient service, unless the court or judge or master, as the case may be, directs otherwise. 2 Geo. 5, c. 14, s. 5.

Posting copy when no entry in solicitor's and agent's book.

295. Where service is made upon the Winnipeg agent of a solicitor, such service shall be held to have been made four days later than the actual date of service. R.S.M. c. 40, r. 362.

Service on Winnipeg agent to be deemed 4 days later than actual date of service.

296. A party suing or defending by a solicitor shall not be at liberty to change his solicitor in any action or matter without an order of the court for that purpose, which may be obtained on præcipe without payment of costs; and until such order is obtained and served, and notice thereof given to the officer with whom the pleadings are filed, the former solicitor shall be considered the solicitor of the party. R.S.M. c. 40, r. 363.

Changing solicitor.

297. Where a plaintiff who has sued out a statement of claim in person, or a defendant who has entered his defence in person, gives through a solicitor notice in writing to the opposite party, or the solicitor or agent of such party, of the solicitor being authorized to act as solicitor for the party on whose behalf the notice is given, all pleadings, notices, orders and other proceedings which, according to the practice of the court, are to be delivered to, or served upon, such party, shall thereafter be delivered to, or served upon, such solicitor. R.S.M. c. 40, r. 364.

Service in case of party acting in person and subsequently employing solicitor and giving notice thereof.

298. In any action instituted by a mortgagee or other person having a charge on real property, for the foreclosure or sale of property, and to which action any judgment, execution or attaching creditor of the mortgagor, or of the person liable to the charge, is a defendant, personal service on such creditor shall not be necessary; the plaintiff in any such action may elect to serve the creditor personally or may proceed as hereinafter provided. R.S.M. c. 40, r. 365; 3 Geo. 5, c. 12, s. 3, *part.*

Service of proceedings for foreclosure or sale may be on solicitor in certain cases.

299. Every notice, whether in proceedings in court, or in extra-judicial proceedings, or otherwise, required to be served upon any execution or attachment creditor, or upon the person entitled to enforce a registered certificate of

Service of certain notices upon execution or attachment creditors.

may be made by serving solicitor.

judgment, may be served upon the attorney who appears, by such execution, attachment or registered certificate of judgment or attachment, to have issued the same, or upon a professional partner of such attorney, who is such partner at the time of service, and when the last renewal of such execution, attachment or certificate of judgment or attachment appears to have been made by an attorney other than the one who originally issued the same, then such notice may be served upon the attorney who appears to have made or issued such last renewal, or his partner aforesaid, and such service shall have the same effect as personal service of such notice. If a registered certificate of judgment or attachment does not show the name of the attorney who issued the same, such service may be made upon the attorney who obtained the judgment or order upon which such certificate is given, or his partner as aforesaid. R.S.M. c. 40, r. 366.

Division VI.

PLEADING.

STATEMENT OF CLAIM.

Form and contents of statement of claim.

300. The statement of claim shall be entitled in the court and shall set out—

(*a*) the names and residences of the plaintiff and defendant;

(*b*) a plain statement of the cause of action and the relief claimed in ordinary language;

(*c*) where the cause of action or one of the causes of action is such that the defendant would under the former practice have been entitled to an order for particulars, a bill of such particulars;

(*d*) where the whole or part of the cause of action is a debt or a liquidated demand, or such a demand as would have been the subject of an action upon the common or money counts, or one or more of such causes of action, in all cases, a statement of the particulars of such demand or claim in the form used before the coming into force of "The Queen's Bench Act, 1895," for special indorsements on writs of summons or for particulars under the common or money counts of a declaration, or a substantially similar form; interest may be claimed and a claim for interest shall not be held to render a claim unliquidated. R.S.M. c. 40, r. 285.

Notices and endorsements upon statements of claim.

301. The statement of claim and every copy thereof served shall bear the following notices or endorsements annexed to or endorsed thereon—

(*a*) the name and address of the solicitor who issues the same, or of the solicitor and his agent if issued by an agent, or of the plaintiff if issued by the plaintiff in person;

(*b*) the office in which and the time within which the statement of defence is to be filed, and that, in default of a statement of defence being filed, judgment may be signed;

(*c*) where the action is only for a claim specified in paragraph (d) of the last preceding rule, a notice or endorsement that, upon payment of the sum claimed and ten dollars for costs, together with the costs of service of the statement of claim, the action will be discontinued. R.S.M. c. 40, r. 286.

DEFENCE AND COUNTERCLAIMS.

Form and contents of statement of defence and counterclaim.

302. The statement of defence and every copy thereof served shall contain—

(*a*) a statement in plain and ordinary language of the matters of defence upon which the defendant intends to rely;

(*b*) if there be a set-off or counterclaim, particulars of the same such as might have been ordered under the former practice under a plea of set-off or counterclaim;

(*c*) a statement of any matter of demurrer intended to be argued. R.S.M. c. 40, r. 287.

Notice or endorsement upon statement of defence.

303. The statement of defence shall also bear a notice annexed thereto or endorsed thereon, stating the name and address of the solicitor who files the same, or of the solicitor and his agent if filed by an agent, or of the defendant if filed by the defendant in person. R.S.M. c. 40, r. 288.

Effect of including demurrer.

304. The including of a demurrer in a statement of defence shall not admit any allegations of fact in the statement of claim, except for the purposes of the demurrer. R.S.M. c. 40, r. 289.

Admission in statement of defence.

Denials required.

305. The defendant or third party filing a statement of defence shall admit, in his statement of defence, such of the allegations in the statement of claim as he knows or can readily ascertain to be true, and in his denials of allegations of fact shall deny specifically wherever possible; and all allegations in a statement of claim shall be held to be ad-

mitted unless the party defendant has denied the same; but no denial or defence shall be necessary as to damages claimed, or their amount, and they shall be deemed to be put in issue in all cases unless expressly admitted. 7-8 Ed. 7, c. 12, s. 4; 2 Geo. 5, c. 14, s. 2.

Counter-claim.

306. A defendant in an action may set up by way of counterclaim, against the claim of the plaintiff, any right or claim, whether the same sound in damages or not.

Effect of counter-claim.

(2) A counterclaim shall have the same effect as a statement of claim in a cross action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim. R.S.M. c. 40, r. 291.

Striking out counter-claim.

307. Where a defendant sets up a counterclaim, if the plaintiff, or any other person named in manner aforesaid as party to such counterclaim, contends that the claim thereby raised ought not to be disposed of by way of counterclaim, but in an independent action, he may, at any time before trial, apply to the court or a judge for an order that such counterclaim may be excluded; and the court or a judge may, on the hearing of such application, make such order as shall be just. R.S.M. c. 40, r. 292.

Judgment for balance of counterclaim.

308. Where in any action a counterclaim is established against the plaintiff's claim, the court may, if the balance is in favor of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case. R.S.M. c. 40, r. 293.

Proceedings when counterclaim affects third person.

309. Where a defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff along with any other person, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all the persons who, if such counterclaim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff. 10 Ed. 7, c. 17, s. 3.

Service of counterclaim on such third person.

310. Where any such person as in the last preceding rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence; and such service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a statement

of claim; and every defence so served shall be endorsed with the following notice:—

Take notice that your defence to the within counterclaim is to be filed in the office of the at Manitoba, within days after service hereof, otherwise judgment will be entered against you. 10 Ed. 7, c. 17, s. 4.

Statement of defence by such third person.

311. Any person not originally made a party to the action, who is served with a counterclaim as aforesaid, must file his statement of defence as if he had been served with a statement of claim in an action. Such person shall be a party to the action from the time when the counterclaim is filed. R.S.M. c. 40, r. 296; 3 Geo. 5, c. 12, s. 3, *part*.

Defence to counterclaim.

312. Any person, including the plaintiff, named as a party to a counterclaim, must deliver a defence thereto as if it were a statement of claim. R.S.M. c. 40, r. 297; 3 Geo. 5, c. 12, s. 3, *part*.

Reply to statement of defence.

313. A plaintiff may deliver a reply to any statement of defence within eight days after the defence or the last of the defences has been delivered, and not thereafter, unless the time is extended by the court or a judge. 5-6 Ed. 7, c. 17, s. 2, *part*.

No subsequent pleading without leave.

314. No pleading subsequent to reply shall be pleaded without leave of the court or a judge, and then only on such terms as the court or judge thinks fit. After the filing of such reply, the defendant shall be held without further pleading to have denied all material allegations in such reply. 5-6 Ed. 7, c. 17, s. 2, *part*.

Time for filing defence to counterclaim.

315. The time limited for filing a statement of defence to a counterclaim shall be as stated in rules 182 and 183, except in the case of a plaintiff who shall deliver it within eight days from service of the counterclaim on him. R.S.M. c. 40, r. 298; 3 Geo. 5, c. 12, s. 3, *part*.

Rules governing subsequent proceedings to counterclaims.

316. Where any defendant to a counterclaim files his statement of defence thereto, all the rules applying to the conduct of actions where a defence is filed to a statement of claim, shall apply, *mutatis mutandis*, to the subsequent proceedings on the counterclaim. 10 Ed. 7, c. 17, s. 5, *part*.

Proceedings when counterclaims not defended.

317. Where any defendant to a counterclaim, including the plaintiff in the action, fails to file his defence thereto within the time limited, such proceedings may be taken against him and such judgment signed on default as in similar cases where a defendant has failed to file his statement of defence to a statement of claim. 10 Ed. 7, c. 17, s. 5, *part*; 3 Geo. 5, c. 12, s. 3, *part*.

Former rules and laws of pleading abolished.

318. The rules and laws of pleading in use at common law and in equity before the coming into force of "The Queen's Bench Act, 1895," are abolished. R.S.M. c. 40, r. 299.

Rules of pleading substituted.

319. The following rules of pleading shall be substituted for those used prior to the coming into force of "The Queen's Bench Act, 1895." R.S.M. c. 40, r. 300.

Pleadings in actions.

Issue.

Effect of filing defence.

Amendment.

Defence to counterclaim.

320. Except as mentioned in rules 311, 312, 313 and 314, the only pleadings in an action shall be a statement of claim and statement of defence. The action shall be at issue at the expiration of ten days from the delivery of the last pleading. After statement of defence is filed the plaintiff shall be held, without further pleading, to have denied all material allegations in the statement of defence, and he may amend his statement of claim and set up such matters in answer to the statement of defence as he might have set up under the former practice by amendment in equity or by replication at law. R.S.M. c. 40, r. 301; 5-6 Ed. 7, c. 17, s. 3; 3 Geo. 5, c. 12, s. 3, *part.*

Pleading may be written or printed, or partly written and partly printed.

Number of copies allowed.

321. Every pleading may be either printed or written, or partly printed and partly written; but no more than four copies of any pleading or other document are to be allowed to any party in the cause or matter, exclusive of the draft, but inclusive of all other copies that may be required or made in the progress of the cause. R.S.M. c. 40, r. 302.

Printing pleading.

Allowance for same.

322. If more than three copies of any pleading or other document, exclusive of the draft, are required, the party may have the pleading or document printed for the purposes of the cause or matter; and in that case he shall, in lieu of all charges for copies, be allowed thirty cents per folio of the pleading or document, and his reasonable disbursements of procuring the same to be printed. R.S.M. c. 40, r. 303.

Delivery of pleading subsequent to statement of claim.

Marking pleading.

323. Every pleading subsequent to statement of claim shall be delivered between the parties, and shall be marked on the face with the date of the day on which it is filed, the title of the action and the description of the pleading; and the delivery of such pleading shall include filing. R.S.M. c. 40, r. 304.

Service of pleading subsequent to statement of claim.

324. When a pleading subsequent to statement of claim is filed, it shall be served as under the former practice, except as in these rules otherwise specifically provided. R.S.M. c. 40, r. 305.

Form of pleadings.

325. Pleadings shall contain a concise statement of the material facts upon which the party pleading relies, but not the evidence by which they are to be proved; dates, sums, and numbers shall be expressed in figures; the signature of counsel shall not be necessary; forms similar to those in the schedule to these rules may be used. R.S.M. c. 40, r. 306.

Particulars to be filed.

326. A party to an action who furnishes particulars pursuant to demand or order shall file such particulars, before service thereof, in the office in which the pleadings in the action are filed. 10 Ed. 7, c. 17, s. 6.

Admissions.

327. Admissions are, in all cases where it is practicable, to be by reference to the numbers of the paragraphs in the pleading to which they relate, with such qualifications as may be necessary or proper for protecting the interests of the party making such admissions: Thus:—"The defendant admits the allegations made in the first, second and third paragraphs of the plaintiff's statement of claim." R.S.M. c. 40, r. 307.

Relief claimed to be stated specifically.

328. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief. And the same rule shall apply to any counterclaim made, or relief claimed, by the defendant in his statement of defence. If the plaintiff's claim be for discovery only, the statement of claim shall show such to be the case. R.S.M. c. 40, r. 308.

Distinct claims or defences to be stated separately.

329. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence or counterclaim founded upon separate and distinct facts. R.S.M. c. 40, r. 309.

Effect of document may be stated.

330. Where the contents of any documents are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof. R.S.M. c. 40, r. 310.

Allegation of malice, etc.

331. Where it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact, without setting out the circumstances from which the same is to be inferred. R.S.M. c. 40, r. 311.

Allegation of notice.

332. Where it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or precise terms of the notice is or are material. R.S.M. c. 40, r. 312.

Allegation of implied contract.

333. Where any contract or any relation between any persons does not arise from any express agreement, but is to be implied from a series of letters, communications or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege the contract or relation as a fact, without setting them out in detail; and if, in such a case, the person so pleading desires to rely in the alternative upon more contracts or relations than one, to be implied from such circumstances, he may state the same in the alternative. R.S.M. c. 40, r. 313.

Facts presumed need not be stated.

334. Neither party need in any pleading allege any matter of fact which the law presumes in its favor, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied.

(*E.g.*—Consideration for a bill of exchange where a plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.) R.S.M. c. 40, r. 314.

Representative capacity to be denied specifically.

335. If either party wishes to deny the right of any other party to claim as executor, or as trustee, or as asignee for the benefit of creditors, or in any representative or other alleged capacity, or to deny the alleged constitution of any partnership firm, he shall deny the same specifically, or the same will be taken to be admitted. R.S.M. c. 40, r. 315.

Allegations and proof of conditions precedent.

336. If a party intends to contest the performance or occurrence of any condition precedent, he shall distinctly set up such condition and the non-performance or non-occurrence of it in his pleading, and subject thereto an averment of the performance or occurrence of all conditions precedent, necessary for the case of the plaintiff or defendant, shall be implied in his pleading. 7-8 Ed. 7, c. 12, s. 10.

Incorporation of party need not be proved, unless specifically denied.

337. Unless the incorporation of a corporate party to an action is specifically denied in the pleadings, it shall not be necessary to prove it. R.S.M. c. 40, r. 316.

Bare denial of contract only denial of the making.

338. Where a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the statute of frauds or otherwise. R.S.M. c. 40, r. 317.

No plea in abatement.

339. No defence shall be pleaded in abatement. R.S.M. c. 40, r. 318.

No new assignment.

340. No new assignment shall be necessary or used. Everything which was formerly alleged by way of new assignment is to be introduced by amendment of the statement of claim. R.S.M. c. 40, r. 319.

Defence to action for recovery of land.

341. No defendant in an action for the recovery of land, who is in possession by himself or his tenant, need plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff, but, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, and he may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned. R.S.M. c. 40, r. 320.

Plea of "not guilty by statute."

342. Nothing in these rules contained shall affect the right of a party to plead "not guilty by statute," and every defence of "not guilty by statute" shall have the same effect as a plea of not guilty by statute has heretofore had. R.S.M. c. 40, r. 321.

Plea of "not guilty by statute" to contain reference to statute relied on.

343. Where a party pleads "not guilty by statute," intending to give the special matter in evidence by virtue of an Act of Parliament, he shall insert in the margin of the paragraph of the pleading containing the defence the words "by statute," together with the year or years of the reign in which the statutes upon which he relies for that purpose were passed, and also the chapter and section of each of such statutes, and shall specify whether such statute is public or otherwise, and whether such statute was enacted by the Imperial or Dominion Parliament, or by the Legislature of this Province, otherwise the defence shall be taken as not to have been pleaded by virtue of an Act of Parliament. R.S.M. c. 40, r. 322.

ISSUES.

Settling the issues of fact in dispute between parties.

Settling admissions.

344. Where in any action it appears to a judge that the pleadings do not sufficiently define the issues of fact in dispute between the parties, or in case it appears to the judge that it would be advantageous to more particularly define the issues, he may make an order defining and setting forth the issues between the parties and settling the terms of any admissions of fact made by any of the parties, pursuant to rule 537. Such order may be made after an appointment,

Procedure.

signed by the judge, and served upon the opposite party by the party obtaining the appointment, and shall be prepared by one of the parties on the direction of the judge, and if not agreed to its terms shall be settled by the judge. 7-8 Ed. 7, c. 12, s. 5.

STRIKING OUT, AMENDING PLEADINGS, ETC.

Court may order scandalous matter to be expunged.

345. If, upon hearing of a cause or matter, the court is of opinion that any pleading, petition or affidavit, or any part of a pleading, petition or affidavit, is scandalous, the court may order the pleading, petition or affidavit to be taken off the files, or may direct the scandalous matter to be expunged, and is to give such directions as to costs as it may think right. R.S.M. c. 40, r. 324.

Motion to expunge may be made at any time before hearing.

346. A motion to have any pleading, petition or affidavit taken off the files for scandal, or to have the scandalous matter expunged, may be made to the court or a judge at any time before the hearing of the cause or matter. R.S.M. c. 40, r. 325.

Striking out or amending scandalous or embarrassing matters.

347. The court or a judge may, at any stage of the proceedings, order to be struck out or amended any matter in the pleadings respectively which may be unnecessary or scandalous, or which may tend to prejudice, embarrass or delay the fair trial of the action. R.S.M. c. 40, r. 326; 7-8 Ed. 7, c. 12, s. 6.

Amendment by plaintiff without leave.

348. The plaintiff may, without any leave, amend his statement of claim at any time before the expiration of the time limited for filing the statement of defence thereto. He shall in such case issue and serve his amended statement of claim; and the time for filing the statement of defence shall run from the service of such amended statement of claim.

Time for filing defence.

(2) Where the party served has already filed a statement of defence, the time for filing a statement of defence to the amended statement of claim shall be eight days.

Præcipe order to amend clerical errors

(3) An order to amend any pleading for the purpose of rectifying a clerical error in names, dates or sums may be obtained at any time upon præcipe.

One order of course to amend obtainable at any time before issue.

(4) One order of course to amend the statement of claim as the plaintiff may be advised may be obtained by the plaintiff on præcipe at any time before the action is at issue. R.S.M. c. 40, r. 327; 3 Geo. 5, c. 12, s. 3, *part.*

Amendment by defendant without leave.

349. A defendant who has set up any set-off or counterclaim may, without any leave, amend such set-off or counterclaim at any time within eight days after filing the same. Time as against all other parties to the action shall in such a case run from the filing and service of the amended set-off or counterclaim. R.S.M. c. 40, r. 328.

Pleading to amended pleading.

350. Where a party is served with an amended pleading after he has himself pleaded to the pleading which has been amended, he may, if so advised, plead anew, or plead additional matter. If he does not plead anew or plead additional matter, his former pleading shall stand and be held to have been pleaded to the amended pleading of the other party. R.S.M. c. 40, r. 329.

Application for leave to amend.

351. In all cases not provided for by the three last preceding rules, application for leave to amend any pleading may be made by either party to the court or a judge in chambers, or to the judge at the trial of the action, and such amendment may be allowed. R.S.M. c. 40, r. 330.

Notice of application to amend at trial

352. Where a party intends to apply at the trial for an amendment of his pleadings, he may, a reasonable time before the day fixed for trial, serve a notice upon the opposite party setting forth the amendment intended to be asked for, and such amendment may be allowed. R.S.M. c. 40, r. 331.

Time limit for amendment.

353. If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same within the time limited for that purpose by the order or, if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of the time limited as aforesaid or of the fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the court or a judge. R.S.M. c. 40, r. 332.

How amendments made.

354. A pleading may be amended by written alterations in the copies filed and served and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than two hundred words in any one place, or are so numerous or of such a nature that making them in the copies filed and served would render the same difficult or inconvenient to read; in either of which cases the amendment must be made by delivering a reprint or fresh copy of the pleading as amended. R.S.M. c. 40, r. 333.

Marking amended pleading.

355. Where any pleading is amended, such pleading when amended shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.:—

Amended dated day of , under order day of

(2) Where a pleading is amended, the amendment shall be written or printed in ink of a different color from that used in the original pleading. R.S.M. c. 40, r. 334.

Delivery of amended pleading.

356. Where a pleading is amended, such amended pleading shall be delivered to the opposite party within the time allowed for amending the same. R.S.M. c. 40, r. 335.

PLEADING MATTER ARISING PENDING THE ACTION.

Before delivery of defence.

357. Any ground of defence or counterclaim which has arisen after action brought, but before the defendant has delivered his statement of defence, may be pleaded by the defendant in his statement of defence or counterclaim, either alone or together with other grounds of defence. R.S.M. c. 40, r. 336.

Before delivery of defence to counterclaim.

358. If, after a counterclaim has been delivered, any ground of defence arises to anything alleged therein by the defendant, it may be pleaded by the plaintiff thereto or be introduced by amendment into the statement of claim. R.S.M. c. 40, r. 337.

After delivery of defence.

359. Where any ground of defence or counterclaim arises after the defendant has delivered his statement of defence, he may introduce the same by amendment into his statement of defence or counterclaim. R.S.M. c. 40, r. 338.

Amendment on præcipe.

360. In any such case the amendment of the pleading filed may, in case the usual time within which an amendment may be made without order has expired, be made without order, on filing a præcipe and an affidavit that the matter of the amendment arose within eight days next before the day of the making of such amendment. R.S.M. c. 40, r. 339.

Amendment by leave.

361. In cases not provided for by the preceding rules, the leave of the court or a judge to amend the statement of claim or defence or counterclaim, or to deliver a further defence or counterclaim or defence to a counterclaim, is to be obtained on notice supported by affidavit. R.S.M. c. 40, r. 340.

Division VII.

MISCELLANEOUS PROCEEDINGS IN AN ACTION.

EFFECT OF NON-COMPLIANCE AND ERRORS.

Formal objections.

362. No proceeding shall be defeated by any formal objection. R.S.M. c. 40, r. 341.

Non-compliance with rules, effect of

363. Non-compliance with any of these rules shall not render any proceeding in any action or matter void, unless the court or a judge so directs; but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with, in such manner and upon such terms as the court or judge thinks fit. It shall not be necessary to give effect to any objection on the ground of irregularity, if it shall appear that the interests of the party objecting are not and will not be affected by such irregularity. R.S.M. c. 40, r. 342.

Irregularity, applications to set aside proceedings for.

364. No application to set aside process or proceedings for irregularity shall be allowed, unless made within a reasonable time, nor if the party applying has taken a fresh step after knowledge of the irregularity. R.S.M. c. 40, r. 343.

AMENDMENTS.

Amendments of defects or errors.

365. The court or a judge may at any time, and on such terms as to costs or otherwise as to the court or judge may seem just, amend any defect or error in any proceedings; and all such amendments may be made as may be necessary for the advancement of justice, determining the real question or issue raised by or depending on the proceedings, and best calculated to secure the giving of judgment according to the very right and justice of the case. R.S.M. c. 40, r. 344.

Substitution and addition of plaintiffs.

366. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the court or a judge, if satisfied that it has been so commenced through a bona fide mistake and that it is necessary for the determination of the real matter in dispute so to do, may order any other person or persons to be substituted or added as plaintiff or plaintiffs, upon such terms as may seem just. R.S.M. c. 40, r. 345.

Amendment at trial.

367. If an amendment is directed or allowed to be made at the trial, it shall not be necessary to draw up or issue an order therefor. The amendment may be at once made on the record, or a minute of the amendment to be made may be entered in the book of the registrar, deputy registrar, clerk or marshal, and the amendment may be formally made at any time afterwards. R.S.M. c. 40, r. 346.

Reinstating action dismissed in error.

Setting aside judgment obtained through error.

368. If an action be dismissed or judgment obtained through any slip, error or default, without determination on the merits, the court or a judge may reinstate such action or set aside such judgment on such terms as may seem just. R.S.M. c. 40, r. 347.

PAPER, NOTICES AND WRITTEN PROCEEDINGS GENERALLY.

Notices to be written or printed.

369. All notices required by these rules or the practice of the court shall be in manuscript or print, or partly in manuscript and partly in print, unless expressly authorized by the court or a judge or by these rules to be given orally. R.S.M. c. 40, r. 348.

Printing.

370. Proceedings, if printed, shall be printed with pica type leaded, on good paper, of foolscap size. R.S.M. c. 40, r. 349.

Paragraphs.

371. Every petition, issue, special case, affidavit and other proceeding of a like nature shall be divided into numbered paragraphs, and shall state concisely such matters and facts as may be necessary to truly inform the court. R.S.M. c. 40, r. 350.

Rolls and records.

372. All rolls and records shall be upon parchment or paper, of such width and length as the registrar shall describe by written notice, to be put up in some conspicuous place in his office and in the offices of the several deputy clerks of the Crown and pleas, and none of these officers shall be bound to receive any roll or record not made up in conformity to such notice, and such rolls and records shall not exceed, when folded, fourteen inches in length and six inches in breadth, written upon at least a sheet of paper and folded accordingly. R.S.M. c. 40, r. 351.

Short style of cause.

373. In all proceedings in a cause or matter, except pleadings, petitions in the nature of pleadings, judgments and decretal orders, the following short style of cause shall be sufficient:—

Between John Smith and others, plaintiffs,
and
Richard Roe and others, defendants.

In case of proceedings which it has been the practice to entitle more shortly, thus:—

Smith vs Roe,

such practice is to continue. R.S.M. c. 40, r. 352.

374. The word folio shall mean one hundred words. R.S.M. c. 40, r. 353. Folio is 100 words.

COPIES OF PAPERS.

375. Office copies of affidavits and other proceedings for service are dispensed with; and where service is required, true copies, instead of office copies, are to be served. R.S.M. c. 40, r. 354. Copies for service.

376. A party requiring a copy of any pleading, affidavit, exhibit or document not directed to be served is to make a written application for the same to the solicitor of the party by whom it has been filed, or on whose behalf it is to be used; and where the party has no solicitor, then to the party himself. R.S.M. c. 40, r. 355. Written application for copies of papers not directed to be served.

377. Where an application is made for a copy of any pleading, affidavit, exhibit or document, it is to be delivered within forty-eight hours from the time of the demand, and any further time which may elapse before the delivery is not to be computed against the party demanding the same. R.S.M. c. 40, r. 356. Time for furnishing such copies.

378. As to taking copies of documents in possession of another party, or extracts therefrom, under rules of court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of ten cents per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof. R.S.M. c. 40, r. 357. Copies of documents in possession of another party.

FORMS.

379. The forms contained in the schedule hereto are to be used with such variations or modifications as circumstances may require; but any variance therefrom, not being in matter of substance, shall not affect their regularity. R.S.M. c. 40, r. 358. Forms.

TRANSMISSION OF PAPERS.

380. Every deputy clerk of the Crown and pleas and every deputy registrar shall, within twenty-four hours after notice in writing delivered to him in his office for that purpose, and upon payment of the necessary postage, enclose, Transmission of documents to Winnipeg by deputy clerks.

seal up and transmit by post to the office at Winnipeg, addressed to the prothonotary, any record in his custody mentioned in the notice, together with all exhibits filed at the trial, and in default thereof he may be adjudged guilty of a contempt of court, and be dealt with in the discretion of the court accordingly; and if, after such notice, the record is not in court at the time of making any motion requiring a reference thereto, the party moving may, on filing an affidavit of the service of notice and that the record, on search, has not been found in the said prothonotary's office, be allowed by the court to make the motion without the production of such record. R.S.M. c. 40, r. 369.

Transmission of documents from one officer to another.

381. Where pleadings or other documents, filed with an officer of the court, are required by any other officer, the officer with whom the pleadings or other documents are filed is, upon production of a request signed by the officer requiring the pleadings or other documents, showing that the same are required for some proceeding before him, to transmit the pleadings or other documents upon payment of postage or express charges. R.S.M. c. 40, r. 370.

Documents, how transmitted.

382. Documents shall be transmitted by post or express, and not otherwise, and with the documents shall be transmitted the necessary postage or express charges for the return of the same, unless they are to be delivered by one officer to another in the same city or town, when they shall be transmitted by delivering the same to the officer requiring them or his clerk. R.S.M. c. 40, r. 371.

Return of documents.

383. As soon as the purpose for which any such documents are required is completed, the officer to whom they have been sent is to re-transmit them to the office from which they were sent. R.S.M. c. 40, r. 372.

TIME.

Month shall mean calendar month.

384. Where, by these rules, or by any judgment or order, time for doing any act or taking any proceedings is limited by months, not expressed to be lunar months, such time shall be computed by calendar months. R.S.M. c. 40, r. 373.

Period of less than 6 days, computation of.

385. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, days on which the offices of the court are closed shall not be reckoned in the computation of such limited time. R.S.M. c. 40, r. 374.

Days, how computed.

386. In all cases in which any particular number of days, not expressed to be clear days, is prescribed by the rules or practice of the court, the same shall be reckoned exclusively of the first day, and inclusively of the last day. R.S.M. c. 40, r. 375.

Clear days.

387. In all cases expressed to be clear days, or where the term "at least" is added, both days shall be excluded. R.S.M. c. 40, r. 376.

Where last day Sunday, or day offices closed.

388. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken on the next day on which the offices are open. R.S.M. c. 40, r. 377.

Order for security for costs, effect of in computing time for defence.

389. The day on which an order that the plaintiff do give security for costs is served, and the time thenceforward until and including the day on which the security is given, are not to be reckoned in the computation of time allowed to a defendant to deliver a defence. R.S.M. c. 40, r. 378.

Enlarging time by consent.

390. The time for delivering or amending any pleading may be enlarged by consent in writing, without application to the court or judge. R.S.M. c. 40, r. 379.

Two clear days' notice of motion to be given.

391. Unless the court or judge gives special leave to the contrary, there must be at least two clear days between the service of a notice of motion or petition and the day for hearing the motion or petition; and in the computation of such two clear days, Sundays and days on which the offices are closed are not to be reckoned. R.S.M. c. 40, r. 380.

Hours of service on solicitors.

392. Unless otherwise specially ordered in the particular case, service upon the solicitor for a party of pleadings, notices, orders and other proceedings shall be effected before the hour of five o'clock in the afternoon; except on Saturday, when it shall be effected before the hour of two o'clock in the afternoon. Such service effected after five o'clock in the afternoon on any week day except Saturday shall be deemed to have been effected on the following day. Such service effected after two o'clock on Saturday shall be deemed to have been effected on the following Monday. R.S.M. c. 40, r. 381.

Half an hour's attendance on a summons or appointment sufficient.

393. An attendance on a motion in chambers, or on an appointment before a master, registrar or other officer, for half an hour next immediately following the return thereof, shall be deemed a sufficient attendance. R.S.M. c. 40, r. 382.

One appointment sufficient.

394. On every appointment the party on whom the same is served shall attend such appointment without waiting for a second, or in default thereof the officer before whom the appointment is may proceed *ex parte* on the first appointment. R.S.M. c. 40, r. 383.

Long vacation, when not reckoned in computing time.

395. The time of vacation shall not be reckoned in the computation of the times appointed or allowed for the following purposes, unless otherwise directed by the court or a judge,—

(*a*) master's reports becoming absolute;

(*b*) moving to discharge an order made under rule 542;

(*c*) moving to add to, vary or set aside a judgment, by any party served therewith;

(*d*) doing any act or taking any proceeding in appealing to the Court of Appeal.

(*e*) delivering any reply to a statement of defence or counterclaim. R.S.M. c. 40, r. 384; 7-8 Ed. 7, c. 12, s. 16.

Enlargement or abridgement of time.

396. The court or a judge shall have power to enlarge or abridge the time appointed by these rules, or any rules relating to time, or fixed by any order, settling, enlarging or abridging the time for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require; and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed; and the expiration of such time shall not be held to give any party a vested right to prevent such enlargement. R.S.M. c. 40, r. 385.

Vacations.

397. The vacations to be observed by the court shall be as follows:—

(*a*) The long vacation, to commence on the fifteenth day of July and end on the fourteenth day of September;

(*b*) The Christmas vacation, to consist of the period from the twenty-fourth day of December to the sixth day of the following January, both days inclusive. R.S.M. c. 40, r. 386.

EXAMINATION FOR DISCOVERY.

Examination for discovery.

398. Any party to an action or issue, whether plaintiff or defendant, or, in the case of a body corporate, any one who is or has been one of the officers of such body corporate, may, without any special order for the purpose, be orally examined after the defence has been delivered, or, if a defendant, after the time for delivering the defence has expired, or, if a party to an issue, after the order for the issue has been filed, and before the trial, touching the matters in question in the action or issue, and upon his affidavit on production of documents, by any party adverse in point of interest, and may be compelled to attend and testify in the same manner, upon the same terms, and subject to the same rules of examination as any witness, except as hereinafter provided. R.S.M. c. 40, r. 387.

Who deemed a party for purpose of examination.

399. A person for whose immediate benefit an action is prosecuted or defended is to be regarded as a party for the purpose of examination. R.S.M. c. 40, r. 388.

Appointment and subpoena.

400. Whenever a party is entitled to examine another party or person, he may procure an appointment therefor from the local master, deputy clerk of the Crown and pleas, or a special examiner in the judicial district where the party or person to be examined resides, and the party or person to be examined, upon being served with a subpœna, and upon payment of the proper fees, shall attend thereon and submit to examination. R.S.M. c. 40, r. 389.

Service of appointment.

401. The party examining shall serve a copy of the appointment upon the solicitor of the party to be examined, or whose officer is to be examined, if such party has a solicitor in the cause, at least forty-eight hours before the examination. R.S.M. c. 40, r. 390.

Order to examine.

402. Upon application to the court or a judge, an order may be made for the examination of any party or person liable to be examined as aforesaid, before any other person or in any other judicial district than those before mentioned; and upon service of a copy of the appointment of the person before whom the examination is to take place and a copy of the order upon the party to be examined, and upon payment of the proper fees, he is to attend and submit to examination. A copy of the appointment shall be served upon the solicitor of the party at least forty-eight hours before the examination. R.S.M. c. 40, r. 391.

Service on solicitor in lieu of client.

403. In lieu of personal service of a subpœna on a party for his examination, service of an appointment upon his solicitor shall be sufficient, if made fourteen days before the day appointed for the examination, and the conduct money may be paid or tendered to the solicitor.

Duty of solicitor when served.

(2) The solicitor shall forthwith communicate the appointment to the party required to attend, and shall not apply the money to any debt due to the solicitor or any other person or pay the same otherwise than to such party for his conduct money, and the same shall not be liable to be attached. 5-6 Ed. 7, c. 17, s. 2, *part.*

Production of papers.

404. The party or person to be examined shall, if so required by notice, produce on the examination all books, papers and documents which he would be bound to produce at the trial under a subpœna *duces tecum.*

(2) Service of such notice on the party's solicitor or, in the case of a body corporate whose officer is to be examined, on the solicitor for such body corporate, shall be suffcient. R.S.M. c. 40, r. 392; 5-6 Ed. 7, c. 17, s. 4.

Parties may be examined on their own behalf.

405. Any party or officer so examined may be further examined on his own behalf, or on behalf of the body corporate of which he is or has been an officer, in relation to any matter respecting which he has been examined in chief; and when one of several plaintiffs or defendants has been examined, any other plaintiff or defendant united in interest may be examined on his own behalf or on behalf of those united with him in interest, to the same extent as the party examined. R.S.M. c. 40, r. 393.

When such examination to take place.

406. Such explanatory examination shall be proceeded with immediately after the examination in chief and not at any future period, except by leave of the examiner or of the court or a judge; and for the purposes of this and the preceding rule, when the officer of a body corporate has been so examined as aforesaid on behalf of the body corporate, the body corporate shall be deemed to be fully represented by such officer. R.S.M. c. 40, r. 394.

Mode of conducting examination.

407. Any party or person examined orally under the preceding rules shall be subject to cross-examination and re-examination; and the examination, cross-examination and re-examination shall be conducted as nearly as may be in the mode in use on a trial. R.S.M. c. 40, r. 395.

A party admitting possession of documents may be ordered to produce them.

408. A party to an action who admits, upon his examination, that he has in his custody or power any deed, paper, writing or document relating to the matters in question in the cause is to produce the same for the inspection of the party examining him, upon the order of the court or a judge, or of the deputy clerk, special examiner or local master before whom he is examined, and for that purpose a reasonable time is to be allowed. But no party shall be obliged to produce any deed, paper, writing or document, which is privileged or protected from production. R.S.M. c. 40, r. 396.

Appeal from such order to produce.

409. Either party may appeal from the order of the deputy clerk, master or examiner; and thereupon the deputy clerk, master or examiner is to certify under his hand the question raised and the order made thereon. R.S.M. c. 40, r. 397.

Penalty for refusing to attend or answer.

410. Any party or person refusing or neglecting to attend at the time and place appointed for his examination, or refusing to be sworn or to answer any lawful question put to him by the examiner or by any party entitled so to do or his counsel, solicitor or agent, shall be deemed guilty of a contempt of court, and proceedings may be forthwith had by attachment and such party or person shall also be liable, if a plaintiff, to have his action dismissed, and, if a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended; and, if an officer of a body corporate, then such body corporate, if a plaintiff, shall also be liable to have its action dismissed, and, if a defendant, to have its defence, if any, struck out and to be placed in the same position as if it had not defended; and the party examining may apply to the court or a judge for an order to that effect, and an order may be made accordingly; and where an application is made to have the action dismissed or the defence, if any, struck out, service of the notice of motion upon the solicitors for the said plaintiff or defendant is to be sufficient service. R.S.M. c. 40, r. 398; 5-6 Ed. 7, c. 17, s. 5.

Service of notice of motion.

Objections to questions.

411. If the party or person under examination demurs or objects to any question or questions put to him, the question or questions so put, and the demurrer or objection of the witness thereto, shall be taken down by the examiner and transmitted by him to the officer of the court where the pleadings are filed, to be there filed; and the validity of such demurrer or objection shall be decided by the court or a

judge; and the costs of and occasioned by such demurrer or objection shall be in the discretion of the court or judge. R.S.M. c. 40, r. 399.

Depositions, how to be taken.

412. Subject to the four next following rules, the depositions taken upon any such oral examination as aforesaid shall be taken down in writing by the examiner, not ordinarily by question and answer, but in the form of a narrative, expressed in the first person, and, when completed, shall be read over to the party examined, and shall be signed by him in the presence of the parties, or of such of them as may think fit to attend. R.S.M. c. 40, r. 400; 5-6 Ed. 7, c. 17, s. 6.

Signing depositions.

413. If the party or person examined refuses or is unable to sign the depositions, then the examiner shall sign the same; and the examiner may upon every examination state any special matter to the court if he thinks fit. R.S.M. c. 40, r. 401.

Taking down questions.

414. It shall be in the discretion of the examiner to put down any particular question or answer, if there appears to be any special reason for so doing, and any question or questions objected to shall, at the request of either party, be noticed or referred to by the examiner in or upon the depositions; and he shall state his opinion thereon to the counsel, solicitors, agents or parties and, if requested by either party, he shall on the face of the depositions refer to such statement. R.S.M. c. 40, r. 402.

Taking examination in shorthand.

415. Where an examination is had or taken before or otherwise than at the trial, if the examining party desires to have such examination taken in shorthand, he shall, unless otherwise ordered by the court or a judge, be entitled to have it so taken at the place of examination (by the examiner or by a shorthand writer approved and duly sworn by him). 5-6 Ed. 7, c. 17, s. 2, *part.*

Mode of.

416. When taken in shorthand the examination may be taken down by question and answer; and unless otherwise ordered it shall not be necessary for the depositions to be read over to, or signed by, the person examined, unless the judge so directs, where the examination is taken before a judge, or in other cases unless any of the parties so desires.

Effect of certified copies.

(2) A copy of the depositions so taken, certified by the person taking the same as correct, and, if such person be not the examiner, also signed by the examiner, shall for all purposes have the same effect as the original depositions in ordinary cases. 5-6 Ed. 7, c. 17, s. 2, *part.*

Return of depositions to court.

417. Where an examination has been taken under the foregoing rules, the depositions taken down by the examiner shall, at the request of any party interested and upon payment of the examiner's fees, be returned to and kept in the office of the court in which the proceedings are carried on; and certified copies of such depositions may be given out, and the examination and depositions purporting to be certified under the hand of the judge or other officer or person taking the same, or a copy thereof purporting to be certified under the hand of the proper officer, shall, without proof of the signature, be received and read in evidence, saving all just exceptions. The production of a document purporting to be such examination or deposition or copy thereof, certified as aforesaid, shall be prima facie evidence that all conditions precedent have been complied with and that the examinations or depositions have been duly taken under this Act, and the same may forthwith be read in evidence by any party at any stage of the trial, saving all just exceptions. R.S.M. c. 40, r. 403.

Examiner may make a special report to court.

418. Every judge, officer or other person taking examinations under these rules may and, if need be, shall make a special report to the court in which such proceedings are pending, touching such examination and the conduct or absence of any witness or other person thereon or relating thereto; and the court shall institute such proceedings and make such order upon such report as justice may require, and as may be instituted and made in any case of contempt of the court. R.S.M. c. 40, r. 404.

Use of depositions as evidence.

419. Any party may, at the trial of an action or issue, use in evidence any part of the examination of the opposite party; provided always that in such case the judge may look at the whole of the examination, and, if he is of opinion that any other part is so connected with the part to be so used that the last-mentioned part ought not to be used without such other part, he may direct such other part to be put in evidence. R.S.M. c. 40, r. 405.

Use of depositions of officer of corporation

420. Where an officer of a corporation has been examined under rule 398, the whole or any part of the examination may be used as evidence by any party adverse in interest to the corporation, and shall be evidence accordingly; but, in the case of a part only being used, the corporation may put in as explanatory any other part of the examination which is so connected with the part to be so used that the last-mentioned part ought not to be used without such explanatory

part, or may use the remainder of the examination of the officer as evidence on the part of the corporation. R.S.M. c. 40, r. 406.

Use of depositions of past officer.

421. Where a person who has been an officer of a corporation has been examined under rule 398, the whole or any part of the examination may, by leave of the judge, be used in the same manner as in the preceding rule provided in respect to the examination of an existing officer of a corporation. This rule shall not apply to the case of an officer who has been dismissed from the service of the corporation before service of the appointment for the examination. R.S.M. c. 40, r. 407.

Personal examination of party claiming for bodily injury may be ordered.

422. In any action brought to recover damages or other compensation for or in respect of bodily injury sustained by any person, the court or a judge (or any person who, by consent of parties, or otherwise, has power to fix the amount of such damages or compensation), may order that the person, in respect of whose injuries damages or compensation is sought, shall submit to be examined by a duly qualified medical practitioner, who is not a witness on either side, at a time and place to be appointed by him in writing, a copy of which order and appointment shall be served upon such person or upon the plaintiff or his solicitor, and may make such order respecting such examination and the cost thereof as appears proper. The medical practitioner shall be selected by the court or judge making the order, and may afterwards be a witness on the trial, unless the judge before whom the action is tried otherwise directs.

Penalty for refusing to be examined.

(2) If such person fails, without good cause, to comply with such order, the plaintiff shall be liable to have his action dismissed. 5-6 Ed. 7, c. 17, s. 2, *part;* 2 Geo. 5, c. 14, s. 3.

INTERROGATORIES.

Delivery of interrogatories.

423. In any cause or matter the plaintiff or defendant may at any time after defence has been delivered, or a plaintiff after the time for delivering the defence has expired, deliver to the opposite party, or to his solicitor for him, interrogatories in writing for the examination of the opposite party, or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such parties is required to answer; provided that no party shall deliver more than one set of interrogatories to the same party without an order of the court or a judge for that purpose;

provided also that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

Costs of any unreasonably long or vexatious interrogatories.

(2) In adjusting the costs of the cause or matter inquiry shall, at the instance of any party, be made into the propriety of exhibiting such interrogatories, or any of them, and if it is the opinion of the taxing officer, or of the court or judge, either with or without an application for inquiry, that such interrogatories, or some of them, have been exhibited unreasonably, vexatiously or at improper length, the costs occasioned thereby shall be paid in any event by the party in fault.

Answers to interrogatories administered to body corporate.

(3) If any party to a cause or matter be a body corporate, the answers to interrogatories exhibited to such body corporate shall be as full and complete as it is possible to make the same upon full and complete inquiry from all officers, servants, agents and employees, past and present, of such body corporate, either within or without the Province or the Dominion of Canada, and from an inspection of all documents, books, records and reports in the possession, custody or control of such body corporate.

Objections. How taken.

(4) Any objection to answering any one or more of several interrogatories, on the ground that it or they is or are scandalous or irrelevant, or are not bona fide required for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

Setting aside interrogatories on application.

(5) Any interrogatories may be set aside or struck out on the ground that they have been exhibited unreasonably or vexatiously, or are prolix, oppressive, unnecessary or scandalous; and any application for this purpose must be made within seven days after service of the interrogatories.

To be answered by affidavit

(6) Interrogatories shall be answered by affidavit, to be filed within ten days from service of such interrogatories, or within such other time as a judge may allow. The affidavit to be made on behalf of a corporation shall be made by the proper officer of such corporation.

Motion if answers insufficient.

(7) No exceptions shall be taken to any affidavits in answer, but the sufficiency of any such affidavit objected to as insufficient shall be determined by the court or a judge on motion or summons.

Requiring party to answer or answer further.

(8) If any party interrogated omits to answer, or answers insufficiently, the court or a judge may on application make an order requiring such party to answer or to answer

further, either by affidavit or by viva-voce examination, as the judge may direct.

Consequences of failure or refusal to answer.

(9) If any party fails to answer interrogatories, or to comply with any order made in respect of interrogatories, he shall, if a plaintiff, be liable to have his action dismissed, and, if a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended, and the party interrogating may apply to the court or a judge for an order to that effect, and an order may be made accordingly. An individual party shall, in addition, be liable to attachment for such failure.

Use of answers as evidence at trial.

(10) Any party may, at the trial of a cause, matter or issue, use in evidence any one or more of the answers, or any part of an answer, of the opposite party to interrogatories without putting in the others or the whole of such answers. Provided always that in any such case the judge may look at the whole of such answers, and, if he shall be of opinion that any others of them are so connected with those put in that the last-mentioned answer ought not to be used without them, he may direct them to be put in.

Forms.

(11) Interrogatories and answers to interrogatories shall, with such variations as the circumstances may require, be, respectively in the forms numbered 157 and 158 in the schedule hereto. 5-6 Ed. 7, c. 17, s. 2, *part*.

PRODUCTION AND INSPECTION OF DOCUMENTS.

Production and inspection of documents.

424. It shall be lawful for the court or a judge, at any time pending any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power relating to any matter in question in such action or proceeding as the court or judge thinks right; and the court may deal with such documents, when produced, in such manner as appears just. R.S.M. c. 40, r. 408.

Order of course for production of documents.

425. Any party may, after the defence is delivered, or a plaintiff may, after the time for delivering the defence has expired, and any party to an issue may, after the order for issue has been filed, obtain an order of course upon præcipe, directing the adverse party, within ten days after the service thereof, to make discovery on oath of the documents which are or have been in his possession or power, relating to any matters in question in the action, and to produce and deposit the same with the proper officer for the usual purposes; and such party shall make discovery and produce and deposit the documents accordingly, without further notice. R.S.M. c. 40, r. 409.

Position as to discovery of third person served under rule 310.

426. A third party who has been served by a defendant under rule 310, and has entered a defence shall, for all purposes of and incident to the production of documents and examination, be as between him and such defendant in the same situation as a defendant, and the defendant serving him shall, for the same purposes, be in the same situation as a plaintiff; the time for taking out an order for production or for examining shall be after the party so served has delivered a defence or, where the application is on behalf of the defendant so serving such third party, the time shall be after the time for delivering the defence has expired. R.S.M. c. 40, r. 410.

Who deemed a party for purpose of production of documents.

427. A person for whose immediate benefit an action is prosecuted or defended is to be regarded as a party for the purpose of production of documents. R.S.M. c. 40, r. 411.

Affidavit on production by corporation.

428. Where the party required to produce documents is a corporation aggregate, the affidavit shall be made by one of the officers of the corporation, and his affidavit shall have the same effect (as nearly as may be) as the affidavit of a party, unless where the court or judge sees reason for holding otherwise. R.S.M. c. 40, r. 412.

Cross-examination of deponent.

429. The deponent in every affidavit on production shall be subject to cross-examination. R.S.M. c. 40, r. 413.

Affidavit on production, form of.

430. The affidavit on production to be made by a party against whom an order for production has been made shall specify which, if any, of the documents therein mentioned he objects to produce, and said affidavit may be in the form No. 30 in the schedule to these rules, with such variations as circumstances may require.

Case of party not making discovery of document

(2) Any party not making discovery of any paper or document, pursuant to an order for discovery and production in an action, matter or proceeding shall not afterwards be at liberty to use such paper or document in evidence in his own behalf in the cause, matter or proceeding unless he satisfies the court or judge that he had some sufficient cause or excuse for not complying with such order, and that he notified the opposite party of the existence of such paper or document, promptly after the existence thereof came to his knowledge, and the court or judge may, if the court or judge thinks fit, adjourn the hearing of the action, matter or proceeding to a subsequent day, and order the party so failing to make discovery as aforesaid to pay the costs of the day of the opposite party. R.S.M. c. 40, r. 414; 9 Ed. 7, c. 14, s. 3.

Adjournment of hearing.

Costs of the day.

Notice to produce documents referred to in pleading or affidavit.

431. Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, to give to any other party in whose pleadings or affidavits reference is made to any document notice in writing to produce such document for the inspection of the party giving the notice, or of his solicitor, and to permit him to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in the action or proceeding, unless he satisfies the court that the document relates only to his own title, he being a defendant to the action, or that he has some other sufficient cause for not complying with the notice. R.S.M. c. 40, r. 415.

Form of such notice.

432. Notice to any party to produce any documents referred to in his pleading or affidavits may be in the form No. 8 in the schedule to these rules, or to the same effect. R.S.M. c. 40, r. 416.

Notice to inspect.

433. The party to whom such notice is given shall, within two days from the receipt of the notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in rule 430, or if any of the documents referred to in the notice have not been set forth by him in any such affidavit, then within four days from the receipt of the notice, deliver to the party giving the same a notice stating the time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, and stating which (if any) of the documents he objects to produce and on what ground. Such notice may be in form No. 10 in the schedule, with such variations as circumstances may require. R.S.M. c. 40, r. 417.

Order for inspection.

434. If the party served with notice under rule 431 omits to give such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a Judge for an order for an inspection. R.S.M. c. 40, r. 418.

Application for such order.

435. Every application for an order for inspection of documents shall be to a judge; and, except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them and that they are believed to be in the possession or power of the other party. R.S.M. c. 40, r. 419.

Determination of issue governing right to discovery.

436. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the court or a judge, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, may order that such issue or question be determined first and reserve the question as to the discovery or inspection. R.S.M. c. 40, r. 420.

Consequences of failure to comply with order to produce.

437. If any party fails to comply with any order for production or inspection of documents, if an individual, he shall be liable to attachment. He shall also be liable, if a plaintiff, to have his action dismissed, and, if a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended; and, if such party is a body corporate, then such body corporate, if a plaintiff, shall be liable to have its action dismissed, and, if a defendant, to have its defence, if any, struck out and to be placed in the same position as if it had not defended; and the party who obtained the order for production or inspection may apply to the court or a judge for an order to that effect, and an order may be made accordingly; and where an application is made to have the action dismissed or the defence, if any, struck out, service of the notice of motion upon the solicitor for the said plaintiff or defendant is to be sufficient service. 5-6 Ed. 7, c. 17, s. 7.

Application for such order.

438. Where the application for such last-mentioned order is made by reason of default in production of books and papers in the master's office, or pursuant to an order to produce, or in carrying in accounts, service of the notice of motion upon the solicitor of the party required to obey the same is to be sufficient service. R.S.M. c. 40, r. 422.

Service of order for discovery on solicitor, when sufficient.

439. Service of an order for discovery or inspection, made against any party, on his solicitor shall be sufficient service upon which to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order. R.S.M. c. 40, r. 423.

Attachment of solicitor.

440. A solicitor upon whom an order against any party for discovery or inspection is served under the last preceding rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to an attachment. R.S.M. c. 40, r. 424.

Examinations of parties and officers out of Manitoba for discovery.

441. The preceding rules, as to the preliminary examinations of parties or persons and discovery and inspection of documents shall, so far as practicable, apply to parties, persons or bodies corporate residing out of Manitoba; and in such cases the court or judge may order the examination of the parties or persons, or of any one who is or has been one of the officers of such body corporate, to be taken at such place and in such manner as may seem just and convenient; and service of the order for examination, discovery or inspection, and of all other papers necessary to obtain the benefit of the provisions of the said rules, shall be sufficient if made on the solicitor of the party in the action, in the same manner as other papers in the action are served on the solicitor therein, unless the court or judge makes other order to the contrary; and if there is no such solicitor, or he cannot for any reason be served, the court or judge may order the service in any other manner to be mentioned in the order in that behalf. 4-5 Ed. 7, c. 6, s. 2.

MOTIONS AND OTHER APPLICATIONS.

Generally.

Application to court or judge to be by motion.

442. Where any application is authorized to be made to the court or a judge in an action or proceeding, such application shall be made by motion. R.S.M. c. 40, r. 428.

No summons, rule or order to show cause to be granted.

443. No summons, rule or order to show cause shall be granted in any action or matter; but when any person other than the applicant is entitled to be heard thereon, he shall be served with a notice of the motion. R.S.M. c. 40, r. 429.

Ex parte orders.

444. The court or judge, if satisfied that the delay caused by proceeding by notice of motion would or might entail irreparable or serious mischief, may make any order *ex parte*, upon such terms as to costs or otherwise, and subject to such undertaking or security, if any, as the court or judge may think just; and any party affected by such order may move to set aside or vary the same. R.S.M. c. 40, r. 430.

When guardian to be notified.

445. Where infants are concerned, no order dispensing with payment of money into court is to be made without notice to the guardian *ad litem* of the infants. R.S.M. c. 40, r. 431.

Case of all proper parties not having been served.

446. If, on the hearing of a motion or other application, the court or judge, master or referee, is of opinion that any person to whom notice has not been given ought to have had notice, the court or judge, master or referee, may either dis-

miss the motion or application or adjourn the hearing thereof in order that notice may be given, upon such terms, if any, as may seem just. R.S.M. c. 40, r. 432.

Adjournment.

447. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the court or judge shall think fit. R.S.M. c. 40, r. 434.

Serving notice of motion upon defendant when no defence filed.

448. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition, upon any defendant who, having been duly served with a statement of claim in the action, has not filed a statement of defence within the time limited for that purpose. R.S.M. c. 40, r. 435.

Serving notices of motion with statement of claim.

449. The plaintiff may also, without any special leave, serve a notice of motion for an injunction, and may, by leave of the court or a judge to be obtained *ex parte*, serve any other notice of motion, upon any defendant along with the statement of claim, or at any time after service of the statement of claim and before the time limited for filing the statement of defence of such defendant. R.S.M. c. 40, r. 436.

Irregularity to be clearly specified in notice.

450. A notice of motion to set aside any proceeding for irregularity must specify clearly the irregularity complained of and the several objections intended to be insisted on. R.S.M. c. 40, r. 437.

Ex parte orders may be moved against.

451. Any party affected by an *ex parte* order, except the party issuing the same, may move to rescind or vary the same before the judge or officer who made the order, or any Judge or officer having jurisdiction, within four days from the time of its coming to his notice, or within such further time as the court or judge may allow, and whether it has been acted upon by the party issuing the order or not. R.S.M. c. 40, r. 438.

Setting down motions, etc.

452. All motions, demurrers, special cases, appeals and other matters to be heard in court at the weekly sittings, except *ex parte* applications, shall be set down for argument in the office of the prothonotary, who shall post up in a convenient place a list of the cases so set down not later than the day before the day for which the same are so set down, and shall furnish a copy of such list to the officer who is to attend the sittings of the court. R.S.M. c. 40, r. 439.

Mode of setting down.

453. All motions and applications to the court required to be set down for argument, and all appeals and special cases, shall be set down by delivering to the proper officer a præcipe specifying the matter to be set down and the day for argument thereof, and requiring him to set the same down. When a married woman, an infant or a person of unsound mind is a party to the action, a copy of the order giving leave to enter a special case for argument shall also be produced. R.S.M. c. 40, r. 440.

Time for setting down.

454 All other motions and applications to the court except *ex parte* applications, are to be set down at latest on the day before the day of argument, except as otherwise provided by these rules, unless the court otherwise orders. R.S.M. c. 40, r. 441.

Applications at Chambers.

Chamber business.

455. The following business shall be disposed of in chambers, together with such other matters as the court or a judge from time to time thinks may be more conveniently disposed of there than in court, viz., applications—

(*a*) for the sale of the estates of infants, under the statutes of Manitoba;

(*b*) as to the guardianship, maintenance and advancement of infants;

(*c*) for the administration of estates upon motion, without action;

(*d*) relating to the conduct of actions or matters;

(*e*) as to matters connected with the management of property;

(*f*) for the payment of moneys into court by parties desiring on their own behalf to pay in the same. R.S.M. c. 40, r. 442.

Form of order.

456. An order shall be in the form No. 90 in the schedule hereto, with such variations as circumstances require. It shall be marked with the name of the judge or officer by whom it is made. R.S.M. c. 40, r. 443.

Signatures to orders made by judge in chambers.

457. Orders made by a judge in chambers may be signed by the prothonotary, or by the deputy clerk of the Crown and pleas in any but the Eastern Judicial District, if the form thereof is approved by the parties appearing on the motion, otherwise by the judge pronouncing the same. 10 Ed. 7, c. 17, s. 8.

458. All orders for administration or partition, made in chambers, shall be drawn up as judgments and entered in like manner as other judgments are required to be entered. All orders declaring persons lunatics, or for the sale of infants' estates, or for the payment of money into or out of court, or for continuing proceedings upon the death or transmission of interest of any party to an action, and all final orders of sale or foreclosure, and all vesting orders, shall be entered in full in a book to be provided for the purpose before the same shall be issued or acted upon. R.S.M. c. 40, r. 445. Entry of certain orders.

459. Every paper, document or collection of documents purporting to be a copy of pleadings, affidavits, orders, papers or proceedings, or of evidence in any action, suit, matter or proceeding, filed for the use of a judge or judges upon any motion to the court or a judge, shall, prima facie, be taken to be authentic and correct, unless and until the contrary be shown, without any certificate, affidavit or verification. R.S.M. c. 40, r. 446. Certain documents filed upon motion prima facie correct.

460. Where an account is taken in chambers special directions may be given with respect to the mode in which the account is to be taken and vouched, and the proceedings shall be as nearly as may be the same as upon a reference to a master. R.S.M. c. 40, r. 447. Taking accounts in chambers.

461. The court may adjourn for consideration in chambers any matter which, in the opinion of the court, may be disposed of more conveniently in chambers; and any matter pending in chambers may be adjourned to open court; and such matter may be so adjourned at the instance of the court or judge or at the request of either party subject to such order as to costs or otherwise as the court thinks right to impose. R.S.M. c. 40, r. 448. Adjournments from court to chambers or vice versa.

462. A judge sitting in chambers may exercise the same power and jurisdiction, in respect of the business brought before him, as is exercised by the court; all orders made by a judge in chambers are to have the force and effect of orders of the court; and all or any of the powers, authorities and jurisdictions given to the master by any Act or Acts now in force, or by any rule of the court, may be exercised by a judge in chambers. R.S.M. c. 40, r. 449. Judge in chambers may exercise powers of court, and also powers of the master.

SPECIAL CASES.

463. The parties may, after the statement of claim has been issued in any action, or in any pending matter not com- Special cases.

menced by statement of claim, concur in stating the questions of law arising in the action or matter in the form of a special case for the opinion of the court. R.S.M. c. 40, r. 452, *part*.

Agreement between parties.

464. The parties to a special case may, if they think fit, enter into an agreement in writing that, on the judgment of the court being given in the affirmative or negative of the question or questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the court in such manner as the court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the action or matter; and the judgment of the court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed or unless stayed on appeal. R.S.M. c. 40, r. 452, *part*.

Hearing.

465. Upon the argument of such case the court and the parties shall be at liberty to refer to the whole contents of the documents referred to, and the court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial. R.S.M. c. 40, r. 452, *part*.

Preliminary question of law.

466. If it appears to the court or a judge, either from the statement of claim or defence or otherwise, that there is in any action or matter a question of law which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to an arbitrator, the court or judge may make an order accordingly, and may direct such question of law to be raised either by special case or in such other manner as the court or judge may deem expedient; and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed. R.S.M. c. 40, r. 453.

Preparing and filing special case.

467. Every special case shall be signed by the several parties or their solicitors, and shall be filed by the plaintiff. Copies for the use of the judges shall be delivered by the plaintiff. R.S.M. c. 40, r. 454.

Special case where persons under disability not to be set down without leave.

468. No special case in an action to which a married woman, not being a party thereto in respect of her separate property or of any separate right of action by or against her, or an infant, or a person of unsound mind not so found by inquisition, is a party shall be set down for argument with-

out leave of the court or a judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant or person of unsound mind, are true. R.S.M. c. 40, r. 455.

Application of preceding rules.

469. The six next preceding rules shall apply to every special case stated in an action or matter or in any proceeding incidental to an action. R.S.M. c. 40, r. 456.

EVIDENCE.

Subpœnas, etc.

Subpœnas.

470. All writs of subpœna may be tested or may bear date upon the day when the same are issued. R.S.M. c. 40, r. 457.

Order for certain subpœnas *duces tecum*.

471. No subpœna for the production of an original record, or of an original document, from any registry office or land titles office, or office of the court or of a County Court, shall be issued, unless the order of the court or a judge is produced to the officer issuing the same, and filed with him, nor unless the writ is made conformable to the description of the document in such order. No such order shall be made without proof that the interests of some party require that the original instrument shall be brought before the judge, court or officer before whom the evidence is to be taken or used. R.S.M. c. 40, r. 458.

Any number of names may be included in one subpœna.

472. Any number of names may be included in one subpœna, and no more than one subpœna shall be allowed on taxation of costs unless a sufficient reason be established to the satisfaction of the taxing officer for issuing more than one. R.S.M. c. 40, r. 459.

Calling opposite party.

473. Where any party in a civil action desires to call the opposite party as a witness at the hearing or trial, he shall either subpœna such party or give him or his solicitor at least eight days' notice of the intention to examine him as a witness in the cause; and if such party does not attend on such notice or subpœna, such non-attendance shall be taken as an admission *pro confesso* against him in any such action, unless otherwise ordered by the court or judge in which or before whom such examination is pending; and a general finding or judgment may be had against the party thereon, or the plaintiff may be non-suited, or the proceedings in the action may be postponed by the court or judge on such terms as the court or judge sees fit to impose. R.S.M. c. 40, r. 460.

Examination of party as if on cross-examination.

474. A party to any civil action or proceeding, or a person for whose immediate benefit such action or proceeding is prosecuted or defended, or the directors, officers, superintendent or managing agents of any corporation which is a party to such action or proceeding, may be examined upon the trial thereof as if under cross-examination at the instance of the adverse party or parties, or any of them, to the same extent and effect as if the witness examined was a witness of the opposite party, and for that purpose may be compelled in the same manner, and subject to the same rules for examination, as any other witness to testify, but the party calling for such examination shall not be concluded thereby, but may rebut it by counter testimony. 5-6 Ed. 7, c. 17, s. 2, *part*; 9 Ed. 7, c. 14, s. 4.

Answers not to conclude party calling the witness.

Bench warrants.

475. Upon proof to the satisfaction of the judge presiding at the sittings of any court, of the service of a subpœna upon any witness who fails to attend or to remain in attendance in accordance with the requirements of the subpœna, and that a sufficient sum for his fees as a witness had been duly paid or tendered to him, and that the presence of such witness is material to the ends of justice, the said judge may, by his warrant, directed to any sheriff or other officer of the court, or to any constable, cause such witness to be apprehended and forthwith brought before him or any other judge who may thereafter preside at such sittings, to give evidence; and in order to secure his presence as a witness, such witness may be taken on such warrant before the presiding judge and detained in the custody of the person to whom the warrant is directed, or otherwise, as the presiding judge may order, until his presence, as such witness, shall be required. or, in the discretion of the said judge, he may be released on a recognizance (with or without sureties) conditioned for his appearance to give evidence.

Form of bench warrant.

(2) The warrant may be similar to the form No. 149 in the schedule to these rules, and may be executed in any part of Manitoba. R.S.M. c. 40, r. 461.

Evidence at Trials and References.

Evidence on trial to be viva voce.

476. In the absence of any agreement between the parties, and subject to these rules, the witnesses at the trial of an action or at an assessment of damages shall be examined viva voce and in open court; but the court or a judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the court or judge may think reasonable, or

Exception.

that any witness, whose attendance in court ought for some sufficient cause to be dispensed with, be examined before an examiner; provided that, where it appears to the court or judge that the other party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of the witness to be given by affidavit. R.S.M. c. 40, r. 462.

Testimony before master to be viva voce, unless otherwise ordered.

477. All witnesses in any matter pending before a master shall give their testimony viva voce, and be subject to examination before the master, unless it is otherwise ordered by the master, or by the court or a judge, on special grounds, or with the consent of the parties in the suit or controversy to which the testimony relates. R.S.M. c. 40, r. 463.

Depositions.

478. The court or a judge may, in any cause or matter where it appears necessary for the purposes of justice, make any order for the examination upon oath before an officer of the court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the court, and may empower any party to the cause or matter to give such deposition in evidence therein, on such terms, if any, as the court or judge may direct. R.S.M. c. 40, r. 464.

Affidavits may be used by consent or by leave.

479. At the trial of an action, or of any further directions therein, affidavits of particular witnesses, or affidavits as to particular facts and circumstances, may be used by consent, or by leave of the court; and such consent may be given on behalf of persons under disability, with the approbation of the court. R.S.M. c. 40, r. 465.

Time plaintiff to file affidavit evidence.

480. If the parties in any action consent to the evidence being taken by affidavit as between the plaintiff and defendant, the plaintiff, within fourteen days after such consent has been given, or within such longer or shorter time as the parties may agree upon, or a judge in chambers may allow, shall file his affidavits and deliver to the defendant or his solicitor a list thereof. R.S.M. c. 40, r. 466.

Time defendant to file affidavit evidence.

481. The defendant, within fourteen days after delivery of such list, or within such longer or shorter time as the parties may agree upon or a judge in chambers may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof. R.S.M. c. 40, r. 467.

Time plaintiff to file his affidavits in reply.

482. Within seven days after the expiration of the said fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matter strictly in reply, and shall deliver to the defendant or his solicitor a list thereof. R.S.M. c. 40, r. 468.

Cross-examination on affidavit evidence.

483. Where the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon such party a notice in writing, requiring the production of the deponent for cross-examination before the court at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the court or a judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the court. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production. R.S.M. c. 40, r. 469.

Compelling attendance of deponent.

484. The party to whom such notice as is mentioned in the last preceding rule is given shall be entitled to compel the attendance of the deponent for cross-examination, in the same way as he might compel the attendance of a witness to be examined. R.S.M. c. 40, r. 470.

Evidence in chief in mitigation of damages in libel and slander when admissible.

485. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, he shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence. R.S.M. c. 40, r. 471.

Evidence of service of notice to produce.

486. An affidavit of the solicitor in the cause, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of such notice to produce, shall be sufficient evidence of the service of the notice, and of the time when it was served. R.S.M. c. 40, r. 472.

Evidence on Motions.

Evidence on motion or petition.

487. Upon any motion or petition, evidence may be given by affidavit. R.S.M. c. 40, r. 473.

Cross-examination on affidavits.

488. Every person who makes an affidavit to be used in any action or proceeding shall be liable to cross-examination thereon, and may be required to attend in the same manner, and subject to the same rules, as a party to be examined in the cause. R.S.M. c. 40, r. 474.

Procuring attendance of witnesses for examination on motions.

489. A party to any action or proceeding may, by a writ of subpœna *ad testificandum* or *duces tecum*, require the attendance of a witness to be examined before the court, or before any officer having jurisdiction in the judicial district where the witness resides, for the purpose of using his evidence upon any motion, petition or other proceeding before the court, or any judge or judicial officer in chambers.

(2) The attendance of such witness is to be secured in the same manner, and subject to the same rules, as upon the examination of a party in the cause. R.S.M. c. 40, r. 475.

Orders for production of documents or attendance of witnesses upon hearing of motion.

490. Upon the hearing of any motion before the court or a judge, the court or judge at discretion, and upon such terms as it or he thinks reasonable, may from time to time order to be produced such documents as it or he thinks fit, and may order such witnesses as it or he thinks necessary to appear and be examined viva voce before such court or judge, or before a local judge, or before any other person, and upon reading the report of the local judge or other person, as the case may be, or, if no such reference is made, then upon examining such documents or hearing such witnesses by the court or judge, the court or judge may make such orders as seem just. R.S.M. c. 40, r. 476.

Power by order to compel attendance of witnesses or production of documents.

491. The court or a judge may, by the order, command the attendance of the witnesses named therein for the purpose of being examined, or may command the production of any writings or other documents to be mentioned in the rule or order; and in the case of a judge, he may, if necessary or convenient so to do, direct the attendance of the witness to be at his own place of abode or elsewhere. R.S.M. c. 40, r. 477.

Disobedience to order to be a contempt of court.

492. If, in addition to the service of the order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, is also served together with or after the service of the order, the wilful disobedience of the order shall be a contempt of court, and proceedings may be forthwith had by attachment; but

Witness entitled to fees.

(*a*) every person whose attendance is so required shall be entitled to the like payment for attendance and expenses as if he had been subpœnaed to attend upon a trial; and

What documents need not be produced.

(*b*) no person shall be compelled to produce under any such rule or order any writing or document which he would not be compellable to produce at the trial of the cause; and

Examination may be adjourned.

(*c*) the court or judge, or person appointed to take the examination, may adjourn the same from time to time as occasion may require. R.S.M. c. 40, r. 478.

Examination of prisoners.

493. The sheriff, gaoler or other officer having the custody of any prisoner shall take the prisoner for any examination authorized by these rules, when so directed by an order of the court or judge; which order may be issued by the court or judge under such circumstances as appear to warrant the production of the prisoner. R.S.M. c. 40, r. 479.

Certified copies of proceedings as evidence.

494. Wherever any party wishes to produce to the court or a judge any pleading or other proceeding filed in any office of the court, he may demand and receive from the officer in whose office the pleading or other proceeding is a copy of the same certified by the officer to be a true copy of the original, and the copy purporting to be so certified shall upon production thereof be admissable in evidence in all causes and matters and between all persons and parties to the same extent as the originals would be admissible, without proof of the signature or official character of the officer certifying the same. R.S.M. c. 40, r. 480.

Default in paying money into bank how proved.

495. Where default is made in the payment of money appointed to be paid into a bank, the certificate of the cashier, manager or agent, or of the like officer, of the bank where the same is made payable shall be sufficient evidence of default. Where the affidavit of the party entitled to receive the same was required by the practice existing at the coming into force of "The Queen's Bench Act, 1895," the same shall still be necessary. R.S.M. c. 40, r. 481.

Leave to Perfect Defective Material.

Leave to perfect defective or insufficient material upon payment of costs.

496. Where any application is made, either under the provision of this Act or under any other law or statute, to the court or a judge, or to a local judge or the referee in chambers, and it appears that the material upon which the said application is made is defective and insufficient in substance or in form, then, if it appears to the court, judge, local judge or referee, from statements of counsel or other-

wise, that such material can be perfected by the applicant within reasonable time, the application shall not be dismissed on account of such defective or insufficient material, but the applicant may be given leave to perfect such material upon payment of the costs occasioned to the opposing party by his additional attendance. R.S.M. c. 40, r. 426.

Leave to perfect defective or insufficient material upon which rule or order obtained.

497. Upon an application to the court or judge to set aside or vacate any rule or order on account of the same having been obtained upon defective or insufficient material, the party who has obtained such rule or order shall be allowed a reasonable time to perfect the material upon which such rule or order was obtained by filing additional material. R.S.M. c. 40, r. 427.

Commissions to Examine Witnesses.

Commission to examine party resident out of Manitoba.

498. If a party to any civil action, or to any issue ordered to be tried, is resident out of Manitoba, and if the opposite party requires a commission to examine such non-resident party, and states by affidavit the facts intended to be proved on such commission, and if the court or judge is satisfied that such commission is applied for in good faith and not for purposes of delay, the court or any judge may issue a commission for the examination of such non-resident party, in the same manner as a commission may be issued for the examination of witnesses. R.S.M. c. 40, r. 483.

Effect of refusal to attend.

499. If such party refuses to attend before the commissioner, such refusal, being proved by affidavit or otherwise to the satisfaction of a judge shall authorize a verdict or judgment to pass against the party, or he shall be non-suited. R.S.M. c. 40, r. 484.

Commission to examine aged or infirm persons, or persons about to leave Manitoba.

500. If the plaintiff or defendant in any action in the court, or a party to any issue ordered to be tried, is desirous of having at the trial thereof the testimony of any aged or infirm person resident within Manitoba, or of any person who is about to withdraw therefrom or who is residing without the limits thereof, the court or a judge may, upon the motion of such plaintiff, defendant or party, and upon hearing the parties, order the issue of a commission under the seal of the court to a commissioner to take the examination of any such person. R.S.M. c. 40, r. 485.

Notice of commission.

501. Due notice of every such commission shall be given to the adverse party, to the end that he may cause the witnesses to be cross-examined. R.S.M. c. 40, r. 486.

Commissions on master's certificate.

502. Foreign commissions for examination of witnesses without the jurisdiction of the court, in proceedings before a master, may, on the certificate of the master, be issued upon præcipe. R.S.M. c. 40, r. 487.

Notice of motion for commission.

503. Upon an application for a commission to take evidence, the applicant is in the notice of motion to state the name of the commissioner to whom he desires the commission to be issued; and where the opposite party desires to name another commissioner, he is, on the return of the motion, to give notice to the applicant of the name of such other commissioner. R.S.M. c. 40, r. 488.

Commission, to whom to be directed.

504. Upon the hearing of the motion, the court or judge (or officer before whom the motion is made) may order the issue of the commission directed to any one or more of the persons so named, or to such other person or persons as may seem proper. R.S.M. c. 40, r. 489.

Particulars to be stated in order for commission.

505. The order or certificate for the issue of a commission is to state the name of the commissioner to whom it is to be directed, and whether the examination of witnesses thereunder is to be taken upon oral questions or upon written interrogatories, and also whether or not notice of the execution thereof is to be given to the opposite party and, if notice is to be so given, then the name and the address of the person on whom such notice is to be served are to be stated in the order. R.S.M. c. 40, r. 490.

Mode of examining witnesses.

506. The examination of witnesses under a commission is to be taken either orally or upon written interrogatories, or partly in one way and partly in the other, as the court or a judge may direct. All oral questions shall be reduced into writing and, with the answers thereto, returned with the commission. R.S.M. c. 40, r. 491.

Examination on written interrogatories.

507. Where the examination is to take place upon written interrogatories, the interrogatories in chief are to be delivered to the opposite party (unless otherwise ordered) at least eight days before the issue of the commission; and the cross-interrogatories are to be delivered to the opposite party (unless otherwise ordered) within four days after the receipt of the interrogatories in chief; and in default of cross-interrogatories being so delivered, the opposite party may send the commission without cross-interrogatories. R.S.M. c. 40, r. 492.

Examination *ex parte*.

508. An examination may be executed *ex parte*, unless the opposite party shall, upon the hearing of the application for the order or master's certificate for the issue of the commission, require notice of the execution of the commission, and give the name and place of abode of some person resident within two miles of the place where the commission is to be executed, upon whom notice may be served. R.S.M. c. 40, r. 493.

Notice of execution of commission.

509. Where notice of the execution of the commission is required to be served, forty-eight hours' notice shall be sufficient; such notice is to be in writing, stating the time and place of the intended examination, and is to be addressed to the person named for that purpose in the order or certificate for the issue of the commission; and service upon him, or upon a grown-up person at the address stated in the order or master's certificate, shall be sufficient. If the name or address stated in such order or certificate shall prove to be illusory or fictitious, or if the party so notified fails to attend pursuant to the notice, the commission may be executed *ex parte*. R.S.M. c. 40, r. 494.

Copies of documents produced as evidence.

510. In the event of any witness, on his examination, cross-examination or re-examination, producing any book, document, letter, paper or writing, and refusing for good cause, to be stated in his deposition, to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present to be a true and correct copy or extract, shall be annexed to the deposition of the witness. R.S.M. c. 40, r. 495.

Witnesses to be examined under oath.

511. Every witness to be examined under the commission shall be examined on oath, affirmation or otherwise, in accordance with his religion, by or before the said commissioners or commissioner. R.S.M. c. 40, r. 496.

Interpreter.

512. If any witness does not understand the English language (the interrogatories, cross-interrogatories and viva voce questions, as the case may be, being previously translated into the language with which he is conversant), then the examination shall be taken in English through the medium of an interpreter to be nominated by the commissioners or commissioner and to be previously sworn according to his religion by or before the commissioners or commissioner truly to interpret the questions to be put to the witness and his answers thereto. R.S.M. c. 40, r. 497.

Depositions to be signed.

513. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken such depositions. R.S.M. c. 40, r. 498.

Return of commission.

514. The interrogatories, cross-interrogatories and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the prothonotary or deputy clerk of the Crown and pleas on or before such day as may be ordered in that behalf, enclosed in a cover under the seal or seals of the said commissioners or commissioner, and certified copies thereof may be given in evidence on the trial of the action, by and on behalf of the said parties respectively, saving all just exceptions, without any other proof of the absence from this country of the witness or witnesses therein named than an affidavit of the solicitor or agent of the party as to his belief of such absence. R.S.M. c. 40, r. 499.

Use of depositions as evidence at trial.

Parties joining in commission.

515. Where, upon the application for a commission to take evidence, the opposite party desires to join in the commission and examine witnesses on his own behalf thereunder, or names a commissioner, each party is to pay the costs of the commission consequent upon the examination of his witnesses and the appointment of his commissioner, without prejudice to the question by whom such costs are ultimately to be borne; and if for any reason the commissioner named by either party refuses to act in the execution of the commission, upon receiving forty-eight hours' notice in writing from the other of them so to do, the commission may be executed by the commissioner giving such notice alone. R.S.M. c. 40, r. 500.

Order for commission to be read as including above particulars.

516. Every order for a commission shall be read as if it contained the above particulars, and shall not set forth the same, but may contain any variations therefrom and any other directions which the court or judge shall see fit to make or give. R.S.M. c. 40, r. 501.

Objections to validity of commission to be by motion to suppress.

517. Any objection to the validity or regularity of any commission or examination of any witness or party shall be taken by way of motion to suppress the commission or examination, and on such motion the court or judge shall make such order for suppressing the same, or returning it to be executed or taken again, or confirming the same, and on such terms as to costs and otherwise, as may seem just. In the event of no such motion being made not later than one week after said commission has been opened or examination re-

turned, as the case may be, then such commission or examination shall be deemed to have been properly executed, taken and returned, and no objection thereto shall afterwards be allowed to prevail, but nothing herein shall apply to any objection there may be to the admissability of the evidence contained in such commission or examination, or any part thereof. R.S.M. c. 40, r. 502.

Objections to questions as leading.

518. Where a party is present or is represented by counsel at any examination under commission or otherwise, such party shall not thereafter be allowed to object to any question put on such examination as leading, unless he shall have made the objection at once upon the question having been put. In no case shall any objection to a question put upon any examination under commission or otherwise as leading be taken, except upon motion made in the manner and within the time specified in the last preceding rule for objecting to the validity of a commission or examination, and the objection shall only be allowed if it shall seem to the court or judge that the form and nature of the question were likely under the circumstances to prejudice the interests of the party objecting. R.S.M. c. 40, r. 503.

Obtaining Evidence for Foreign Tribunals.

Application.

519. Where, under the Imperial statute known as "The Foreign Tribunals Evidence Act, 1856," or under "The Extradition Act," chapter 155 of the Revised Statutes of Canada, 1906, any civil or commercial matter, or any criminal matter, is pending before a court or tribunal of a foreign country and it is made to appear to the court or a judge, by *commission rogatoire,* or letter of request, or other evidence as hereinafter provided, that such court or tribunal is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction, the court or a judge may, on the *ex parte* application of any person shown to be duly authorized to make the application on behalf of such foreign court or tribunal, and on production of the *commission rogatoire,* or letter of request, or of a certificate signed in the manner, and certifying to the effect, mentioned in section 2 of "The Foreign Tribunals Evidence Act, 1856," or such other evidence as the court or a judge may require, make such order or orders as may be necessary to give effect to the intention of the Acts above mentioned in conformity with section 1 of the said "Foreign Tribunals Evidence Act, 1856." 7-8 Ed. 7, c. 11, s. 1, *part.*

Form of order.

520. An order made under the last preceding rule may be in form number 159 in the schedule to these rules, with such variations as circumstances may require. 7-8 Ed. 7, c. 11, s. 1, *part.*

Who may take the evidence.

521. The examination may be ordered to be taken before any fit and proper person nominated by the person applying, or before one of the examiners of the court, or such other qualified person as to the court or a judge may seem fit. 7-8 Ed. 7, c. 11, s. 1, *part.*

Transmission of the evidence when taken.

522. Unless otherwise provided in the order for examination, the examiner before whom the examination is taken shall, on its completion, forward the same to the prothonotary of the court at Winnipeg, and on receipt thereof he or his deputy shall append thereto a certificate, in form numbered 160 in the schedule to these rules, with such variations as circumstances may require, duly sealed with the seal of the court, and shall transmit the depositions so certified, and the *commission rogatoire* or letter of request, if any, to the foreign court or tribunal requiring the same. 7-8 Ed. 7, c. 11, s. 1, *part.*

Mode of conducting the examination of the witnesses.

523. An order made under above rule 519 may, if the court or a judge shall think fit, direct the said examination to be taken in such manner as may be requested by the *commission rogatoire* or letter of request from the foreign court, or therein signified to be in accordance with the practice or requirements of such court or tribunal, or which may, for the same reason, be requested by the applicant for such order. But in the absence of any such special directions being given in the order for examination the same shall be taken in the manner prescribed in rules 506 to 513 inclusive, and, where such examination is ordered to be taken before one of the examiners of the court, the same rules shall apply to such examination. 7-8 Ed. 7, c. 11, s. 1, *part.*

In case of requests from other British tribunals.

524. Rules 519 to 523, inclusive, shall apply, as far as may be, to applications under the Imperial statute known as "The Evidence by Commission Act, 1859" (22 Vic., c. 20), for the purpose of giving effect to any commission or letter of request from any British tribunal out of the jurisdiction, except that in such cases the depositions certified as above provided, and letter of request, if any, shall be forwarded by the prothonotary to the judge or other officer by whom such commission or letter of request was signed. 7-8 Ed. 7, c. 11, s. 1, *part.*

Dispensing with application to the court by any of the parties.

525. Where a *commission rogatoire* or letter of request, as mentioned in rule 522, is transmitted to the court by His Majesty's Secretary of State at Ottawa, with an intimation that it is desirable that effect should be given to the same without requiring an application to be made to the court by the agents in Manitoba of any of the parties to the action or matter in the foreign country, or British possession, the prothonotary shall transmit the same to the Attorney-General of the Province, who may thereupon make such applications and take such steps as may be necessary to give effect to such *commission rogatoire* or letter of request, in accordance with rules 519 to 524, inclusive. 7-8 Ed. 7, c. 11, s. 1, *part.*

Affidavits.

Form of affidavits.

526. Every affidavit shall be drawn up in the first person, stating the name of the deponent at the commencement in full and his description and true place of abode, and shall be signed by him. R.S.M. c. 40, r. 504.

Form of affidavit made by two or more deponents.

527. In every affidavit made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat, except that, if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above named" deponents. R.S.M. c. 40, r. 505.

Jurat.

528. The jurat may be in the form or to the effect following:—

Sworn before me at in the Province of Manitoba, on the day of , A.D. .

R.S.M. c. 40, r. 506.

Affidavits, how framed.

529. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. R.S.M. c. 40, r. 507.

Affidavits by officers of corporations.

530. Any affidavit in an action or proceeding to which a municipal or other corporation is a party may be made by any officer, servant or agent of the corporation having knowledge of the facts required to be deposed to, and he shall state therein that he has such knowledge. R.S.M. c. 40, r. 508.

Alterations in affidavits, how verified.

531. No affidavit having in the jurat or body thereof any interlineation, alteration or erasure shall, without leave of the court or a judge, be read or made use of in any matter pending in court, unless the interlineation or alteration

(other than by erasure) is authenticated by the initials of the officer taking the affidavit; nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written, and signed or initialed in the margin of the affidavit by the officer taking it. R.S.M. c. 40, r. 509.

Affidavits by illiterate person.

532. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, and that the deponent seemed perfectly to understand it, and made his signature or mark in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the court or a judge is otherwise satisfied that the affidavit was read over to and apparently perfectly understood by the deponent. R.S.M. c. 40, r. 510.

Affidavits not to be sworn before solicitor of party.

533. No affidavit shall be read or made use of for any purpose, if sworn before the solicitor of the party in the cause on whose behalf the affidavit is made, or before the clerk or partner of such solicitor. R.S.M. c. 40, r. 511.

Filing fees.

534. All affidavits and other papers required to be filed in any action or matter, on motions and other matters, shall, before being used, be filed in the proper office and marked with a proper memorandum showing payment of any fee payable for filing. R.S.M. c. 40, r. 512.

Filing affidavits.

535. Affidavits to be used on a motion in chambers shall be filed with the prothonotary, referee or local judge, who shall transmit them to the proper office when the motion is disposed of. R.S.M. c. 40, r. 513.

Time for filing.

536. All the affidavits upon which a notice of motion or a petition is founded must be filed before the service of the notice of motion or petition. R.S.M. c. 40, r. 514.

ADMISSIONS.

Calling for admissions by opposite party.

537. Either party may call upon the other party to admit any document, saving all just exceptions, or to admit any fact or facts material to the case of the party making such call. 7-8 Ed. 7, c. 12, s. 7.

Form of notice.

538. A notice to admit documents may be in the form No. 11 in the schedule to these rules. R.S.M. c. 40, r. 516.

Proof of admissions.

539. The production of any written admissions purporting to be admissions in the action, and to be made in pursuance of any notice to admit documents or otherwise, and to be signed by the solicitor of the party by whom or on whose behalf they purport to be made, shall be sufficient prima facie evidence of such admissions. R.S.M. c. 40, r. 517.

TRANSMISSION OF INTEREST PENDENTE LITE.

Action not to abate by reason of marriage, etc.

540. An action shall not become abated by reason of the marriage, death or bankruptcy of any of the parties, if the cause of action survives or continues, and shall not become defective by the assignment, creation or devolution of any estate or title *pendente lite*. Whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered notwithstanding the death. R.S.M. c. 40, r. 518.

Assignment *pendente lite*.

541. In case of an assignment, creation or devolution of any estate or title *pendente lite*, the action may be continued by or against the person to or upon whom such estate or title has come or devolved. R.S.M. c. 40, r. 519.

Order to add parties on change of interest.

542. Where by reason of marriage, death or bankruptcy, or any other event occurring after the commencement of an action and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order that the proceeding in the action shall be carried on between the continuing parties to the action and such new party may be obtained on præcipe, upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence. R.S.M. c. 40, r. 520.

Service of such order.

543. An order so obtained shall, unless the court or a judge otherwise directs, be served upon the continuing party or parties to the action or their solicitors, and also upon each such new party (unless the person making the application be himself the only new party); and the order shall from the time of such service, subject, nevertheless, to the next five following rules, be binding on the person served therewith. R.S.M. c. 40, r. 521.

Application to discharge order.

544. Where any person who is under no disability, or under no disability other than coverture, or, being under any disability other than coverture, has a guardian *ad litem* in the action, shall be served with such order, such person may apply to the court or a judge to discharge or vary such order at any time within fourteen days from the service thereof. R.S.M. c. 40, r. 522.

Endorsement on such order.

545. Upon every copy of such order served, there shall be endorsed a memorandum in the form or to the effect set forth in form No. 6 in the schedule to these rules. R.S.M. c. 40, r. 523.

Application by persons under disability to discharge order.

546. Where any person being under any disability other than coverture, and not having had a guardian *ad litem* appointed in the action, is served with any such order, such person may, at any time within fourteen days from the appointment of a guardian *ad litem* for such party, apply to the court or a judge to discharge or vary the order; and until such period of fourteen days shall have expired, the order shall have no force or effect as against such person so served. R.S.M. c. 40, r. 524.

Application to discharge order when served out of Manitoba.

547. Where the order is served out of Manitoba, the party served is to have the same time to apply to discharge the order as a defendant has to file a defence to a statement of claim so served; but an application may be made for shortening the time, and an order may be made accordingly in a proper case. R.S.M. c. 40, r. 525.

Application to discharge in case of order allowing service by publication.

548. Where the court or a judge authorizes publication instead of service, the court or judge is at the same time to appoint such time for applying to discharge the order as seems proper. R.S.M. c. 40, r. 526.

Defendant in continued action may compel plaintiff to proceed.

549. Where an action is one which would but for these rules have abated by reason of the death of either party, and in which the proceedings may be continued under these rules, the defendant or person against whom the action may be so continued may apply on notice to compel the plaintiff, or the person entitled to proceed with the action, to proceed according to the provisions of these rules within such time as the court or a judge may order, or in default for an order dismissing the action or for payment of the costs thereof or for such order as may be just. R.S.M. c. 40, r. 527.

Costs.

550. Wherever any judgment or order has been made for payment of costs and the action or matter would, but for these rules, become abated, any person interested under the judgment or order may under these rules continue the proceedings, and thereupon prosecute and enforce the judgment or order. R.S.M. c. 40, r. 528.

When executors of deceased defendant may be sued.

551. In case an action on a bill or note is brought against more than one defendant, who must otherwise have been sued separately, and it happens that any defendant dies pending the action, an action may nevertheless be brought against the executors or administrators of such deceased defendant. R.S.M. c. 40, r. 529.

PAYMENT INTO COURT IN SATISFACTION.

When defendant may pay money into court in satisfaction.

552. A defendant may, either before or at the time of delivering his defence, or afterwards by leave of the court or a judge, pay into court a sum of money in satisfaction of the cause or a part of the cause of action, or one or more of the causes of action, for which the plaintiff sues; and the money, when so paid in, shall remain in court subject to further order, unless the plaintiff elects to take it out. But the payment of money into court shall not be deemed an admission of the cause of action in respect of which it is so paid. R.S.M. c. 40, r. 530.

Such payment to be signified in defence.

553. Payment into court shall be signified in the defence, and the claim or cause of action in satisfaction of which the payment is made shall be specified therein. R.S.M. c. 40, r. 531.

How plaintiff may take money out.

554. If the plaintiff takes the money out of court, he shall take it in satisfaction of the very cause of action for which it was paid in, and shall, upon applying therefor, file and serve a memorandum acknowledging the cause for which he takes it out, which may be according to the form No. 7 in the schedule to these rules and shall be equivalent to a satisfaction piece. R.S.M. c. 40, r. 532.

Time for election.

555. The plaintiff shall make his election to take the money out of court before the action is at issue. R.S.M. c. 40, r. 533.

Taxing costs when plaintiff takes money.

556. When the plaintiff takes out money in satisfaction of the entire cause of action, he may tax his costs of the action and may sign judgment therefor unless the defendant pays them within forty-eight hours after taxation. R.S.M. c. 40, r. 534.

Case of money paid into court in consolidated actions.

557. Where money is paid into court in two or more actions which are consolidated, the money paid in and the costs in all the actions shall be dealt with in the same manner as in the action tried. R.S.M. c. 40, r. 535.

When plaintiff may pay in.

558. A plaintiff may, in answer to a counterclaim, pay money into court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into court by a defendant. R.S.M. c. 40, r. 536.

Tender.

559. With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into court. R.S.M. c. 40, r. 537.

DISCONTINUANCE.

Wholly or as to part of claim.

As to one or more defendants.

560. The plaintiff may, at any time before notice of trial is served, by notice in writing, filed and served, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint, either as to all the defendants or as to one or more of several defendants; and a defendant shall be entitled to the costs of the action, if wholly discontinued against him, and if not wholly discontinued to the costs occasioned to him by such withdrawal and previously incurred by him in respect of the matter so withdrawn.

(2) Such costs may be taxed upon production of the notice of discontinuance, and if not paid within four days from taxation the defendant may, without any order, sign judgment therefor.

(3) Such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action.

(4) Save as in these rules otherwise provided, it shall not be competent for the plaintiff to discontinue the action without leave of the court or a judge; but the court or a judge may, before, or at, or after, the hearing or trial, upon such terms as to costs, and as to any other action against all or any of the defendants, and otherwise, as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. R.S.M. c. 40, r. 538; 10 Ed. 7, c. 17, s. 9.

Withdrawal of defence or counterclaim.

561. A defendant may, with the leave of the court or a judge, but not otherwise, withdraw his defence or counterclaim, or both, or any part of either or both, upon such terms as may be imposed. R.S.M. c. 40, r. 539.

DISMISSAL OF ACTIONS.

For want of prosecution.

562. If the action is at issue two months before the commencement of any sittings of the court for which the plaintiff might give notice of trial, and he does not give notice of trial therefor, the action may be dismissed for want of prosecution. R.S.M. c. 40, r. 540.

CONSOLIDATION OF ACTIONS.

563. Actions in the court may be consolidated by order of the court or a judge, in the manner prior to the passing of "The Queen's Bench Act, 1895," in use in the court on its common law side. R.S.M. c. 40, r. 542.

TRIAL.

General Rules.

Place of trial.

564. The trial of every action shall take place in the judicial district in which the statement of claim issued, unless the court or a judge otherwise orders on an application for a change of venue. 9 Ed. 7, c. 14, s. 5.

Application to change place of trial.

565. On the application of either party and on grounds shown by affidavit, the court or a judge may order that the trial of any action shall take place in any other judicial district than that in which the statement of claim issued. R.S.M. c. 40, r. 544; 9 Ed. 7, c. 14, s. 6.

Notice of trial after action at issue

566. After the action is at issue, either party may give notice of trial for any sitting of the court for the trial of causes where the action is to be tried. R.S.M. c. 40, r. 545.

Trial of different questions in different modes.

567. Subject to the provisions of this Act and of the preceding rules, the court or a judge may, in any action at any time, or from time to time, order that different questions of fact arising therein be tried by different modes, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials, and in all cases may order that one or more issues of fact be tried before any other or others. R.S.M. c. 40, r. 547.

Trial by jury to be before single judge, unless otherwise ordered.

568. Every trial of any question or issue of fact by a jury shall be held before a single judge, unless such trial is specially ordered to be held before two or more judges. R.S.M. c. 40, r. 548.

Trial at bar.

569. The plaintiff or defendant, in any action in the court, may, in the sittings of the Court of Appeal next after the action is at issue, apply for a trial at bar; and the Court of Appeal may, in its discretion, upon hearing the parties, grant or refuse the same. R.S.M. c. 40, r. 549; 3 Geo. 5, c. 12, s. 3, *part.*

Trial at bar at instance of Crown.

570. In all cases in which the Crown may be actually or immediately interested, a trial at bar may be had as of right upon, and shall be regulated and governed by, the same principles as in similar cases in England at the time of the passing of "The Queen's Bench Act, 1895." R.S.M. c. 40, r. 550.

Day to be fixed by court for trial at bar.

571. In case any trial at bar is directed, a judge may appoint such day or days for the trial thereof as he may think fit. R.S.M. c. 40, r. 551; 3 Geo. 5, c. 12, s. 3, *part.*

Form of notice of trial.

572. Notice of trial shall state the place and day for which it is to be entered for trial, and shall be given before entering the action for trial. It may be in the form No. 12 in the schedule to these rules, with such variations as circumstances may require. R.S.M. c. 40, r. 552.

Ordinary notice ten days.

Short notice five days.

573. Ten days' notice of trial shall be given, unless the party to whom it is given has consented to take short notice of trial, and shall be sufficient in all cases, unless otherwise ordered by the court or a judge. Short notice of trial shall be five days' notice. R.S.M. c. 40, r. 553.

Notice of trial at bar.

574. Notice of a trial at bar shall be given to the prothonotary before giving notice of trial to the party. R.S.M. c. 40, r. 554.

Entry for trial.

575. After notice of trial is given, either party may enter the action for trial. If both parties enter the action for trial at the same sittings, it shall be tried in the order of the plaintiff's entry. R.S.M. c. 40, r. 555.

Record.

576. On or before the third day before the day for holding the court at which the action is to be tried, the party entering the action for trial shall deliver to the proper officer one copy of the whole of the pleadings and particulars in the action for the use of the judge at the trial, and such copy shall be certified as a true copy by the officer having charge of the pleadings and particulars filed, and shall be called the "record." The officer shall thereupon enter the action for trial. 10 Ed. 7, c. 17, s. 11.

Withdrawal of record.

577. Where an action has been entered for trial, it may be withdrawn by either the plaintiff or the defendant, upon producing to the proper officer a consent in writing, signed by the parties, but not otherwise except by order. R.S.M. c. 40, r. 559.

Actions not tried.

578. Actions not tried or disposed of, after being once entered for trial, shall remain for trial, subject to the provisions of rule 577, but (except in case of adjournment to a specified day) shall not be heard at any subsequent sittings unless and until a fresh notice of trial be given for such sittings by one of the parties. R.S.M. c. 40, r. 560.

Non-appearance of defendant.

579. If, when an action is called on for trial, the plaintiff appears and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him. R.S.M. c. 40, r. 561.

Non-appearance of plaintiff.

580. If, when an action is called on for trial, the defendant appears and the plaintiff does not appear, the defendant, if he has no counterclaim, shall be entitled to judgment dismissing the action; but if he has a counterclaim he may prove such claim so far as the burden of proof lies upon him. R.S.M. c. 40, r. 562.

Setting aside judgment by default at trial.

581. Any verdict or judgment obtained, where one party does not appear at the trial, may be set aside by the court, or by a judge in court, or by the judge at the sittings, upon such terms as may seem fit. R.S.M. c. 40, r. 663.

Non-suit, effect of.

582. Any judgment of non-suit, unless the court or a judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but in case of mistake, surprise, accident or otherwise, any judgment of non-suit may be set aside on such terms, as to payment of costs and otherwise, as to the court or a judge may seem just. R.S.M. c. 40, r. 665.

Judgment of non-suit where jury disagree.

583. In any case where at the trial the jury disagree and find no verdict, the court may, notwithstanding such disagreement, give judgment of non-suit. R.S.M. c. 40, r. 667.

Witness may be put out of court.

584. The judge at the trial may, at the request of either party, cause some or all of the witnesses to be removed from the court during the trial and any party to the cause or his solicitor, intending or subpœnaed to give evidence, may be so ordered to retire for the whole or a part of the time of

Penalty for returning without leave.

such trial; or the judge may, instead, require the party intending to give evidence for himself to be examined before his other witnesses; and any such witness who returns to the court, without leave, shall be liable to be punished in such manner as to the judge may seem proper; and the judge may, in his discretion, exclude the testimony of any witness who returns to or remains in the court without leave of the judge. R.S.M. c. 40, r. 563.

Evidence omitted by accident or mistake, how supplied.

585. Where, through accident, inadvertence or mistake, the absence of a witness or document, or other cause, a party omits or fails to prove some fact material to his case, the judge may proceed with the trial, subject to such fact being afterwards proved at such time, and subject to such terms and conditions, as to costs and otherwise, as the judge shall direct; and, if the case is being tried by a jury, the judge may direct the jury to find a verdict as if such fact had been proved, and the verdict shall take effect on such fact being afterwards proved as directed; and, if not so proved, judgment is to be entered for the opposite party, unless the court or a judge otherwise directs. This rule shall not apply to an action for libel. R.S.M. c. 40, r. 564.

Rule not to apply to action for libel.

Counsel at trial to make admissions.

586. The judge at any trial may call upon counsel for the different parties to admit such of the matters and allegations in the pleadings of the opposite party or parties as counsel knows or can readily ascertain to be true, and, in case of refusal or neglect to make such admission, the judge shall have power to order the party or parties whose counsel so neglected or refused to make admissions, or to order such counsel personally, to pay all costs occasioned by such neglect or refusal. 7-8 Ed. 7, c. 12, s. 8.

Penalty in costs for neglect or refusal.

Costs of protests, etc., recoverable.

587. In an action brought to recover the amount of any bill, draft, order or promissory note, and the damages and interest, the expenses of noting and protesting, and all other charges and postages incurred thereon, it shall not be necessary to specially claim such damages, interest, expenses and charges, but the same shall be allowed to the plaintiff at any trial, reference or assessment of damages, as if the same had been specially claimed. R.S.M. c. 40, r. 565.

Assessment of damages in respect of continuing cause of action.

588. Damages in respect of any continuing cause of action shall be assessed down to the time of the assessment. R.S.M. c. 40, r. 566.

Adjournment of trial.

589. The judge, if he thinks it expedient in the interest of justice, may postpone or adjourn the trial for such time and upon such terms (if any) as he shall think fit. R.S.M. c. 40, r. 567.

Judge may direct entry of judgment, adjourn or reserve judgment.

590. Upon the trial of an action, the judge may, at or after the trial, direct that judgment be signed and entered for any or either party, or adjourn the case for further consideration, or may reserve his judgment. R.S.M. c. 40, r. 568.

Exhibits to be marked.

591. Exhibits put in at the trial are to be marked thus: "In the King's Bench (*short title*). This exhibit (the property of) is produced by the plaintiff (*or* defendant C., *as the case may be*), this day of , 19 . A.B., Registrar" (Deputy Clerk *or* Deputy Registrar). R.S.M. c. 40, r. 569.

Evidence oral or documentary cannot be withdrawn without leave.

592. Where a party or witness is examined at the trial, or a document is put in as evidence and marked by the registrar, deputy clerk or deputy registrar, the deposition of the party or witness so examined, or the document so put in, is not to be withdrawn as evidence without the leave of the court. R.S.M. c. 40, r. 570.

Where judgment reserved exhibits to be left with registrar, *and al.*

593. Where judgment is reserved, the exhibits used at the trial shall be deposited with the registrar, deputy clerk or deputy registrar for the use of the court, and shall not be delivered out without order or consent of parties. A receipt shall be deposited with the proper officer by any party taking out an exhibit. R.S.M. c. 40, r. 571.

Solicitor may be mulcted in costs for a non-attendance delaying trial.

594. Where, upon the trial of an action, it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally or by some person in his behalf, or having omitted to deliver any paper necessary for the use of the court, and which according to its practice ought to have been delivered, such solicitor shall personally pay to the parties such costs as the court thinks fit to award. R.S.M. c. 40, r. 572.

Entry of findings.

595. The registrar, deputy clerk or other officer present at the trial shall enter all such findings of fact as the judge may at the trial direct to be entered, and the directions, if any, of the judge as to judgment, and the certificates, if any, granted by the judge, such entry to be made in a book to be kept for the purpose, and also to be endorsed on the record. R.S.M. c. 40, r. 573.

Certificates to sign judgment.

596. The said endorsement, or the certificate of the said officer, or the certificate of the judge, shall be a sufficient authority to the proper officer to sign judgment accordingly. R.S.M. c. 40, r. 574.

Delivery of record to solicitor after judgment.

597. The registrar, deputy clerk or other officer present at the trial shall, after judgment has been given, or, in jury cases, after the time for moving for a new trial has expired, deliver to the solicitor of the party entitled thereto any record in his custody, upon getting a receipt for the same. R.S.M. c. 40, r. 575.

Vexatious Defences in Actions to Recover Land.

Notice to defendant to show legal right to possession of land.

598. It being desirable, in actions to recover land brought against persons who are merely intruders, not to prevent plaintiffs from recovering land to which they have just claim, on account of some want of technical form in their title, or some imperfection not affecting the merits of the case, and of which mere strangers to the title, having no claim or color of legal claim to the possession, should not be permitted to take advantage, the plaintiff or his solicitor, in any action to recover land, may serve a notice upon the defendant or his solicitor in words or to the effect following: "Take notice that I claim the premises for which this action is brought as the bona fide purchaser thereof from A. B. (*or as the case may be*), and that you will be required to show upon the trial of this cause what legal right you have to the possession of the premises." R.S.M. c. 40, r. 576.

Formal defects in plaintiff's title not to defeat action.

599. If, upon the trial of such action, the evidence of title given by the plaintiff satisfies the court, and the jury (if the case is tried by a jury), that he is entitled in justice to be regarded as the proprietor of the land or is entitled to the immediate possession thereof for any term of years, but that he cannot show a perfect legal title by reason of some want of legal form in some instrument produced, or by reason of the defective registration of some will or instrument produced, or for any cause not within the power of the plaintiff to remedy by using due diligence, the judge, or the jury under the direction of the court, may find a verdict for the plaintiff, unless the defendant or his counsel, upon being required by the other party so to do, gives such evidence of title as shows that he is the person legally entitled, or that he bona fide claims to be the person legally entitled to the land, by reason of the defect in the title of the plaintiff, or that he holds, or bona fide claims to hold, under the person so entitled. R.S.M. c. 40, r. 577.

Verdict in such cases to be endorsed as rendered under the foregoing rules.

600. Whenever a verdict or judgment is rendered or given under the authority of the foregoing provisions, it shall be endorsed as rendered or given under the two last preceding rules, and it shall be stated in the judgment to

have been so given; and in any action thereafter brought for the mesne profits, such judgment shall not be evidence to entitle the plaintiff to recover. R.S.M. c. 40, r. 578.

Protection of Defendant in case of Erroneous Survey.

Allowance to defendant for improvements.

601. If an action to recover land is brought against any person who, after any line or limit has been established according to law, is found, in consequence of unskilful survey, to have made improvements on lands not his own, the judge before whom such action is tried shall assess, or direct the jury to assess, damages for the defendant for any loss he may sustain in consequence of any improvements made before the commencement of such action, and also assess, or direct the jury to assess, the value of the land to be recovered; and if the verdict or finding be for the plaintiff, no writ of possession shall issue until the plaintiff has tendered or paid the amount of such damages, or has offered to release the said land to the defendant, provided the defendant, within such time as the trial judge shall fix, pays or tenders to the plaintiff the value of the land so assessed.

Relief extended to subsequent purchasers.

(2) The same or similar relief may be given to any person claiming under the person who has made such improvements. R.S.M. c. 40, r. 579; 1 Geo. 5, c. 14, s. 1.

When defendant to obtain costs.

602. In all cases in which the judge or the jury before whom any action of ejectment is tried assess damages for the defendant, as provided in the last preceding rule, for improvements made upon land not his own in consequence of unskilful survey, and where it satisfactorily appears that the defendant does not contest the plaintiff's action for any other purpose than to obtain the value of the improvements made upon the land previous to the alteration and establishment of the lines according to law, the judge before whom such action is tried shall certify such fact upon the record, and thereupon the defendant shall be entitled to judgment for the costs of the defence:

Defendant to give notice to plaintiff.

Provided that the defendant, before entering his statement of defence, shall have given notice in writing to the plaintiff, or to his attorney named on the statement of claim, of the amount claimed for such improvements, and that on payment of such amount the defendant or person in possession would surrender the possession to the plaintiff, and that the said defendant did not intend at the trial to contest the title of the plaintiff; and if on the trial it be found that such notice was not given as aforesaid, or if there be assessed for the defendant a less amount than that claimed in

the notice, or if it be found that the defendant had refused to surrender possession of the land after tender made of the amount claimed, then and in any such case the judge shall not certify and the defendant shall not be entitled to the costs of the defence, but shall pay costs to the plaintiff; and upon the trial of any cause after such notice, no evidence shall be required to be produced in proof of the title of the plaintiff.

(2) This rule shall apply in case the defendant is a person claiming under the person who has made such improvements. R.S.M. c. 40, r. 580; 1 Geo. 5, c. 14, s. 2.

Improvements under Mistake of Title.

Relief of persons making improvements under mistake of title.

603. In every case in which a person makes lasting improvements on land under the belief that the land is his own, he or his assigns shall be entitled to a lien upon the same to the extent of the amount by which the value of the land is enhanced by such improvements, or shall be entitled or may be required to retain the land if the court is of opinion or requires that this should be done, according as may, under all the circumstances of the case, be most just, making compensation for the land if retained, as the court may direct. 10 Ed. 7, c. 17, s. 13.

Inspection of Property.

Judge may inspect property.

604. It shall be lawful for any judge by whom any cause or matter may be heard or tried with or without a jury, or before whom any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein. R.S.M. c. 40, r. 581.

Inspection by jury, parties or witnesses.

605. Either party in an action may apply to the court or a judge for an order for the inspection by the jury, or by himself or by his witnesses, of any real or personal property, the inspection of which may be material to the proper determination of the question in dispute; and the court or a judge may make such order upon such terms, as to costs and otherwise, as the court or judge may think fit. R.S.M. c. 40, r. 582.

Party requiring view to deposit with sheriff sum to pay expenses.

606. Upon any application for a view by a jury, there shall be an affidavit stating the place at which the view is to be made and the distance thereof from the place of trial. The applicant shall pay into the hands of the sheriff the amount which the court or judge may fix as the necessary expenses of carrying out the order, including compensation of jurymen for the extra time occupied thereby. The sheriff

shall pay the expenses, other than jurymen's fees, and return the balance of the money so paid in to the Provincial Treasurer. In case the presiding judge so orders, the party paying in the above moneys, if successful, may tax the same as costs in the cause against the opposing party. R.S.M. c. 40, r. 583.

Division VIII.

JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.

DEFAULT OF DEFENCE.

Proceedings in default of defence.

607. Where any defendant fails to file his statement of defence within the time limited and the plaintiff is desirous of proceeding upon default of defence, he shall, before taking such proceeding upon default, file an affidavit of service, or the undertaking of the defendant's solicitor accepting service and agreeing to file a statement of defence, with an affidavit verifying the undertaking filed, as the case may be. No affidavit that a defence has not been filed shall be necessary. R.S.M. c. 40, r. 584.

Proceedings when some defendants do not defend or their defences are struck out.

608. Whether there is one defendant only, or more defendants than one, judgment may be signed by default against such as do not defend or whose defences may have been struck out, without prejudice to the right of the plaintiff to proceed with the action against any other defendant or defendants, but it shall be lawful for the court or a judge to set aside or vary such judgment, upon such terms as may seem just. 1 Geo. 5, c. 14, s. 4.

Judgment where claim wholly or partly for debt or liquidated demand.

609. Where the whole or a part of the plaintiff's claim is a demand which comes within the classes of cases mentioned in paragraph (*d*) of rule 300, the judgment by default as to such demand shall be a final judgment for the amount of such demand and interest (if claimed) and taxed costs, and execution may be issued forthwith therefor. Such judgment and execution shall not prejudice the plaintiff's right to proceed as in the next rule provided or against any defendant who has filed a statement of defence. R.S.M. c. 40, r. 586.

Judgment where claim or some part not for debt or liquidated demand.

610. Where the whole or part of the plaintiff's claim is such a demand as does not come within the classes of cases mentioned in paragraph (*d*) of rule 300, the judgment by default as to such demand shall be interlocutory only. The plaintiff may, on the expiration of ten days from the sign-

ing of such interlocutory judgment, set down the action for any sitting of the court or a judge for the hearing of court motions, whether in the place named in the statement of claim for the trial of the action or at the City of Winnipeg, and at the said sitting the plaintiff's claim may be disposed of, and the court at such sitting shall have all the powers, in reference to the disposition of the plaintiff's claim, which were formerly possessed in determining actions or assessments at law or making decrees in suits in equity, as well as the powers conferred by this Act, or the plaintiff may, on the expiration of such ten days, set down the action for trial at any sitting of the court for the trial of causes at the place named in the statement of claim.

(2) Proceeding upon this rule shall not prejudice the plaintiff's right to proceed under the next preceding rule also, if applicable, or to proceed against any defendant who has filed a statement of defence. R.S.M. c. 40, r. 587; 7-8 Ed. 7, c. 12, s. 13.

Last three rules not to apply to action for land except as afterwards provided.

611. The last preceding three rules shall not apply to an action for the recovery of land, except as hereinafter provided. R.S.M. c. 40, r. 588.

Provisions of Imp. Act 8 and 9 Wm. 3, c. 11, to remain in force.

612. Notwithstanding anything in these rules contained, the provisions of the Act of the Parliament of Great Britain, passed in the session held in the eighth and ninth years of the reign of King William the Third, entitled "An Act for the better preventing frivolous and vexatious suits," as to the assignment or suggestion of breaches, or as to judgment, shall continue in force in Manitoba; but the procedure provided in this Act shall be substituted for the procedure provided in the said Act of the Parliament of Great Britain. R.S.M. c. 40, r. 589.

Recovery of Land.

Judgment by default in action for land.

613. If no defence is filed in an action for the recovery of land within the time limited, or if statement of defence is filed but the defence is limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the statement of claim shall recover possession of the land, or of the part thereof to which the defence does not apply. R.S.M. c. 40, r. 590.

Assessment for damages in action for land.

614. Where the plaintiff has claimed for mesne profits, arrears of rent or damages for breach of contract, in a statement of claim for the recovery of land, he may enter judgment, as in the last preceding rule mentioned, for the land, and may proceed as in the other preceding rules as to such other claim so made. R.S.M. c. 40, r. 591.

Costs where adverse possession.

615. If no statement of defence is filed in an action for recovery of land, and in case the plaintiff files the statement of claim, and an affidavit showing that the statement of claim has been properly served, and an affidavit that the party so served was at the time of the issue or service of the statement of claim in actual adverse possession of the land, or instead of such affidavits obtains and files an order of the court or judge allowing him to sign judgment as well for his costs as for recovery of possession of the land, the plaintiff may at once sign judgment that the person whose title is asserted in the statement of claim shall recover and have possession of the land, and also his costs (to be taxed in the ordinary way), and the plaintiff may forthwith issue execution thereupon; and the judgment may be in the words, or to the effect of form No. 119 in the schedule to these rules, with the words following or words to the same effect added thereto, namely, "and do also recover against the said C. D. (*the defendant*) $ for his costs of suit." R.S.M. c. 40, r. 592.

Form of judgment.

MORTGAGE ACTIONS.

Motion for judgment in undefended mortgage action where defendants or some of them are infants.

616. In an ordinary action for redemption, foreclosure or sale, where the defendants, or some of the defendants, are infants and no defence is set up, the action is not to be set down to be heard in court by way of motion for judgment; but after the statements of defence are filed, or after the time for filing same has expired, the plaintiff is to file affidavits of the due execution of the mortgage, and of such other facts and circumstances as entitle him to a judgment, and is to apply for the judgment in chambers, upon notice to the guardian *ad litem* of the infants and the other defendant's solicitor, if any.

Judgment on praecipe in undefended mortgage actions.

(2) Where the defendant by his statement of defence admits the execution of the mortgage and other facts, if any, entitling the plaintiff to a judgment, or where the defendant disclaims any interest in the mortgaged premises, or where no statement of defence is filed, the plaintiff is, on praecipe to the prothonotary or deputy clerk of the Crown and pleas in whose office the statement of claim was issued, to be entitled to judgment, including, where prayed for, an order against the defendant for immediate payment and for the immediate delivery of possession.

(3) The reference in such cases, when required by the practice, shall be to the master or the local master.

(4) Such a judgment may be granted notwithstanding that the defendant has been served by publication or otherwise, or is a corporation; provided, always, that, when the statement of claim has not been personally served, the claim of the plaintiff shall be duly verified by affidavit. R.S.M. c. 40, r. 593.

CONFESSION OF ACTION OR JUDGMENT.

Defendants may confess action to recover land as to the whole or part of the property.

617. A sole defendant or all the defendants, in an action for the recovery of land, may confess the action as to the whole or a part of the property, by giving the plaintiff a notice entitled in the court and cause, signed by the defendant or defendants, and with the signature attested by his or their solicitor; and thereupon the plaintiff may forthwith sign judgment for the recovery of possession and costs, in the words or to the effect of form No. 120 in the schedule to these rules, and issue execution thereon. R.S.M. c. 40, r. 594.

Confession of action by one of several defendants defending for a part for which others do not defend.

618. If one of several defendants who defends separately for a portion of the property for which the other defendant or defendants do not defend desires to confess the plaintiff's title to such portion, he may give a like notice to the plaintiff; and thereupon the plaintiff may forthwith sign judgment and issue execution for the recovery of possession of such portion of the property, and for the costs occasioned by the defence relating to the same, and the action may proceed as to the residue. R.S.M. c. 40, r. 595.

Confession where others defend as to same part.

619. If one of several defendants who defends separately in respect of property for which other defendants also defend desires to confess the plaintiff's title, he may give a like notice thereof; and thereupon the plaintiff may sign judgment against such defendant for the costs occasioned by his defence, and may proceed in the action against the other defendants to judgment and execution. R.S.M. c. 40, r. 596.

Except as provided in 3 preceding rules, every confession of judgment, *cognovit actionem, relicta verificatione*, etc., ineffectual to support judgment.

620. Except as provided in the three last preceding rules, every confession of judgment or action, *cognovit actionem, relicta verificatione* and warrant of attorney to confess judgment shall be ineffectual to support a judgment in an action.

Rule not to apply to confessions in court or upon trial.

(2) This rule shall in no case be held to apply to confessions of judgment or admissions by counsel or by parties in court or upon a trial or a proceeding in the nature of a trial, or upon an assessment or reference. R.S.M. c. 40, r. 597.

621. In no case shall any judgment be signed in an action until a statement of claim has been duly issued and served therein, and the time allowed by rule 182 or rule 183 for filing a statement of defence, has expired. A judgment signed in contravention of this rule and all proceedings thereupon or thereunder shall be void, but a judge shall, nevertheless set aside the same upon application in chambers. R.S.M. c. 40, r. 598. Judgment not to be signed until statement of claim duly issued and served and time for filing defence expired.

622. Hereafter no judgment shall be liable to be set aside or declared void on the ground that it is fraudulent against creditors, except by action for the benefit of the plaintiff and other creditors of the party against whom judgment is recovered, notwithstanding that the plaintiff attacking the same be a judgment or execution creditor of such party. Any moneys or property realized under such action shall only be distributed proportionately by the court among such creditors as shall choose to come in and become parties thereto according to the former practice of the Court of Queen's Bench on its equity side, as in case of a bill by a plaintiff who was not a judgment or execution creditor. R.S.M. c. 40, r. 599. Action to set aside judgment as fraudulent against creditors must be for benefit of plaintiff and other creditors.

623. The last preceding rule shall not apply where the validity of any judgment is called in question upon interpleader proceedings taken at the instance of a sheriff. R.S.M. c. 40, r. 600. Cases where preceding rules shall not apply.

INTERIM ALIMONY.

624. In an alimony action, the defendant may, at any time before the statement of defence is due, give notice in writing that he submits to pay the interim alimony and costs, as demanded by the plaintiff in the statement of claim; and in that case no order is to be taken out until there has been a default in payment; and in case of default, affidavits being filed verifying the endorsement and notice and the default, the order is to be issued on præcipe No application for interim alimony shall be made until the time for delivering the defence has expired. R.S.M. c. 40, r. 601. Submission to pay interim alimony.

LEAVE TO SIGN JUDGMENT.

625. Where a defendant files a statement of defence in an action in which the plaintiff's claim is such a demand as comes within the classes of cases mentioned in paragraph (*d*) of rule 300, or in which the plaintiff's claim is for the recovery of land, and the plaintiff is not entitled to a judgment or order under the preceding rules, he may, on an affi- Motion for leave to sign judgment.

davit made by himself, or by any other person who can swear positively to the debt or cause of action, verifying the cause of action and stating that in his belief there is no defence to the action, serve the defendant with a notice of motion to show cause before a judge why the plaintiff should not be at liberty to sign final judgment for the amount claimed in the statement of claim, together with interest, if any, or for the recovery of the land with or without rent or mesne profits as the case may be, and costs. A copy of the affidavit shall accompany the notice of motion. The judge may thereupon, unless the defendant, by affidavit or otherwise, satisfies him that he has a good defence to the action on the merits, or discloses such facts as may be deemed sufficient to entitle him to defend the action, make an order empowering the plaintiff to sign judgment accordingly. R.S.M. c. 40, r. 602.

How defendant to show cause to motion.

626. The defendant may show cause against such application by affidavit, or by offering to bring into court the sum claimed. In such affidavit he shall state whether the defence he alleges goes to the whole or to part only, and if so, to what part, of the plaintiff's claim. The judge may, if he thinks fit, order the defendant to attend and be examined upon oath, or to produce any books or documents, or copies of or extracts therefrom. R.S.M. c. 40, r. 603.

Defence shown as to part.

627. In any case, if it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim or that any part of his claim is admitted to be due, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any, as to suspending execution, or the payment of any amount levied or any part thereof into court by the sheriff, the taxation of costs, or otherwise, as the judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim. R.S.M. c. 40, r. 604.

Case of several defendants, some entitled to defend, others not.

628. If it appears to the judge that any defendant has a good defence to the action, or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former. R.S.M. c. 40, r. 605.

629. Leave to defend may be given unconditionally, or subject to such terms as to giving security or otherwise, as the court or judge may think fit. R.S.M. c. 40, r. 606. Leave to defend may be absolute or conditional.

630. Where, on any motion under rule 625, it appears that the defence disclosed is substantially only as to the amount recoverable, the judge may pronounce a judgment or order directing a reference to a master, and may either pronounce such judgment as may be proper to take effect on the confirmation of the report, or may reserve further directions and questions of costs for the consideration of the court or a judge after the report is made. 5-6 Ed. 7, c. 17, s. 2. Reference to master to settle amount of claims when disputed.

MOTION FOR JUDGMENT.

631. Unless otherwise provided, the judgment of the court shall be obtained by motion for judgment. R.S.M. c. 40, r. 607. Judgment obtained by motion.

632. At the trial of any action no party shall be entitled to judgment on the grounds of his pleading being true, if the facts proved are not sufficient in point of law to entitle him to judgment. R.S.M. c. 40, r. 608. No judgment at trial on pleadings, if facts proved not sufficient.

633. If the title of the plaintiff in an action to recover land, as alleged in the statement of claim, existed at the time of the service thereof, but had expired before the trial, the plaintiff shall, notwithstanding, be entitled to judgment, according to the fact, that he was entitled at the time of serving the statement of claim, and to his costs of the action. R.S.M. c. 40, r. 609. Judgment where title of plaintiff to recover land existed when statement of claim served but has expired before trial.

634. When the evidence has been taken by affidvait or under a reference, either party may set down the cause, by way of motion for judgment thereon, after the expiration of ten days from the completion of the evidence. The motion shall be to a sitting of the court for the trial of causes, and ten days' notice thereof shall be given as in cases of notice of trial. R.S.M. c. 40, r. 610. Motion for judgment when evidence taken by affidavit or under reference.

635. No action shall, except by leave of the court or a judge, be set down on motion for judgment after the expiration of one year from the time when the party seeking to set down the same first became entitled to do so. R.S.M. c. 40, r. 611. No motion for judgment after one year, except by leave.

Motion for judgment after issues have been tried.

636. Where issues have been ordered to be tried, or issues or questions of fact to be determined, in any manner, and there is no direction of a court or a judge for the entry of judgment, the plaintiff may set down the action on motion for judgment as soon as such issues or questions have been determined. If he does not so set it down, and give notice thereof to the other parties, within fourteen days after his right so to do has arisen, then, after the expiration of such fourteen days, any defendant may set down the action on motion for judgment, and give notice thereof to the other parties. R.S.M. c. 40, r. 612.

After some of the issues have been tried.

637. Where issues have been ordered to be tried, or issues or questions of fact to be determined, in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the court or a judge for leave to set down the action on motion for judgment, without waiting for such trial or determination, and the court or judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact. R.S.M. c. 40, r. 613.

On motion for judgment or new trial, final judgment may be given.

638. Upon a motion for judgment, the court may, if satisfied that it has before it all the material necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly; or may, if it is of opinion that it has not sufficient material before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit. R.S.M. c. 40, r. 614.

Summary relief on motion upon admissions in pleadings, etc.

639. Any party to an action may at any stage thereof apply to the court or a judge for such order as he may, upon any admissions of fact in the pleadings or in the examination of any other party, be entitled to; and it shall not be necessary to wait for the determination of any other question between the parties; or he may so apply where the only evidence consists of documents and such affidavits as are necessary to prove their execution or identity without the necessity of any cross-examination; or he may so apply where

infants are concerned, and evidence is necessary so far only as they are concerned for the purpose of proving facts which are not disputed.

(2) The foregoing rules shall not apply to such applications, and any such application may be made by motion as soon as the right of the party applying to the relief claimed has appeared from the pleadings.

(3) The court or a judge may, on any such application, give such relief, subject to such terms, if any, as such court or judge may think fit. R.S.M. c. 40, r. 615.

Pending application may be turned into motion for judgment.

640. Where it is made to appear to the court or a judge, on the hearing of any application which may be pending before the court or judge, that it will be conducive to the ends of justice to permit it, the court or judge may direct the application to be turned into a motion for judgment, or a hearing of the cause or matter; and thereupon the court or judge may make such order as to the time and manner of giving the evidence in the cause or matter, and with respect to the further prosecution thereof, as the circumstances of the case may require; and upon the hearing it shall be discretionary with the court or judge to either pronounce a judgment or make such order as the court or judge deems expedient. R.S.M. c. 40, r. 616.

Motion on further directions.

641. Where further directions have been reserved, if the party having the conduct of the action does not set the same down by way of motion for judgment on further directions, and serve notice thereof within fourteen days after the confirmation of the master's report, any other party affected by the report may set the same down and serve notice of the motion. R.S.M. c. 40, r. 617.

SETTLEMENT OF JUDGMENTS AND ORDERS.

Settling judgments.

642. All judgments delivered in Winnipeg, or elsewhere than at the place of trial, shall be settled by the registrar, unless a contrary direction be given by a judge.

(2) All judgments delivered at the place of trial, other than Winnipeg, shall be settled, when necessary, by the deputy registrar or deputy clerk of the Crown and pleas at the place of trial, unless a contrary direction be given by a judge.

(3) By the direction of a judge any such judgment may be settled by himself or any other officer.

(4) When a judgment is not settled by a judge, any party affected may, upon notice to the other parties interested, apply to a judge to vary the minutes. R.S.M. c. 40, r. 618.

Appointment to settle judgment.

643. No notice of settling minutes, or passing a judgment or order, is to be given, unless by direction of the officer by whom the judgment or order is to be settled, nor until the proposed minutes of the judgment or order have been prepared by or delivered to the officer by whom the same are to be settled; the notice (where the officer deems a notice proper) is to be by an appointment signed by him, a copy whereof is to be served; the proposed minutes shall remain in his office for inspection until settled or passed, and any party may take a copy thereof. R.S.M. c. 40, r. 619.

Procedure where party makes default.

644. Where a notice is given to settle minutes or to pass a judgment or order, and the party served attends thereon, but the party giving the notice does not attend, or is not prepared to proceed, the officer settling the judgment or order may proceed *ex parte* to settle the minutes or pass the judgment or order, or may in his discretion order the party giving the notice to pay to the other party the costs of his attendance; or if a party served asks for delay, the officer may grant the delay on such terms as he thinks reasonable as to payment of costs or otherwise. R.S.M. c. 40, r. 620.

SIGNING AND ENTRY OF JUDGMENT AND ORDERS.

Signing judgment.

645. Every judgment, whether pronounced by the court or signed by default, shall be signed by the prothonotary or deputy clerk of the Crown and pleas, as the case may be. R.S.M. c. 40, r. 621.

Date of judgment pronounced by court.

646. Every judgment pronounced by the court shall be dated as of the day on which judgment is pronounced, and shall take effect from that date, unless otherwise directed by the court or a judge, and shall also bear upon its face the date upon which it is signed. R.S.M. c. 40, r. 622.

Date of default judgment.

647. Every judgment signed by default shall be dated on the day on which it is signed. R.S.M. c. 40, r. 623.

Forms of judgment.

648. The forms in the schedule to these rules may be used for judgments, with such variations as circumstances may require. R.S.M. c. 40, r. 624.

649. In all cases the judgment pronounced by the court may be signed and entered forthwith, unless otherwise ordered. R.S.M. c. 40, r. 625. Judgment may be signed immediately after pronounced.

650. Where it is provided that any judgment may be signed upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced; and if the same be regular and contain all that is by law required, he shall enter judgment accordingly. R.S.M. c. 40, r. 626. Signing judgment upon filing of affidavit.

651. Where any judgment may be signed pursuant to any order or certificate, or to the return to any writ, the production of such order or certificate, sealed with the seal of the court, or of such return, shall be a sufficient authority to the officer to sign judgment accordingly. R.S.M. c. 40, r. 627. Signing judgment on order.

652. In all cases where a person or party obtains a judgment or order from the court or a judge, or from a master or referee in chambers, upon condition, and fails to perform or comply with the condition, he is to be considered to have waived or abandoned the judgment or order, as far as the same is beneficial to himself, and any other party or person interested in the matter, on the breach or non-performance of the condition, may either take such proceedings as the judgment or order in such case may warrant, or such proceedings as might have been taken if the judgment or order had not been made. R.S.M. c. 40, r. 628. Conditional orders.

653. It shall not be necessary in any judgment or order to reserve liberty to apply, but any party may apply to the court from time to time as he may be advised; and where any judgment or order directs the payment of money out of court, it shall not be necessary to direct that a cheque be drawn for the purpose. R.S.M. c. 40, r. 629. Liberty to apply need not be reserved.

654. Every judgment shall be entered at full length in a book to be kept for that purpose. R.S.M. c. 40, r. 630. Entry of judgment.

655. No order of course, or order made in chambers, and no order obtained *ex parte* and not being of a special nature, is to be entered in full unless so directed by the court or judge; but this provision is not to be construed as applying to judgments, or to orders in the nature of judgments, or to final orders for sale or foreclosure, or to orders which by special or general order of the court or a judge are directed to be entered. R.S.M. c. 40, r. 631. Certain orders not to be entered.

Orders requiring entry.

656. Notwithstanding the provisions of the last preceding rule, the following orders shall be entered in full,—

orders declaring persons lunatics;
orders for administration;
orders for partition;
orders for the sale of infants' estates;
orders for payment of money into or out of court;
orders for foreclosure or sale;
orders of revivor;
vesting orders. R.S.M. c. 40, r. 632.

Mode of entry.

657. The entering clerk is to note in the margin of the judgment or order book the day of entering a judgment or order, and is at the foot of a judgment or order to note the same date, and the book in which the entry has been made and the pages of such book. R.S.M. c. 40, r. 633.

FORM OF JUDGMENTS AND ORDERS, ETC.

General form of judgments for foreclosure or sale.

658. Judgments for foreclosure or sale, where a reference is required, are, after the proper recitals hitherto in use, to direct, in general terms, that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for redemption or foreclosure (*or* for redemption or sale, *as the case may be*), and that for these purposes the cause is referred to (*naming the master*); and a judgment so expressed is to be read and construed as if the same set forth the particulars contained in rules 118 to 131 and rule 252. R.S.M. c. 40, r. 634.

Paragraphing judgments and orders

659. Judgments and orders are to be divided into convenient paragraphs, and such paragraphs are to be numbered consecutively; and where accounts are directed to be taken, or inquiries to be made, the direction in that behalf may be in the form No. 139 in the schedule to these rules, with such variations as the circumstances of the case require. R.S.M. c. 40, r. 635.

Statement of sums of money.

660. In all judgments and orders, sums are to be stated in dollars and cents. R.S.M. c. 40, r. 636.

Form of judgments and orders.

661. Every judgment or order shall show on its face the day of the week and month on which it was given or made, and (except judgments signed by default or upon an order for leave to sign a judgment and orders of course) shall show the name or names of the judge or judges who gave or made the same. R.S.M. c. 40, r. 637.

VARIATION OF JUDGMENTS AND ORDERS.

Correcting clerical errors in judgments and orders.

662. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court or a judge on motion without an appeal. R.S.M. c. 40, r. 638.

Amendment.

663. Where a judgment or order as drawn up requires amendment in any other particular on which the court did not adjudicate, the same may be amended in open court on petition without an appeal, if under all the circumstances the court deems fit. R.S.M. c. 40, r. 639.

Petition to vary, reverse or impeach judgment or order.

664. Any party entitled to the variation or reversal of a judgment or order, upon the ground of matter arising subsequent to the making thereof, or subsequently discovered, or to impeach a judgment or order on the ground of fraud, or to suspend the operation of a judgment or order, or to carry a judgment or order into operation, is to proceed by petition in the cause, praying the relief which is sought and stating the grounds upon which it is claimed. R.S.M. c. 40, r. 640.

Verification and service of petition.

665. The petition is to be verified by affidavit, and served upon the solicitors of all parties interested and, in case a party has no solicitor, then upon the party. R.S.M. c. 40, r. 641.

Endorsement on petition.

666. Upon the copy of the petition served is to be endorsed the following memorandum or notice: "If you do not appear on the petition, the court will make such order on the petitioner's own showing as shall appear just in your absence; and if this petition is served personally, you will not receive any notice of the future proceedings on the petition." R.S.M. c. 40, r. 642.

Hearing of petition.

667. Upon the hearing of the petition, the court may either make a final order, or direct the petition to stand over with liberty to the parties interested in sustaining the judgment or order to file a special answer to the same, and may make such order as to the production of further proof, and the manner thereof, and the further hearing of the petition, as the court deems meet. R.S.M. c. 40, r. 643.

Evidence necessary to reverse or vary upon new matter.

668. Where the reversal or variation of a judgment or order is sought upon new matter, such proof as would have been requisite upon a motion to file a bill of review must be supplied. R.S.M. c. 40, r. 644.

ENTRY OF SATISFACTION.

Satisfaction piece.

669. In order to acknowledge satisfaction of a judgment it shall be requisite only to produce a satisfaction piece in a form similar to the appropriate form in the schedule, and such satisfaction piece shall be signed by the party or parties acknowledging the same or their personal representatives, and their signatures shall be witnessed by some practising solicitor, expressly named by him or them, and attending at his or their request to inform him or them of the nature and effect of such satisfaction piece before the same is signed; which solicitor shall declare himself in the attestation thereto to be the solicitor for the person so signing the same, and state that he is witness as such solicitor (provided that a judge at chambers may make an order dispensing with such signature under special circumstances, if he thinks fit); and in cases where the satisfaction piece is signed by the personal representative of a party deceased, his representative character shall be proved by the production of the probate of the will, or of the letters of administration, to the officer in custody of the judgment. R.S.M. c. 40, r. 645.

Entry of satisfaction piece.

670. Every satisfaction piece shall be entered in the office where the judgment is entered. R.S.M. c. 40, r. 646.

VACATING REGISTRATION OF LIS PENDENS.

Order to vacate registration of lis pendens.

671. Where a certificate of lis pendens has been registered, and the plaintiff, or other party at whose instance the certificate was issued, does not in good faith prosecute the litigation, a judge of the Court of King's Bench may at any time during the litigation make an order vacating the registration of the certificate of lis pendens.

On terms in certain cases.

(2) Where a certificate of lis pendens has been registered, and the plaintiff's claim is not solely to recover land, or an estate, or interest therein, but is to recover a sum of money or money's worth which is chargeable on or payable out of the land, or some estate or interest therein, or for which he claims that the land or such estate or interest therein ought to be subjected to payment, or where a plaintiff claims land or some interest in land, and, in the alternative, damages or compensation in money or money's worth, a judge of the Court of King's Bench may at any time during the litigation make an order vacating the registration of the certificate of lis pendens, upon such terms as to giving security or otherwise as may be deemed just.

On any just ground.

(3) A judge of the Court of King's Bench may at any time order the registration of such certificate to be vacated upon any other just ground.

(4) On any application under this rule a judge of the Court of King's Bench may order any of the parties to the application to pay the costs of any of the other parties thereto, or may make any other order, with respect to costs, as under all the circumstances may appear to him just. Order as to costs.

(5) The order for vacating or annulling or refusing to vacate or annul the registration of a ceritficate of lis pendens shall be subject to appeal according to the practice of the Court of King's Bench in like cases, and the order for vacating or annulling such registration may be registered in the same manner as judgments and other orders affecting lands are registered, which registration may be made on or after the fourteenth day from the date of the order, unless a judge of the Court of King's Bench postpones or forbids the registration in the meantime. 5-6 Ed. 7, c. 17, s. 1. Order subject to appeal. Registration of vacating order.

Division IX.

APPEALS.

GENERALLY.

672. Save where in this Act or these rules or in any other statute specifically provided otherwise, every rule, order, decision, judgment, verdict or decree made, rendered, given or pronounced by a single judge at a trial, in court, in chambers, or upon any appeal, or otherwise howsoever, may be set aside, varied, altered or discharged, upon appeal to the Court of Appeal, which appeal may be made by motion without leave. R.S.M. c. 40, r. 647; 5-6 Ed. 7, c. 18, s. 7. Appeals from single judge.

673. Where, at or after the trial of an action by a jury, the judge has directed that any judgment be entered, any party may, without any leave reserved, apply to the Court of Appeal to set aside such judgment and to enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason of the judge having caused the judgment to be wrongly entered with reference to the finding of the jury upon the question so submitted to them. R.S.M. c. 40, r. 648; 5-6 Ed. 7, c. 18, s. 7. Appeal from judgment entered on findings of jury.

674. Where, at or after the trial of an action before a judge, the judge has given, made or pronounced any order, decision, verdict, judgment or decree, or has directed that any judgment, verdict or decree be made or entered, any party may, without any leave reserved, apply to the Court Appeal against verdict, judgment or decree of single judge.

of Appeal for a new trial, or to set aside, vary, alter or discharge such decision, order, verdict, judgment or decree, and to enter any other judgment or make any other decree, upon the ground that the finding of the judge is wrong. R.S.M. c. 40, r. 649; 5-6 Ed. 7, c. 18, s. 7.

Certain action not to prejudice right to appeal.

675. No party shall lose such right of appeal under the three last preceding rules by drawing up, issuing, obtaining, serving or entering any such rule, order, decision, judgment, verdict or decree. R.S.M. c. 40, r. 650.

Motion to Court of Appeal after trial by jury.

676. Where there has been a trial by jury any motion in reference thereto may be made by way of appeal, without leave, for the entry of any judgment or order which the trial judge below ought to have made. 10 Ed. 7, c. 17, s. 7.

Notice not to stay proceedings.

Judge may grant stay.

677. Notice of motion to the Court of Appeal shall not be a stay of proceedings, but a judge may grant a stay of proceedings in the action either at the trial or upon application thereafter. R.S.M. c. 40, r. 658; 5-6 Ed. 7, c. 18, s. 7.

Setting aside judgment by default.

678. Any judgment by default may be set aside by the court or a judge, upon such terms as to costs or otherwise as the court or judge may think fit. R.S.M. c. 40, r. 664.

APPEALS FROM CHAMBERS.

Appeals to single judge.

679. Any person affected by any order or decision of the referee in chambers, a master, a local judge or a local master, may appeal therefrom to a judge in chambers.

(2) Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the officer aforesaid had jurisdiction only by consent, or in which such officer exercised his discretion in making the order or giving the decision.

(3) The appeal shall be by motion, on notice served within six days after the order or decision complained of, or, in case of a report, at any time before the report becomes absolute, or in any case within such further time as may be allowed by a judge or by the officer aforesaid whose decision or order is complained of.

(4) The motion shall be made within sixteen days after the order or decision which is appealed against has been made or given, or within such further time as may be allowed as aforesaid.

(5) In case of an appeal from the order of a local judge or local master, the deputy clerk of the Crown and pleas shall, on præcipe, transmit to the proper officer of the court all documents filed in his office and required for the disposing of the appeal.

(6) The appeal shall be no stay of proceedings, unless so ordered by a judge or by the officer whose decision is complained of.

(7) The material used upon making the order appealed from may be used on the appeal without being refiled. R.S.M. c. 40, r. 682.

Further evidence may be received upon such appeals.

680. In all appeals to a judge in chambers, the judge appealed to shall have all the powers and duties as to amendment and otherwise of the officer appealed from, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination before the judge appealed to, or by affidavit, or by depositions taken before a special examiner or commissioner.

(2) Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. R.S.M. c. 40, r. 482.

APPEALS FROM TAXATION.

Review of taxation by judge.

681. Any party who may be dissatisfied with the certificate of a taxing officer, as to any item or part of an item which may have been objected to, may apply to a judge in chambers for an order to review the taxation as to such item or part of an item, and the judge may thereupon make such order as to the judge may seem just. R.S.M. c. 40, r. 684.

When appeal from taxing officer lies.

682. No appeal shall lie from the certificate of the taxing officer, unless a notice thereof is given within four days from the day of the date of the certificate and is brought on for argument within fourteen days from the said day. R.S.M. c. 40, r. 685.

Material upon appeal.

683. Such application shall be heard and determined by the judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof unless the judge otherwise directs. R.S.M. c. 40, r. 686.

Appeal by appointment pending taxation.

684. There may be an appeal by appointment, without other notice, from a taxing officer in Winnipeg to a judge, pending the taxation in any case. R.S.M. c. 40, r. 687.

Division X.

ENFORCEMENT OF JUDGMENTS AND ORDERS

EXECUTIONS.

Generally.

Interpretation. "Writ of execution." "Issuing execution against any person."

685. In these rules the term "writ of execution" shall include writs of *fieri facias*, sequestration and attachment, and all subsequent writs that may issue for giving effect thereto, and the expression "issuing execution against any person" shall mean the issuing of any such process against his person or property as under these rules shall be applicable to the case. R.S.M. c. 40, r. 688.

Writ of *fi. fa.*

686. Writs of *fieri facias* shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner as the like writs have heretofore been executed. R.S.M. c. 40, r. 689.

Writs of *ven ex.*

687. Writs of *venditioni exponas* may be issued and executed in the same cases and in the same manner as heretofore. R.S.M. c. 40, r. 690.

Writ of possession.

688. A writ of possession shall have the effect of a writ of assistance as well as of a writ of *habere facias possessionem*. R.S.M. c. 40, r. 691.

Suing out *fi. fa.*

689. Every person to whom any sum of money or any costs are payable under a judgment shall, immediately after the time when the judgment was duly entered, be entitled to sue out one or more writ or writs of *fieri facias* to enforce payment thereof, subject, nevertheless, as follows:—

(*a*) If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period;

(*b*) The court or judge at the time of giving judgment, or the court or a judge afterwards, may give leave to issue execution before, or may stay execution until, any time after, the expiration of such period. R.S.M. c. 40, r. 692.

Enforcement of order.

690. Every order of the court or a judge, whether in an action, cause or matter, may be enforced in the same manner as a judgment to the same effect. R.S.M. c. 40, r. 693.

Enforcing order for payment into court.

691. A judgment or order for the payment of money into court may be enforced by any mode by which a judgmen for that purpose may be enforced, and the person having the carriage of the judgment or order for the time being shall be deemed to be the person to receive payment for the purpose of enforcing the same. R.S.M. c. 40, r. 694.

Writ for recovery of land.

692. A judgment for the recovery, or for the delivery of the possession, of land may be enforced by writ of possession. R.S.M. c. 40, r. 695.

Writ of possession.

693. Where by any judgment any person therein named is directed to deliver up possession of any lands to some other person on, or at any specified time after, being served with the judgment, the person prosecuting the judgment shall, without any order for that purpose, be entitled to sue out a writ of possession, on filing an affidavit showing due service of the judgment and that the same has not been obeyed. R.S.M. c. 40, r. 696.

Writs for recovery of land, mesne profits and costs.

694. Upon judgment or order for recovery of any land and mesne profits or rents in respect of the premises claimed and costs, there may be either one writ or separate writs of execution for the recovery of possession, and for the mesne profits, rents and costs, at the election of the party entitled to recover the same. R.S.M. c. 40, r. 697.

Writ for specific delivery of goods.

695. In all cases where specific goods, chattels, deeds, securities, valuable papers, or any property other than land or money, are demanded in an action, and the plaintiff has judgment to recover the same or their value, the court or a judge shall at the request of the plaintiff, where a recovery or delivery of the property in specie is desired, direct a writ of execution to issue on the judgment, commanding the defendant specifically to deliver up forthwith the property demanded, and, in case of refusal, that the defendant be arrested and detained in prison until he complies with the terms of the writ, and also that the goods and chattels of the defendant, to double the value of the property in question, be taken and kept until the further order of the court to ensure or enforce obedience to the writ, or that a writ of sequestration may issue; or, at the option of the plaintiff, the court or judge may order the sheriff to make of the defendant's goods the value of such property; but the plaintiff shall, either by the same or by a separate writ or writs of execution (to be issued in the ordinary manner), be entitled to have made of the defendant's goods the damages, costs and interest in such action. R.S.M. c. 40, r. 698.

Writ of attachment, to enforce judgment to do or leave undone.

696. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment or by committal. R.S.M. c. 40, r. 699.

Writ enforcing judgment for conditional relief.

697. Where a judgment is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the court or a judge for leave to issue execution against such party, and the court or judge may, if satisfied that the right to relief has arisen according to the terms of the judgment, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions in an action may be tried. R.S.M. c. 40, r. 700.

Execution upon judgment against partners in firm name.

698. Where a judgment is against partners in the name of the firm, execution may issue in manner following:—

(*a*) against any property of the partners as such;

(*b*) against any person who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(*c*) against any person who has been served as a partner with the statement of claim, and has failed to defend. R.S.M. c. 40, r. 701.

Execution against person claimed to be a partner.

699. If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the court or a judge for leave so to do; and the court or a judge may give such leave if the liability be not disputed, or, if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined. R.S.M. c. 40, r. 702.

Money made on execution on behalf of infant or lunatic to be paid into court.

700. Where any money (other than for costs) is recovered by or on behalf of an infant or of a person of unsound mind by his guardian, next friend or committee, the same shall, unless otherwise ordered, be paid into court subject to further order; and no payment to the guardian, next friend or committee of moneys due to such infant or person of unsound mind, otherwise than for the costs of any such action, shall be a valid discharge to the party making such

payment as against the infant or person of unsound mind. Every writ of execution for the levying of any such moneys is to be indorsed by the officer issuing the same with the following notice: "All moneys made under this execution, other than costs, are to be paid into court by the sheriff, as required by rule 700. R.S.M. c. 40, r. 703.

Attachment and Sequestration.

Writ of attachment.

701. A writ of attachment against the person may be issued under the same circumstances and in the same manner and shall have the same effect as according to the practice of the Court of Queen's Bench on its equity side prior to the passing of "The Queen's Bench Act, 1895." R.S.M. c. 40, r. 704.

No attachment of person for non-payment of money.

702. No writ of attachment against the person shall be issued by reason only of the non-payment of money by such person. R.S.M. c. 40, r. 705.

Leave to issue writ.

703. No such writ of attachment shall be issued without the leave of the court or a judge, to be applied for on notice to the person against whom the attachment is to be issued. R.S.M. c. 40, r. 706.

Attachment for non-performance of an act.

704. If a person who is ordered, otherwise than by an order of course, to do in a limited time any act other than to pay money, refuses or neglects to obey the judgment or order according to the exigency thereof, the party prosecuting the same shall be entitled to a writ or writs of attachment against the disobedient party. R.S.M. c. 40, r. 707.

Upon attachment of contemnor, sequestration may issue.

705. If a person is, under the last preceding rule, taken or detained in custody under a writ of attachment, without obeying the judgment or order, then, upon the sheriff's return that the person has been so taken or detained, the party prosecuting the judgment or order shall be entitled, upon præcipe, to a commission of sequestration against the estate and effects of the disobedient party. R.S.M. c. 40, r. 708.

Issue of commission of sequestration.

706. If an attachment cannot be executed against the person refusing or neglecting to obey the judgment or order, by reason of his being out of the jurisdiction of the court, or of his having absconded, or that with due diligence he cannot be found, or if in any other case the court may think proper to dispense with a writ of attachment, an order may be granted for a commission of sequestration against the estate and effects of the disobedient person; and it shall not be necessary for that purpose to sue out an attachment. R.S.M. c. 40, r. 709.

Sequestration may issue for default in payment of money on application in chambers.

707. If a person who is ordered to pay money neglects to obey the judgment or order according to the exigency thereof, the party prosecuting the same may, at the expiration of the time limited for the performance thereof, apply in chambers for a writ of sequestration against the defaulting party, and upon proof of due service of a notice of the motion, unless the judge thinks proper to dispense with such service, and upon proof by affidavit of such other matters, if any, as the judge requires, the judge may order a writ of sequestration to issue. R.S.M. c. 40, r. 710; 3 Geo. 5, c. 12, s. 3, *part*.

Commission to be directed to sheriff.

708. Commissions of sequestration are to be directed to the sheriff, unless otherwise ordered. R.S.M. c. 40, r. 711.

Issue and Form of Writ.

When execution may issue of course.

709. As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment. R.S.M. c. 40, r. 712.

Execution by leave of court.

710. (*a*) Where six years have elapsed since the judgment or the date of the order, or where any change has taken place by death or otherwise in the parties entitled or liable to execution; or

(*b*) where a husband is entitled or liable to execution upon a judgment or order against or at the suit of his wife; or

(*c*) where a party is entitled to execution upon a judgment of assets *in futuro;*

the party alleging himself to be entitled to execution may apply to the court or a judge for leave to issue execution accordingly, and such court or judge, if satisfied that the party so applying is entitled to issue execution, may make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case such court or judge may impose such terms, as to costs or otherwise, as shall seem just. R.S.M. c. 40, r. 713; 3 Geo. 5, c. 12, s. 3, *part*.

Execution in case of persons not parties.

711. In cases other than those mentioned in rule 709, any person, not being a party in an action, who obtains any order, or in whose favor any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the action; and any person not being

a party to an action, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action. R.S.M. c. 40, r. 714.

Præcipe for writ.

712. No writ of execution shall be issued unless the party issuing it, or his solicitor, files a præcipe for that purpose. The præcipe shall contain the title of the action, the date of the judgment and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firms against whose goods, the execution is to be issued; and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The appropriate forms in the schedule to these rules may be used, with such variations as circumstances may require. R.S.M. c. 40, r. 715.

Endorsement of name and address of solicitor.

713. Every writ of execution shall be endorsed with the name and place of abode or office of business of the solicitor actually suing out the same; and when such solicitor sues out the writ as agent for another solicitor, the name and place of abode of such other solicitor shall also be endorsed upon the writ; and in case no solicitor is employed to issue the writ, then it shall be endorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or other place, of such plaintiff's or defendant's residence, if any such there be. R.S.M. c. 40, r. 716.

Poundage, etc.

714. Upon every execution there may be levied, in addition to the sum recovered by the judgment, the poundage, fees, expenses of execution and interest upon the amount recovered. R.S.M. c. 40, r. 717.

Direction to sheriff to be endorsed.

715. Every writ of execution for the recovery of money shall be endorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the legal rate per annum from the time when the judgment was entered up; provided that in cases where there is an agreement between the parties that a specified rate of interest shall be secured by the judgment, then the endorsement may be accordingly to levy the amount of interest so agreed. R.S.M. c. 40, r. 718; 3 Geo. 5, c. 12, s. 3, *part.*

Endorsement of amounts to be paid for costs of writs.

716. Every officer issuing a writ of execution, or renewal thereof, shall endorse upon the same a memorandum signed by him of the amount or amounts respectively hereinafter mentioned, which the party issuing such writ is entitled to receive for suing out such writ or renewal and placing it in the sheriff's hands, including all attendances, endorsements, etc., and for his costs of any prior or other writs or renewals, specifying the amount allowed for each writ or renewal; and no sum not so endorsed by the officer is to be collected for such costs. R.S.M. c. 40, r. 719.

Date.

Form.

717. Every writ of execution shall bear date of the day on which it is issued. The appropriate forms in the schedule to these rules may be used, with such variations as circumstances may require. R.S.M. c. 40, r. 720.

Duration and Renewal.

Writs of execution, when to be tested.

In force for two years.

718. Every writ of execution shall be tested on the day on which it is issued, and shall remain in force for two years from the teste, and no longer, if unexecuted, unless renewed; but such writ may, within thirty days before its expiration, and so from time to time during the continuance of the renewed writ, be renewed by the party issuing it for two years from the date of such renewal by being marked in the margin with a memorandum to the effect following:—

Form of renewal.

Renewed for two years from the day of .
(*Signed by the prothonotary, or deputy clerk of the Crown and pleas or other proper officer.*)

Priority of renewed writ.

and a writ of execution so renewed shall have the effect, and be entitled to priority, according to the time of the original delivery to the sheriff. R.S.M. c. 40, r. 721.

Proof of renewal.

719. The production of a writ of execution, purporting to be renewed in the manner provided by the last preceding rule shall be sufficient prima facie evidence of its having been renewed. R.S.M. c. 40, r. 722.

Transcript of judgment to a County Court.

720. A transcript of any judgment of the court for the payment of an amount within the jurisdiction of a County Court, may at any time be procured from the proper officer of the court in which such judgment was recovered, on payment of a fee of fifty cents, and such transcript may be filed in the office of the County Court of the judicial division in which the party liable to pay the judgment resides, and such judgment shall, upon the filing of such transcript

in said office, become a judgment of the court in which it is so filed and all proceedings may thereupon be taken and had as on any other judgment of said last mentioned court. 10 Ed. 7, c. 17, s. 14; 3 Geo. 5, c. 12, s. 3, *part*.

Return of Writs, etc.

Orders to return writs.

721. All orders against sheriffs to return writs shall be returnable in six days, and shall be issued from the office from which the writ was issued. R.S.M. c. 40, r. 723.

Such orders to issue on præcipe.

722. No judge's order shall issue for the return of any writ, but a præcipe order shall issue for that purpose out of the office from which the writ issued, which shall be of the same force and effect as side bar rules formerly made for that purpose. R.S.M. c. 40, r. 724.

Return to order.

723. The sheriff shall file the writ with his return thereto in the office from which the order to return the same was issued at the expiration of the time limited by the order or as soon thereafter as the office shall be open, and the officer with whom it is filed shall endorse the day and hour when it was filed. 3 Geo. 5, c. 12, s. 3, *part*.

Return orders may be issued by deputy clerks.

724. Every deputy clerk of the Crown and pleas, or deputy registrar may sign and issue orders on any sheriff to return writs issued out of the office of such deputy clerk or deputy registrar, and directed to such sheriff; and the sheriff shall, in case of his being served therewith, return the writs to the office from which the same issued. R.S.M. c. 40, r. 726.

Sheriff's fees when return ordered.

725. If a writ delivered to a sheriff for service or execution has remained in his hands thirty days, and if he has not been delayed from returning the same by an order in writing from the party from whom he received the writ, his solicitor or agent, and if he is afterwards directed by order of court to return such writ, he shall not be entitled to any fees thereon unless, within four days after being so directed, he returns or encloses the writ by post to such party, his solicitor or agent. R.S.M. c. 40, r. 727.

Demand for return by party who delivered writ.

726. If the party who delivered any writ or process to any sheriff to be executed, by himself or by his solicitor, or by the agent of such solicitor, requires, by a demand in writing, the sheriff to return the writ either to the party or to his solicitor or solicitor's agent, or to the court from which the writ issued (and whether such requisition is made before or after the service or other execution thereof),

the sheriff shall within eight days, inclusive of the day of service of the requisition, return the writ according to the terms of the requisition; and if he wilfully refuses or neglects to do so, he shall be liable to be ordered to return the writ, and to be further proceeded against as in other cases of contumacy. R.S.M. c. 40, r. 728.

Other party entitled to return may proceed in like manner

727. In all cases where the party to the writ or process, who did not deliver the same to the sheriff to be executed, is entitled, according to the practice of the court, to call for a return of the writ or process, he may proceed in like manner to procure such return as is above provided in the case of parties who have delivered the writ or process to the sheriff for execution. R.S.M. c. 40, r. 729.

Liability of sheriff for costs for not returning writs.

728. In every case in which a sheriff neglects or refuses to return any writ when so called upon, he shall be bound to pay the costs of any order taken out to compel the return, and all other costs consequent thereon, and also the costs of the previous requisition to make the return. R.S.M. c. 40, r. 730.

Personal service on sheriff not necessary.

729. In no case shall personal service on the sheriff be necessary if it appears by affidavit that inquiry was made for him and that he could not conveniently be found; but service shall be deemed to have been made upon the sheriff by serving the deputy sheriff if he can be conveniently found; and if the deputy sheriff cannot conveniently be found, then service may be made upon the sheriff's clerk, or upon any bailiff of the sheriff who may for the time being be present in, or have charge of, the sheriff's office. R.S.M. c. 40, r. 731.

Application of above rules to coroners, district registrars, *et al.*

730. All rules referring to writs of execution shall extend and apply to coroners, district registrars and elisors employed in the service or execution of the process of the Court. R.S.M. c. 40, r. 732.

Attachment for non-return of writs.

731. If a writ is issued out of the court directed to a sheriff, and is delivered to him for execution, and if the sheriff is ordered to return the same and does not make the return within the time specified in the order, the plaintiff or defendant in the writ (as the case may be) may move for an order of attachment against the sheriff, and the court or a judge may order the sheriff to be attached, or limit a further period after which an order of attachment shall issue unless a return be made in the meantime, or may otherwise order as seems proper. R.S.M. c. 40, r. 733.

Issue of writ after extension of time for return.

732. If the writ is not returned at the expiration of any further time limited by the order mentioned in the last preceding rule, and if the service of the order and the failure of the sheriff to return the writ is proved, the court or judge may order a writ of attachment to issue forthwith against the sheriff. R.S.M. c. 40, r. 734.

Upon return to such attachment judge in chambers may direct issue of *habeas corpus*.

733. Upon the return of "cepi corpus" to any such attachment, any judge having jurisdiction as aforesaid may direct the issue of a writ of *habeas corpus*, and thereupon may exercise the same powers and discretion in committing the sheriff to close custody, or in admitting him to bail, and in all other respects, as are possessed by the court. R.S.M. c. 40, r. 735.

Such writs may be returnable on a day certain.

734. All orders of attachment and writs of *habeas corpus* issued against a sheriff may be returnable on a day certain, to be fixed by the order of the judge or court; and the return day shall not be more than thirty days from the issuing of the order. The order when issued out of the court shall be made returnable before the presiding judge in chambers. R.S.M. c. 40, r. 736.

Neglect of sheriff's officer to return process to sheriff.

735. Every deputy sheriff, bailiff or other sheriff's officer or clerk, entrusted with the custody of any writ or process, or of any book, paper or document belonging to the said sheriff or his office, shall, upon demand upon him by such sheriff, restore and return such writ, process, book, paper or document to the custody of the said sheriff; and in case of any neglect or refusal to return or restore the same as aforesaid, the party so neglecting or refusing may be required by an order of the court or of any judge to return and restore such writ, process, book, paper or document to such sheriff, and may be further proceeded against by attachment, as in other cases of contumacy to orders of court. R.S.M. c. 40, r. 737.

Order compelling sheriff's officer to deliver process.

736. If any deputy sheriff, bailiff or sheriff's officer has in his possession, custody or control any writ of *fieri facias* or other writ, or any bench warrant or process whatsoever, and upon demand made by the sheriff from whom the same was received or his successor in office, or by any other party entitled to the possession of the same, neglects or refuses to deliver up the same, such sheriff or his successor in office, or the party entitled to the possession of the same, may proceed before a judge in chambers, or the local judge of the judicial district for which such sheriff acts, to compel the production thereof; and an order may

be made thereupon and enforced in the same manner as like orders for the return of writs against sheriffs, and with or without costs, or the motion may be refused with costs against the party applying, in the discretion of the judge or local judge aforesaid. R.S.M. c. 40, r. 738.

Lands.

Writ of *elegit* abolished.

737. The writ commonly called the writ of *elegit* cannot be issued in this Province. R.S.M. c. 40, r. 739.

No more *fi. fa.* lands to be issued.

738. No writ of *fieri facias de terris* shall hereafter be issued in this Province. R.S.M. c. 40, r. 740.

Enforcing judgment against lands.

739. A party entitled to enforce a judgment or order for the payment of money may register a certificate or certificates thereof in a registry office or land titles office as provided by "The Judgments Act," and such registration shall have the effect provided by that Act. R.S.M. c. 40, r. 741.

Motion for judgment debtor and grantee to show cause why fraudulent conveyance should not be set aside.

740. Where a judgment creditor or a person entitled to money under a judgment or order, who has registered a certificate of such judgment or order, alleges that the debtor or person who is to pay has made a conveyance or other disposition of any of his lands in the registration district or land titles district in which such certificate is registered, which conveyance or other disposition is void, as being made to delay, hinder or defraud creditors or a creditor, it shall not be necessary to institute an action for the purpose of setting aside such conveyance or other disposition, but a motion may be made to the court or a judge in chambers by the judgment creditor or person entitled to such money, calling upon the judgment debtor or person who is to pay, and the person to whom the conveyance or other disposition has been made or who has acquired any interest thereunder, to show cause why the lands embraced therein, or a competent part thereof, should not be sold to realize the amount to be payable under the judgment or order. R.S.M. c. 40, r. 742.

Motion for judgment debtor to show cause why his interest in land should not be sold.

741. Where any judgment creditor in an action, or a person entitled to money under a judgment or order, has registered a certificate of such judgment or order and alleges that the debtor or person to pay is entitled to or has an interest in any land which under the former practice could have been sold under a registered judgment or order or other legal process, or could have been rendered available in a suit for equitable execution by sale for satisfaction

of a debt, a motion may be made to the court or a judge in chambers, by the creditor or person entitled to such money, calling upon the debtor or person who is to pay, and upon any trustee or other person having the legal estate in the land in question, to show cause why any land in the registration district or land titles district in which such certificate is registered, or the interest therein of the debtor or the person who is to pay, or a competent part of the said land, should not be sold to realize the amount payable under the judgment or order. R.S.M. c. 40, r. 743.

County Court judgments.

742. In the case of a County Court judgment, an application may be made under either of the two last preceding rules, as the case may be. R.S.M. c. 40, r. 744, *part.*

Proceedings upon such motions.

743. Upon any application under any of the three last preceding rules, such proceedings shall be had, either in a summary way, or by the trial of an issue, or by inquiry before an officer of the court, or by an action, or otherwise, as the court or judge may deem necessary or convenient for the purpose of ascertaining the truth of the matters in question, and whether the lands, or the debtor's or other person's interest therein, are or is liable for the satisfaction of the judgment or order. R.S.M. c. 40, r. 745.

Order for sale.

744. Where in a summary way, or upon the trial of an issue, or as the result of any inquiries under the four last preceding rules, or otherwise, any land or the interest of any debtor or other person therein is found liable to be sold, an order shall be made by the court or judge, declaring what land or what interest therein is liable to be sold, and directing sale thereof by the master according to the usual practice. R.S.M. c. 40, r. 746.

Certificate of lis pendens may be registered.

745. Any notice of motion for an order under any of the rules numbered 740, 741 and 742 may contain a description of the land in question, and upon filing the same with the proper officer, signed by the solicitor of the applicant, a certificate of lis pendens may be issued for registration, and in case the said motion is refused in whole or in part, a certificate of the order may be issued for registration. R.S.M. c. 40, r. 747.

Pro rata distribution of proceeds of sale of lands under registered judgment against a

746. In case the judgment debtor is a municipality or a school district, the proceeds of any sale of any lands under any judgment registered after the first day of January, 1911, shall be distributed pro rata amongst the following, that is to say, (*a*) all judgment creditors of the munici-

municipality or a school district.

pality or school district, whether their judgments have been registered or not, (*b*) all persons or corporations who are holders of overdue bonds or debentures of the municipality or school district, although they may have taken no proceedings to realize thereon, and (*c*) the Government of the Province of Manitoba in respect of any indebtedness of such municipality or school district to it however arising; and before any such distribution shall be made notice shall be given to all such creditors to come in and prove their claims, such notice to be given and such distribution to be made as nearly as may be according to the practice of the court in actions for administration of estates. 1 Geo. 5, c. 14, ss. 5, 6.

EXAMINATION OF JUDGMENT DEBTORS.

Examination of judgment debtor without order.

747. Where a judgment is for the recovery by, or payment to, any person, of money, the party entitled to enforce the judgment may, without an order, examine the judgment debtor upon oath before a master or a special examiner, or before one of the clerks or deputy clerks of the Crown and

Upon order.

pleas (or by the order of the court or a judge before any other person to be specially named in such order), touching his estate and effects, and as to the property or means he had when the debt or liability which was the subject of the action in which judgment has been obtained against him was incurred, and as to the property and means he still has of discharging the said judgment, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him. R.S.M. c. 40, r. 748.

Examination of officers of judgment debtor corporation.

748. If the judgment is against a body corporate, or an order for the payment of money has been obtained against a body corporate, the person entitled to enforce the judgment or order may in like manner examine any of the officers, past or present, of such body corporate upon oath before any of the officers referred to in the last preceding rule, touching the names and residences of the stockholders or former stockholders in said body corporate, the amount and particulars of stock held or owned by each stockholder or formerly so held or owned, and the amount paid thereon; also, as to any and what debts are owing to the said body corporate, and as to the estate and effects of the body corporate, and as to the disposal made by the body corporate of any property since contracting the debt or liability in respect of which the said judgment or order was obtained. R.S.M. c. 40, r. 749.

Examination of certain persons as to a judgment debtor's means.

749. Where judgment has been obtained, the court or a judge may, on the application of the party entitled to enforce the judgment, order any clerk or employee or former clerk or employee of the judgment debtor, or any person, or the officer or officers of any corporation, to which person or corporation the debtor has made a transfer of his property or effects since the date when the liability or debt which was the subject of the action in which judgment was obtained was incurred, to attend in the judicial district in which such person resides, before a master or special examiner, or a local master, a deputy registrar of the court, or a deputy clerk of the crown and pleas, or before the judge of the County Courts of the judicial district, and to submit to be examined upon oath as to the estate and effects of the debtor, and as to the property and means he had when the debt or liability aforesaid was incurred, and as to the property or means he still has of discharging the judgment, and as to the disposal he has made of any property since contracting the debt or incurring the liability, and as to any and what debts are owing to him. The examination is to be for the purpose of discovery only, and no order is to be made on the evidence given on such examination. R.S.M. c. 40, r. 750.

Examination in other cases.

750. If any difficulty shall arise in or about the execution or enforcement of any judgment or order other than for the recovery or payment of money, any party interested may apply to a judge and the judge may make such order thereon for the attendance and examination of any party or otherwise as may be just. R.S.M. c. 40, r. 751.

Compelling attendance.

751. Any person liable to be examined under any of the four last preceding rules may be compelled to attend and testify, and to produce books and documents, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined as in the case of a witness. R.S.M. c. 40, r. 752.

Service of appointment.

752. Any person liable to be examined under rules 747 to 750 may be served with an appointment signed by the judge or officer, and, where the examination is to take place under an order, also with a copy of the order; such service to be made at least forty-eight hours before the time appointed for the examination; and the person to be examined to be paid the same fees as a witness. R.S.M. c. 40, r. 753.

Conduct of examination.

753. The examination shall be conducted in the same manner as in the case of an oral examination of an opposite party. R.S.M. c. 40, r. 754.

Committal for failure to attend or make disclosure.

754. If such debtor or other person does not attend as required by the said appointment, or appointment and order, as the case may be, and does not allege a sufficient excuse for not attending, or if, attending, he refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, the court or judge may order him to be committed to the common gaol of the judicial district in which he resides for any term not exceeding twelve months, or until he shall attend and make satisfactory answers and disclosures. R.S.M. c. 40, r. 755.

Provision for order for payment by judgment debtor after examination, and for imprisonment for disobedience of order.

755. The court or judge may also, upon the application of the judgment creditor and upon reading such examination, and hearing any evidence given orally or by affidavit on the part of the judgment creditor or the judgment debtor, if satisfied that the judgment debtor is in a position to pay the whole or any part of such judgment, make an order that the judgment debtor do pay the said debt within a time to be limited, or do pay the same or any part thereof by such instalments as the court or judge is satisfied the judgment debtor is able or will be able to pay, and, if afterwards the judgment debtor fails to make the payment or payments so ordered, the court or judge may, on a subsequent application by notice of motion duly served on the debtor, unless he shows good cause to the contrary, order the debtor to be committed to the common gaol of the judicial district in which he resides for any term not exceeding twelve months or until he shall have complied with such first-mentioned order. 1 Geo. 5, c. 14, s. 7.

Interpretation.

"Judgment."

"Debtor."

756. Every judgment or order of the court directing payment of money, except for costs, shall, so far as it relates to such money, be deemed a judgment, and the person to receive payment a creditor, and the person to make payment a debtor, within the meaning of the nine last preceding rules. R.S.M. c. 40, r. 756.

Person having carriage of the judgment to be deemed the person to receive payment.

757. If a judgment or order directs the payment of money into court or to the credit of any cause, or otherwise than to any person, the person having the carriage of the judgment or order, so far as relates to such payment, shall be deemed the person to receive payment within the meaning of the last preceding rule. R.S.M. c. 40, r. 757.

Application of rules 747 to 757 to proceedings under Acts of Parliament of Canada.

758. The preceding rules numbered from 747 to 757 shall, so far as the Legislature of Manitoba has power to enact, be applicable to causes, matters and proceedings under Acts of the Parliament of Canada, in which an order or judgment for the payment of money has been made by the court or judge, and the person or corporation against whom such order has been made or judgment given shall be held to be a judgment debtor within the meaning of the said rules. R.S.M. c. 40, r. 758.

ATTACHMENT OF DEBTS.

Garnishment.

759. Upon the *ex parte* application of any plaintiff or judgment creditor, or person entitled to enforce a judgment or order for the payment of money, either before or after the oral examination mentioned in the preceding rules, and upon affidavit by himself or his solicitor, or some other person or persons aware of the facts respectively, stating, in case a judgment has been recovered or an order made, that it has been recovered or made, and that it is still unsatisfied and to what amount, or, in case a judgment has not been recovered, that an action is pending, the time of its commencement, the nature of the cause of action and the actual amount of the debt, claim or demand, and that the same is justly due and owing to the plaintiff by the defendant after making all just discounts, and stating, in either of the said cases, that any other person or corporation is indebted or liable to the defendant or judgment debtor or person liable to satisfy such judgment or order, and is within the jurisdiction of the court, a judge in chambers may order that all debts, obligations and liabilities owing, payable or accruing due from such third person (hereinafter called the garnishee) to the defendant or judgment debtor, or person liable to satisfy such judgment or order (as the case may be), shall be attached to answer the judgment of the plaintiff to be recovered or of the judgment creditor which has been recovered, or the order which has been made (as the case may be).

Deputy clerk to have jurisdiction in outside judicial districts.

(2) For the purposes of this rule the expression "judge in chambers" shall include the deputy clerk of the Crown and pleas in any judicial district other than the Eastern. R.S.M. c. 40, r. 759; 1 Geo. 5, c. 14, s. 8.

Form of affidavit.

760. Affidavits in the forms numbered respectively 33 and 34 in the schedule to these rules, or to the like effect, shall be held to be sufficient for the purposes of the last preceding rule. R.S.M. c. 40, r. 760.

Meaning of "debts, obligations and liabilities."

761. Except as hereinafter mentioned, the expression "debts, obligations and liabilities" in rule 759, and that expression or any of the words composing it when used in any order made under the said rule, shall not comprise any obligation or liability not arising out of trust or contract unless judgment shall have been recovered thereon against the garnishee; but (though not so as to restrict farther than as aforesaid the general sense of the words) the said expression in the said rule or in any such order shall be construed to include all claims and demands of the defendant, judgment debtor or person liable under the order for payment of money against the garnishee arising out of trust or contract where such claims and demands could be made available under equitable execution. R.S.M. c. 40, r. 761.

Operation of attaching order.

762. Service of an order that debts, obligations or liabilities due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee in such manner as the judge shall direct, shall bind such debts, obligations or liabilities in his hands from the time of service. R.S.M. c. 40, r. 762.

Enforcing payment by garnishee.

763. If the garnishee does not forthwith pay into court the amounts payable in respect of the debts, obligations and liabilities attached, or an amount equal to the judgment debt or the sum payable under the principal judgment or order, or (in case judgment has not been recovered) the amount limited by the attaching order if any, and does not dispute the debts, obligations and liabilities, or some one or more of them, claimed to be due, owing or payable from him to the defendant, judgment debtor or person liable under the judgment or order for payment of money, or if he does not appear upon notice to him, then the judge may order the garnishee to pay into court the amount appearing due from the garnishee, or so much thereof as may be sufficient to satisfy the principal judgment or order, or an amount estimated to be sufficient to satisfy the judgment expected to be recovered, or, if judgment has been recovered, or in case of an order made for payment of money, the judge may order the garnishee to pay to the judgment creditor, or to the party entitled to enforce the principal judgment or order, the amount appearing due from the garnishee or sufficient thereof to satisfy the principal judgment or order and all costs reasonably incurred in enforcing such judgment or order, including the costs of the garnishee proceedings.

(2) The order for payment by the garnishee, whether into court or to the judgment creditor or person entitled

to enforce the principal judgment or order, may be made on the application of the plaintiff, judgment creditor or person so entitled, or upon the application of the defendant, judgment debtor or person liable under the principal judgment or order.

(3) No order shall be made for payment out of court of moneys paid in by the garnishee, or for payment by the garnishee to a party claiming as judgment creditor or as entitled to enforce the principal judgment or order, without notice to the defendant, judgment debtor or person liable on the principal judgment or order, unless the court or a judge shall, under special circumstances, dispense with such notice. R.S.M. c. 40, r. 763.

Maturing claims.

764. If the claim or demand be not due at the time of the attachment, an order may be made for payment thereof at maturity, and execution may issue therefor when it matures. R.S.M. c. 40, r. 764.

Issue where garnishee disputes liability.

765. If the garnishee disputes his liability, the judge, instead of making an order for payment into court or otherwise, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined. R.S.M. c. 40, r. 765.

Order for third person to appear.

766. Where, after an order for the attachment of debts, obligations or liabilities, it is suggested by the garnishee that any debt, obligation or liability sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the judge may order such third person to appear and state the nature and particulars of his claim upon the debt, obligation or liability. R.S.M. c. 40, r. 766.

Proceedings as to claims of third person.

767. After hearing the allegations of such third person under such order, and of any other person whom, by the same or any subsequent order, the judge may order to appear, or in case of such third person not appearing when ordered, the judge may order payment by the garnishee, or may order any issue or question to be tried or determined according to the preceding rules, and may bar the claim of such third person, or may make such other order as the judge thinks fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the judge thinks just and reasonable. R.S.M. c. 40, r. 767.

Judge may take evidence.

768. A judge may take evidence upon, and hear and dispose of summarily in chambers, any question as to the liability of the garnishee or as to the claim of a third party, without directing a formal trial of an issue.

Further powers of judge in garnishment cases.

(2) Upon any such summary hearing, or upon the trial of any such issue, the judge may inquire into and decide upon such claim and allow or give effect to it or hold it void as against the garnishees for being a fraud upon creditors or otherwise, as the justice of the case shall require. R.S.M. c. 40, r. 768; 7-8 Ed. 7, c. 12, s. 14.

Costs of garnishee.

769. The garnishee, upon complying with any order of the court to be made respecting the debts, obligations or liabilities due or payable by him, shall be entitled to his costs as between solicitor and client. Such costs, if not ordered to be satisfied in any other way, shall be paid by the garnishing plaintiff. This rule shall not apply in case the garnishee unsuccessfully resists payment either in whole or in part, in which case a judge shall deal with the costs. R.S.M. c. 40, r. 769.

Garnishee discharged by payment.

770. Payment by the garnishee into court or in compliance with an order of the court or a judge, or execution levied upon the garnishee under any such proceeding as aforesaid, shall be a valid discharge to him as against the defendant, judgment debtor or person liable under the principal judgment or order in respect of the amount paid or levied, although such proceeding may be set aside or the judgment reversed. R.S.M. c. 40, r. 770.

Debt attachment book.

771. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates and statements of the amounts recovered, and otherwise; and copies of any entries made therein may be taken by any person upon application to the proper officer. R.S.M. c. 40, r. 771.

Division XI.

PETITIONS.

Endorsement on petition.

772. There shall be endorsed on every petition a notice addressed to the parties concerned, stating the time and place at which the petition is to be heard, and informing them that, if they do not appear on the petition at such time and place, the court may make such order, on the petitioner's own showing, as shall appear just. R.S.M. c. 40, r. 772.

ADMINISTRATION.

Who may apply for administration order.

773. Any person claiming to be a creditor, or a specific, pecuniary or residuary legatee, or the next of kin, or one of the next of kin, or the heir, or a devisee interested under the will, of a deceased person, may apply to a judge in chambers, or to the local judge in the judicial district in which the deceased person resided at the time of his death, upon motion, without any action being instituted or any other preliminary proceeding, for an order for the administration of the estate of such deceased person. R.S.M. c. 40, r. 776.

Notice of motion.

774. The notice of motion is to be served upon all proper parties at least fourteen days before the day named for hearing the application, and must be served upon the executor or administrator. R.S.M. c. 40, r. 777.

Order for administration.

775. Upon proof by affidavit of the due service of the notice of motion, or on the appearance in person, or by his solicitor or counsel, of the executor or administrator, and upon proof by affidavit of such other matter, if any, as the judge or local judge requires, the usual order may be made for the administration of the estate of the deceased, with such variations, if any, as the circumstances of the case require; and the order so made is to have the force and effect of a judgment to the like effect made at the trial of an action between the same parties. R.S.M. c. 40, r. 778.

Special directions as to carriage of order.

776. The judge or local judge is to give any special directions touching the carriage or execution of the order, which he deems expedient; and in case of applications for an order by two or more persons or classes of persons, the judge or local judge may grant the same to such one or more of the claimants as he thinks fit; and the carriage of the order may be subsequently given to any party interested, and upon such terms as the judge or local judge may direct. R.S.M. c. 40, r. 779.

Administration order may be obtained by personal representative.

777. An order for the administration of the estate of a deceased person may be obtained by his executor or administrator, and all the provisions of the foregoing rules are to extend to applications by an executor or administrator. R.S.M. c. 40, r. 780.

Master to have full power to deal with estate and costs.

778. The master shall have full power to deal with the estate, and shall dispose of the costs of the proceedings, and shall in the least expensive and most expeditious manner finally wind up all matters connected with the estate, with

out any further directions and without any separate, interim or interlocutory reports or orders, except where the special circumstances of the case absolutely call therefor. R.S.M. c. 40, r. 781.

Moneys realized to be paid into court.

779. All moneys realized from the estate shall at once be paid into court; and no moneys shall be distributed or paid out for costs or otherwise, without an order of the court or a judge; and on the application for such order, the judge may review, amend or refer back to the master, his report or order, or make such other order as he deems proper. R.S.M. c. 40, r. 782.

Master to inquire as to outstanding estate.

To compute interest on debts and legacies.

780. In taking an account of a deceased's estate under an order of reference, the master is to inquire and state to the court what, if any, of the deceased's estate is outstanding or undisposed of, and is also to compute interest on the deceased's debts from the date of the judgment or order, and on legacies from the end of one year after the deceased's death, unless any other time of payment is directed by the will. R.S.M. c. 40, r. 783.

Advertisement for creditors.

781. Every advertisement for creditors, affecting the estate of a deceased person, which is issued pursuant to an order, is to direct every creditor, by a time to be thereby limited, to send to such other party as the master directs, or to his solicitor, to be named and described in the advertisement, the name and address of the creditor and the full particulars of his claim, and a statement of his account, and the nature of the security, if any, held by him; and

Form.

such advertisement is to be in the form set out in form No. 20 in the schedule to these rules, with such variations as the circumstances of the case require; and at the time of directing such advertisement, a time is to be fixed for adjudicating on the claims. R.S.M. c. 40, r. 784.

Creditor need not attend unless notified.

782. No creditor need make an affidavit, or attend in support of his claim (except to produce his security, if any), unless he is served with a notice requiring him to do so as hereinafter provided. R.S.M. c. 40, r. 785.

Creditors to produce securities and other documents, if notified.

783. Every creditor is to produce before the master the security (if any) held by him, at such time as is specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims; and every creditor, if required by notice in writing, to be given by the executor or administrator of the deceased, or by such other party as the master directs, in the form set forth in form No. 21

in the schedule to these rules, is to produce all other deeds and documents necessary to substantiate his claim before the master at such time as is specified in the notice. R.S.M. c. 40, r. 786.

Penalty for refusing to produce.

784. In case a creditor neglects or refuses to comply with the next preceding rule, he is not to be allowed any costs of proving his claim, unless the master otherwise directs. R.S.M. c. 40, r. 787.

Examination of claims.

785. The executor or administrator of the deceased, or such other party as the master directs, is to examine the claims sent in pursuant to the advertisement, and is to ascertain, as far as he is able, to which of such claims the estate of the deceased is justly liable. R.S.M. c. 40, r. 788.

Affidavit by examiner of claims.

786. The executor or administrator, or one of the executors or administrators, or such other party, either alone, or jointly with his solicitor or other competent person, or otherwise, as the master directs, is, at least seven clear days before the day appointed for adjudication, to file an affidavit, which may be in the form No. 32 in the schedule to these rules, verifying a list of the claims, the particulars of which have been sent in pursuant to the advertisement, and stating to which of such claims, or part thereof, respectively, the estate of the deceased is, in the opinion of the deponent, justly liable, and his belief that such claims, or parts thereof respectively, are justly due and proper to be allowed, and the reason for such belief. R.S.M. c. 40, r. 789.

Time for making affidavit may be postponed.

787. If the master thinks fit so to direct, the making of the affidavit referred to in the next preceding rule is to be postponed till after the day appointed for adjudication, and is then to be subject to such directions as the master may give. R.S.M. c. 40, r. 790.

Adjudication on claims.

788. At the time appointed for adjudicating upon the claims, or at any adjournment thereof, the master may allow any of the claims or any part thereof respectively, without proof by the creditors, and may direct such investigation of all or any of the claims not allowed, and require such further particulars, information or evidence relating thereto as he thinks fit, and may, if he so thinks fit, require any creditor to attend and prove his claim or any part thereof; and the adjudication on such claims as are not then allowed is to be adjourned to a time to be then fixed. R.S.M. c. 40, r. 791.

Notice to creditors.

789. Notice is to be given by the executor or administrator or such other party as the master directs,—

Where claim allowed without proof.

(*a*) to every creditor whose claim, or any part thereof, has been allowed without proof by the creditor, of the allowance, and the notice may be in the form No. 22 in the schedule to these rules;

Where proof of claim required.

(*b*) and to every such creditor as the master directs, to attend and prove his claim, or such part thereof as is not allowed, by a time to be named in the notice (which may be in the form No. 23 in the schedule to these rules), not being less than seven clear days after the notice, and to attend at a time to be therein named, being the time to which the adjudication thereon has been adjourned; and in case any creditor does not comply with the notice, his claim, or such part thereof as aforesaid, is to be disallowed, unless the master thinks fit to give further time. R.S.M. c. 40, r. 792.

Creditor may send in particulars of claim 7 days prior to adjourned adjudication.

790. A creditor who has not before sent in particulars of his claim, pursuant to the advertisement, may do so seven clear days previous to any day to which the adjudication is adjourned. R.S.M. c. 40, r. 793.

Reception of claims after date fixed in advertisement.

791. After the time fixed for the advertisement, no claim is to be received (except as before provided in case of an adjournment), unless the master thinks fit to give special leave upon application, and then upon such terms and conditions as to costs and otherwise as the master directs. R.S.M. c. 40, r. 794.

Creditors to be notified when their claims payable.

792. Where an order is made for payment of money out of court to creditors, the party whose duty it is to prosecute the order is to send each creditor, or his solicitor (if any), a notice that the cheques may be obtained from the accountant; and the notice may be in the form No. 24 in the schedule to these rules; and the party is, when required, to produce any papers necessary to enable the creditors to receive their cheques. R.S.M. c. 40, r. 795.

Mode of giving notice.

793. Every notice by the preceding twenty rules required to be given is, unless the master otherwise directs, to be deemed sufficiently given and served if transmitted by post, prepaid, to the creditor to be served, according to the address given by the creditor in the claim sent in by him pursuant to the advertisement, or, in case the creditor has employed a solicitor, to such solicitor, according to the address given by him. R.S.M. c. 40, r. 796.

PARTITION.

Partition.

794. Any adult person entitled to a judgment or order for the partition of an estate may, on serving one or more of the persons entitled to a share of the estate of which partition is sought with a fourteen clear days' notice of motion, apply to a judge in chambers, or to the local master in the judicial district wherein the land sought to be affected by the proceeding lies, for an order for the partition or sale of the premises in question; whereupon such order for partition or sale, or such other order as may be proper, may be made; and the master to whom such proceedings are referred shall thereupon proceed in the least expensive and most expeditious manner, according to the practice in force before the coming into force of "The Queen's Bench Act, 1895," for the partition or sale of the premises, the ascertainment of the rights of the various persons interested, the adding of parties, the taxation and payment of costs, and otherwise:

Provided, always, (*a*) that where an infant is interested in the estate no order shall be made for partition or sale until such infant is represented by its guardian *ad litem*, (*b*) that all moneys realized from the estate shall at once be paid into court, and that no moneys shall be distributed or paid out for costs or otherwise without an order of the court or a judge, and (*c*) that on the application for such order the judge may review, amend or refer back to the master his report or order, or make such other order as he deems proper. R.S.M. c. 40, r. 797.

Case of lands being discovered in another district after judgment.

795. When, after an order has been made under the last preceding rule, lands are discovered in another judicial district, an application may be made to a judge in chambers for the partition or sale of such lands under the order formerly made, and when two or more orders have been made by local masters in different judicial districts, an application may be made in chambers for an order as to the conduct of the future proceedings. R.S.M. c. 40, r. 798.

PROPERTY OF INFANTS.

Applications to sell, etc., infant's estate.

796. All applications for the sale, mortgage, lease or other disposition of an infant's estate shall be made in chambers; and no reference in any such matter is to be directed to any local master except by leave of a judge. R.S.M. c. 40, r. 799.

Official guardian to be notified.

797. The official guardian shall be duly notified of all applications under the last preceding rule. R.S.M. c. 40, r. 800.

Petition, how intituled.

798. A petition for the sale or other disposition of the real estate of an infant is to be intituled in the matter of the infant. R.S.M. c. 40, r. 801.

Petition presented in name of infant.

799. The petition is to be presented in the name of the infant, by his guardian, or by a person applying by the same petition to be appointed guardian as hereinafter provided. R.S.M. c. 40, r. 802.

Statements in petition.

800. The petition is to state the nature and amount of the personal property to which the infant is entitled, the necessity of resorting to the real estate, and the nature, value and the annual profits thereof; it must also state circumstances sufficient to justify the sale or other disposition of the estate, and the application of the proceeds in the manner proposed. The prayer must state specifically the relief that is desired; it must designate the lands to be disposed of, and must propose a scheme for that purpose and for the appropriation of the proceeds. If an allowance for maintenance is desired, it must be so prayed, and a case must be stated to justify such an order and to regulate the amount. R.S.M. c. 40, r. 803.

Petition may pray for appointment of guardian.

801. The petition may pray for the appointment of a guardian, as well as for the disposal of the infant's estate. In that case, a proper case must be made by the petition, and established by the evidence, for the appointment of the person proposed. R.S.M. c. 40, r. 804.

Infant to be produced upon all petitions for sale of his estate.

802. Upon all petitions for the sale of an infant's estate, the infant is to be produced before a judge in chambers or before a master. R.S.M. c. 40, r. 805.

Examination of infant if over 14 years.

803. When the infant is above the age of fourteen years, he is to be examined apart by the judge or master, upon the matter of the petition, as to his consent thereto; and his examination is to be stated to have been taken under this rule, and is to be annexed to and filed with the petition. R.S.M. c. 40, r. 806.

Infants under 14 need not be examined.

804. It shall not be necessary to examine any infant under fourteen years of age in support of a petition affecting such infant's estate, unless required by a judge; but, unless

otherwise ordered, it shall be sufficient for the officer before whom such infant shall be produced to certify that he has been produced and that he is under the age of fourteen years. R.S.M. c. 40, r. 807.

Witnesses in support of petition.

805. The witnesses to verify the petition are also to be produced before the judge or master, and are to be examined viva voce as to the matter of the petition; and the depositions so taken are to be stated to have been taken under this rule. R.S.M. c. 40, r. 808.

Referee may examine infant and witnesses without order

806. The referee in chambers may examine infants and witnesses under the preceding rule, without special order or reference. R.S.M. c. 40, r. 809.

Relief may be granted or further evidence required.

807. Upon a petition so verified, the court or judge may either grant the relief prayed at once or make such order as to further evidence, or otherwise, as the circumstances of the case require. R.S.M. c. 40, r. 810.

Settling conveyances.

808. No conveyance of the lands of infants is to be settled, until evidence is produced to the officer settling the same of the purchase money having been paid into court, or of the payment thereof into court having been dispensed with, nor, in cases where there is to be a mortgage for part of the purchase money, until evidence is given to the said officer of such mortgage having been registered and deposited with the accountant. R.S.M. c. 40, r. 811.

Division XII.

EXTRAORDINARY REMEDIES.

BAILABLE PROCEEDINGS.

Arrest for debt.

809. Except as in these rules is specially provided no person shall be arrested or held to bail for debt or for the non-payment of money upon, under or by virtue of any writ, rule, order or process issued out of the court. R.S.M. c. 40, r. 812; 3 Geo. 5, c. 12, s. 3, *part.*

ATTACHMENT.

Issue and Effect of.

Interpretation.

810. In the following rules numbered from 811 to 855—

"Debtor," "creditor."

(*a*) the expressions "debtor" and "creditor" mean and include persons respectively against and in favor of whom

Amount of debt, etc., not less than $100

there are causes of action, and include corporations, both foreign and domestic; and the debt, demand, damages or claim shall not be less than one hundred dollars;

"Judgment creditor."

(*b*) the expression "judgment creditor" means any person, whether plaintiff or defendant or other party, who has recovered judgment against another, and also any person entitled to enforce a judgment, and includes a corporation, foreign or domestic; the expression "judgment debtor" means any person, whether plaintiff or defendant or other party, against whom a judgment has been recovered, and includes a corporation, foreign or domestic. R.S.M. s. 40, r. 813.

"Judgment debtor."

Order for attachment to take place of writ of attachment.

811. No writ of attachment shall hereafter issue, but an order for attachment may be obtained in an action commenced by statement of claim. R.S.M. c. 40, r. 814.

What may be attached.

812. Any benefit, estate or interest, in possession or otherwise, in or to any real estate or hereditaments, or in or to any personal property, effects or credits, situate or being in Manitoba, of a debtor or a person against whom there is a cause of action, and not exempt from seizure under execution or from liability to answer a judgment upon such cause of action, may be attached for the payment of a debt or the satisfaction of a cause of action arising from legal liability in the following cases:—

When attachment may issue.

Debtor departing to defraud creditor.

(*a*) whenever such debtor or other person, being an inhabitant of this Province, shall depart therefrom with intent to defeat or defraud his creditors or those who have causes of action against him, or to avoid being arrested or served with process, or shall keep himself concealed therein with the like intent; or

Non-resident debtor liable to resident creditor.

(*b*) whenever such debtor or other person, not being a resident of this Province, shall be indebted to a creditor, or legally liable to a person as aforesaid, residing within this Province, either in respect of a contract express or implied made in this Province, or in respect of any cause of action arising therein, or in the case of a contract or other obligation, if made elsewhere, to be performed or partly performed or completed in this Province, or liable to be compensated for in damages, or in respect of a cause of action which arose and for which he is liable to satisfy another person in this Province; or

Debtor having transferred or intending to transfer property to defraud creditors.

(*c*) whenever any such debtor or person as aforesaid, being a resident or non-resident of this Province, is about to remove or transfer any of his property, effects or credits from this Province, or has assigned, transferred, disposed of

or secreted, or is about to assign, transfer, dispose of or secrete any of his real estate or hereditaments, or any interest in real estate therein, or any of his personal property, effects or credits, with intent to delay, defeat or defraud his creditors, or those who have causes of action against him. R.S.M. c. 40, r. 815.

Order made by judge in chambers upon affidavit

813. An order for attachment may be made by a judge in chambers upon affidavit or affidavits of the creditor or other person who has a cause of action, his attorney, servant or agent, or other persons, as provided in the next following rule. R.S.M. c. 40, r. 816.

Statement in all cases in affidavit.

814. The affidavit or affidavits of the creditor or other person who has a cause of action, his attorney, servant or agent, or other person, shall state in all cases that a statement of claim has been issued in the action, the cause of action and the sum claimed, and that the debtor or other person is justly and truly indebted to the creditor, or is legally liable to him in damages, in that sum, after making all proper and just set-offs, allowances and discounts; and in addition—

In case of absconding or concealed debtor.

(*a*) in the case of an absconding or concealed debtor or person liable in damages, that the creditor or other person as aforesaid, his attorney, servant or agent, or other person, hath good reason to believe, and doth verily believe, that the debtor or other person liable as aforesaid hath departed from Manitoba, or keeps himself concealed within Manitoba, to avoid being arrested or served with process, or with intent to delay, defeat or defraud his creditors (with such facts and circumstances as form the grounds of such belief); or

In case of non-resident debtor.

(*b*) in the case of a debtor or other person liable as aforesaid, not being a resident of this Province, that the debtor or other person liable as aforesaid is not a resident of Manitoba and has not, to the knowledge of the deponent, any agent in this Province authorized to accept service of process for him, showing how the cause of action arose, and that the same comes within the class of cases mentioned in paragraph (*b*) of rule 812; or

In case of debtor having transferred or intending to transfer property to defraud creditors.

(*c*) in cases coming within paragraph (*c*) of rule 812, that the creditor or other person who has a cause of action, his attorney, servant or agent, or other person, hath reason to believe that the debtor or other person liable as aforesaid is about to remove or transfer his property, effects or credits, or some part thereof, from this Province, or has assigned, transferred, disposed of or secreted, or is about to assign,

transfer, dispose of or secrete, his real estate or hereditaments, or his interest or estate therein, or some part thereof, or his personal property, effects or credits, or some part thereof, with intent to delay, defeat or defraud his creditors or other persons aforesaid (with such facts and circumstances as form the grounds of such beliefs). R.S.M. c. 40, r. 817; 4-5 Ed. 7, c. 6, s. 3; 3 Geo. 5, c. 12, s. 3, *part*.

Affidavit to show if possible where debtor is and whether a corporation or not, etc.

815. In all cases the affidavit or affidavits shall, if possible, show where the debtor or other person liable as aforesaid is at the time of making the same; and whether or not the debtor or other person liable as aforesaid is a corporation and, if so, whether domestic or foreign, and where its head or chief office is, and who is or are its president, chairman, clerk or chief officer or officers. R.S.M. c. 40, r. 818.

Order for attachment.

816. Upon reading the affidavit or affidavits, a judge may make an order for attachment, and in such order, if the defendant has not filed a statement of defence, may appoint a time for the debtor or other person liable as aforesaid to file a statement of defence, as the judge shall see fit, which time shall be regulated by the distance from the office of the court out of which the statement of claim has issued to the place in which the debtor or other person is, or is supposed to be, having due regard to the means of, and necessary time for, postal or other communication, with such terms and conditions and such other direction, if any, as the said judge may think proper; and the provision thus made for filing a statement of defence shall take the place of the usual rules as to time limited for filing a statement of defence. R.S.M. c. 40, r. 819.

Time for filing defence.

Form.

817. The order for attachment may be in or to the effect of form No. 116 in the schedule to these rules. R.S.M. c. 40, r. 820.

Operation of order for attachment.

818. Every order for attachment shall, at and from the time of its delivery to the sheriff, bind all the goods and chattels, or any interest in goods and chattels, of the person against whom the same is issued, within the bailiwick of the said sheriff, and not exempt from seizure under execution or from liability to answer a judgment upon the cause of action upon which the order for attachment is issued, and shall take priority to any chattel mortgage or bill of sale, executed by the defendant after the receipt by the sheriff of such order, or only taking effect under "The Bills of Sale and Chattel Mortgage Act," as against the creditors interested after such receipt, but shall not take priority to a

bona fide sale by the defendant of any of his goods and chattels, followed by an actual and continued change of possession thereof, without actual notice to the purchaser that such order is in the hands of the sheriff of the judicial district wherein the defendant resides or carries on business. R.S.M. c. 40, r. 821.

Order not to bind lands.

819. The delivery to the sheriff of an order for attachment shall not have the effect of binding the lands, or any interest in the lands, of the person against whom the same is issued. R.S.M. c. 40, r. 822.

Certificate for registration.

820. The prothonotary or deputy clerk of the Crown and pleas, as the case may be, shall, upon application and upon a copy of the order for attachment being filed, issue one or more certificates in or to the effect of the form No. 117 in the schedule to these rules. R.S.M. c. 40, r. 823.

Execution of certificate.

821. Such certificate shall be sealed with the seal of the court and shall be signed by the prothonotary or deputy clerk of the Crown and pleas, as the case may be, and may be registered in any registry office under the provisions of "The Registry Act," or in any land titles office, in the same manner and upon payment of the same fees as in the case of a certificate of judgment. R.S.M. c. 40, r. 824.

Registration.

Effect of registration.

822. Every such certificate, when registered, shall bind the interest of the person against whom the order for attachment is issued in all lands which are not exempt from seizure under a writ of execution or proceedings under a certificate of judgment, situate in the registration district or land titles district in which such certificate is registered, whether such lands are or are not registered under "The Real Property Act." R.S.M. c. 40, r. 825.

Mortgagee's interest not affected.

823. The provisions of the five last preceding rules shall not affect the interest of a mortgagee in lands. R.S.M. c. 40, r. 826.

Order cancelling certificate.

824. Such certificate may be cancelled or vacated by order of the court or a judge, registered in the office in which the certificate has been registered. An order cancelling or vacating the certificate may be obtained upon its being shown, to the satisfaction of the court or judge, that the cause of action in respect of which the attachment proceedings have been taken has been satisfied, that three months have elapsed since the certificate was issued, and that there are no unsatisfied executions in the hands of any sheriff in the Province

Enforcing certificate.

against the defendant. While the certificate remains in force any judgment creditor of the defendant may take proceedings under rule 741 for the sale of the defendant's interest in any lands bound by the certificate. Such proceedings shall be as nearly as possible the same as proceedings to sell land under a certificate of judgment. R.S.M. c. 40, r. 827.

Application of proceeds.

825. All proceeds of lands realized in such proceeding shall be applied, *first*—in payment of the amount of any judgment a certificate of which is registered against the defendant prior to the registration of the certificate of attachment, and all costs lawfuly incurred thereunder; *next*—in payment of the costs of the proceedings for sale; and *next*—in a rateable distribution among all creditors of the defendant whom the master may report to have certificates of orders for attachment, or of judgments or orders for the payment of money, registered in the registration district or land titles district in which the lands lie subsequently to the registration of the certificate of attachment on which the proceedings are taken, and including the creditor on whose attachment such proceedings are taken. R.S.M. c. 40, r. 828.

When certificate of attachment to lapse.

826. Every such certificate shall lapse and become void unless, within one year from the date thereof, some proceeding for the sale of the land bound by the certificate be commenced in this court and a certificate of the prothonotary or other official of the court, that such proceeding has been taken, has been filed in the proper land titles or registry office, and in that event the certificate shall remain in force until the termination of any proceeding for sale of the lands which has been commenced as aforesaid. 3 Ed. 7, c. 11, s. 2.

What may be seized under order for attachment.

827. All property, credits and effects, including all rights or shares in any association or corporation, of a debtor or other person as aforesaid, may be seized and taken under order for attachment in the same manner and to the same extent as they might be seized and taken under execution; and the sheriff, upon the receipt of such order, shall forthwith take into his charge or keeping all such property and effects according to the exigency of the order; and he shall be allowed all necessary disbursements for keeping the same, and he shall immediately call to his assistance two substantial freeholders, with whose aid he shall make a just and true

Inventory.

inventory of all the property, credits and effects, evidences of title or debts, books, and book and other accounts, bills, bonds, notes, vouchers and papers that he has attached, and

shall return such inventory signed by himself and the said freeholders, together with the order of attachment. R.S.M. c. 40, r. 830.

Case of horses, cattle, perishable property, etc., being seized.

828. If any horses, cattle, sheep, pigs or perishable goods or chattels, or such as from their nature would be likely to deteriorate in value or would be expensive to keep, shall be attached, the sheriff shall have the same appraised and valued on oath by two competent persons; and upon notice thereof given to the plaintiff, the plaintiff shall forthwith give to the sheriff a bond with two or more sureties, if the sheriff shall require the same, the sufficiency of which bond shall be approved by the sheriff, in double the amount of the appraised value of the articles, conditioned for payment to the defendant, his executors, administrators or assigns, of all damages and costs which may be sustained by the defendant by reason of the seizure and sale of the articles, over and above the proceeds of the sale thereof, in case judgment be not obtained by the plaintiff against the defendant for substantially the sum claimed by the plaintiff against the defendant in the order for attachment; and then the sheriff shall, upon reasonable notice in that behalf, proceed to sell all or any of such articles at public auction to the highest bidder, and shall hold the proceeds of such sale for the same purposes as he would hold any property seized under the attachment. R.S.M. c. 40, r. 831.

Sheriff to be secured in such case.

829. If the plaintiff, after notice to himself, or to his attorney or agent, of the seizure of any of the articles enumerated in the next preceding rule, neglects or refuses to deposit such bond, or to give the sheriff such security as he shall require in that behalf, then, after the lapse of four days next after such notice, the sheriff shall be relieved from all liability to such plaintiff in respect of the retaining of the articles so seized; and the sheriff may in his discretion either sell such articles or forthwith restore the same to the person from whose possession he took them. R.S.M. c. 40, r. 832.

Property or proceeds thereof in hands of County Court officer, how to be dealt with.

830. If the sheriff to whom an order for attachment is directed for execution finds any property or effects, or the proceeds of any property or effects which have been sold as perishable, belonging to the defendant named in such order, in the hands or in the custody or keeping of any constable, bailiff, clerk or other officer of any County Court, by virtue of any writ or writs of attachment issued from any County Court, such sheriff may demand and take all such property or effects or the proceeds thereof, or any part thereof; and the officer so having the same or any part thereof shall, on

notice of the order of attachment of the sheriff, and on demand made by him, forthwith deliver all such property or effects, or, if sold, the proceeds thereof, to the sheriff, upon penalty of forfeiting double the value thereof, to be recovered by the sheriff with costs and to be by him accounted for, after deducting his own costs (if any), as part of the property and effects of the defendant; but the plaintiff or plaintiffs who have duly sued out such writ or writs of attachment in the County Court may proceed to judgment in the said County Court according to the practice thereof; and upon such plaintiff or plaintiffs delivering a memorandum of the judgment, with the costs, so recovered in the County Court, under the hand of the clerk of such court, to such sheriff, every such plaintiff shall be entitled to have the same satisfied in like manner as, and in rateable proportion with, the other plaintiffs who obtain judgments against the defendant in the Court of King's Bench, as herein provided. R.S.M. c. 40, r. 833.

Inventory on first order sufficient in respect of same property

831. The sheriff having made an inventory and appraisement on the first order for attachment shall not make any new or any other inventory or appraisement on any subsequent order for attachment against the same defendant in respect of the same property. R.S.M. c. 40, r. 834.

Orders to be in duplicate.

832. Every such attaching order in an action shall be issued in duplicate, and shall be so marked on its face, and one of the duplicates shall be delivered to the sheriff and the other shall be used for the purpose of serving the defendant. 3 Geo. 5, c. 12, s. 3, *part*.

Date.

833. Every such attaching order shall be dated on the day on which it is made, and shall remain in force as long as the statement of claim is in force. R.S.M. c. 40, r. 836.

Further orders within six months.

834. The plaintiff may, at any time within six months from the date of the original order of attachment, upon application to the proper officer, obtain one or more certified copy or copies of the attaching order, which may be delivered to any sheriff other than the sheriff to whom the original order was delivered, for the purpose of attaching the property, credits or effects of the defendant in aid of the original order. R.S.M. c. 40, r. 837.

Service.

835. In actions in which an order of attachment has been issued, the statement of claim and order of attachment may be served in like manner as in ordinary actions. 3 Geo. 5, c. 12, s. 3, *part*.

Plaintiff to prove claim.

836. Before the plaintiff shall be entitled to sign judgment by default, he shall file an affidavit proving the amount of the debt and damages claimed by him in such action, after giving credit for all payments and claims which might be set-off or lawfully claimed by the debtor at the time of making the affidavit. R.S.M. c. 40, r. 839.

Defendant may be let in.

837. The court or judge may, either before or after final judgment, let in the defendant to put in special bail and defend the action, in the same manner and subject to the same rules and discretion as on a like application in an ordinary action. R.S.M. c. 40, r. 840.

Special bail.

838. The special bail (whether put in within the time limited by the order, or within such time as the court or a judge directs) shall be put in and perfected in like manner as if the defendant had been arrested under the former practice relating to bailable proceedings for the amount sworn to on obtaining the attachment. R.S.M. c. 40, r. 841.

Return of property upon perfecting special bail.

839. Upon the defendant so putting in and perfecting special bail, all his property, credits and effects attached in the action (excepting any which have been disposed of as perishable, and then the net proceeds of the goods so disposed of) shall be restored and paid to him, unless there be some other lawful ground for the sheriff to withhold or detain the same. R.S.M. c. 40, r. 842.

Motion against order for attachment.

840. If, at any time before the execution issues, it appears upon motion that the defendant was not a debtor subject to have an order for attachment issued against him under these rules at the time of the obtaining of the attaching order, such defendant shall recover his costs of defence, to be deducted from the amount of the plaintiff's claim or judgment; and the plaintiff shall be entitled only to judgment or execution for the excess, if any; and if the taxed costs of the defendant are greater than the amount of the plaintiff's claim or judgment, then the defendant shall be entitled to an order for payment of the excess forthwith. R.S.M. c. 40, r. 843.

Attaching Property in Hands of Third Parties.

Effect of serving notice of order for attachment.

841. If any notice in writing of the order of attachment has, by the sheriff or by or on behalf of the plaintiff suing out such order, been duly served upon any person owing any debt or demand to, or who has the custody or possession of any property or effects of, such attached defendant, and if such person, after such notice, pays any such

debt or demand or delivers over any such property or effects to such attached defendant, or to any one to his use or for his benefit, he shall be deemed to have done so fraudulently; and if the attaching plaintiff recovers judgment against the said attached defendant and the property and effects otherwise seized by the sheriff are insufficient to satisfy such judgment, such person shall be liable for the deficiency and all costs to the extent of double the amount of such debt or demand and of double the value of all such property or other the premises so fraudulently paid or delivered over. R.S.M. c. 40, r. 844.

What proceeding a person notified under next preceding rule may take.

842. If, after notice as aforesaid, any person indebted to such attached defendant, or having the custody of his property as aforesaid, be sued for such debt or demand or property by such attached defendant, or by any person to whom he has assigned the debt or property after the date of the order for attachment, such person so sued may, on affidavit, apply to the court or a judge to stay proceedings in the action against himself, until it be known that the property and effects so otherwise seized by the sheriff are sufficient to discharge the sum or sums recovered or to be recovered against such attached defendant, and the court or judge may make such rule or order in the matter as the court or judge thinks fit; and the judge, if necessary, may direct an issue to try any disputed question of fact in the premises. R.S.M. c. 40, r. 845.

Collection of accounts by sheriff.

843. The sheriff may also, by rule or order of the court or a judge, collect any or all accounts and debts due by persons indebted to such debtor or liable to the defendant in attachment, and may sell any of such debts and accounts by public auction, if in his opinion it would be more to the advantage of the creditors of the defendant to realize in that manner; and the proceedings prior to and under such sale by auction shall be as nearly as possible the same as in the case of a sale of goods by the sheriff under execution. R.S.M. c. 40, r. 846.

Compromise of claims by sheriff.

844. In proceeding to collect any of such accounts and debts the sheriff may compromise, compound, abandon, submit to arbitration or otherwise settle the same in any manner which seems to him expedient without being responsible for any loss occasioned by any act or thing so done by him in good faith. R.S.M. c. 40, r. 847.

Proceedings by sheriff against debtors of debtor where attached property insufficient.

845. If the real estate and personal property, credits and effects of such attached defendant, attached by any order for attachment as aforesaid, prove otherwise insufficient to satisfy the executions obtained in the actions thereon against such attached defendant, the sheriff having execution thereof may, by rule or order of the court or a judge, to be granted on the application of the plaintiff in any such case, bring an action for and recover from any person indebted to such debtor or person liable to the defendant in attachment the debt, claim, property or right of action attachable under these rules and owing to and recoverable by such attached defendant, with costs; in which suit the defendant therein shall be at liberty to set up any defence which would have availed him against such attached defendant at the date of the order for attachment; and a recovery in such suit by the sheriff shall operate as a discharge as against such attached defendant; and the sheriff shall hold the moneys recovered by him as part of the assets of such attached defendant, and shall apply them accordingly. R.S.M. c. 40, r. 848.

Form of statement of claim under preceding rule.

846. The statement of claim in any such action by the sheriff shall contain an introductory averment to the effect following:— "A.B., sheriff of , etc., who sues under the provisions of the law respecting attached debtors, in order to recover from C.D., debtor to E.F., an attached debtor, the debt owing *(or other claim according to the facts)* to the said E.F. by the said C.D., complains that, etc." R.S.M. c. 40, r. 849.

Sheriff not bound to bring action until secured.

847. The sheriff shall not be bound to bring an action against any party as aforesaid, until the attaching plaintiff gives to the sheriff such indemnity as to him shall be satisfactory, to secure him against costs, losses and expenses to be incurred in the prosecution of such action, or to which he may become liable in consequence thereof; such indemnity may be by bond or otherwise as shall be satisfactory to the sheriff. R.S.M. c. 40, r. 850.

Action not to abate on death, etc., of sheriff.

848. In the event of death, resignation or removal from office of any sheriff after such action brought, the action shall not abate, but may be continued in the name of his successor, to whom the benefit of the security so given shall inure as if he had all the time been the sheriff; and a suggestion of the necessary facts as to the change of the sheriff as plaintiff shall be entered on the record. R.S.M. c. 40, r. 851.

Priority as Between Different Attaching Orders.

Distribution where several attaching creditors.

849. The proceeds of the property and effects attached in the sheriff's hands shall be rateably distributed among such plaintiffs as shall in due course obtain judgment and execution against the defendant whose property has been attached, in proportion to the sums actually due upon such executions, whether such plaintiffs have sued out orders for attachment or not; and the court or judge may, on application, delay such distribution to give reasonable time for the obtaining of judgments. R.S.M. c. 40, r. 852.

Order required.

Preliminary requirements for issue of order.

850. Such distribution shall only take place upon the order of the court or a judge. Before such order is made certificates shall be filed from the prothonotary and the deputy clerks of the Crown and pleas in the judicial districts other than the Eastern, showing what actions have been commenced during the past two years against the defendant, and in no case shall an order for distribution be made until two months after the first order for attachment was delivered to the sheriff, or within one month after the publication by the sheriff in *The Manitoba Gazette* of a notice stating that on or after a day to be named therein he will distribute such proceeds amongst the several parties who shall then appear to be entitled to share in such distribution.

Rateable distribution.

(2) The plaintiffs who have executions in the sheriff's hands against the defendant at the time of distribution shall share rateably. 5-6 Ed. 7, c. 17, s. 8; 3 Geo. 5, c. 12, s. 3, *part*.

Attaching creditors in County Court to share in distribution.

851. Every plaintiff in a County Court who shall produce to the sheriff a certified memorandum from the clerk of the County Court, of his judgment obtained in that court against such defendant, shall be considered and treated as the other plaintiffs in the Court of King's Bench, who have sued out and placed in the hands of the sheriff executions, as provided in the last preceding rule, and shall also share in the distribution of the proceeds of land under the proceedings for sale hereinbefore provided for. R.S.M. c. 40, r. 854.

Case of property being insufficient.

852. If the property and effects of such attached defendant be insufficient to satisfy the sums due to the plaintiffs, unless a judge shall otherwise order, none shall be allowed to share, unless their statements of claim or writs of summons were issued within three months from the date of the first order for attachment. R.S.M. c. 40, r. 855.

Case of a plaintiff wishing to prosecute action against defendant in attachment.

853. Any plaintiff wishing to prosecute an action against the defendant in attachment, in the court or in any County Court, whether action is begun before or after the first order for attachment is made, shall be entitled, on application and on proof that an order for attachment has been made against the defendant, to obtain an order from the court or a judge, or the judge of the County Court, as the case may be, allowing him to proceed to judgment on the same terms, as nearly as may be, as those imposed upon a first attaching creditor. R.S.M. c. 40, r. 856.

Return of Attached Property to Debtor.

Return of attached property upon security being given.

854. It shall be competent for and in the discretion of the sheriff or other officer, in the case of any seizure under an order for attachment issued under these rules, forthwith to restore the property seized, or any part of it, to the possession of the party in whose possession it was seized, upon being fully indemnified by bond to him, with two or more obligors to be approved of by him, conditioned for the payment of double the appraised or reasonable value of the said property, or so much thereof as shall satisfy in due course of law the debts or damages which the attaching plaintiffs may recover in judgment against the attached defendant, together with lawful costs, charges and expenses, or by some good and available security satisfactory to the sheriff to the same purport. R.S.M. c. 40, r. 857.

After one month following return of execution, or after one month from distribution, overplus to be restored.

855. If, after a period of one month next following the return of any execution against the property and effects of any attached defendant, or after a period of one month from a distribution under the order of the court or a judge, whichever last happens, and after the satisfying of the several plaintiffs entitled, there be no other order for attachment or execution against the same property and effects in the hands of the sheriff, then all the property and effects of such attached defendant, or unappropriated moneys, the proceeds of any part of such property and effects, remaining in the hands of the sheriff, together with all books, book accounts, evidences of title or of debt, vouchers and papers whatsoever belonging thereto, shall be delivered to such attached defendant, or to the person or persons in whose custody the same were found, or to the authorized agent of such attached defendant; and thereupon the responsibility of the sheriff in respect thereto shall determine. R.S.M. c. 40, r. 858.

REPLEVIN.

When goods may be replevied.

856. When goods, chattels, bonds, debentures, promissory notes, bills of exchange, books of accounts, papers, writings, valuable securities, or other personal property or effects, have been wrongfully distrained under circumstances in which, by the law of England as it existed on the fifteenth day of July in the year 1870, replevin might be made, the person so complaining of such distress as unlawful may obtain an order of replevin in the manner prescribed in these rules; or in case goods, chattels, property or effects aforesaid have been otherwise wrongfully taken or detained, the owner or other person or corporation capable at the time these rules take effect of maintaining an action of trespass or trover for personal property may bring an action of replevin for the recovery thereof and for the recovery of the damages sustained by reason of such unlawful taking or detention, or of such unlawful detention, in like manner as actions are brought and maintained by persons complaining of unlawful distress. R.S.M. c. 40, r. 859.

Goods seized under process not to be replevied.

857. The provisions herein contained shall not authorize the replevying or the taking out of the custody of a sheriff or other officer of the court or a County Court of any property seized under process issued out of either of those courts. R.S.M. c. 40, r. 860.

Writ of replevin abolished.

Order to replevy.

858. The writ of replevin is hereby abolished. Whenever a party is entitled to replevy goods, he may obtain an order therefor in an action commenced by statement of claim, which action shall be conducted in the same manner as other actions, save as otherwise provided in these rules. R.S.M. c. 40, r. 861.

859. An order of replevin may be obtained—

When motion for order required.

(*a*) on motion therefor on an affidavit by the person claiming the property or some other person, showing to the satisfaction of the court or a judge the facts of the wrongful taking or detention which is complained of, as well as the value and description of the property, and that the person claiming it is the owner thereof, or is lawfully entitled to the possession thereof (as the case may be); or

Order on præcipe.

(*b*) on præcipe, if the person claiming the property, his servant or agent, makes an affidavit which shall be entitled and filed in the court out of which the order is to issue, stating—

(i) that the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof (describing the property in the affidavit);

(ii) the value thereof to the best of his belief;

(iii) that the property was wrongfully taken out of the possession of the claimant, or was fraudulently got out of his possession, within two months next before the making of the affidavit;

(iv) that the deponent is advised and believes that the claimant is entitled to the order;

(v) and that there is good reason to apprehend that, unless the order is issued without waiting for a motion, the delay would materially prejudice the just rights of the claimant in respect to the property; or

Order on præcipe where property distrained.

(c) on præcipe (in case the property was distrained for rent or *damage feasant*), if the person claiming the property, his servant or agent, makes an affidavit (which shall be entitled and filed in the court from which the order is to issue), stating—

(i) that the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof (describing the property in the affidavit);

(ii) the value thereof to the best of his belief;

(iii) that the property was taken under color of a distress for rent or *damage feasant;* and in such case the order shall state that the defendant has taken and unjustly detains the property, under color of a distress for rent or *damage feasant* (as the case may be).

Except as above mentioned no order to issue.

(2) Except as hereinbefore mentioned, no order of replevin shall be issued. R.S.M. c. 40, r. 862; 3 Geo. 5, c. 12, s. 3, *part.*

Discretionary power of court or judge when motion made for order.

860. When a motion for an order is made, the court or judge may proceed on the *ex parte* application of the plaintiff, or may direct notice to be served on the defendant to show cause why the order should not issue; and may, on the *ex parte* application or on the return of the motion, grant or refuse the order, or may direct the sheriff to take a bond in less or more than treble the value of the property or to take as security money to the amount of the value of the

property, or may direct him to take and detain the property until the further order of the court, instead of at once replevying the same to the plaintiff, or may impose any terms or conditions in granting the order, or in refusing the same on the return of a motion, as under the circumstances in evidence appear just. R.S.M. c. 40, r. 863; 3 Geo. 5, c. 12, s. 3, *part*.

Application to discharge order.

861. If an order of replevin is issued, the defendant may at any time, or from time to time, on notice to the plaintiff, apply to the court or a judge, on affidavit or otherwise, to discharge, vary or modify the order, or to stay proceedings under the order, or for any other relief, to be specified in the notice, with respect to the return, safety or sale of the property or any part thereof, or otherwise; and the court or judge may make such order thereon as, under all the circumstances, best consists with justice between the parties. R.S.M. c. 40, r. 864.

Form of replevin order

862. The order of replevin shall state the description and value of the property, and shall be dated on the day on which it is made, and may be in the words or the effect of form No. 112 in the schedule to these rules or otherwise adapted to the circumstances of the case. R.S.M. c. 40, r. 865.

Sheriff's security.

863. Before the sheriff acts on the order he shall, unless otherwise provided in the order, take a bond from the plaintiff with two sufficient sureties in treble the value of the property to be replevied, as stated in the order, or shall take as security money to the amount of the value of the property.

Assignment of bond.

(2) Such bond shall be assignable to the defendant, and the bond and assignment thereof may be in the words or to the effect of form No. 153 in the schedule to these rules.

Bonds subject to 8 and 9 Wm. 3, c. 11, s. 8.

(3) The bond shall be subject to the provisions of the eighth section of the Act passed by the Imperial Parliament in the eighth and ninth years of the reign of His Majesty King William the Third, chaptered eleven, save that the practice in any action on such bond shall conform to that under these rules. R.S.M. c. 40, r. 866; 3 Geo. 5, c. 12, s. 3, *part*.

Indemnity of defendant.

864. Where an order of replevin is issued for any personal property which had not been previously taken out of the plaintiff's possession, and for which the plaintiff might formerly have brought an action of trespass or trover, the defendant shall be entitled, if the plaintiff fails in the action, to be fully indemnified against all damages sustained by the

defendant, including any extra costs which he may incur in defending the action; and the bond to be taken by the sheriff or bailiff shall be conditioned, not only as heretofore required in that behalf, but also to indemnify and save harmless the defendant from all loss and damage which he may sustain by reason of the seizure, and of any deterioration of the property in the meantime in the event of its being returned, and all costs, charges and expenses which the defendant may incur, including reasonable costs not taxable between party and party. This rule shall not apply to cases of distress for rent or *damage feasant*. R.S.M. c. 40, r. 867.

Sheriff not to serve copy order till he has replevied.

865. The sheriff shall not serve a copy of the statement of claim or the order until he has replevied the property, or some part of the property therein mentioned if he cannot replevy the whole in consequence of the defendant having eloigned the same out of his judicial district, or because the same is not in the possession of the defendant or of any person for him. R.S.M. c. 40, r. 868.

Action of sheriff when order issues on præcipe.

866. If the order issues on præcipe, the sheriff shall take and detain the property, and shall not replevy the same to the plaintiff without the order of the court or a judge in that behalf; but the sheriff may, within fourteen days from the time of his taking the same, re-deliver it to the defendant, unless in the meantime the plaintiff obtains and serves on the sheriff an order directing a different disposition of the property. This rule shall not apply in case of a distress for rent or *damage feasant*. R.S.M. c. 40, r. 869.

Property concealed in house.

867. If the property to be replevied or any part thereof is secured or concealed in any dwelling house or other building or enclosure of the defendant, or of any other person holding the same for him, and if the sheriff publicly demands from the owner and occupant of the premises deliverance of the property to be replevied, and if the same is not delivered to him after such demand, he may, and shall if necessary, break open such house, building or enclosure for the purpose of replevying such property or any part thereof, and shall make replevin according to the order. R.S.M. c. 40, r. 870.

Property concealed about the person.

868. If the property to be replevied or any part thereof is concealed either about the person or on the premises of the defendant, or of any other person holding the same for him, and if the sheriff demands from the defendant or such other person deliverance thereof and deliverance is neglected or refused, he may, and if necessary shall, search and exam-

ine the person and premises of the defendant or other person for the purpose of replevying the property or any part thereof, and shall make replevin according to the order. R.S.M. c. 40, r. 871.

Return to order.

869. The sheriff shall return the order on or before the tenth day after the service thereof. and shall transmit, annexed thereto, a statement showing—

(*a*) the names of the sureties in and the date of the bond taken from the plaintiff, and the name or names of the witness or witnesses thereto;

(*b*) the places of residence and additions of the sureties;

(*c*) the number, quantity and quality of the articles of property replevied, and in case he has replevied only a portion of the property mentioned in the order, and cannot replevy the residue by reason of the same having been eloigned out of his judicial district by the defendant, or not being in the possession of the defendant or of any other person for him, he shall state in his return the articles which he cannot replevy and the reason why not. R.S.M. c. 40, r. 872.

Eloignment of property.

870. If the sheriff makes such a return of the property distrained, taken or detained, having been eloigned, as would have warranted the issuing of a *capias in withernam* by the law of England, then, upon the filing of such return, an order shall be issued on præcipe in the words or to the effect of form No. 113 in the schedule to these rules, which shall have the same force and effect as a *capias in withernam* had, and before executing such order the sheriff shall take security as provided by rule 863. R.S.M. c. 40, r. 873.

Order in withernam.

Judgment where no defence.

871. If no statement of defence is filed within the time limited therefor, the plaintiff shall be at liberty to sign final judgment for the sum of five dollars and costs according to the proper scale, or may sign interlocutory judgment and proceed as in other cases. R.S.M. c. 40, r. 874.

MANDAMUS.

Mandamus may be asked in statement of claim.

872. The plaintiff in any action in the court may in his statement of claim ask for a mandamus commanding the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested.

Joinder of claim for mandamus with other claims.

(2) Such claim for a mandamus may be joined with any other claim or cause of action except a claim for replevin or for the recovery of land. R.S.M. c. 40, r. 875.

873. If judgment be given for the plaintiff, the court may by the judgment command the defendant, either forthwith or on the expiration of such time and upon such terms as may appear to the court to be just, to perform the duty in question. The court or a judge may also extend the time for the performance of the duty. R.S.M. c. 40, r. 876. Judgment.

874. No writ of mandamus shall hereafter be issued in an action, but a mandamus shall be by judgment or order, which shall have the same effect as a writ of mandamus formerly had. R.S.M. c. 40, r. 877. Writ of mandamus abolished. Order for mandamus.

875. The pleadings and other proceedings shall be the same in all respects, as nearly as may be, and costs shall be recoverable by either party, as in an ordinary action. R.S.M. c. 40, r. 878. Procedure in mandamus cases.

876. Nothing in the preceding rules contained shall take away the jurisdiction of the court to grant orders of mandamus; nor shall any order of mandamus issued be invalid by reason of the right of the prosecutor to proceed by action for mandamus; but in all cases a claim for a mandamus shall be proceeded with by action under the preceding rules, unless leave is granted by the court or a judge to proceed otherwise. R.S.M. c. 40, r. 879. Jurisdiction not affected.

877. In all cases the right of the plaintiff or applicant to a mandamus shall be determined on the trial of the action or the hearing of the motion, and the order of mandamus when issued shall be peremptory. R.S.M. c. 40, r. 880. Determination of application.

878. Within the time limited in any order of mandamus, whether obtained in an action or otherwise, or if no time be therein limited then within ten days after the service of such order upon the person to whom the same is directed, such person shall file an affidavit with the prothonotary showing what he has done in obedience to such order or, if he has been unable to comply with such order, showing the reasons of such inability. Failure to file such affidavit shall be a contempt of court and may be punished accordingly. Upon such affidavit being filed any party may apply for such order as may be necessary to enforce obedience to the order of mandamus, or to perfect the relief to which such person may be entitled, and the court may make such order as may be deemed just. R.S.M. c. 40, r. 881. Person commanded to do an act to file affidavit showing compliance or reasons for non-compliance.

879. If the order of mandamus be directed to a corporation, the affidavit shall be made by the chief officer or acting chief officer of such corporation within the Province. R.S.M. c. 40, r. 882. In case of corporation commanded, who shall make above affidavit.

Adding parties.

880. The court or judge may at any stage of an action or motion or proceeding for a mandamus add any parties, or permit any parties to be heard who may be interested in the matters in question in such action, motion or proceeding. R.S.M. c. 40, r. 883.

Order may issue in first instance.

881. Upon application by motion for any order of mandamus, the order may in all cases be made in the first instance, if the court thinks fit, or the court may direct that, before the hearing of the motion is proceeded with, any party or any person or corporation shall be served with notice or made a party to the motion. R.S.M. c. 40, r. 884.

Motion for order to be supported by affidavit.

882. In all cases in which application for mandamus is made by motion, the application may be made to the court on affidavit upon leave being granted as provided in rule 876, and upon notice in the ordinary manner to any person who may, in the opinion of the court or judge, be affected by the order, if made. R.S.M. c. 40, r. 885.

Service of motion.

883. The notice of motion may be served upon the person or party named therein, either personally or by substitution as may be directed by the court or a judge, in the same manner as a statement of claim; and the motion may be prosecuted upon affidavit or other evidence in the same manner as other applications; and if an order of mandamus is made, the same may be enforced by process of attachment. R.S.M. c. 40, r. 886.

Order.

884. Upon hearing the parties who appear or their counsel and after service of the notice upon all proper persons, as hereinbefore provided, the court, if in its opinion the case is a proper one, shall make the order and shall thereby direct what is to be done and performed by the person or party to whom the order is directed; but if in the opinion of the court the application should be refused, the said motion shall be dismissed. R.S.M. c. 40, r. 887.

Enforcement of order.

885. If a mandamus granted in an action or otherwise, or a mandatory order, injunction, or judgment for specific performance of any contract, be not complied with, the court or judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done as far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the court or judge, at the cost of the disobedient party; and upon the act being done the expenses incurred may be ascertained in such manner as the court or judge may direct, and execution may issue for the amount so ascertained and costs. R.S.M. c. 40, r. 888.

886. No part of the jurisdiction by the last preceding fourteen rules conferred upon a judge shall be exercised by the referee in chambers or the local judges of the court. R.S.M. c. 40, r. 889. Referee or local judges not to grant orders of mandamus.

INJUNCTIONS.

887. No writ of injunction shall be issued in any case. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction formerly had. R.S.M. c. 40, r. 890. Writ of injunction abolished. Order for injunction.

INTERIM PRESERVATION OF PROPERTY.

888. Where by any contract a prima facie case of liability is established and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the court or a judge may make an order for the preservation or interim custody of the subject matter of the litigation, or may order that the amount in dispute be brought into court or otherwise secured. R.S.M. c. 40, r. 891. Interim preservation of property.

889. The court or a judge, on the application of any party to an action, may make any order for the sale by any person or persons named in the order, and in such manner and on such terms as to the court or judge may seem desirable, of any goods, wares or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just or sufficient reason it may be desirable to have sold at once. R.S.M. c. 40, r. 892. Sale of perishable goods.

890. An application for an order under paragraph (*o*) of section 26 of this Act, or under the two last preceding rules, may be made by any party. If the application be by the plaintiff for an order under the said paragraph (*o*), it may be made either *ex parte* or on notice, and if for an order under the two last preceding rules, it may be made, after notice to the defendant, at any time after the issue of the statement of claim, and, if it be by any other party, then on notice to the plaintiff, and at any time after the statement of defence is filed, by the party making the application. R.S.M. c. 40, r. 893. Application for injunction order.

891. The court or a judge, upon the application of any party to an action, and upon such terms as may seem just, may make any order for the detention, preservation or inspection of any property, being the subject of the action; and for all or any of the purposes aforesaid may authorize any person or persons to enter upon or into any Order for detention and inspection of property.

land or building in the possession of any party to such action; and for all or any of the purposes aforesaid may authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence. R.S.M. c. 40, r. 894.

Amount of lien claimed may be paid into court, and property delivered to plaintiff.

892. Where an action is brought to recover, or a defendant in his statement of defence seeks by way of counterclaim to recover, specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the court or a judge, at any time after such last-mentioned claim appears from the pleadings, or is shown by affidavit or otherwise to the satisfaction of the court or judge, may order that the party claiming to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the court or judge may direct, and that, upon such payment into court being made, the property claimed be given up to the party claiming it. R.S.M. c. 40, r. 895.

PROHIBITION.

Application for prohibition.

893. It shall not be necessary to file a suggestion on any application for an order for prohibition. The application may be made on affidavit, subject to the general rules as to motions and evidence on motions. R.S.M. c. 40, r. 896.

Judge to be prohibited need not be notified.

894. Upon an application for an order for prohibition the judge of the court to be prohibited shall not be served with notice thereof, and need not, except by the order of a judge, be required to appear to be heard thereon, and shall not, except by such order, be liable to any order for the payment of the costs thereof; but the application shall be proceeded with and heard in the same manner in all respects as in other applications to a judge sitting in court, and notice of such application shall be given to, or served on, the opposite party or parties. R.S.M. c. 40, r. 897.

Writ of prohibition abolished.

Order for prohibition.

895. No writ of prohibition shall issue in any case, but the matter shall be finally disposed of by order; and no pleading shall be necessary, but an order for prohibition shall have the same effect as a writ of prohibition formerly had. R.S.M. c. 40, r. 898.

INTERPLEADER.

Generally.

Interpleader relief.

896. Relief by way of interpleader may be granted—

(*a*) where the person seeking relief (hereinafter called the applicant) is under liability for any debt, money, goods or chattels, for or in respect of which he is or expects to be sued by two or more parties (hereinafter called the claimants) making adverse claim thereto;

(*b*) where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the court, and claim is made to any money, goods or chattels taken or intended to be taken in execution under any process, or under an order for an attachment, or to the proceeds or value of any such goods or chattels, by any person other than the person against whom the process issued, or by any landlord for rent, or by any second or subsequent judgment or execution creditor claiming priority over any previous judgment or execution process or proceeding, or by the party against whom the process was issued claiming that such goods or chattels are exempt from such seizure or sale. Such application may be made within thirty days after receipt of notice of such claim, and not later unless allowed by a judge on special grounds. R.S.M. c. 40, r. 899.

Matter to be proved by applicant.

897. The applicant must satisfy the court or a judge, by affidavit or otherwise,—

(*a*) that the applicant claims no interest in the subject matter in dispute, other than for charges or costs; and

(*b*) that the applicant does not collude with any of the claimants; and

(*c*) that the applicant is willing to pay or transfer the subject matter into court, or to dispose of it as the court or a judge may direct. R.S.M. c. 40, r. 900.

Applicant entitled to relief though titles of claimants independent.

898. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another. R.S.M. c. 40, r. 901.

When application may be made by defendant.

899. Where the applicant is a defendant, application for relief may be made at any time after service of the statement of claim. R.S.M. c. 40, r. 902.

Motion by applicant.

900. The applicant may make a motion calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them. R.S.M. c. 40, r. 903.

Stay of proceedings in action when defendant applicant.

901. If the application is made by a defendant in an action, the court or a judge may stay all proceedings in the action. R.S.M. c. 40, r. 904.

Order.

902. If the claimants appear on the motion, the court or a judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff and which defendant. R.S.M. c. 40, r. 905.

Evidence.

903. A judge may take evidence upon and dispose of the merits of any such claim in chambers, and, subject to appeal, decide the same in a summary manner and on such terms as may be just. R.S.M. c. 40, r. 906.

Questions of law.

904. Where the question is a question of law and the facts are not in dispute, the court or a judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the court. R.S.M. c. 40, r. 907.

Issues may be tried by a jury.

905. If so ordered, any interpleader issue may be tried by a jury, in which case the order shall set out upon whose application trial by jury has been directed; and such party shall pay the jury fee required by this Act and file the receipt therefor with the record, otherwise a judge may, and when the case is called on for trial the presiding judge shall, except for special reasons, strike out the provision for trial by jury. R.S.M. c. 40, r. 908.

Sheriff's interpleader applications.

906. Interpleader applications made by a sheriff, and arising in respect of writs issued to him from a County Court, shall be made in the same manner, and shall be subject to the same rules, and shall be made to the same judge or court, as if such writs were issued out of the Court of King's Bench. R.S.M. c. 40, r. 909.

Judgment final, subject to appeal or motion.

907. Subject to appeal or motion, the judgment or verdict in any interpleader issue, and the decision or order of the judge in a summary manner, shall in all cases be final and conclusive upon the parties and all persons claiming by, from or under them. R.S.M. c. 40, r. 910.

Failure of claimant to appear or obey order.

908. If a claimant, having been duly served with a notice of motion calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the notice or, having appeared, neglects or refuses to comply with any order made after his appearance, the court or judge may make an order declaring him and all persons claiming under him forever barred against the applicant and persons claiming under him; but the order shall not affect the rights of the claimants as between themselves. R.S.M. c. 40, r. 911.

Order for sale of goods seized in execution.

909. Where goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the court or judge may order a sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just. R.S.M. c. 40, r. 912.

Exclusion of execution creditor not joining in contestation.

910. If a sheriff or other officer applies to the court or judge for relief by interpleader proceedings, and any execution creditor declines to join in contesting the claim of the adverse claimant, the court or judge may direct that such creditor shall be excluded from any benefit which may be derived from the contestation of such claim. R.S.M. c. 40, r. 913.

Final disposition of all matters by court or judge.

911. The court or judge who tries the issue may, and in general, unless there is special reason to the contrary, shall, finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for. Where the judge does not dispose of the whole matter he shall give a certificate of his finding, from which there may be an appeal without entry of judgment or further proceeding. R.S.M. c. 40, r. 914.

Title where one order made in several actions.

912. Where in any interpleader proceeding it is necessary or expedient to make one order in several actions or matters, such order may be made by the court or judge before whom the interpleader proceedings are taken, and shall be entitled in all such matters or actions; and any such order (subject to the right of appeal) shall be binding on the parties in all such actions or matters. R.S.M. c. 40, r. 915.

In case of several executions sheriff may embrace all in one application.

913. If a sheriff has more than one writ at the suit or instance of the same or different persons against the same property, it shall not be necessary for him to make a separate application on each writ or in each action; but he may make one application, and may make all the persons who are execution creditors parties to said application, and the court or judge before whom the application is made shall take such proceedings, and make such order thereon and therein, as if a separate application had been made upon and in respect of each writ. R.S.M. c. 40, r. 916.

Application in case of executions from different courts.

914. If there are writs or orders from the Court of King's Bench and from one or more County Courts against the same goods, and whether at the suit or instance of the same plaintiff, or of different plaintiffs, the application for such interpleader shall be made to the Court of King's Bench or to one of the judges or the referee in chambers or a local judge; and such court, judge, referee or local judge shall dispose of the whole matter, as if all the writs against the goods had been issued from the said court; and in such case the County Court shall have no cognizance or jurisdiction whatever in the matter. R.S.M. c. 40, r. 917.

Orders as to sale, etc., in cases under last two rules

915. In any such case as in the two last preceding rules mentioned, the court or a judge shall make such order with respect to staying proceedings on the several writs, or with respect to directing a sale of the goods or property in question, as may be necessary, and with respect to the final disposition or order to be made as to the goods or the proceeds thereof, and in all other matters whatsoever, as fully as if all the writs had been issued from the Court of King's Bench. R.S.M. c. 40, r. 918.

When issue directed sheriff may tax his costs and serve allocatur on each party.

916. If an issue is directed to be tried for the determination of an adverse claim in respect of property seized or taken under an order for attachment or writ of execution, the sheriff (or other officer) to whom such order is delivered or such writ is directed may tax the costs incurred by him in consequence of such adverse claim, and may, when they are taxed, serve a copy of the certificate of the same upon each of the parties to the issue; and the attaching or execution creditor shall forthwith pay the same to the said sheriff (in default of which payment a writ of execution may issue to enforce the same), and if successful upon the issue shall tax such costs among his costs of the cause. R.S.M. c. 40, r. 919.

Liability for sheriff's costs where case compromised.

917. If any such proceedings be compromised between the parties thereto, such costs of the sheriff or other officer shall be paid by the party, plaintiff or defendant, by whom the execution or attachment was sued out. R.S.M. c. 40, r. 920.

Sheriff's possession money where goods remain in his custody pending determination of issue.

918. If, after the seizure of any property under attachment or in execution, an issue is directed, and the property seized remains, pending the trial of the issue, in the custody of the sheriff or other officer who seized the same, the court from which the order for attachment or writ of execution issued, or any judge thereof, may make an order for the payment to the sheriff or other officer of such sum for his trouble in and about the custody of the property as the court or judge deems reasonable; and the sheriff or other officer shall have a lien upon the property for payment of the same in the event of the issue being decided against the claimant, but only to the extent to which such issue shall be so decided. R.S.M. c. 40, r. 921.

Interpleader order.

919. When an issue is directed upon any interpleader application, the order for the same shall be settled by the judge and shall set out in detail the names of the parties to such issue, the matter to be tried, and the description of the goods, money or property in question. A copy thereof shall be filed, with the affidavits and other papers filed upon the interpleader application, and such copy and affidavits and papers shall be forthwith transmitted to the office of the court where the trial is to take place. No formal issue is to be drawn up or used, but the said copy of the order for issue shall be used instead thereof, and shall be the record for use at the trial. So soon as the order for trial of an issue is made all parties thereto shall be liable to examination in the manner heretofore provided as to the examination of parties. No other record shall be entered than as above provided, but the clerk shall, on præcipe filed by either party, set down the issue for trial at the proper sittings. R.S.M. c. 40, r. 922.

Trial of Interpleader in County Courts.

List and value of goods to be set out in sheriff's affidavit.

920. The affidavit of the sheriff or other officer applying for an interpleader order shall set out a list of the goods and chattels seized, with the value placed upon them by said sheriff or other officer, unless where the total value of goods and chattels seized amounts to the sum of four hundred dollars or more, in which case such list shall be unnecessary and only the fact of such value shall be stated. R.S.M. c. 40, r. 923.

Trial of issue in County Court.

921. When goods or chattels are seized under a writ of execution or an order for attachment issued out of the Court of King's Bench and an interpleader order is made, if the value of the said goods and chattels does not, in the opinion of the judge or other person making such order, exceed the sum of four hundred dollars, the order directing an issue to be tried shall direct that the issue shall be tried in the County Court of the judicial division in which such goods and chattels or some part thereof were seized, or in such other County Court as the judge or other person making such order may direct; and in such case the issue shall be tried in such County Court. R.S.M. c. 40, r. 924.

Filing copy of order for such issue in County Court.

922. After the order for such issue shall have been settled and drawn up under the last preceding rule, up to which point the proceedings shall be carried on in the Court of King's Bench, a copy of the same shall be filed with the clerk of the County Court, and thereupon such issue shall become a cause in said County Court, and all the provisions of "The County Courts Act" as to the trial of causes therein and appeals therefrom, or any provisions which may at any time be substituted therefor, shall apply to said issue. R.S.M. c. 40, r. 925.

Taxation of costs.

923. After such issue shall have been tried and determined in a County Court, the costs shall be taxed by the clerk of such County Court according to the provisions of "The County Courts Act." The judge of said County Court shall, after reviewing and, if necessary, correcting such taxation, indorse upon the copy of the order for said issue, filed as above provided, the judgment of said County Court upon said issue, and shall also certify upon said copy the amount of costs so taxed. The clerk of the County Court after the time for appealing has expired, or sooner if the judge of such County Court shall so order, shall deliver to the successful party the copy of the order for such issue so indorsed, who shall file the same in the Court of King's Bench. The provisions of rule 911 shall not apply to issues tried under this and the two last preceding rules in a County Court. All subsequent proceedings in connection with the order for such issue shall be carried on in the Court of King's Bench. R.S.M. c. 40, r. 926.

Filing copy of County Court judgment in Court of King's Bench

Appeal from County Court.

924. An interpleader issue tried in a County Court shall be subject to appeal to the same extent, and subject to the same provisions, as any ordinary cause in a County Court. R.S.M. c. 40, r. 927.

Interpleader by Bailees and Carriers.

925. Any common carrier or other bailee of goods and chattels, whether under a special contract or otherwise howsoever, upon whom any claim is made to any goods or chattels in the possession of such carrier or bailee by any one or more claimants, whether such claims have or have not a common origin, may either before or at any time after action is brought by any such claimants respecting the said goods, upon affidavit showing how the said goods and chattels came into his possession, the nature and extent of any lien which the said carrier or bailee has upon the said goods and chattels for services rendered and money advanced thereon, if any such claim exists, and the value or supposed value thereof, also showing who said claimants respectively are, and the nature (as far as said carrier or bailee knows) of the claims respectively made to said goods, and that he the said carrier or bailee has good reason to believe, and does believe, that if he delivers such goods to either of the claimants he will be sued by the other or others of them, and that he does not collude with any or either of the parties claiming possession of said goods and chattels, apply to the court or a judge, or where the value of the goods does not exceed four hundred dollars to the court or a judge or to any judge of a County Court of the judicial division within which such goods are at the time of the application, by motion calling upon all the parties respectively claiming the said goods and chattels to appear and state the nature and particulars of their respective claims, and to maintain or relinquish the same. Interpleader by bailees and carriers.

(2) Such affidavit may be made by any person upon information respecting the facts set out in the affidavit and belief in their truth.

(3) The judge or County Court judge, in disposing of said application, shall have and exercise all the powers given to a judge in interpleader matters. R.S.M. c. 40, r. 928.

926. If any such claimant, being duly served with notice of the said motion, does not appear to maintain or relinquish his claim or right, or refuses to comply with any order made after appearance, the said judge may declare him barred from making or prosecuting his claim against the said carrier or bailee, saving the right or claim of such party against the person or party to whom, under the said order, said goods, or the proceeds thereof, may be delivered; and the said judge may make such order between the parties to the said application as may seem just. R.S.M. c. 40, r. 929. Barring claimant.

Satisfaction of bailee's lien may be provided for.

927. It shall not be necessary, in order to entitle any such carrier or bailee to relief by way of interpleader, that he should abandon any lawful lien he may have upon the goods and chattels which are the subject of such application; and in disposing of said application, the judge, in the case of any such lien, may make such order respecting the satisfaction or payment thereof, and as to the relief asked and sought thereby, and as to the costs of the parties and the payment thereof, as the right and justice of the case may require. R.S.M. c. 40, r. 930.

Division XIII.

ORIGINATING NOTICES.

Who may give notice.

928. The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin or heir-at-law of a deceased person, or as *cestui que trust* under the trusts of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may serve a notice of motion returnable in cases under clauses (*a*), (*b*), (*e*) and (*h*) hereof before a judge of the court sitting in weekly court, and in other cases before a judge of the court in chambers, for such relief of the nature or kind following, as may be specified in the notice and as the circumstances of the case may require, that is to say, the determination, without an administration of the estate or trust, of any of the following questions or matters,—

In what cases.

(*a*) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin or heir-at-law, or *cestui que trust;*

(*b*) the ascertainment of any class of creditors, legatees, devisees, next of kin or others;

(*c*) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (where necessary) of such accounts;

(*d*) the payment into court of any moneys in the hands of the executors or administrators or trustees;

(*e*) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;

(*f*) the approval of any sale, purchase, compromise or other transaction;

(*g*) the opinion, advice or direction of a judge pursuant to "The Trustee Act";

(*h*) the determination of any question arising in the administration of the estate or trust. 3 Geo. 5, c. 12, s. 10, *part*.

929. The persons to be served with notice under the last preceding rule, in the first instance, shall be the following, that is to say,— Who to be served.

(*a*) where the notice is served by an executor or administrator or trustee—

(*i*) for the determination of any question under clauses (*a*), (*e*), (*f*), (*g*) or (*h*) of the last preceding rule, the person or one of the persons whose rights or interests are sought to be affected;

(*ii*) for the determination of any question under clause (*b*) of said rule, any member or alleged member of the class;

(*iii*) for the determination of any question under clause (*c*) of said rule, any person interested in taking such accounts;

(*iv*) for the determination of any question under clause (*d*) of said rule, any person interested in such money;

(*v*) if there are more than one executor or administrator or trustee, and they do not all concur in the service of the notice, those who do not concur;

(*b*) where the notice is served by any person other than the executors, administrators or trustees, the said executors, administrators or trustees. 3 Geo. 5, c. 12, s. 10, *part*.

930. The judge may direct such other persons to be served as may seem just.

(2) The judge may also exercise the powers conferred upon the court by rules 211 and 212. 3 Geo. 5, c. 12, s. 10, *part*.

931. The judge may summarily dispose of the questions arising on the application and make such judgment or order as the nature of the case may require, or may give such Judge's powers.

directions as he may think just for the trial of any questions arising upon the application. 3 Geo. 5, c. 12, s. 10, *part.*

Special directions.

932. Any special directions, touching the carriage or execution of the judgment or order or the service thereof upon persons not parties, may be given as may seem just. 3 Geo. 5, c. 12, s. 10, *part.*

Effect of notice.

933. Service of a notice under rule 928 shall not interfere with or control any power or discretion vested in any executor, administrator or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought. 3 Geo. 5, c. 12, s. 10, *part.*

Division XIV.

COSTS.

GENERAL RULES.

Costs to be in discretion of court.

934. Subject to the provisions of this Act, the costs of and incident to all proceedings in the court shall be in the discretion of the court, but nothing herein contained shall deprive a trustee, mortgagee or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in courts of equity.

(2) Where any action or issue is tried by a jury, the costs shall follow the event, unless, upon application made at the trial, for good cause shown, the judge before whom the action or issue is tried or the court otherwise orders.

(3) Costs of proceedings before judicial officers, unless otherwise disposed of, shall be in their discretion subject to appeal. R.S.M. c. 40, r. 931.

Case of one of several plaintiffs failing.

935. When several plaintiffs have been joined, and some or one of them only have or has been found entitled to relief, the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who has not or have not been found entitled to relief, unless the court in disposing of the costs of the action otherwise orders. R.S.M. c. 40, r. 932.

Case in which County Court costs only allowed.

936. In case an action of the proper competence of a County Court is brought in the Court of King's Bench, and the judge or court makes no order to the contrary, the plaintiff, who is awarded costs, shall recover only County Court costs, and the defendant shall be entitled to tax his costs of suit as between solicitor and client, and so much thereof as exceeds the taxable costs of the defence which would have been incurred in the County Court shall, on entering judgment, be set off and allowed by the taxing officer against the plaintiff's County Court costs to be taxed, or against the costs to be taxed and the amount of the verdict if it be necessary; and if the amount of costs so set off exceeds the amount of the plaintiff's verdict and taxed costs, the defendant shall be entitled to execution for the excess against the plaintiff; but the court or a judge may by order prevent such set-off or allow the plaintiff costs on the scale used in the King's Bench, with or without the right of set-off to the defendant. R.S.M. c. 40, r. 933.

Costs where several actions on one bond note, bill, etc

937. Where several actions are brought on one bond, recognizance, promissory note, bill of exchange or other instrument, or where several actions are brought against the maker and indorser of a note, or against the drawer, acceptor and indorser of a bill of exchange, there shall be collected or recovered from the defendant the costs taxed in one action only at the election of the plaintiff, and the actual disbursements only in the other actions, unless the court otherwise orders; but this provision shall not extend to any interlocutory costs in the progress of an action. R.S.M. c. 40, r. 934.

Costs of guardians.

938. Where the official guardian or other guardian of an infant, lunatic or person of unsound mind is entitled to costs, as against any party to an action or proceeding, the court or judge may order the successful adult party, if any, to pay such costs and add them to his own. R.S.M. c. 40, r. 935.

Costs of attaching debts.

939. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, including examination of the debtor or other person liable to examination, shall be in the discretion of the court or judge. R.S.M. c. 40, r. 936.

Interlocutory costs.

940. The court and every judge thereof, in so far as it or he may be able so to do without injustice, shall adopt and carry out the principle that no costs of any interlocutory motion before judgment, or before an order to enter judg-

ment is obtained, shall be allowed, unless in the opinion of the judge or officer making the same, or of the taxing officer, such order was necessary to the proper trial or disposition of the case, or to do justice between the parties; and all costs of motions made before final judgment, where costs are allowed, shall, unless otherwise ordered, be taxed at the taxation of the general costs of the cause, subject to all just rights of set-off. In cases where an application is made which, though within the strict right of the applicant, is considered by the court or judge to be vexatious and unnecessary, costs may be given against the applicant. R.S.M. c. 40, r. 937.

Costs of examinations for discovery.

941. No party shall be entitled to tax against the opposite party the costs of an examination for discovery, except upon the fiat of a judge. Such fiat may be given at the trial by the judge before whom the case is tried, or by a judge in chambers on application for that purpose upon notice to the opposite party; but no costs of obtaining such fiat shall be allowed. R.S.M. c. 40, r. 938.

Costs from one defendant to another.

942. Where the costs of one defendant ought to be paid by another defendant, the court may order payment to be made by the one defendant to the other directly; and it shall not be necessary to order payment through the plaintiff. R.S.M. c. 40, r. 939.

Costs of shorthand writer.

943. In cases not otherwise provided for, the taxing officer may, in any cause, matter or other proceeding, allow a reasonable sum for the expenses of a shorthand writer, on the certificate of the judge before whom the examination of any witness or witnesses in any such cause, matter or other proceeding takes place. R.S.M. c. 40, r. 941.

Costs in alimony actions.

944. No application for costs is to be made in an alimony action until the time for delivering the defence has expired; and no costs shall be ordered to be paid *de die in diem* by the defendant beyond the amount of cash disbursements actually and properly made by the plaintiff's solicitor. R.S.M. c. 40, r. 942.

Costs in alimony action.

945. If the plaintiff in an alimony action fails to obtain a judgment for alimony, no costs beyond the amount of the cash disbursements actually and properly made by the plaintiff's solicitor shall be ordered to be paid by the defendant. R.S.M. c. 40, r. 943.

Costs in administration and partition actions.

946. In all actions or proceedings instituted for administration, or partition, or administration and partition, unless otherwise ordered by the court or a judge, instead of the costs being allowed according to the tariff, each person properly represented by a solicitor, and entitled to costs out of the estate—other than creditors not parties to the action or proceeding—shall be entitled to his actual disbursements in the action or proceeding, not including counsel fees, and there shall be allowed, for the other costs of the suit payable out of the estate, a commission on the amount realized, or on the value of the property partitioned in the action or proceeding, which commission shall be apportioned amongst the persons entitled to costs, as the judge or master thinks proper. Such commission shall be as follows:—

On sums not exceeding $500	20	per cent.,
For every additional $100 up to $1,500	5	per cent.,
For every additional $100 up to $4,000	3	per cent.,
For every additional $1,000 up to $10,000	2½	per cent.,
For every additional $1,000	1	per cent.,

and such remuneration shall be in lieu of all fees, whether between "party and party," "as between solicitor and client," or "between solicitor and client." R.S.M. c. 40, r. 944.

Costs of unnecessary administration, partition or sale actions

Party to pay his own costs where he refuses to be represented by solicitor for class.

947. When two or more actions or proceedings are instituted for administration, or partition, or sale, the judge may, in his discretion, disallow all or any of the costs of any action or proceeding which in his opinion has been unnecessarily prosecuted; where any one of the parties, constituting a class formed by a master for representation in his office by one solicitor, insists on being represented by a different solicitor, such person is personally to pay the costs of his own solicitor of and relating to the proceedings before the master, with respect to which such nomination has been made, and all such further costs as are occasioned to any of the parties by his being represented by a different solicitor from the solicitor so nominated. R.S.M. c. 40, r. 945.

Costs occasioned by not admitting

948. Whenever the defendant or third party filing a statement of defence has neglected or refused to make the admissions required by any rule hereof, and whenever any party at the trial of an action has neglected or refused to make admissions in accordance with rule 58C, and whenever anything in the course of an action or reference which ought to have been admitted has not been admitted, the party whose counsel or attorney neglected or refused to make the admission, or such counsel or attorney personally, shall be ordered to pay the costs occasioned by such neglect or refusal. 7-8 Ed. 7, c. 12, s. 9.

Tender of costs on service of petition.

949. Where a petition in any action or matter is served and notice is given to the party served that in case of his appearance in court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be five dollars. The party making the payment shall be allowed the same in his costs, provided the service was proper, but not otherwise; but this rule is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the court or judge shall consider the party entitled, notwithstanding such notice or tender, to appear in court. R.S.M. c. 40, r. 947.

Costs of unnecessary appearance in court or at chambers.

950. Where any party appears upon any application or proceeding in court or chambers in which he is not interested, or upon which, according to the practice of the court, he ought not to attend, he is not to be allowed any costs of such appearance, unless the court or judge shall expressly direct such costs to be allowed. R.S.M. c. 40, r. 948.

Costs of suit taxable against unsuccessful party limited to $300 and disbursements

951. The amount of costs, exclusive of disbursements, but inclusive of all interlocutory motions and applications, and any appeal or appeals therefrom to the Court of Appeal, which may be taxed and allowed to the successful party in any action or proceeding of any nature or kind whatsoever, as against any other party thereto, up to and inclusive of the trial or final disposition of any such action or proceeding in the court, shall, subject to the proviso at the end of this section, be limited to the sum of three hundred dollars, and counsel fees earned in the Province of Manitoba shall not be deemed to be disbursements for the purposes of any such taxation; provided that the trial judge shall have a discretion to order the allowance of any greater amount, within the limit of costs ordinarily taxable, in cases of special importance or difficulty, or in any case in which he shall be of opinion that costs have been increased by vexatious or unreasonable conduct on the part of the plaintiff or defendant. 7-8 Ed. 7, c. 12, s. 1.

Subject to increase where specially ordered by the trial judge.

Court to have absolute discretion over costs and may order payment of costs by solicitor or counsel personally.

952. In all actions, suits and proceedings, in the court, the awarding of costs and the apportionment of same between the parties on the same or adverse sides shall, subject to this Act, be in the absolute discretion of the court or judge, and the court or judge shall have jurisdiction to order the payment of costs personally by any solicitor or counsel for any party in any such action, suit or proceeding in case the court or judge shall see fit to make such order. 7-8 Ed. 7, c. 12, s. 3.

TAXATION.

953. Where costs are awarded to be paid, it shall be competent to a taxing officer to tax the same, without an express reference to him for that purpose. Upon completing the taxation of any bill of costs, the officer taxing the same shall give a certificate of such taxation and the amount allowed thereon. R.S.M. c. 40, r. 950. Costs may be taxed without reference.

954. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase, if any, shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor, in all cases where a notice to tax is necessary. R.S.M. c. 40, r. 951. One day's notice of taxation.

955. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person or by his solicitor or guardian. R.S.M. c. 40, r. 952. Notice of taxation unnecessary when defendant has not appeared.

956. The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance the officer shall in his discretion consider unnecessary in consequence of the interest of the party in the fund or estate being small, or remote, or sufficiently protected by other parties interested. R.S.M. c. 40, r. 953. Parties to attend taxation

957. Where any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect. R.S.M. c. 40, r. 954. Neglect to bring in or tax costs.

958. In any case in which a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he thinks fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or the officer may allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered. R.S.M. c. 40, r. 955. Set-off of costs.

Set-off of damages or costs not to prejudice solicitor's lien.

959. No set-off of damages or costs between parties shall be allowed to the prejudice of the solicitor's lien for costs in the particular action against which the set-off is sought; provided, nevertheless, that interlocutory costs in the same action awarded to the adverse party may be deducted. R.S.M. c. 40, r. 956.

Revision of certain costs.

960. All bills of costs or disbursements in actions brought for the administration of an estate, or for partition, or for the foreclosure, redemption or sale of mortgaged premises, and all bills in other actions where the amount is to be paid out of an estate or out of a fund in court, or in which any infant, lunatic or person of unsound mind is interested (or which shall be payable out of any estate in which any infant, lunatic, or person of unsound mind, is interested), are to be revised by the registrar or prothonotary, before the amount thereof is inserted in any certificate, report, order or judgment. R.S.M. c. 40, r. 957.

Revision of taxation by local officers.

961. The local master or other local officer is forthwith, after taxing any such bill of costs, to transmit the same by mail to Winnipeg, addressed to the proper taxing officer; and he is to allow in the bill the postage for the transmission and return of the bill, and shall prepay the same, and is to allow in the bill the sum of one dollar as a fee for the revision of the bill by the taxing officer at Winnipeg, and that sum, with postage stamps for the postage, is to be paid at the time of taxation by the party procuring the bill to be taxed; and the local master or other officer is to transmit with the bill to one of the taxing officers at Winnipeg the dollar and the necessary stamps for postage on the return of the bill to the local master or other officer. R.S.M. c. 40, r. 958.

Duty of taxing officer on receipt of bill for revision.

962. The registrar or prothonotary upon receiving the bill of costs is to examine the same, and to mark in the margin such sums (if any) as may appear to him to have been improperly allowed or to be questionable; and he is to revise the taxation either *ex parte* or upon notice to the Winnipeg agent (if any) of the solicitor whose bill is in question, as in his discretion he may see fit, but notifying such agent (if any) in all cases where the taxation is not clearly erroneous, or where the amount in question is so large as in the judgment of the taxing officer to make such notification proper. Such notification may be by appointment mailed to the address of the agent (if any). R.S.M. c. 40, r. 959.

963. In any such case no sum is to be inserted in the report of a local master or other officer as taxed and allowed for costs, until such revision by a taxing officer; but in a case of urgency a writ of execution may issue to levy debt or costs, or both, upon the order of a judge, subject to the future revision by the taxing officer. R.S.M. c. 40, r. 960. In any such case no sum to be inserted for costs in report until after revision.

964. Pending a revision, judgment may be entered and execution issued, unless the court or a judge otherwise orders; and in case of an execution being so issued, if the amount taxed is reduced on revision, the party entitled to the costs shall forthwith give notice of the reduction and of the amount thereof to the sheriff or other officer in whose hands the execution had been placed, and the amount struck off on the revision shall be deducted from the amount indorsed on the execution. R.S.M. c. 40, r. 961. But execution may issue.

965. No mileage shall be taxed or allowed for the service of any statement of claim, paper or proceeding, without an affidavit being made and produced to the proper taxing officer, stating the sum actually disbursed and paid for such mileage, and the name of the party to whom such payment has been made. R.S.M. c. 40, r. 962. Mileage.

966. All affidavits of increase must be made by the solicitor in the cause, or some clerk having the management thereof, or by the client. They must set forth the sums paid to counsel (if any), naming them, and for what service, the names of witnesses, their places of abode, the places at which they were subpœnaed, and the distance which each such witness was necessarily obliged to travel in order to attend the trial, that every such witness was necessary and material for the client in the cause, that they did attend, and that they did not attend as witnesses in any other cause (or otherwise, as the case may be). The number of days which each witness was necessarily absent from home in order to attend such trial must also be accurately stated. If a solicitor attends as a witness, it must be stated whether or not he attended at the place of trial as solicitor or witness in any other cause. The day on which the trial occurred should be stated. If maps or plans were used at the trial, the necessity for them must be shown in the affidavit or no allowance will be made for them; the sum paid for them must also be set forth, and that they were prepared or procured with a view to the trial of the cause. The taxing officer is authorized in such case to make a reasonable allowance for maps and plans. R.S.M. c. 40, r. 963. Affidavits of increase.

Certain costs taxable between party and party as are taxable between solicitor and client.

967. Where costs are to be taxed as between party and party, the officer taxing the same may allow to the party entitled to receive such costs the like costs as are taxable where costs are directed to be taxed as between solicitor and client, in respect of the following matters,—

(*a*) advising with counsel on the pleadings, evidence and other proceedings in the cause;

(*b*) procuring counsel to settle such proceedings and petitions as may appear to have been proper to be settled by counsel;

(*c*) procuring and attending consultation of counsel;

(*d*) the amendment of pleadings;

(*e*) on proceedings in the master's office;

(*f*) supplying counsel with copies of, or extracts from, necessary documents. R.S.M. c. 40, r. 964.

Præcipe orders on application of client.

968. Where the retainer of the solicitor is not disputed and there are no special circumstances, an order may be obtained on præcipe from the proper officer in the judicial district in which the solicitor resides;

For delivery and taxation of solicitor's bill.

(*a*) by the client for the delivery and taxation of the solicitor's bill;

For taxation of bill delivered.

(*b*) by the client for the taxation of a bill already delivered, within one month from its delivery. 10 Ed. 7, c. 17, s. 12.

Solicitor and client taxation.

969. When a client or other person is entitled to the delivery of a solicitor's bill of fees, charges and disbursements, or a copy thereof, the bill or a copy thereof, as the case may be, is to be delivered within fourteen days from the service of the order.

(2) The bill delivered shall be referred to the proper taxing officer for taxation, and on the reference the solicitor is to give credit for all sums of money by him received from or on account of the client, and is to refund what, if anything, he may on such taxation appear to have been overpaid.

(3) The taxing officer is to tax the costs of the reference and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference to be paid according to the event of the taxation.

(4) The solicitor is not, pending the reference, to commence or to prosecute any action touching the demand, without leave of the court or a judge.

(5) The amount certified to be due shall forthwith after confirmation of the certificate by filing, as in the case of a master's report, be paid by the party liable to pay such amount.

(6) Upon payment by the said client or other person of what (if anything) may appear to be due to the solicitor, the solicitor (if required) is to deliver to the said client or other person, or as he may direct, all deeds, books, papers and writings in the solicitor's possession, custody or power, belonging to the client.

(7) The order shall be read as if it contained the above particulars, and shall not set forth the same, but may contain any variations therefrom and any other directions which the court or judge shall see fit to make or give. R.S.M. c. 40, r. 965.

Contents of order to tax solicitor's bill

970. When a solicitor's bill has been delivered, the order of reference shall be presumed to contain clauses (2) to (6), inclusive, of the last preceding rule, whether obtained by the solicitor, client or other person liable to pay the same. R.S.M. c. 40, r. 966.

Order, when of course, to issue on præcipe.

971. The order, when grantable of course, shall be issued on præcipe: Provided that no such order shall be granted on præcipe on the application of a solicitor for the taxation of a bill of costs against his own client. R.S.M. c. 40, r. 967.

Objection to taxation.

972. Any party dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any item or items, may, at any time before the certificate is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the item or items,or part or parts thereof, objected to, and may thereupon apply to the taxing officer to review the taxation in respect of same. R.S.M. c. 40, r. 968.

Review of taxation by taxing officer.

973. Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he thinks fit, receive further evidence in respect thereof; and if so required by either party, he shall state either in his certificate of taxation or by reference to such objections, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto. R.S.M. c. 40, r. 969.

Disallowance of costs of anything unnecessary or improper, and of any pleadings, etc., of unnecessary length.

974. The court or judge may, at the hearing of any action or matter, or upon any appeal, application or proceeding in any action or matter in court or chambers, and whether the same is objected to or not, direct the costs of any writ, pleading, petition, affidavit, evidence, account, statement or other proceeding, or any part thereof, which is improper, unnecessary or contains unnecessary matter, or is of unnecessary length, to be disallowed; or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary or to contain unnecessary matter, or to be of unnecessary length. In such case the party whose costs are so disallowed shall pay the costs occasioned to the other parties by such unnecessary proceeding, matter or length; and, in any case where such question has not been raised before and dealt with by the court or judge, the taxing officer may look into the same (and, as to affidavits and evidence, although the same may be entered as read in any judgment or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so. 7-8 Ed. 7, c. 12, s. 11, *part*.

Taxation of costs between party and party.

975. Between party and party the taxing officer shall not allow the costs of proceedings—

(*a*) unnecessarily taken;

(*b*) not calculated to advance the interests of the party on whose behalf the same were taken;

(c) incurred through over-caution, negligence or mistake;

unless he is of opinion that such proceedings were taken by the solicitor because, in his judgment, reasonably exercised, they were conducive to the interests of his client.

Between solicitor and client.

(2) Between solicitor and client the taxing officer may allow the costs of proceedings taken as mentioned in the above clauses (*a*) and (*c*) of this rule, when he is of the opinion that such proceedings were taken by the solicitor because, in his judgment, reasonably exercised, they were conducive to the interests of his client, and may allow the costs of proceedings taken as mentioned in clause (*b*) where the same were taken by the desire of the client, after being informed by his solicitor that the same were unnecessary and not calculated to advance the interests of the client. 7-8 Ed. 7, c. 12, s. 11, *part*.

SHERIFF'S FEES.

Sheriff's fees.

976. If a part only is made by the sheriff on or by force of any execution against goods and chattels, he shall be entitled, besides his fees and expenses of execution, to poundage only upon the net amount so made by him, whatever be the sum endorsed upon the writ; and if the personal estate, except chattels real, of the execution debtor is seized or advertised on or under an execution, but not sold by reason of satisfaction having been otherwise obtained, or from some other cause, and no money is actually made by the sheriff on or by force of such execution, he shall be entitled to the fees and expenses of execution and poundage only on the value of the property seized not exceeding the amount indorsed on the writ, or such less sum as the court or a judge may deem reasonable. R.S.M. c. 40, r. 970.

Application to court respecting sheriff's fees.

977. If any person liable on an execution is dissatisfied as to the amount of poundage, fees and expenses of execution claimed by a sheriff, he may, before or after payment thereof, and upon notice to the sheriff, apply to the court or a judge; and if, upon a statement of the facts, the court or judge is of opinion that the amount is unreasonable, notwithstanding that it is according to the tariff, the same shall be reduced or ordered to be refunded upon such terms, as to costs or otherwise, as the court or judge may think fit to impose. R.S.M. c. 40, r. 971.

Taxing sheriff's costs.

978. Upon the settlement of an execution, either in whole or in part, by payment, levy or otherwise, the sheriff or officer claiming or retaining any fees, poundage, incidental expenses or remuneration, which have not been taxed, shall upon being required by either plaintiff or defendant, or the solicitor of either party, and on payment or tender of the sum of four dollars for the expenses of such taxation, and the further sum of twenty-five cents for the copy of his bill in detail (which he shall be bound to render), have his fees, poundage, incidental expenses or remuneration, as the case may be, taxed by the taxing officer of the court for the district, or by the registrar or prothonotary. R.S.M. c. 40, r. 972.

Sheriff not to collect fees after request for taxation.

979. No sheriff shall, without taxation, collect or retain any fees, costs, poundage or incidental expenses, after having been so required to have the same taxed. R.S.M. c. 40, r. 973.

Taxation and allocatur.

980. The taxing officer or the registrar or the prothonotary shall tax the bills of costs presented to him for taxation, as herein required, and shall give, when requested, a certificate of such taxation and the amount thereof. R.S.M. c. 40, r. 974.

Duty of taxing officer.

981. It shall be the duty of the taxing officer, upon proof of notice of the time and place of the taxation having been duly served upon the sheriff, deputy sheriff or other officer charged with the execution of the writ, to examine the bills presented to him for taxation, as herein required, whether such taxation is opposed or not, and to be satisfied that the items charged in such bill are correct and legal, and to strike out all charges for services which, in his opinion, were not necessary to be performed. R.S.M. c. 40, r. 975.

Appeal from taxation.

982. Either party dissatisfied with the taxation may appeal therefrom as in ordinary cases. R.S.M. c. 40, r. 976.

Proceedings against sheriffs et al. for wilful overcharge.

983. If any sheriff or sheriff's bailiff or officer shall take, levy or receive any moneys, fees or charges in respect of any official duty performed by him or, in respect of the execution of any writ, warrant or process, in excess of what is allowed by law, he may be summoned before a judge, by order of such judge, upon complaint being made on affidavit setting forth the facts according to the belief of the deponent. Upon the hearing of such complaint the judge, whether such sheriff, bailiff or officer appears or not, may exercise all the powers of a judge, sitting in court for the trial of actions and causes; and if he finds that such sheriff, bailiff or officer has improperly and wilfully taken, levied or received such moneys, fees or charges, then he shall order such sheriff, bailiff or officer forthwith, or within such time, not exceeding one month, as he, the judge, shall think fit, to pay into court the sum of two hundred dollars and costs of the proceedings as between attorney and client, and in default thereof shall commit such sheriff, bailiff or officer to the common gaol of the judicial district for a period of not less than two, nor more than six months.

(2) One-half of said sum of two hundred dollars shall be paid out to the Treasurer of the Province, and the other half of said sum and said costs shall be paid out to the person aggrieved.

(3) The sum of two hundred dollars ordered to be paid as above shall not, in whole or in part, be the subject of attachment or garnishment, or be applied upon any set-off, counterclaim or adverse claim of any kind. R.S.M. c. 40, r. 977.

SECURITY FOR COSTS.

Order for security for costs.

984. Where it appears by the statement of claim, notice, petition or other proceeding by which an action or matter is instituted, or by an indorsement thereon, that the plaintiff resides out of Manitoba, the defendant shall be entitled, on præcipe, to an order requiring the plaintiff, within four weeks from the service of the order, to give security by bond for four hundred dollars, or by paying two hundred dollars into court, for the defendant's costs of the action, staying all further proceedings in the meantime, and directing that in default of such security being given the action be dismissed with costs as against such defendant, unless the court or judge upon special application for that purpose shall otherwise order. R.S.M. c. 40, r. 978; 3-4 Ed. 7, c. 8, s. 2; 3 Geo. 5, c. 12, s. 3, *part.*

When order for security may be made.

985. Security for costs may be ordered where by law or by the practice a party has heretofore been entitled to obtain security for costs, and, without restricting the generality of this provision, also in the following cases,—

(*a*) where the plaintiff resides out of Manitoba;

(*b*) where the plaintiff is ordinarily resident out of Manitoba, although he may be temporarily resident within Manitoba;

and the court or a judge may make such order for security for costs and staying proceedings until security is given as may seem just. 3 Geo. 5, c. 12, s. 3, *part.*

Additional cases in which defendant may obtain security for costs.

986. In addition to any cases in which a defendant in any action may, by law or by the practice of the courts, be entitled to obtain security for costs from a plaintiff, security for costs may be granted to the defendant in any action or proceeding in which it is made to appear satisfactorily to the court or a judge that the plaintiff has brought a former action or proceeding for the same cause, which is pending either in Manitoba or in any other country, or that he has judgment or order passed against him in said action or proceeding, with costs, and that such costs have not been paid; and such court or judge may thereupon make such rule or order staying proceedings until such security is given as to the court or judge seems meet. R.S.M. c. 40, r. 979; 3 Geo. 5, c. 12, s. 3, *part.*

Persons suing for penalties may be ordered to give security for costs.

987. In any action in which the plaintiff sues as an informer, or seeks to recover any penalty given to any informer or person who sues for the same as aforesaid, under any statute or law in which any penalty is given to any per-

son who sues for the same, either for his sole benefit, or for the benefit of the Crown, or partly for his benefit and partly for the benefit of the Crown, the person so sued, or his agent or solicitor, may apply to the court in which the action was instituted or is pending, or a judge thereof, for security for costs, upon an affidavit made by the defendant, or by any person having knowledge of the facts, showing that the action is brought to recover a penalty, and that, in the belief of the deponent, the plaintiff or informer is not possessed of property sufficient to answer the costs of the action in case a verdict is given or judgment rendered in favor of the defendant, and that the said defendant has a good defence to the action upon the merits, as the deponent is advised and believes; and the court or judge may make an order that the plaintiff or informer in the action shall give security for the costs to be incurred in the action, in the same manner and in accordance with the practice in cases where a plaintiff resides out of the Province; and the order shall be a stay of proceedings in the case, until the proper security is given as aforesaid. R.S.M. c. 40, r. 980.

Action by nominal plaintiff only.

988. In any action in which the plaintiff is only the nominal plaintiff, the person sued or his agent or solicitor may apply to the court in which the action was instituted or is pending, or a judge thereof, for security for costs, upon an affidavit made by the defendant, showing that the plaintiff is only the nominal plaintiff in the action, that the plaintiff is not possessed of property sufficient to answer the costs of the action in case a verdict is given or judgment is rendered in favor of the defendant, and that he (the said defendant) has a good defence to the action upon the merits, as he is advised and believes; and in such case the court or judge may make an order that the plaintiff shall give security for the costs to be incurred in the action, in the same manner and in accordance with the practice in cases where the plaintiff resides out of the Province; and the order shall be a stay of proceedings in the case, until the proper security is given as aforesaid. R.S.M. c. 40, r. 981.

Amount of security.

989. In any action or matter in which security for costs is required, the security shall be of such amount and be given at such time or times, and in such manner and form, as the court or judge shall direct. R.S.M. c. 40, r. 982.

Time for giving security.

990. Where a defendant in any action is entitled to obtain security for costs from a plaintiff, the court or judge may require the plaintiff to furnish the security within a time to be limited in any order for such security, or by any subsequent order.

(2) If the plaintiff fails, without sufficient excuse, to comply with such order, he shall be liable to have his action dismissed, as for want of prosecution, with costs, and the court or judge may make an order accordingly.

(3) The time limited by any such order for giving any such security may be extended by the court or any judge, either before or after the expiration of such time, and an order dismissing the action for not giving security may be discharged and the action reinstated, if it shall seem just, and on such terms, if any, as may be imposed. R.S.M. c. 40, r. 983.

Security by bond.

991. Where a bond is to be given as security for costs, it shall, unless the court or a judge otherwise directs, be given to the party or persons requiring the security, and not to an officer of the court. R.S.M. c. 40, r. 984.

Money may be paid into court in lieu of giving bond.

992. Whenever a party is under an obligation to give a bond as security for costs, he may, without special order, pay into court a sum of money not less than half the penalty of the bond required, and the same when so paid in shall stand as security in lieu of the bond required. R.S.M. c. 40, r. 985.

Notice when money so paid in.

993. The party so paying in money shall, when paying the same in, state the purpose for which it is so paid in, and shall forthwith serve a notice upon the opposite party specifying the fact and purpose of such payment. R.S.M. c. 40, r. 986.

Changing amount of security.

994. The amount of security may be increased or diminished from time to time by the court or a judge, either before or after the security has been furnished. R.S.M. c. 40, r. 987.

Security on motion for judgment by foreign plaintiff.

995. When an action is brought by a foreign plaintiff liable to give security for costs, for such a claim that, upon motion under rule 625, an order allowing him to sign judgment might be made, he may, on being served with an order for security for costs, pay into court the sum of fifty dollars, as a partial compliance with such order; and thereupon, whether the defendant has filed his statement of defence or not, the plaintiff shall be at liberty to proceed with a motion for judgment under rule 625, but the order for security shall, nevertheless, in all other respects, have its full operation and effect. R.S.M. c. 40, r. 988.

Judgment for part of claim in such case.

996. If upon such a motion the plaintiff is allowed to sign judgment for any portion of his claim, he may sign judgment and issue execution therefor, but shall not take any other proceedings until the order for security shall have been fully complied with. R.S.M. c. 40, r. 989.

TARIFF OF COSTS.

Tariff of fees to be promulgated by judges.

997. Except as otherwise provided by "The Law Fees Act," the judges, or a majority of them, of whom the chief justice shall be one, may from time to time promulgate a tariff or tariffs of fees to be allowed to barristers, solicitors, sheriffs and officers of the court, except special examiners. Any such tariff, when approved by the Lieutenant-Governor-in-Council and printed in *The Manitoba Gazette,* shall be of the same force and effect as if incorporated in this Act. The Lieutenant-Governor-in-Council may from time to time provide a tariff of fees to be taken and received by special examiners of the court appointed under this Act. 5-6 Ed. 7, c. 17, s. 9.

Special examiner's fees.

Division XV.

GENERAL PROVISIONS.

Fusion of law and equity.

998. It is hereby declared that it is the purpose of this Act to fuse and amalgamate the former systems of law and equity and common law and equity practice into one system. R.S.M. c. 40, r. 992.

Application of law and practice.

999. The law and practice in force in Manitoba, as provided by this Act and rules lawfully made thereunder, shall be applied to all matters, causes, suits, actions and proceedings, without distinction as to whether the rights or remedies would formerly have been legal or equitable, in such a way as shall in the judgment of the court conduce to the just, speedy and inexpensive determination of the rights of all parties in question therein. R.S.M. c. 40, r. 993.

SCHEDULE.

The following is the schedule of forms referred to in the foregoing rules:—

Forms.

NOTICES, ETC.

No. 1.—NOTICE OF MOTION TO COURT.

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

Take notice that the Court will be moved on behalf of on day, the day of , 19 , at o'clock in the forenoon, or so soon thereafter as counsel can be heard, that (*state the object of the intended application*).

Dated the day of , 19 .

(*Signed*) X. Y.,

Solicitor for the

To

R.S.M. c. 40, form 1.

No. 2.—NOTICE OF MOTION IN CHAMBERS.

Title, etc.

Take notice that a motion will be made on behalf of before the referee in chambers (*or as the case may be*), at the Court House in the City of Winnipeg, on day, the day of , 19 , at o'clock in the noon, or so soon thereafter as the motion can be heard, for an order for time to, etc.

(*or* that the in this action be tried by under section of "The King's Bench Act,"

or that the plaintiff and claimant appear and state the nature of their respective claims to the goods and chattels seized by the above-named sheriff under the writ of *fieri facias* issued in this action and maintain or relinquish the same and abide by such order as may be made herein, and that in the meantime all further proceedings be stayed.)

R.S.M. c. 40, form 2.

No. 3.—NOTICE OF APPLICATION FOR ADMINISTRATION ORDER OR RESPECTING THE GUARDIANSHIP OF AN INFANT.

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

Take notice that an application will be made to in Winnipeg (*or* to at his office in the city *or* town of,

etc., *as the case may be*), on the day of , at the hour of o'clock in the forenoon, (*or* if opposed, then to a Judge in chambers so soon thereafter as a Judge shall be sitting in chambers, for an order for the administration of the estate, real and personal, of by the Court, *or* for an order appointing guardian of , an infant); and upon such application will be read the affidavits of this day filed.

Dated, etc.

X. Y.,
Solicitor for

To Mr. C. D.

R.S.M. c. 40, form 3.

No. 4.—NOTICE LIMITING DEFENCE.

(*Rules 193, 194.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

The defendant, C. D., limits his defence to part only of the property mentioned in the statement of claim in this action, that is to say, to the north-west quarter of the lot.

Yours, etc.,
G. H.,
Solicitor for the said defendant, C. D.

To

R.S.M. c. 40, form 4.

No. 5.—ENDORSEMENT ON COUNTERCLAIM BY DEFENDANT TO THIRD PARTY.

(*Rule 224.*)

Notice filed day of .

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

To Mr. X. Y.

Take notice that this action has been brought by the plaintiff against the defendant (as surety for M. N.), upon a bond conditioned for payment of $10,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are (his co-surety under the said bond, *or*, also surety for the said M. N., in respect of the said matter, under another bond made by you in favor of the said plaintiff, dated the day of , A.D.).

Or [as acceptor of a bill of exchange for $2,500, dated the day of , A.D. , drawn by you upon and accepted by the defendant and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.]

Or [to recover damages for a breach of contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant C. D., you must file a statement of defence within sixteen days after service of this notice.

In default of your so filing a defence, you will not be entitled in any future proceeding between the defendant C. D. and yourself to dispute the validity of the judgment in this action, whether obtained by consent or otherwise.

Dated, etc.

(*Signed*) E. T.
Or X. Y.,
Solicitor for the defendant,
E. T.

Statement of defence to be entered at the office of the
at .

R.S.M. c. 40, form 5.

No. 6.—ENDORSEMENT ON ORDER ADDING OR CHANGING PARTIES UNDER Rule 545.

Take notice that, if you desire to discharge this order you must apply to the Court for that purpose within fourteen days after the service hereof upon you. The original statement of claim in this cause is filed in the office of the at (*and if the service is after a judgment directing a reference to a master or other officer, add*) and reference under the judgment in this matter is being prosecuted in the office of the at .

R.S.M. c. 40, form 6.

No. 7.—ACCEPTANCE OF SUM PAID INTO COURT.

(*Rule 554.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

Take notice that the plaintiff accepts the sum of $ paid by you into Court in satisfaction of his claim herein (*or* of his claim for, etc.).

Dated, etc.

X. Y.,
Plaintiff's solicitor.

To Z.,

Defendant's solicitor.

R.S.M. c. 40, form 7.

No. 8.—NOTICE TO PRODUCE DOCUMENTS.

(*Rule 432.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

Take notice that the (plaintiff *or* defendant) requires you to produce for his inspection the following documents referred to in your (statement of claim, *or* defence, *or* affidavit dated the day of , A.D.).

Dated, etc.

(*Describe documents required.*)

X. Y.,
Solicitor for the

To Z.,
Solicitor for

R.S.M. c. 40, form 8.

No. 9.—NOTICE TO PRODUCE (GENERAL FORM).

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

Take notice that you are hereby required to produce and show to the Court on the trial of this action all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power, containing any entry, memorandum, or minute relating to the matters in question in this action, and particularly

Dated, etc.

To the above-named
and to
h solicitor or agent } Solicitor for the above-named

R.S.M. c. 40, form 9.

No. 10.—NOTICE TO INSPECT DOCUMENTS.

(*Rule 433.*)

In the King's Bench.

A. B. v. C. D.

Take notice that you can inspect the documents mentioned in your notice of the day of , A.D. , (*except the deed numbered in that notice*) at my office on day next the instant, between the hours of 12 and 4 o'clock.

Or, that the (plaintiff *or* defendant) objects to giving you inspection of documents mentioned in your notice of the day of , A.D. , on the ground that (*state the ground*):—

Dated, etc.

X. Y.,
Solicitor for

R.S.M. c. 40, form 10.

No. 11.—NOTICE TO ADMIT DOCUMENTS.

(*Rule 538.*)

In the King's Bench.

A. B. v. C. D.

Take notice that the plaintiff (*or* defendant) in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (*or* plaintiff), his solicitor or agent, at , on , between the hours of ; and the defendant, (*or* plaintiff) is hereby required, within four days from the said day, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies, and such documents as are stated to have been served, sent or delivered were so served, sent or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

X. Y.,

Solicitor for

Dated, etc.

To E. F., solicitor (*or* agent) for defendant (*or* plaintiff).

G. H., solicitor (*or* agent) for plaintiff (*or* defendant).

Here describe the documents, the manner of doing which may be as follows:—

ORIGINALS.

Description of Documents.	Dates
Deed of covenant between A.B. and C.D. first part, and E. F. second part	January 1, 1878.
Indenture of lease from A.B. to C.D.	February 1, 1898.
Indenture of release between A.B., C.D., first part, etc.	February 2, 1878.
Letter—defendant to plaintiff	March 1, 1878.
Policy of insurance on goods by ship "Isabella," on voyage from Selkirk to Norway House	July 3, 1877.
Memorandum of agreement between C.D., captain of said ship, and E.F.	August 1, 1878.
Bill of exchange for $500 at three months, drawn by A.B. on and accepted by C.D., indorsed by E.F. and G.H.	May 1, 1879.

COPIES.

Description of Documents.	Dates	Original or duplicate served, sent or delivered, when, how and by whom
Register of baptism of A.B. in the parish of X	January 1, 1848.	
Letter—plaintiff to defendant	February 1, 1848.	Sent by general post Feb. 2, 1848.
Notice to produce papers	March 1, 1878.	Served March 2, 1878, on defendant's attorney by E.F., of——
Record of a judgment of the Court of King's Bench in an action, J.S. and J.N.	Trinity term, 1 Ed. VII.	

R.S.M. c. 40, form 11.

No. 12.—NOTICE OF TRIAL.

(*Rule 572.*)

In the King's Bench.

A. B. v. C. D.

Take notice of trial of this action (*or* the issues in this action ordered to be tried) at for the day of next.

X. Y.,
Plaintiff's solicitor (*or as the case may be*).

Dated, etc.

To Z., defendant's solicitor (*or as the case may be*).

R.S.M. c. 40, form 12.

No. 13.—NOTICE OF DISCONTINUANCE.

(*Rule 560.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

Take notice that the plaintiff hereby wholly discontinues this action (*or* withdraws so much of his claim in this action as relates to, etc.).

(*If not against all the defendants, add*), as against the defendant, etc.

Dated the day of , 19 .

(*Signed*)
of
Solicitor for the plaintiff.

R.S.M. c. 40, form 13.

No. 14.—NOTICE OF CROSS-EXAMINATION OF DEPONENTS AT TRIAL ON AFFIDAVITS.

(*Rule 483.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

Take notice that the intend at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

And also take notice that you are hereby required to produce the said deponents for such cross-examination before the Court aforesaid.

Dated the day of , 19 ,

Solicitor for the

To

The schedule above referred to—

Name of deponent.	Address and description	Date when affidavit filed

R.S.M. c. 40, form 14.

No. 15.—NOTICE OF ELECTION THAT DEFENDANT CONDUCT SALE.

(*Rule 250.*)

In the King's Bench.

(*Short Title.*)

To defendant.

Take notice that the plaintiff elects that the sale of the mortgaged premises be conducted by you instead of by the plaintiff, and you are at liberty to withdraw the deposit made by you in this cause for the purpose of such sale.

R.S.M. c. 40, form 15.

No. 16.—ENDORSEMENT OF NOTICE OF TIME TO MOVE TO DISCHARGE ORDER ADDING A PARTY.

(*Rule 41.*)

To A. B. (*the person upon whom the service has been directed.*)

If you wish to apply to discharge the within order, or to add to, vary or set aside the judgment, you must do so within fourteen days from the service hereof. (*When the order fixes a time for the further proceedings, add*) and if you fail to attend at the time and place appointed, either in person or by your solicitor, such order will be made and proceedings taken in your absence, as may seem just and expedient; and you will be bound by the judgment and the further proceedings in the cause, in the same manner as if you had been originally made a party to the action, without notice.

Dated this day of , 19 .

C. D.,
Plaintiff's solicitor.

3 Geo. 5, c. 12, s. 4.

No. 17.—ENDORSEMENT OF NOTICE OF TIME TO MOVE AGAINST JUDGMENT AFFECTING PERSONS NOT MADE PARTIES.

(*Rule 218.*)

To A. B. (*the person affected*).

If you wish to apply to add to, vary or set aside the judgment of which the within is a copy, you must do so within fourteen days from the service hereof, and if you fail to make any such application within

that time, either in person or by your solicitor, such order will be made and proceedings taken, in your absence, as may seem just and expedient, and you will be bound by the judgment, and the further proceedings in the cause, in the same manner as if you had been originally made a party to the action, without notice.

Dated this day of , 19 .

C. D.,
Plaintiff's solicitor.

3 Geo. 5, c. 12, s. 5.

No. 18.—NOTICE TO ENCUMBRANCERS SERVED UNDER RULE 120.

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

Whereas an action has been instituted by the above-named plaintiff for the foreclosure (*or* sale) of (*or* enforcement of a lien on) certain lands (*insert description of lands*), and I have been directed by the judgment made in this cause, and dated the day of , to enqlire whether, any person, other than the plaintiff, has any charge lien or encumbrance upon the said estate; and whereas it has been made to appear before me that you have each some lien, charge or incumbrance upon the said estate, and I have therefore caused you to be made a party to this suit and have appointed the day of , at o'clock in the noon, for you to appear before me at my chambers at , either in person or by your solicitor, to prove your claims;

Now you are hereby required to take notice: 1st. That if you wish to apply to discharge my order making you a party, or to add to, vary or set aside the judgment, you must do so within fourteen days after the service hereof; and if you fail to do so, you will be bound by the judgment and the further proceedings in this cause as if you were originally made a party to the action; 2nd. That if you fail to attend at the time and place appointed, you will be treated as disclaiming all interest in the land in question, and it will be dealt with as if you had no claim thereon, and your claim will be in fact foreclosed.

W. L., Master.

To

R.S.M. c. 40, form 17.

No. 19.—APPOINTMENT SERVED UNDER RULE 122.

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

Having been directed by the judgment in this cause, dated the day of , to inquire whether any person other than the plaintiff has any lien, charge or encumbrance upon the lands in the pleadings mentioned, being (*insert description of lands*), I hereby appoint day of next, at o'clock in the noon, at my chambers to proceed with said inquiries.

And you are hereby required to take notice: That if you fail to attend at the time and place appointed, you will be treated as disclaiming all interest in the land in question, and it will be dealt with as if you had no claim thereon, and your claim will be in fact foreclosed.

W. L., Master.

R.S.M. c. 40, form 18.

No. 20.—ADVERTISEMENT FOR CREDITORS UNDER RULE 781.

Pursuant to a judgment (*or* an order) of the Court of King's Bench, made in (the matter of the estate of A. B., and in) a cause S. against P. (*short title*), the creditors of A. B., late of in the of , who died in or about the month of , 19 , are, on or before the day of , 19 , to send by post, prepaid, to E. F., of , the solicitor of the defendant C. D., the executor (*or* administrator) of the deceased (*or as may be directed*), their christian and surnames, addresses and description, the full particulars of their claims, a statement of their accounts, and the nature of the securities, if any, held by them; or in default thereof, they will be peremptorily excluded from the benefit of the said judgment (*or* order). Every creditor holding any security is to produce the same before me, at my chambers, at, etc., on the day of , 19 , at o'clock in the noon, being the time appointed for adjudication on the claims.

Dated this day of , 19 .

G. H., Master.

R.S.M. c. 40, form 19.

No. 21.—NOTICE TO CREDITORS TO PRODUCE DOCUMENTS UNDER RULE 783.

(*Short Title.*)

You are hereby required to produce, in support of the claim sent in by you against the estate of A. B., deceased (*describe any document required*), before me at my chambers, at, etc., on the day of , at o'clock in the noon.

Dated this day of , 19 .

G. R., of, etc., solicitor for plaintiff (*or* defendant, *or as may be*).
To S. T.

R.S.M. c. 40, form 20.

No. 22.—NOTICE TO CREDITOR THAT CLAIM ALLOWED UNDER RULE 789.

(*Short Title.*)

The claim sent in by you against the estate of A. B., deceased, has been allowed at the sum of $, (with interest thereon at $ per cent. per annum from the day of , 19 , and $ for costs, *or as the case may be*).

If part only allowed, add: If you have claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file (etc., *as in Form No. 23*).

Dated this day of , 19 .

G. R., of, etc., solicitor for the plaintiff (*or* defendant, *or as the case may be*).

To P. P.

R.S.M. c. 40, form 21.

No. 23.—NOTICE TO CREDITOR TO PROVE HIS CLAIM UNDER RULE 789.

(*Short Title.*)

You are hereby required to prove the claim sent in by you against the estate of A. B., deceased. You are to file such affidavit as you may be advised in support of your claim, to give notice thereof to , master (*or as the case may be*), on or before the day of , 19 ; and to attend personally, or by your solicitor, at his chambers, on the day of , 19 , at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day of , 19 .

G. R., of, etc., solicitor for the plaintiff (*or* defendant, *or as the case may be*).

To S. T.

R.S.M. c. 40, form 22.

No. 24.—NOTICE THAT CHEQUES MAY BE RECEIVED UNDER RULE 792.

(*Short Title.*)

The cheques for the amounts directed to be paid to the creditors of A. B., deceased, by an order made in this action (*or* matter) dated the day of , 19 , may be received at the accountant's office, at the court house, in Winnipeg, on and after the day of , 19 .

G. R., of, &c., solicitor for the plaintiff (*or* defendant, *or as the case may be*.)

To W. S.

Etc.

R.S.M. c. 40, form 23.

REPORTS, ETC., BY MASTERS.

No. 25.—FORM OF REPORT IN ADMINISTRATION SUIT.

(*Rule 82.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

Pursuant to the order (*or* judgment) herein made, dated the day of , 19 , having caused an office copy thereof to be served upon (*give the names of persons served under rule 253, and also the names of those upon whom service has been dispensed with, and the reason for dispensing with service*) I proceeded to dispose of the matters referred to me, and thereupon was attended by the solicitors for all parties interested (*or as the case may be*).

(*If a guardian ad litem has been appointed for any of the parties, this should be so stated, and the reason why such appointment was made.*)

and find as follows:

1. The personal estate not specifically bequeathed of the testator, come to the hands of the executors, and wherewith they are chargeable, amounts to the sum of $, and they have paid, or are entitled to be allowed thereout, the sum of $, leaving a balance due from them (*or* "to them," *as the case may be*) of $ on that account.

(*If no personal estate, say:* No personal estate has come to hands of the executors, nor are they chargeable with any.)

2. The creditors' claims sent in pursuant to my advertisement in that behalf, published in issues of the newspaper called , and which have been allowed, are set forth in the first schedule hereto, and amount altogether to $.

(*If no creditors say:* No creditor has sent in a claim pursuant to my advertisement in that behalf, nor has any such claim been proved before me.)

3. The funeral expenses of the testator, amounting to $ have been paid by the executors and are allowed to them in the amount of personal estate.

4. The legacies given by the testator are set forth in the second schedule hereto and, with the interest therein mentioned, remain due to the persons named (*or as the case may be*).

5. The personal estate of the said testator, outstanding or undisposed of, is set forth in the third schedule hereto.

(*In this third schedule personal estate not specifically bequeathed should be set forth separately from the other personalty outstanding or undisposed of. If there is no specific bequest, it should be so stated in the body of the report.*)

6. The real estate which the said testator was seized of, or entitled to, and the encumbrances (*if any*) affecting the same, are set forth in the fourth schedule hereto.

7. The rents and profits of the testator's real estate received by the said executors, or with which they are chargeable, amount to $, and they have paid, or are entitled to be allowed thereout, the sum of $, leaving a balance due from (*or* to) them of $ on that account.

(*If no rents, etc., received, say:* No rents and profits have come to the hands of the said executors, nor are they chargeable with any.)

8. I have allowed to the said executors the sum of $, as a compensation for their personal services in the management of the said estate.

The First Schedule referred to in the Foregoing Report.

No.	Names of creditors	Principal	Interest Allowed		Costs (if any) subsequent to judgment	Costs of this suit	Total
			Rate per cent.	Amount to date of report			
	[Distinguish any which are secured by mortgage or lien, or otherwise entitled to any priority.]			$ c.	$ c.	$ c.	$ c.

(No general form can well be framed for the other Schedules, but in all cases brevity is to be studied. Where particulars are given, they should show merely the general character of the things described; as, for instance, the schedule of outstanding personality may say: A number of book debts outstanding, amounting in the aggregate to $; a quantity of household furniture and effects, valued at $; and the like short particulars should be given in other cases. Lands should be described without setting forth metes and bounds.)

R.S.M. c. 40, form 24.

No. 26.—CONDITIONS OF SALE REFERRED TO IN RULE 90.

1. No person shall advance less than $10 at any bidding under $500, nor less than $20 at any bidding over $500, and no person shall retract his bidding.

2. The highest bidder shall be the purchaser; and if any dispute arise as to the last or highest bidder, the property shall be put up at a former bidding.

3. The parties to the action, with the exception of the vendor (and, *naming any parties, trustees, agents or others in a fiduciary situation*), shall be at liberty to bid.

4. The purchaser shall, at the time of sale, pay down a deposit, in proportion of $10 for every $100 of the purchase money, to the vendor or his solicitor; and shall pay the remainder of the purchase money on the day of next; and upon such payment, the purchaser shall be entitled to the conveyance and to be let into possession; the purchaser at the time of sale to sign an agreement for the completion of the purchase.

5. The purchaser shall have the conveyance prepared at his own expense, and tender the same for execution.

6. If the purchaser fails to comply with the conditions aforesaid or any of them, the deposit and all other payments made thereon shall be forfeited, and the premises may be re-sold; and the deficiency, if any, by such re-sale, together with all charges attending the same, or occasioned by the defaulter, are to be made good by the defaulter.

R.S.M. c. 40, form 25.

No. 27.—REPORT ON SALE REFERRED TO IN RULE 98.

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

Pursuant to the judgment (*or* order) of this Honorable Court, bearing date the day of , and made in this cause, I have, under the rules of the Court of King's Bench, in the presence of (*or* after notice to) all parties concerned, settled an advertisement and particulars and conditions of sale, for the sale of the lands mentioned or referred to in the said judgment (*or* order), and such advertisement having, according to my directions, been published in the (*naming the newspaper or newspapers*) once in each week for the weeks immediately preceding the said sale (*or as the case may be*), and bills of the said sale having been also, as directed by me, published in different parts of the rural municipality (town *or* city) of and the adjacent country and villages (*or as the case may be*), the said lands were offered for sale by public auction, according to my appointment, on the day of , by me (*or* by Mr. , of , appointed by me for that purpose, auctioneer), and such sale was conducted in a fair, open and proper manner, when , of , was declared the highest bidder for, and became the purchaser of, the same, at the price or sum of $, payable as follows (*set out shortly the condition of sale as to payment of the purchase money*).

All which having been proved to my satisfaction by proper and sufficient evidence, I humbly certify to this Honorable Court.

Dated

R.S.M. c. 40, form 26.

AFFIDAVITS.

No. 28.—AFFIDAVIT OF SERVICE OF STATEMENT OF CLAIM.

(*Rule 270.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

I, , of , make oath and say as follows:—

(1) I did on the day of , 19 , personally serve C. D., the above named defendant in this action, with a true copy of the statement of claim herein hereto annexed, and all notices endorsed thereon or annexed thereto except endorsement of service, by delivering the same to, and leaving the same with, the said defendant on the day last aforesaid at in the of .

(2) To effect such service I necessarily travelled miles

(3) Subsequently, namely, upon the day of , I did endorse upon the said original statement of claim (*or* notice) the day of the month and the week of such service.

Sworn at , this day of , 19 .

Before me, etc.

This affidavit is filed on behalf of the

R.S.M. c. 40, form 27.

No. 29.—AFFIDAVIT BY LANDLORD.

(*Rule 187.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

I, , of , make oath and say as follows:—

I am in possession of the land sought to be recovered in this action by myself (*or* by the said C. D., my tenant, *as the case may be.*)

Sworn at this day of , 19 .

Before me, etc.

R.S.M. c. 40, form 28.

No. 30.—AFFIDAVIT AS TO DOCUMENTS.

(*Rule 430.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

I, the above named defendant C. D., make oath and say as follows—

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the first schedule hereto.

3. That (*here state upon what grounds the objection is made, and verify the facts as far as may be.*)

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last mentioned documents were last in my possession or power on (*state when.*)

6. That (*here state what has become of the last mentioned documents, and in whose possession they now are.*)

7. According to the best of my knowledge, information and belief, I have not now and never had in my possession, custody or power, or in the possession, custody or power of my solicitors or agents, solicitor or agent, or in the possession, custody or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto, and the pleadings and other proceedings in the action.

R.S.M. c. 40, form 29.

No. 31.—AFFIDAVIT OF PRODUCTION, WHEN MADE BY AN OFFICER OF A CORPORATION.

(*Rule 428.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

I, , of , make oath and say as follows:—

1. I am the (*here state the name of the office held by the deponent in the service of the company on whose behalf he maks the affidavit*), and, as such, have knowledge of all documents which are, or have been, in the custody or possession of the said (*company*), relating to the matters in question in this action.

2. I am cognizant of the matters in question in this action.

3. The said defendants have in their possession or power the documents relating to the matters in question in this action, set forth in the first and second parts of the first schedule hereto.

4. The said defendants object to produce the said documents set forth in the second part of the said first schedule hereto.

5. That (*here state on what grounds the objection is made, and verify the facts as far as may be*).

6. The said defendants have had, but have not now, in their possession or power, the documents relating to the matters in question in this action, set forth in the second schedule hereto.

7. The last mentioned documents were last in the possession or power of the said defendants on (*state when*).

8. That (*here state what has become of the last mentioned documents, and in whose possession they now are*).

9. According to the best of my knowledge, information and belief, the said defendants have not now and never had in their possession, custody or power, or in the possession, custody or power of myself, or of any of its solicitors or agents, or of any person or persons whomsoever, on its behalf any (*proceed as in last form*).

R.S.M. c. 40, form 30.

No. 32.—AFFIDAVIT OF EXECUTOR OR ADMINISTRATOR AS TO CLAIMS UNDER RULE 786.

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

We, A. B., of, etc., the above named plaintiff (*or* defendant, *or as may be*), the executors (*or* administrators) of X. Y., late of in the of , deceased, and E. F., of, etc., solicitor, severally make oath and say, as follows:—

I, the said E. F. (*solicitor*), for myself say, as follows:—

1. I have, in the paper writing now produced and shown to me, and marked A, set forth a list of all the claims, the particulars of which

have been sent in to me by persons claiming to be creditors of the said X. Y., deceased, pursuant to the advertisement issued in that behalf, dated day of , 19 .

And I, the said A. B., for myself say, as follows:—

2. I have examined the several claims mentioned in the paper writing now produced and shown to me, and marked A, and I have compared the same with the books, accounts and documents of the said X. Y. (*or as may be, and state any other inquiries or investigations made*), in order to ascertain, as far as I am able, to which of such claims the estate of the said X. Y. is justly liable.

3. From such examination (*and state any other reasons*), I am of opinion, and verily believe, that the estate of the said X. Y. is justly liable to the amounts set forth in the sixth column of the first part of the said paper writing marked A; and to the best of my knowledge and belief such several amounts are justly due from the estate of the said X. Y., and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said X. Y. is not justly liable to the claims set forth in the second part of the said paper writing marked A, and the same ought not to be allowed without proof by the respective claimants (*or* I am not able to state whether the estate of the said X. Y. is justly liable to the claims set forth in the second part of the said paper writing marked A, or whether such claims, or any parts thereof, are proper to be allowed without further evidence).

Sworn, etc.

Exhibit referred to in the above Affidavit.

(*Short Title.*)

List of claims the particulars of which have been sent in to E. F., the solicitor of the plaintiff (*or* defendant, *or as may be*), by persons claiming to be creditors of X. Y., deceased, pursuant to the advertisement issued in that behalf, dated the day of , 19 .

This paper writing, marked A, was produced and shown to , and is the same as is referred to in his affidavit sworn before me this day of , 19 .

W. B., etc.

First Part.—Claims proper to be allowed without further evidence.

Serial No.	Name of claimant	Addresses and descriptions	Nature of claim	Amount claimed	Amount proper to be allowed
				$ c.	$ c.

Second Part—Claims which ought to be proved by the claimants.

Serial No.	Names of claimants	Addresses and descriptions	Nature of claim	Amount claimed
				$ c.

R.S.M. c. 40, form 31.

No. 33.—AFFIDAVIT IN SUPPORT OF GARNISHING ORDER AFTER JUDGMENT.

(*Rule 760.*)

In the King's Bench.

Between

judgment creditor,

and

judgment debtor.

I, of , the above named judgment creditor (*or* for the above named judgment creditor), make oath and say as follows:—

1. On a judgment of the Court entered in this action the judgment debtor is now indebted to the judgment creditor in the sum of not less than

2. I am informed and believe that (*name, address and description of garnishee*) is indebted to the judgment debtor, and that the said (*insert the name of garnishee*) is within the jurisdiction of this Court.

Sworn at this day of , 19 .

Before me .

This affidavit is filed on behalf of the

R.S.M. c. 40, form 32.

No. 34.—AFFIDAVIT FOR GARNISHING ORDER BEFORE JUDGMENT.

(*Rule 760.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

I, (*name and description of deponent*), make oath and say:—

1. This action is pending, and was commenced on the day of , 19 .

2. The cause of action for which this action is brought is

3. In respect of the said cause of action the defendant is justly indebted to the plaintiff in $, after making all just discounts.

4. I am informed and believe that is indebted to the defendant, and is within the jurisdiction of this Court. (*Insert jurat and notice as in No. 32*).

R.S.M. c. 40, form 33.

No. 35.—AFFIDAVIT OF INTERPLEADER (OTHER THAN BY SHERIFF.)

(*Rule 896.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

I, , of , the defendant in the above action, make oath and say, as follows:—

1. The statement of claim herein was issued on the day of , 19 , and was served on me the day of , 19 . I have not yet delivered a statement of defence herein.

2. The action is brought to recover . The said (is *or* are) in my possession, but I claim no interest therein.

3. The right to the said subject-matter of this action has been and is claimed (*if claim in writing make the writing an exhibit*) by one who (*state expectation of suit or that he has already sued*).

4. I do not in any manner collude with the said or with the above named plaintiff, but I am ready to bring into Court or to pay or dispose of the said in such manner as the Court may order or direct.

Sworn at this day of , 19 .

Before me .

This affidavit is filed on behalf of the .

R.S.M. c. 40, form 34.

STATEMENTS OF CLAIM AND DEFENCE.

No. 36.—GENERAL FORMS.

(*Rules 300, 302.*)

In the King's Bench.

The day of , A.D. .

Between

A. B., plaintiff,

and

C. D., defendant.

(*Signed*)

Prothonotary,

(*or* Deputy Clerk of the Crown and Pleas.)

1. Between the 1st of January and the 28th of February, 1889, the plaintiff supplied to the defendant various articles of drapery (dry goods, *or as the case may be*); and payments on account were from time to time made by the defendant.

2. On the 28th of February, 1889, a balance remained due to the plaintiff of $325, and an account was on that day sent by the plaintiff to the defendant showing that balance.

3. On the 1st of March following, the defendant paid the plaintiff by cheque $32 on account of the same. The residue of the said balance, amounting to $293, has never been paid.

4. The plaintiff claims $.

5. The following are the particulars of the plaintiff's claim:—

Issued the day of , 19 , by X. Y., of , plaintiff's solicitor.

ENDORSEMENTS.

1. This statement of claim was issued by .
(To be endorsed where required by the rules.)

2. The defendant's statement of defence is to be filed in the office of the at , Manitoba, within after service hereof, otherwise judgment will be entered against him.

3. Upon payment of $ and $10 for costs, with costs of service, action will be discontinued. R.S.M. c. 40, form 35.

No. 37.)

(For parts not herein contained, see form 36.)

STATEMENT OF CLAIM.

1. A. B., of K., in the of L., died on the 1st of July, 1880, intestate. The defendant, G. H., is the administrator of A. B.

2. A. B. died entitled to lands in the said in an estate in fee simple, and also to some other real estate and to personal estate. The defendant has entered into possession of the real estate of A. B., and received the rents thereof.

3. A. B. was never married; he had one brother only, who pre-deceased him without having been married, and two sisters only, both of whom also pre-deceased him, namely, M. N. and P. Q. The plaintiff is the only child of M. N., and the defendant is the only child of P. Q.

The plaintiff claims—

1. To have the real and personal estate of A. B. administered in this Court, and for that purpose to have all the proper directions given and accounts taken.

2. To have a receiver appointed of the rents of his real estate.

3. Such further or other relief as the nature of the case may require.

R.S.M. c. 40, form 36.

No. 38.

In the King's Bench.

The day of A.D. .

In the matter of the estate of A. B., deceased.

Between

E. F., plaintiff,

and

G. H., defendant.

STATEMENT OF DEFENCE.

1. The plaintiff is an illegitimate child of M. N. She was never married. The defendant admits the allegations contained in the 1st and 3rd paragraphs of the plaintiff's statement of claim.

2. The intestate was not entitled to any real estate at his death.

3. The personal estate of A. B. was not sufficient for the payment of his debts, and has all been applied in payment of his funeral and testamentary expenses, and part of his debts.

4. The plaintiff's statement of claim is bad in law, because—

5. The defendant counterclaims—

6. The defendant claims a set-off for—

7. The following are the particulars of the defendant's (counter-claim or set-off).

ENDORSEMENT.

This statement of defence is filed by—

Delivered the day of , 19 , by X. Y., of , defendant's solicitor.

R.S.M. c. 40, form 37.

No. 39.

(*See No. 36.*)

STATEMENT OF CLAIM.

1. A. B., of K., in the of L., duly made his last will dated the 1st day of March, 1883, whereby he appointed the defendant and M. N. (who died in the testator's lifetime) executors thereof, and devised and bequeathed his real and personal estate to, and to the use of, his executors in trust to pay the rents and income thereof to the plaintiff for his life, and after his decease, and in default of his having a son who should attain 21, or a daughter who should attain that age or marry, upon trust as to his real estate for the person who would be the testator's heir-at-law, and as to his personal estate for the persons who would be the testator's next of kin, if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the 1st day of July, 1901, and his will was proved by the defendant, on the 4th day of October, 1901. The plaintiff has not been married.

3. The testator was at his death entitled to real and personal estate; the defendant entered into the receipt of the rents of the real estate and got in the personal estate; he has sold some part of the estate.

The plaintiff claims:—

1. To have the real and personal estate of A. B. administered in this Court, and for that purpose to have all proper directions given and accounts taken;

2. Such further or other relief as the nature of the case may require.

R.S.M. c. 40, form 38.

No. 40.

(*See No. 38.*)

STATEMENT OF DEFENCE.

1. A. B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some real estate which the defendant sold, and which produced the net sum of $22,500 and the testator had some personal estate which the defendant got in, and which produced the net sum of $5,400.

2. The defendant applied the whole of said sums and the sum of $84, which the defendant received from rents of the real estate, in the payment of the funeral and testamentary expenses and debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the 10th day of January, 1902, and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant admits the allegations in the 1st and 2nd paragraph's of the plaintiff's statement of claim.

5. The defendant submits that the plaintiff ought to pay the costs of this action.

R.S.M. c. 40, form 39.

No. 41.—ACTION AGAINST DEL CREDERE AGENTS.

(*See No. 36.*)

STATEMENT OF CLAIM.

1. The plaintiffs are manufacturers of artificial manures, carrying on business at , in the of .

2. The defendants are commission agents, carrying on business in Winnipeg.

3. In the early part of the year , the plaintiffs commenced, and down to the 19 , continued to consign to the defendants, as their agents, large quantities of their manures for sale, and the defendants sold the same and received the price thereof, and accounted to the plaintiffs therefor.

4. No express agreement was ever entered into between the plaintiffs and the defendants with respect to the terms of the defendants' employment as agents. The defendants have always charged the plaintiffs a commission at per cent. on all sales effected by them, which is the rate of commission ordinarily charged by all *del credere* agents in the said trade. And the defendants, in fact, always accounted to the plaintiffs for the price, whether they received the same from the purchaser or not.

5. The plaintiffs contend that the defendants are liable to them as *del credere* agents, but if not so liable are, under the circumstances hereinafter mentioned, liable as ordinary agents.

6. On the , the plaintiffs consigned to the defendants for sale a large quantity of goods, including tons of .

7. On or about the , the defendants sold tons of part of such goods to one G. H., for $, at three months credit, and delivered the same to him.

8. G. H. was not, at that time, in good credit, and was in insolvent circumstances, and the defendants might, by ordinary care and diligence, have ascertained the fact.

9. G. H. did not pay for the said goods, but before the expiration of the said three months for which credit had been given, the estate of the said G. H. was placed in liquidation under the Insolvency Acts then in force; and the plaintiffs have never received the said sum of $ or any part thereof.

The plaintiffs claim:—

1. Damages to the amount of $.

2. Such further or other relief as the nature of the case may require.

R.S.M. c. 40, form 40.

No. 42.

(*See No. 38.*)

STATEMENT OF DEFENCE.

1. The defendants deny that the said commission of per cent. mentioned in paragraph 4 of the claim is the rate of commission ordinarily charged by *del credere* agents in the said trade, and say that the same is the ordinary commission for agents other than *del credere* agents; and they deny that they ever accounted to the plaintiffs for the price of any goods, except after they had received the same from the purchasers.

2. The defendants deny that they were ever liable to the plaintiffs as *del credere* agents.

3. With respect to the eighth paragraph of the plaintiff's statement of claim, the defendants say that, at the time of the said sale to the said G. H., the said G. H. was a person in good credit. If the truth is that the said G. H. was then in insolvent circumstances, the defendants did not suspect and had not reason to suspect the same, and could not by ordinary care or diligence have ascertained the fact.

4. The defendants admit the allegations contained in paragraphs 1, 2, 3, 6, 7 and 9 of the plaintiff's statement of claim.

R.S.M. c. 40, form 41.

No. 43.

(*See No. 36.*)

STATEMENT OF CLAIM.

1. Messrs. M. N. & Co., on the day of , drew a bill of exchange upon the defendants for $, payable to the order of the said Messrs. M. N. & Co. three months after date, and the defendants accepted the same.

2. Messrs. M. N. & Co. endorsed the bill to the plaintiffs.

3. The bill came due on the , and the defendants have not paid it.

4. The plaintiffs claim the amount of the bill and interest thereon to judgment.

R.S.M. c. 40, form 42.

No. 44.

(*See No. 38.*)

STATEMENT OF DEFENCE.

1. The bill of exchange mentioned in the statement of claim was drawn and accepted under the circumstances hereinafter stated, and except as hereinafter mentioned, there never was any consideration for the acceptance or payment thereof by the defendants.

2. Shortly before the acceptance of the said bill it was agreed between the said Messrs. M. N. & Co., the drawers thereof, and the defendants, that the said Messrs. M. N. & Co. should sell and deliver to the defendants free on board ship at the port of 1,200 tons of coal during the month of , and that the defendants should pay for the same by accepting the said Messrs. M. N. & Co.'s draft for $ at six months.

3. The said Messrs. M. N. & Co. accordingly drew upon the defendants, and the defendants accepted the bill of exchange now sued upon.

4. The defendants did all things which were necessary to entitle them to delivery by the said Messrs. M. N. & Co. of the said 1,200 tons of coal under their said contract, and the time for delivery has long since elapsed; but the said Messrs. M. N. & Co. never delivered the same or any part thereof, but have always refused to do so, whereby the consideration for the defendant's acceptance has wholly failed.

5. The plaintiffs first received the said bill and it was first endorsed to them after it was overdue.

6. The plaintiffs never gave any value or consideration for the said bill.

7. The plaintiffs took the said bill with notice of the facts stated in the 2nd, 3rd and 4th paragraphs thereof.

R.S.M. c. 40, form 43.

No. 45.

(*Style of Cause.*)

AMENDMENT OF PLAINTIFF'S STATEMENT OF CLAIM NO. 43.

The plaintiff's gave value and consideration for the said bill in manner following, that is to say, on the day of 19 , the said Messrs. M. N. & Co. were indebted to the plaintiffs in about $, the balance of an account for goods sold from time to time by him to them. On that day they ordered of the plaintiffs further goods to the value of about $, which last mentioned goods have since been delivered by him to them. At the time of the order for such last mentioned goods it was agreed between Messrs.

M. N. & Co. and the plaintiffs, and the order was received upon the terms that they should indorse and hand over to them the bill of exchange sued upon, together with various other securities on account of the said previous balance and the price of the goods so ordered on that day. The said securities, including the bill sued upon, were thereupon on the same day indorsed and handed over to the plaintiffs.

R.S.M. c. 40, form 44.

No. 46.

(See No. 36.)

STATEMENT OF CLAIM.

1. The defendant on the day of made his promissory note, whereby he promised to pay to the plaintiff or his order $ three months after date.

2. The note became due on the day of , 19 , and the defendant has not paid it.

3. The plaintiff claims:—

The amount of the note and interest thereon to judgment.

R.S.M. c. 40, form 45.

No. 47.

(See No. 38.)

STATEMENT OF DEFENCE.

1. The defendant made the note sued upon under the following circumstances:—The plaintiff and defendant had for some years been in partnership as coal merchants, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, and that the defendant should take over the whole of the partnership assets and liabilities, and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership books, and enquire into the state of the partnership assets and liabilities; and he did accordingly examine the books and make the said enquiries, and he thereupon represented to the defendant that the assets of the firm exceeded $10,000 and that the liabilities of the firm were under $3,000, whereas the fact was that the assets of the firm were less than $5,000 and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the last paragraph induced the defendant to make the note now sued on, and there never was any other consideration for the making of the note.

R.S.M. c. 40, form 46.

No. 48.

(*See No. 36.*)

STATEMENT OF CLAIM.

1. The plaintiff on the day of , 19 , drew a bill of exchange upon the defendant for $, payable three months after date, and the defendant accepted the same.

2. The bill became due on day of , 19 , and the defendant has not paid it.

The plaintiff claims:—(*State claim.*)

R.S.M. c. 40, form 47.

No. 49.

(*See No. 38.*)

STATEMENT OF DEFENCE.

At the time of making the alleged acceptance of the said bill the defendant was an infant within the age of twenty-one years.

R.S.M. c. 40, form 48.

No. 50.

(*Style of Cause.*)

AMENDMENT OF STATEMENT OF CLAIM NO. 48.

The defendant C. D., who at the time of the acceptance of the said bill, was an infant within the age of twenty-one years, ratified and confirmed the said acceptance after he attained full age and before action, by a writing made and signed by him.

R.S.M. c. 40, form 49.

No. 51.

(*See No. 36.*)

STATEMENT OF CLAIM.

1. The plaintiffs are merchants, factors and commission agents, carrying on business in Winnipeg.

2. The defendants are merchants and commission agents, carrying on business at Toronto, in the Province of Ontario.

3. For several years prior to the , 19 , the plaintiffs had been in the habit of consigning goods to the defendants for sale as their agents, and the defendants had been in the habit of consigning goods to the plaintiffs for sale, as their agents; and each party always received the price of the goods sold by him for the other; and a balance was from time to time struck between the parties, and paid.

4. On the of , the moneys so received by the defendants for the plaintiffs, and remaining in their names, largely exceeded the moneys received by the plaintiffs for the defendants, and a balance of $ was accordingly due to the plaintiffs from the defendants.

5. On or about the , 19 , the plaintiffs sent to the defendants a statement of the accounts between them, showing the said sum as a balance due to the plaintiffs from the defendants; and the defendants agreed to the said statement of accounts as correct, and to the said sum of $ as the balance due by them to the plaintiffs, and agreed to pay interest on such balance if time were given to them.

6. The defendants requested the plaintiffs to give them three months' time for the payment of the said sum of $, and the plaintiffs agreed to do so upon the defendants accepting the bills of exchange hereinafter mentioned.

7. The plaintiffs thereupon, on the , drew two bills of exchange upon the defendants, one for $ and the other for $, both payable to the order of the plaintiffs three months after date, and the defendants accepted the bills.

8. The said bills became due on the , 19 , and the defendants have not paid the bills, or either of them, nor the said sum of $.

9. The plaintiffs claim:—
$ and interest to the date of judgment.

R.S.M. c. 40, form 50.

No. 52.

(See No. 36.)

STATEMENT OF CLAIM.

1. The plaintiff is a journeyman painter. The defendant is a builder, having his building yard and carrying on business at Brandon, and for six months before and up to the 22nd August, 19 , the plaintiff was in the defendant's employment as a journeyman painter.

2. On the said 22nd August, 19 , the plaintiff came to work as usual in the defendant's yard at about six o'clock in the morning.

3. A few minutes after the plaintiff had so come to work the defendant's foreman, X. Y., who was then in the yard, called the plaintiff to him and accused the plaintiff of having on the previous day stolen a quantity of paint, the property of the defendant, from the yard. The plaintiff denied the charge, but X. Y. gave the plaintiff into the custody of a constable, whom he had previously sent for, upon a charge of stealing paint.

4. The defendant was present at the time when the plaintiff was given into custody, and authorized and assented to his being given into custody; and in any case X. Y., in giving him into custody, was acting within the scope and in the course of his employment as the defendant's foreman, and for the purpose of the defendant's business.

5. The plaintiff, upon being so given in custody, was taken by the said constable a considerable distance through various streets, on foot, to the police station, and he was there detained in a cell till late in the same afternoon, when he was taken to the police court, and the charge against him was heard before the magistrate then sitting there, and was dismissed.

6. In consequence of being so given into custody, the plaintiff suffered annoyance and disgrace, and loss of time and wages, and loss of credit and reputation, and was thereby unable to obtain any employment or earn any wages for three months.

7. The plaintiff claims $ damages.

R.S.M. c. 40, form 51.

No. 53.

(*See No. 38.*)

STATEMENT OF DEFENCE.

1. The defendant denies that he was present at the time when the plaintiff was given into custody, or that he in any way authorized or assented to his being given into custody. And the said X. Y., in giving the plaintiff into custody, did not act within the scope or in the course of his employment as the defendant's foreman, or for the purposes of the defendant's business.

2. At some time about five or six o'clock on the , being the evening before the plaintiff was given into custody, a large quantity of paint had been stolen by some person or persons from a shed upon the defendant's yard and premises.

3. At about 5.30 o'clock on the evening of the , the plaintiff, who had left off work about half an hour previously, was seen coming out of the shed when no one else was in it, although his work lay in a distant part of the yard from, and he had no business in or near, the shed. He was then seen to go to the back of a stack of timber in another part of the yard. Shortly afterwards the paint was found to have been stolen, and it was found concealed at the back of the stack of timber behind which the plaintiff had been seen to go.

4. On the following morning, before the plaintiff was given into custody, he was asked by X. Y. what he had been in the shed and behind the stack of timber for, and he denied having been in either place. X. Y. had reasonable and probable cause for suspecting and did suspect that the plaintiff was the person who had stolen the paint, and thereupon gave him into custody.

R.S.M. c. 40, form 52.

No. 54.

(*See No. 36.*)

STATEMENT OF CLAIM.

1. In or about , 19 , the defendant caused to be inserted in the newspaper an advertisement in which he offered for sale the lease, fixtures, fittings, goodwill and stock-in-trade of a baker's shop and business and described the same as an increasing business, and doing twelve barrels a week. The advertisement directed applications for particulars to be made to X. Y.

2. The plaintiff having seen the advertisement applied to X. Y., who placed him in communication with the defendant, and negotiations ensued between the plaintiff and the defendant for the sale to the plaintiff of the defendant's bakery at , with the lease, fixtures, fittings, stock-in-trade and good-will.

3. In the course of these negotiations the defendant repeatedly stated to the plaintiff that the business was a steadily increasing business, and that it was a business of more than twelve barrels a week.

4. On the 5th of April, 19 , the plaintiff, believing the said statement of the defendant to be true, agreed to purchase the said premises from the defendant for $2,000, and paid to him a deposit of $300 in respect of the purchase.

5. On the 15th of April the purchase was completed, an assignment of the lease executed and the balance of the purchase money paid. On the same day the plaintiff entered into possession.

6. The plaintiff soon afterwards discovered that at the time of the negotiations of the said purchase by him and of the said agreement, and of the completion thereof, the said business was and had long been a declining business; and at each of those times, and for a long time before, it had never been a business of more than four barrels a week. And the said premises were not of the value of $2,000, or any saleable value whatever.

7. The defendant made the false representations herein before mentioned, well knowing them to be false, and fraudulently, with the intention of inducing the plaintiff to make the said purchase on the faith of them.

8. The plaintiff claims $ damages.

R.S.M. c. 40, form 53.

No. 55.

(See No. 38.)

STATEMENT OF DEFENCE.

1. The defendant says that at the time when he made the representations mentioned in the 3rd paragraph of the statement of claim and throughout the whole of the transactions between the plaintiff and defendant, and down to the completion of the purchase and the relinquishment by the defendant of the said shop and business to the plaintiff, the said business was an increasing business, and was a business of over twelve barrels a week. And the defendant denies the allegations of the sixth paragraph of the statement of claim.

2. The defendant repeatedly during the negotiations told the plaintiff that he must not act upon any statement or representation of his, but must ascertain for himself the extent and value of the said business. And the defendant handed to the plaintiff for this purpose the whole of his books, showing fully and truthfully all the details of the said business, and from which the nature, extent and value thereof could be fully seen; and those books were examined for that purpose by the plaintiff, and by an accountant on his behalf. And the plaintiff made the purchase in reliance upon his own judgment, and the result of his own inquiries and investigations, and not upon any statement or representation whatever of the defendant.

3. The defendant admits the allegations of paragraphs 1, 2, 3 and 4 of the statement of claim.

R.S.M. c. 40, form 54.

No. 56.

(*See No. 36.*)

STATEMENT OF CLAIM.

1. The plaintiffs are brewers, carrying on their business at Brandon, under the firm name of X. Y. & Co.

2. In the month of March, 1901, M. N. was desirous of entering into the employment of the plaintiffs as a traveller and collector, and it was agreed between the plaintiffs and the defendants and M. N. that the plaintiffs should employ M. N. upon the defendants entering into the guarantee hereinafter mentioned.

3. An engagement in writing was accordingly made and entered into, on or about the 30th March, 1901, between the plaintiffs and the defendants, whereby, in consideration that the plaintiffs would employ M. N. as their collector, the defendants agreed that they would be answerable for the due accounting by M. N. to the plaintiffs for, and the due payment over by him to the plaintiffs of, all moneys which he should receive on their behalf as their collector.

4. The plaintiffs employed M. N. as their collector accordingly, and he entered upon the duties of such employment, and continued therein down to the 31st December, 1901.

5. At various times between the 29th of September and the 25th of December, 1901, M. N. received on behalf of the plaintiffs and as their collector sums of money from debtors of the plaintiffs, amounting in the whole to the sum of $3,400; and of this amount M. N. neglected to account for or pay over to the plaintiffs sums amounting in the whole to $908, and appropriated the last mentioned sums to his own use.

6. The defendants have not paid the last mentioned sums, or any part thereof, to the plaintiffs.

7. The plaintiffs claim:—(*State claim.*)

R.S.M. c. 40, form 55.

No. 57.

(*See No. 36.*)

STATEMENT OF CLAIM.

1. The plaintiff is a shoemaker, carrying on business at Winnipeg. The defendant is a soap and candle manufacturer at the same place.

2. On the 23rd of May, 19 , the plaintiff was walking northward along the west side of Main Street, in the City of Winnipeg, at about 3 o'clock in the afternoon. He was obliged to cross Bannatyne Street, which is a street running into Main Street at right angles thereto. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a two-horse van of the defendant, under the charge and control of the defendant's servant, was negligently, suddenly and without any warning, turned at a rapid and dangerous pace out of Main Street into Bannatyne Street. The pole of the van struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally; and in consequence thereof the plaintiff was for four months ill and suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

4. The plaintiff claims $ damages.

R.S.M. c. 40, form 56.

No. 58.

(*See No. 38.*)

STATEMENT OF DEFENCE.

1. The defendant denies that the van was the defendant's van, or that it was under the charge or control of the defendant's servant. The van belonged to John Smith, of , a carman and contractor, employed by the defendant to carry and deliver goods for him; and the person under whose charge and control the said van was was the servant of the said John Smith.

2. The defendant denies that the van was turned out of Main Street either negligently, suddenly or without warning or at a rapid or dangerous pace.

3. The defendant says that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the van approaching him and avoided any collision with it.

R.S.M. c. 40, form 57.

No. 59.

(*See No. 36.*)

STATEMENT OF CLAIM.

1. The plaintiff is a carrying on business at . The defendant is a , residing at .

2. On the day of , the defendant assaulted the plaintiff and the plaintiff was seriously hurt and wounded, and was for a long time, in consequence of his injuries, unable to transact his business, and incurred expense for nursing and medical attendance.

3. The plaintiff claims $ damages.

R.S.M. c. 40, form 58.

No. 60.

(*See No. 38.*)

STATEMENT OF DEFENCE.

The plaintiff first assaulted the defendant, who thereupon committed the alleged assault in his own defence.

R.S.M. c. 40, form 59.

No. 61.

(Style of Cause.)

AMENDMENT OF STATEMENT OF CLAIM NO. 59

The defendant, E. F., pretends that he committed the assault complained of in his own defence; but the facts are that the defendant was trespassing on the plaintiff's land and refused to leave though requested to do so, whereupon the plaintiff laid his hands on the defendant in order to remove him, using so much force as, and no more than, was necessary for that purpose.

R.S.M. c. 40, form 60.

No. 62.

(See No. 36.)

STATEMENT OF CLAIM.

1. The plaintiff is a , residing at Portage la Prairie. The defendants are carriers of passengers upon a railway from Winnipeg to .

2. In January, 19 , the plaintiff took a ticket from Winnipeg to , and was received by the defendants as a passenger to be by them safely carried in a train which started from Winnipeg for .

3. Owing to the negligence of the defendants in the management of their railway, the train in which the plaintiff was travelling came into collision with an engine, at a short distance from Winnipeg.

4. The plaintiff was thrown from his seat by the said collision, and much injured about the head, and had his right arm broken.

5. (*The following paragraphs may be introduced by amendment to meet defence infra:*—The defendants allege that the plaintiff accepted the sum of $300 in full satisfaction of all cause of action which he might have on account of the said collision, but the facts are as follows:—

6. A short time after the collision an officer of the defendants procured the plaintiff to accept the said accord and satisfaction by fraudulently representing that his injuries were of a temporary nature, and that if they should afterwards turn out to be more serious than he anticipated he would still be able to obtain further compensation from the defendants.

7. The plaintiff, fully believing the said representations, and acting upon the faith thereof, was induced thereby to accept the said accord and satisfaction and then accepted the same, subject to the express condition that he should not thereby exclude himself from further compensation from the defendants if his injuries should prove more serious than he then anticipated.

8. After the acceptance of the said accord and satisfaction, the injuries suffered by the plaintiff in the collision did turn out to be more serious than was anticipated at the time aforesaid, and thereupon the plaintiff commenced the present action.)

9. The plaintiff claims $ damages.

R.S.M. c. 40, form 61.

No. 63.

(See No. 38.)....

STATEMENT OF DEFENCE.

1. Shortly after the collision referred to in the statement of claim, one of the officers of the defendants called upon the plaintiff for the purpose of ascertaining from him whether he intended to make any claim against the defendants arising out of the said collision.

2. At such interview the plaintiff informed the said officer that he did intend to make a claim against the defendants arising out of the said collision; and it was there and then agreed between the plaintiff and the said officer acting on behalf and by the authority of the defendants that, in consideration that the defendants would pay to the plaintiff a sum of $300, he, the plaintiff, would accept such sum from the defendants in full satisfaction and discharge of all cause of action which he had or might have against the said defendants on account of the said collision.

3. Thereupon the said officer, acting on behalf of the defendants, paid to the plaintiff the sum of $300, and the plaintiff received the same in full discharge of the aforesaid cause of action.

R.S.M. c. 40, form 62.

No. 64.

(See No. 36.)

STATEMENT OF CLAIM.

1. On the day of , the plaintiff, by deed, let to the defendant a house and premises, No. 52 Street, in the City of Brandon, for a term of twenty-one years, from the day of , at the yearly rental of $400, payable quarterly.

2. By the said deed, the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said deed also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the a quarter's rent became due; and on the , another quarter's rent became due; on the , both had been in arrear for twenty-one days, and both are still due.

5. On the same , the house and premises were not, and are not now, in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value.

The plaintiff claims:—

(1) Possession of the said house and premises;

(2) $ for arrears of rent;

(3) $, damages for the defendant's breach of his covenant to repair;

(4) $ for occupation of the house and premises from the to the day of recovering possession.

R.S.M. c. 40, form 63.

No. 65.

(*See No. 36.*)

STATEMENT OF CLAIM.

1. On the day of , the plaintiff let to the defendant a house, No. 62 Street, in the City of Winnipeg, as tenant from year to year, at the yearly rent of $420, payable quarterly, the tenancy to commence on the day of

2. The defendant took possession of the house and continued tenant thereof until the day of last, when the tenancy determined by a notice duly given.

3. The defendant has disregarded the notice and still retains possession of the house.

4. (*Amendment to meet the counterclaim infra*): The defendant, C. D., sets up in his defence that the plaintiff agreed to give to the defendant a new lease, and the plaintiff, A. B., admits the agreement alleged in the statement of defence, but he refuses to grant to the defendant a lease, inasmuch as such agreement provided that the lease should contain a covenant by the defendant to keep the house in good repair and a power of re-entry by the plaintiff upon breach of such covenant, and the plaintiff says that the defendant, since the agreement was made, has not kept the house in good repair, and the same is now in a dilapidated condition.

The plaintiff claims:—

(1) Possession of the house;

(2) $ for mesne profits from the day of

R.S.M. c. 40, form 64.

No. 66.

(*See No. 38.*)

STATEMENT OF DEFENCE AND COUNTERCLAIM.

The defence and counterclaim of the above named C. D.

1. Before the determination of the tenancy mentioned in the statement of claim, the plaintiff, A. B., by writing dated the day of , signed by him, agreed to grant to the defendant, C. D., a lease of the house mentioned in the statement of claim, at the yearly rent of $450, for the term of twenty-one years, commencing from the day of , when the defendant, C. D.'s, tenancy from year to year determined, and the defendant has since that date been, and still is, in possession of the house under the said agreement.

2. By way of counterclaim, the defendant claims to have the agreement specifically performed, and to have a lease granted to him accordingly.

R.S.M. c. 40, form 65.

No. 67.

(*See No. 38.*)

DEFENCE TO NO. 66.

The plaintiff, A. B., admits the agreement stated in the defendant C. D.'s statement of defence, but he refuses to grant to the defendant a lease, because such agreement provided that the lease should contain a covenant by the defendant to keep the house in good repair, and a power of re-entry by the plaintiff upon breach of such covenant, and the plaintiff says that the defendant, since the making of the said agreement, has not kept the house in good repair, and the same is now in a dilapidated condition.

R.S.M. c. 40, form 66.

No. 68.

(*See No. 36.*)

STATEMENT OF CLAIM.

1. K. L., late of the Rural Municipality of Portage la Prairie, duly executed his last will, dated the 4th day of April, 19 , and thereby devised his lands in the said municipality unto and to the use of the plaintiffs and their heirs, upon the trusts therein mentioned for the benefit of his daughters Margaret and Martha, and appointed the plaintiff's executors thereof.

2. K. L. died on the 3rd day of January, 19 , and his said will was proved by the plaintiffs in the proper Surrogate Court on or about the 4th day of February, 19 .

3. K. L. was at the time of his death seized in fee of the north-east quarter of section five in township twelve in range seven west of the principal meridian.

4. The defendant, soon after the death of K. L., entered into possession of the said land, and has refused to give it up to the plaintiffs.

The plaintiffs claim:—

(1) Possession of the said land;

(2) $ for mesne profits of the premises from the death of K. L. till such possession shall be given.

R.S.M. c. 40, form 67.

No. 69.

(*See No. 36.*)

STATEMENT OF CLAIM.

1. The plaintiff was on the 5th March, 19 , and still is the owner and occupier of a farm in the Rural Municipality of Elton, being section five in township twelve in range nineteen west of the principal meridian.

2. A private road, known as Highfield Lane, runs through a portion of the plaintiff's farm. It is bounded upon both sides by fields of the plaintiff's, and is separated therefrom by a fence and ditch.

3. For a long time prior to the 5th March, 19 , the defendant had wrongfully claimed to use the road for his horses, carts and wagons, on the alleged ground that the same was a public highway; and the plaintiff had frequently warned him that the same was not a public highway, but the plaintiff's private road, and that the defendant must not so use it.

4. On the 5th March, 19 , the defendant came with a cart and horse and a large number of servants and workmen, and forcibly used the road, and broke down and removed a gate which the plaintiff had caused to be placed across the same.

5. The defendant and his servants and workmen on the same occasion pulled down and damaged the plaintiff's fence and ditch upon each side of the road, and went upon the plaintiff's field beyond the fence and ditch, and injured the crops there growing and dug up and injured the soil of the road; and in any case the acts mentioned in this paragraph were wholly unnecessary for the assertion of the defendant's alleged right to use or the user of the said road as a highway.

The plaintiff claims:—

(1) Damages for the wrongs complained of;

(2) An order restraining the defendant from any repetition of any of the acts complained of;

(3) Such further relief as the nature of the case may require.

R.S.M. c. 40, form 68.

No. 70.

(*See No. 38.*)

STATEMENT OF DEFENCE.

1. The defendant says that the road was and is a public highway for horses and carriages; and a few days before the 5th of March, 19 , the plaintiff wrongfully erected the gate across the road for the purpose of obstructing and preventing, and it did obstruct and prevent the use of the road as a highway. And the defendant on the said 5th of March, 19 , caused the said gate to be removed, in order to enable him lawfully to use the road by his horses, carts and wagons as a highway.

2. The defendant denies the allegations of the 5th paragraph of the statement of claim, and says that neither he nor any of his workmen or servants did any act, or used any violence, other than was necessary to enable the plaintiff lawfully to use the highway.

R.S.M. c. 40, form 69.

No. 71.—SPECIAL CASE FOR THE OPINION OF THE COURT.

(*Rules 463-469.*)

The following case is stated for the opinion of the Court under an order of the Honorable Mr. Justice , dated the day of , 19 , made pursuant to Rule 452 (*or as the case may be*), (*here state the material facts of the case bearing upon the question of law to be decided.*)

The question (*or* questions) for the opinion of the Court is (*or* are)—

First—Whether, etc.

Second—Whether, etc.

R.S.M. c. 40, form 70.

PRÆCIPES.

No. 72.—ENTRY FOR ARGUMENT GENERALLY.

(*Rule 452.*)

(*Title, etc.*)

Set down for argument the

Dated this day of , 19 .

(*Signed*)
(*Address*)

R.S.M. c. 40, form 71.

No. 73.—ENTRY OF SPECIAL CASE.

(*Rule 467.*)

(*Title, etc.*)

Set down for argument the special case filed in this action on the day of , 19 (*or* set down the dated the day of , 19 , of Mr. , the referee in this for hearing as a special case).

Dated this day of , 19 .

(*Signed*)
(*Address*)

R.S.M. c. 40, form 72.

No. 74.—SEARCH.

(*Title, etc.*)

Search for

Dated this day of , 19 .

(*Signed*)
(*Address*)

(Agent for)
Solicitor.

R.S.M. c. 40, form 73.

No. 75.—ENTRY OF ACTION FOR TRIAL.

(*Rule 575.*)

(*Title, etc.*)

Enter this action for trial for .

Dated this day of , 19 .

(*Signed*)
(*Address*)

R.S.M. c. 40, form 74.

No. 76.—COMMISSION TO EXAMINE WITNESSES.

(*Rule 498.*)

(*Title, etc.*)

Required, in pursuance of order dated , a commission to examine witnesses directed to .

Dated this day of , 19 .

(*Signed*)
(*Address*)

Solicitor for .

R.S.M. c. 40, form 75.

No. 77.—HABEAS CORPUS AD TESTIFICANDUM.

(*Rule 493.*)

(*Title, etc.*)

Required, in pursuance of order dated , a writ of *habeas corpus ad testificandum*, directed to the , to bring before .

Dated this day of , 19 .

(*Signed*)
(*Address*)

Solicitor for the .

R.S.M. c. 40, form 76.

No. 78.—FIERI FACIAS.

(*Rule 689.*)

(*Title, etc.*)

Required a writ of *fieri facias*, directed to the sheriff of , to levy against C. D. the sum of $, and interest thereon at the rate of per centum per annum from the day of to [and $ costs].

Judgment (*or* order) dated day of .

Taxing master's certificate, dated day of .

Dated the day of .

(*Signed*)
(*Address*)

Solicitor for the (*party on whose behalf writ is to issue*).

R.S.M. c. 40, form 78.

No. 79.—VENDITIONI EXPONAS.

(*Rule 687.*)

(*Title, etc.*)

Required a writ of *venditioni exponas*, directed to the sheriff of , to sell goods and of C. D., taken under writ of *fieri facias* in this action tested day of .

Dated the day of , 19 .

(*Signed*)

(*Address*)

Solicitor for the .

R.S.M. c. 40, form 79.

No. 80.—WRIT OF SEQUESTRATION.

(*Rules 705-707.*)

(*Title, etc.*)

Required a writ of sequestration against C. D. for not , at the suit of A. B., directed to the sheriff of .

Order dated day of .

Dated the day of , 19 .

(*Signed*)

(*Address*)

R.S.M. c. 40, form 80.

No. 81.—WRIT OF POSSESSION.

(*Rule 693.*)

(*Title, etc.*)

Required a writ of possession, directed to the sheriff of , to deliver possession to A. B., of

Judgment dated day of , 19 .

Dated the day , 19 .

(*Signed*)

(*Address*)

Solicitor for the

R.S.M. c. 40, form 81.

No. 82.—WRIT OF DELIVERY OF CHATTELS.

(*Rule 695.*)

(*Title, etc.*)

Required a writ of delivery, directed to the sheriff of , to make delivery to A. B. of

Dated the day of , 19 .

(*Signed*)
(*Address*)

Solicitor for the .

R.S.M. c. 40, form 82.

No. 83.—ATTACHMENT.

(*Rule 704.*)

(*Title, etc.*)

Required, in pursuance of order dated day of , an attachment, directed to the sheriff of , against C. D., for not delivering to A. B.

Dated the day of , 19 .

(*Signed*)
(*Address*)

Solicitor for the .

R.S.M. c. 40, form 83.

No. 84.—PRAECIPE FOR DIRECTION TO THE BANK REFERRED TO IN RULE 134.

In the King's Bench.

(*Short Style of Cause.*)

Required a direction for the Bank to receive from $, payable into Court to the credit of this cause under , dated (*or as the case may be*).

Dated

A. B.,

Defendant's solicitor (*or as the case may be*).

R.S.M. c. 40, form 84.

No. 85.—PRAECIPE FOR CHEQUE REFERRED TO IN RULE 139.

In the King's Bench.

(Short Style of Cause.)

Required a cheque for $, with $ interest thereon from to *(being a period, if any, for which interest is payable under the order or judgment, but which has not already been taken into account and computed)*, payable to , and the following papers are produced herewith *(naming the judgments, orders, reports, etc., showing the party's right to the cheque)*:

Judgment, dated

Order, dated

Report, dated , etc.

Dated

A. B.,
Plaintiff's solicitor, *(or as the case may be)*.

R.S.M. c. 40, form 85.

SUBPŒNAS, ETC., FOR EXAMINATION OF WITNESSES.

No. 86.—SUBPOENA AD TESTIFICANDUM *(General Form)*.

In the King's Bench.

Between

, plaintiff,

and

, defendant.

To of .

You are hereby commanded to attend before at on day, the day of 19 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the (plaintiff *or* defendant).

By order of the Court.

(Signed.)

Prothonotary *(or* Deputy Clerk of the Crown and Pleas.)

R.S.M. c. 40, form 86.

No. 87.—SUBPOENA DUCES TECUM *(General Form)*.

(Rule 470.)

(Title, etc.)

To , of .

You are hereby required to attend before at on day, the day of , 19 , at the hour of in the noon, and so from

day to day until the above case is tried, to give evidence on behalf of the ; and also to bring with you and produce at the time and place aforesaid (*specify documents to be produced*).

By order of the Court.

(Signed.)

Prothonotary (*or* Deputy Clerk of the Crown and Pleas.)

R.S.M. c. 40, form 87.

No. 88.—COMMISSION TO EXAMINE WITNESSES.

(*Rules 498, 500, 502.*)

(*Title, etc.*)

George the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India:

To , of , commissioner named by and on behalf of the , and to , of , a commissioner named by and on behalf of the , greeting:

Know ye that We, in confidence of your prudence and fidelity, have appointed you and by these presents give you power and authority to examine on interrogatories and viva voce as hereinafter mentioned witnesses on behalf of the said and respectively at before you or either of you.—And We command you as follows:—

1. Both the said and the said shall be at liberty to examine on interrogatories and viva voce on the subject matter thereof or arising out of the answers thereto, such witnesses as shall be produced on their behalf, with liberty to the other party to cross-examine the said witnesses on cross interrogatories and viva voce on the subject matters thereof or arising out of the answers thereto, the party producing any witness for examination being at liberty to re-examine him viva voce; and all such additional viva voce questions, whether on examination, cross-examination or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said commission.

2. Not less than forty-eight hours before the examination of any witness on behalf of either of the said parties, notice in writing, signed by one of you, the commissioner of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the names of the witnesses to be examined, shall be given to the other party by delivering the notice to (*name and address of the person named in the order for the purpose*), or to a grown up person there, and shall be given also to the commissioner of the other party at the address aforesaid of such commissioner or to a grown up person for him at the said last mentioned address; and if the commissioner of that party neglect to attend pursuant to the notice, then you, the commissioner of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness, on his examination, cross-examination or re-examination, producing any book, document, letter, paper or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof or extract therefrom, certified by the commissioners or commissioner present and acting to be a true and correct copy or extract, shall be annexed to the witness's deposition.

4. Each witness to be examined under this commission shall be examined on oath, affirmation or otherwise, in accordance with his religion, by or before the commissioners or commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories and viva voce questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the commissioners or commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the of the Court of King's Bench on or before the day of , inclosed in a cover under the seals or seal of the commissioners or commissioner.

8. Before you, or any of you, in any manner act in the execution hereof, you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences.

And We give you or any one of you authority to administer such oath to the other or others of you.

Witness, the Honorable , Chief Justice, etc., the day of , in the year of our Lord one thousand nine hundred and .

This writ was issued by
of
agent for
of
solicitor for the
who reside at

COMMISSIONER'S OATH.

You shall, according to the best of your skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission within written. So help you God.

CLERK'S OATH.

You shall truly, faithfully and without partiality to any or either of the parties in this cause take, write down, transcribe and engross all and every the questions which shall be exhibited or put to all and every

witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as you are directed and employed by the commissioners to take, write down, transcribe or engross the said questions and depositions. So help you God.

WITNESS' OATH.

You are true answer to make to all such questions as shall be asked you, without favor or affection to either party, and therein you shall speak the truth, the whole truth and nothing but the truth. So help you God.

INTERPRETER'S OATH.

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations, which shall be administered to, and all and every the questions which shall be exhibited or put to all and every witness and witnesses produced before and examined by the commissioners named in the commission within written, as far forth as you are directed and employed by the said comissioners, to interpret and translate the same out of the English language into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

Direction of interrogatories, etc., when returned by the commissioners.

The prothonotary of the Court of King's Bench,

Court House, Winnipeg.

R.S.M. c. 40, form 88.

No. 89.—HABEAS CORPUS AD TESTIFICANDUM.

(*Rule 493.*)

(*Title, etc.*)

To the keeper of the prison at .

You are directed to bring , who it is said is detained in prison under your custody , before at on day, the day of , at the hour of in the noon, and so from day to day until the above action is tried, to give evidence on behalf of the . And that immediately after the said shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

By order of the Court.

(*Signed*)
Prothonotary (*or* Deputy Clerk of the Crown and Pleas).

This writ was issued by , solicitor for the , who reside at .

R.S.M. c. 40, form 89.

ORDERS.

No. 90.—ORDER (GENERAL FORM.)

(*Rule 456.*)

In the King's Bench.

In Chambers.
(*Name of the Judge or the referee.*)
Between

A. B., plaintiff,
and
C. D., defendant.

Upon hearing , and upon reading the affidavit of , filed the day of , 19 , and ,

It is ordered .

Dated the day of , 19 .

R.S.M. c. 40, form 90.

No. 91.—ORDER FOR SUBSTITUTED SERVICE.

(*Rules 269, 274.*)

In the King's Bench.

In Chambers.
(*Name of the Judge or the referee.*)
Between

A. B., plaintiff,
and
C. D., defendant.

Upon hearing , and upon reading the affidavit of , filed the day of , 19 , and ,

It is ordered that service of a copy of this order, and of a copy of the statement of claim in this action, by sending the same by a prepaid and registered post letter, addressed to the defendant at shall be good and sufficient service of the writ.

Dated the day of , 19 .

R.S.M. c. 40, form 91.

No. 92.—ORDER FOR TIME.

(*Rule 396.*)

In the King's Bench.

In Chambers.
(*Name of the Judge or the referee.*)
Between

A. B., plaintiff,
and
C. D., defendant.

Upon hearing , and upon reading the affidavit of filed the day of , 19 , and ,

It is ordered that the shall have time for, etc.

Dated the day of , 19 .

R.S.M. c. 40, form 92.

No. 93.—ORDER FOR FINAL JUDGMENT.

(*Rule 625.*)

In the King's Bench.

In Chambers.

(*Name of the Judge or the referee.*)

Between

A. B., plaintiff,

and

C. D., defendant.

Upon hearing , and upon reading the affidavit of filed the day of , 19 , and ,

It is ordered that the plaintiff may sign final judgment in this action for the amount of his claim, to be computed with interest, as claimed, by the registrar (*or* deputy registrar), and costs to be taxed, and the costs of this application.

Dated the day of , 19 .

R.S.M. c. 40, form 93.

No. 94.—ORDER TO AMEND (ON PRAECIPE).

(*Rule 348.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

Upon the application of the plaintiff ,

It is ordered that the plaintiff be at liberty to amend the statement of claim in this action by .

Dated the day of , 19 .

R.S.M. c. 40, form 94.

No. 95.—ORDER FOR NAMES OF PARTNERS.

(*Rule 181.*)

In the King's Bench.

In Chambers.

(*Name of the Judge or the referee.*)

Between

A. B., plaintiff,

and

C. D., defendant.

Upon hearing , and upon reading the affidavit of filed the day of , 19 , and ,

It is ordered that the furnish the with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm.

Dated the day of , 19 .

R.S.M. c. 40, form 95.

No. 96.—ORDER FOR PARTICULARS (GENERAL).

In the King's Bench.

(*Name of the Judge or the referee.*)

Between

A. B., plaintiff,

and

C. D., defendant.

Upon hearing , and upon reading the affidavit of filed the day of , 19 , and ,

It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the plaintiff's claim in this action, and that, unless such particulars be delivered within days from the date of this order, all further proceedings be stayed until the delivery thereof.

Dated the day of , 19 .

R.S.M. c. 40, form 96.

No. 97.—ORDER FOR PARTICULARS (ACCIDENT CASE).

In the King's Bench.

(*Name of the Judge or the referee.*)

Between

A. B., plaintiff,

and

C. D., defendant.

Upon hearing , and upon reading the affidavit of filed the day of , 19 , and .

It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the injuries and expenses mentioned in the statement of claim, together with the time and place of the accident and the particular acts of negligence complained of, and that, unless such particulars be delivered within days from the date of this order, all further proceedings in this action be stayed until the delivery thereof.

Dated the day of , 19 .

R.S.M. c. 40, form 97.

No. 98.—ORDER FOR PRODUCTION (ON PRAECIPE).

(*Rule 425.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant

Upon the application of the ,

It is ordered that the do, within ten days after the service of this order, make discovery on oath of the documents which are or have been in possession or power relating to any matters in question in this action.

Dated the day of , 19 .

R.S.M. c. 40, form 98.

No. 99.—ORDER TO PRODUCE DOCUMENTS FOR INSPECTION.

(*Rule 434.*)

In the King's Bench.

In Chambers.

(*Name of the Judge or the referee.*)

Between

A. B., plaintiff,

and

C. D., defendant.

Upon hearing , and upon reading the affidavit of filed the day of , 19 and ,

It is ordered that the do, at all seasonable times, on reasonable notice, produce at the office of solicitor, situate at , the following documents; namely, ; and that the be at liberty to inspect and peruse the documents so produced and to take copies and abstracts thereof and extracts therefrom, at expense, and that in the meantime all further proceedings be stayed, and that the costs of this application be .

Dated the day of , 19 .

R.S.M. c. 40, form 99.

No. 100.—ORDER FOR COMMISSION TO EXAMINE WITNESSES.

(*Rule 505.*)

In the King's Bench.

In Chambers.

(*Name of the Judge or the referee.*)

Between

A. B., plaintiff,

and

C. D., defendant.

Upon hearing , and upon reading the affidavit of filed the day of 19 , and .

It is ordered as follows:—

1. A commission may issue directed to , of , a commissioner named by and on behalf of the , and to , of , a commissioner named by and on behalf of the , for the examination upon interrogatories and viva voce of witnesses on behalf of the said and respectively at aforesaid before the said commissioners;

2. days previously to the sending out of the said commission, the solicitor of the said shall give to the solicitor of the said notice in writing of the mail or other conveyance by which the commission is to be sent out, and the solicitor of the said shall give to of (*giving his address*), the agent of the said at or near the place where the commission is to be executed, at least forty-eight hours' notice of the time and place of the execution thereof;

3. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories and depositions to be taken thereunder, together with any documents, copy or extract and the official copies thereof, and all other costs incidental thereto, shall be .

4. The commission and all evidence taken thereon, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be returned to the proper office on or before the day of next.

Dated the day of , 19 .

R.S.M. c. 40, form 100; 3 Geo. 5, c. 12, s. 6.

No. 101.—ORDER FOR EXAMINATION OF WITNESS BEFORE TRIAL (DE BENE ESSE).

(*Rule 509.*)

In the King's Bench.

In Chambers.

(*Name of the Judge or the referee.*)

Between

A. B., plaintiff,

and

C. D., defendant.

Upon hearing , and upon reading the affidavit of filed the day of , 19 . and ,

It is ordered that , a witness on behalf of the , be examined viva voce (on oath or affirmation) before (*or* before esquire, special examiner), the solicitor or agent giving to the solicitor or agent notice in writing of the time and place where the examination is to take place;

And it is further ordered that the examination so taken be filed in the office of , and that an office copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor or agent of the as to his belief, and that the costs of this application be .

Dated the day of , 19 .

R.S.M. c. 40, form 101.

No. 102.—GARNISHING ORDER (ATTACHING DEBTS).

(*Rule 759.*)

In the King's Bench.

In Chambers.

(*Name of the Judge or the referee.*)

Between

, plaintiff (*or* judgment creditor, *or as the case may require*),

and

, defendant (*or* judgment debtor, *or as the case may require*),

and

, garnishee.

Upon hearing , and upon reading the affidavit of filed the day of , 19 ,

It is ordered that all debts, obligations and liabilities owing payable, or accruing due from the above named garnishee (*or* garnishees or any of them) to the above named defendant (*or* judgment debtor, *or as the case may be*), be attached to answer a judgment to be recovered by the above named plaintiff against the above named defendant in the Court of King's Bench up to the amount of $ (*or* a judgment recovered by the above named judgment creditor against the above named judgment debtor in the Court of King's Bench, on the day of , 19 , for the sum of dollars and cents, on which judgment the sum of dollars and cents is now due and unpaid, *or* an order made in the Court of King's Bench by the Honorable Mr. Justice on the day of , 19 , by which the above named was ordered to pay to the above named the sum of dollars, of which the sum of dollars is now due and unpaid, *or as the case may be*).

Dated the day of , 19 .

R.S.M. c. 40, form 102.

No. 103.—GARNISHING ORDER (ABSOLUTE).

(*Rule 763.*)

In the King's Bench.

In Chambers.

(*Name of the Judge or the referee.*)

Between

, plaintiff (*or* judgment creditor, *or as the case may require*),

and

, defendant (*or* judgment debtor, *or as the case may require*),

and

, garnishee.

Upon reading the affidavit of filed the day of , 19 , and the order made by the referee in chambers (*or* the Honorable Mr. Justice), whereby it was ordered that all debts, obligations and liabilities owing, payable or accruing due from the above named garnishee (*or as the case may be*) to the above named defendant (*or* judgment debtor, *or as the case may be*), to answer (*continue as in attaching order and refer to any other material used on the motion*), and upon hearing and (*or* the said having been duly served with notice of this motion and not having appeared, *or as the case may be*).

It is ordered that the above named garnishee (*or as the case may be*) do forthwith (*or* on the day of , 19) pay to the said plaintiff (*or as the case may be*) the sum of dollars and cents due (*or* payable *or* on that day to become due *or* payable) from the said garnishee (*or* as *the case may be*) to the said defendant (*or as the case may be*).

(*Add any directions as to costs or otherwise.*)

Dated the day of , 19 .

R.S.M. c. 40, form 103.

No. 104.—ORDER ON APPLICATION TO TAX SOLICITOR'S BILL OF COSTS.

(*Rule 969.*)

In the King's Bench.

In Chambers.

(*Name of the Judge or the referee.*)

In the matter of

, gentleman,

One of the solicitors of the King's Bench.

Upon application of

It is ordered that the above named solicitor do deliver to the applicant a bill of his fees, charges and disbursements, and that the same when delivered (*or* the bill of fees, charges and disbursements delivered to the applicant by the above named solicitor *or* by the above solicitor to , *as the case may be*) be referred to the to be taxed.

And it is ordered that the costs of this application be .

Dated the day of , 19 .

R.S.M. c. 40, form 104.

No. 105.—INTERPLEADER ORDER, No. 1.

(*Rule 908.*)

In the King's Bench.

In Chambers.

(*Name of the Judge or the referee.*)

Between

, plaintiff,

and

, defendant;

and between

, claimant,

and

, respondent.

Upon hearing , and upon reading the affidavit of filed the day of , 19 , and , and

It is ordered that the claimant be barred, that no action be brought against the above named (sheriff) , and that the costs of this application be .

Dated the day of , 19 .

R.S.M. c. 40, form 105.

No. 106.—INTERPLEADER ORDER, No. 2.

(*Rule 902.*)

In the King's Bench.

In Chambers.

(*Name of the Judge or the referee.*)

Between

, plaintiff,

and

, defendant;

and

, claimant,

Upon hearing , and upon reading the affidavit of filed the day of , 19 , and ,

It is ordered that the above named claimant be substituted as defendant in this action in lieu of the present defendant, and that the costs of this application be .

Dated the day of , 19 .

R.S.M. c. 40, form 106.

No. 107.—INTERPLEADER ORDER, No. 3.

(*Rules 902, 909, 919.*)

In the King's Bench.

(*Name of the Judge or the referee.*)

Between

, plaintiff,

and

, defendant;

and between

, claimant,

and the said execution creditor and
the sheriff of , respondents.

Upon hearing , and upon reading the affidavit of filed the day of , 19 , and ,

It is ordered that the said sheriff proceed to sell the goods seized by him under the writ of *fieri facias* issued herein, and pay the net proceeds of the sale, after deducting the expenses thereof (*or as otherwise ordered*), into Court in this cause, to abide further order herein.

* And it is further ordered that the parties proceed to the trial of an issue in the Court of King's Bench, in which the said claimant (*or* execution creditor) shall be plaintiff and the said execution creditor (*or* the claimant) shall be the defendant, and that the question to be tried shall be whether, at the time of the (*insert here* delivery of the writ to the sheriff *or* seizure by the sheriff, *or* sale by the sheriff, *as the case may require*), the goods seized (*or* the money), namely , were the property of the claimant as against the execution creditor.

Said issue shall be tried at .

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the said sheriff for the seizure of the said goods.

Dated the day of , 19 .

R.S.M. c. 40, form 107.

No. 108.—INTERPLEADER ORDER, No. 4.

(*Rule 918.*)

In the King's Bench.

In Chambers.

(*Name of the Judge or the referee.*)

Between

, plaintiff,

and

, defendant;

and between

, claimant,

and the said execution creditor and
the sheriff of , respondents.

Upon hearing , and upon reading the affidavit of filed the day of , 19 , and .

It is ordered that, upon payment of the sum of $ into Court by the said claimant within from this date, or upon his giving within the same time security to the satisfaction of for the payment of the same amount by the said claimant according to the directions of any order, to be made herein, and upon payment to the above named sheriff of the possession money from this date, the said sheriff to withdraw from the possession of the goods seized by him under the writ of *fieri facias* herein;

And it is further ordered that unless such payment be made or security given within the time aforesaid, the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof (*or as otherwise ordered*) and the possession money from this date, into Court in the cause, to abide further order herein.

(Follow Form No. 107 from *.)

R.S.M. c. 40, form 108.

No. 109.—INTERPLEADER ORDER, No. 5.

(*Rule 918.*)

In the King's Bench.

(*Name of the Judge or the referee.*)

Between

, plaintiff,

and

, defendant;

and between

, claimant,

and the said execution creditor and the sheriff of , respondents.

Upon hearing , and upon reading the affidavit of filed the day of , 19 , and ,

It is ordered that, upon payment of the sum of $ into Court by the said claimant, or upon his giving security to the satisfaction of for the payment of the said amount by the claimant according to the directions of any order to be made herein, the above named sheriff withdraw from the possession of the goods seized by him under the writ of *fieri facias* issued herein;

And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in the possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desires the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the goods, and the claimant pay possession money for the time he *ordered*, and the possession money from this date, into court in the cause, to abide further order herein.

(Follow Form No. 107 from *.)

R.S.M. c. 40, form 109.

No. 110.—INTERPLEADER ORDER, No. 6.

(*Rule 903.*)

In the King's Bench.

In Chambers.

(*Name of the Judge.*)

Between

, plaintiff,

and

, defendant;

and between

, claimant,

and the said execution creditor and the sheriff of , respondents.

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing and upon reading the affidavit of filed the day of , 19 , and ,

It is ordered that

And that the costs of this application be .

Dated the day of , 19 .

R.S.M. c. 40, form 110.

No. 111.—INTERPLEADER ORDER No. 7.

(*Rule 909.*)

In the King's Bench.

In Chambers.

(*Name of the Judge or the referee.*)

Between

, plaintiff,

and

, defendant;

and between

, claimant,

and the said execution creditor and the sheriff of , respondents.

Upon hearing , and upon reading the affidavit of filed the day of , 19 , and ,

It is ordered that the above named sheriff proceed to sell enough of the goods seized under the writ of *fieri facias* issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant and this execution;

And it is further ordered that out of the proceeds of the said sale (after deducting the expenses thereof and rent, if any) the said sheriff pay the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant;

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be .

Dated the day of , 19 .

R.S.M. c. 40, form 111.

No. 112.—ORDER OF REPLEVIN.

(*Rule 863.*)

In the King's Bench.

In Chambers.

(*Name of the Judge or the referee.*)

Between

A. B., plaintiff,

and

C. D., defendant.

Upon the application of the above named plaintiff, and upon reading the affidavit of filed and upon hearing

It is ordered that the sheriff of (*here insert the name of the judicial district*) do, without delay, take the security required by law and cause to be replevied to the plaintiff his goods, chattels and personal property following; that is to say (*here set out description of property as in the affidavit filed*), which the said plaintiff alleges to be of the value of $, and to have been taken and unjustly detained (*or* unjustly detained, *as the case may be*) by the defendant C. D., in order that the said plaintiff may have his remedy in that behalf;

And it is further ordered that the said sheriff do, forthwith after the execution of this order, make return to (*insert here the title of the officer from whose office the statement of claim in the action was issued*) what he shall have done in the premises, and do also return this order.

Dated the day of , 19 .

R.S.M. c. 40, form 112.

No. 113.—ORDER OF WITHERNAM.

(*Rule 870.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D., defendant.

Upon the application of the plaintiff, and it appearing by the return of the sheriff of the of to the order of replevin made herein on the day of that the goods, chattels and personal property mentioned in the said order have been eloigned by the defendant, C. D., out of the bailiwick of the sheriff of to places to him unknown, so that he could not replevy the same to the said plaintiff.

It is ordered that the said sheriff do forthwith take *in withernam* the goods, chattels and personal property of the said defendant, C. D., in his bailiwick, to the value of the goods, chattels and personal property by the said defendant, C. D., before taken, and do forthwith deliver them to the said plaintiff to be kept by him until the said defendant, C. D., delivers the goods, chattels and personal property last aforesaid to the said plaintiff;

And it is further ordered that, if the said plaintiff shall give security to the said sheriff as provided by law for the prosecution of the plaintiff's claims and for the return of the goods, chattels and property

so to be taken *in withernam* as aforesaid, if the return thereof shall be adjudged, then the said sheriff do take security with two sufficient sureties from the said defendant, C. D., to answer to the said plaintiff for the taking and unjustly detaining of his goods, chattels and personal property aforesaid;

And it is further ordered that the said sheriff do forthwith make return to (*insert here the title of the officer from whose office the statement of claim in the action was issued*) what he shall have done in the premises, and do also return this order.

Dated the day of , 19 .

R.S.M. c. 40, form 113.

No. 114.—PROHIBITION.

(*Rules 893-895.*)

(*Title, etc.*)

It appearing that the said has entered an action against C. D. in the said Court, and that the said Court has no jurisdiction in the said cause (*or* to hear and determine the said action), by reason that (*state facts showing want of jurisdiction*),

It is ordered that the said be and he is hereby prohibited from further proceeding in the said cause (*or* action) in the said court.

R.S.M. c. 40, form 114.

No. 115.—ORDER DISMISSING MOTION GENERALLY.

In the King's Bench.

In Chambers.

(*Name of the Judge or the referee.*)

Between

A. B., plaintiff,

and

C. D., defendant.

Upon hearing , and upon reading the affidavit of filed the day of , 19 , and ,

It is ordered that the application of be dismissed.

Dated the day of , 19 .

R.S.M. c. 40, form 115.

No. 116.—ORDER OF ATTACHMENT.

(*Rule 817.*)

(*Title, etc.*)

In the King's Bench.

To the sheriff, etc.

It is ordered that, upon the application of the plaintiff, you attach, seize and safely keep all the personal property, credits and effects, to-

gether with all the evidences of title or debts, books and book accounts, or other accounts, vouchers and papers belonging thereto, or otherwise, of C. D., to secure and satisfy A. B. a certain debt, demand or claim of $ (*the sum sworn to*) , with his costs of action, and to satisfy the debts, claims and demands of such other persons to whom C. D. may be liable for debt or damages as shall duly place their orders for attachment in your hands or otherwise lawfully notify you of their claims and duly prosecute the same;

And it is further ordered that, as soon as you shall have executed this order, you do return the same, with the inventory and appraisement of what you have attached thereunder.

And it is further ordered that the defendant do file a statement of defence, if any, in the proper office on or before the day of next.

Dated at , this day of

R.S.M. c. 40, form 116; 3 Geo. 5, c. 12, s. 7.

No. 117.—CERTIFICATE OF ATTACHMENT FOR REGISTRATION.

(*Rule 820.*)

In the Court of King's Bench.
Manitoba.

Judicial District.

To wit:

I hereby certify that, on the day of , A.D. 19 , an order for attachment was issued from this office at the suit of , plaintiff, against , defendant, claiming dollars.

Dated at this day of , A.D. 19 .
(*Seal*)

Prothonotary (*or* Deputy Clerk of the Crown and Pleas.)

R.S.M. c. 40, form 117.

FORMS OF JUDGMENT.

No. 118.—JUDGMENT IN DEFAULT OF DEFENCE IN CASE OF DEMAND ON A DEBT OR LIQUIDATED MONEY CLAIM.

(*Rule 609.*)

In the King's Bench.

Between

A. B., plaintiff

and

C. D., defendant

The day of , 19 .

The defendants (*or* the defendant, C.D.) not having delivered any statement of defence to the plaintiff's claim;

It is this day adjudged that the plaintiff recover against the said defendant $, and $ costs taxed.

(*Signed*) Prothonotary (*or* Deputy Clerk of the Crown and Pleas)

R.S.M. c. 40, form 118.

No. 119.—JUDGMENT IN DEFAULT OF DEFENCE IN ACTION FOR RECOVERY OF LAND.

(*Rule 613.*)

(*Title, etc.*)

The day of , 19 .

No statement of defence having been delivered herein,

It is this day adjudged that the plaintiff recover possession of the land in the statement of claim herein mentioned and described as

(*Signed*)
Prothonotary (*or* Deputy Clerk of the Crown and Pleas).

R.S.M. c. 40, form 119.

No. 120.—JUDGMENT UPON CONFESSION BY DEFENDANT OF ACTION FOR RECOVERY OF LAND.

(*Rule 617.*)

(*Title, etc.*)

The day of , 19 .

The defendant, C. D., having confessed this action (*or* having confessed this action as to part of the said land, that is to say: *state the part*),

It is this day adjudged that the said plaintiff do recover possession of the land in the statement of claim mentioned (*or* of the said part of the said land), with the appurtenances and costs to be taxed.

(*Signed*)
Prothonotary (*or* Deputy Clerk of the Crown and Pleas).

The above costs have been taxed and allowed at $, as appears by a taxing officer's certificate dated the day of , 19 .

(*Signed*)
Prothonotary (*or* Deputy Clerk of the Crown and Pleas).

R.S.M. c. 40, form 120.

No. 121.—JUDGMENT IN DEFAULT OF DEFENCE IN ACTION FOR RECOVERY OF LAND WITH DAMAGES.

(*Rule 614.*)

(*Title, etc.*)

The day of , 19 .

The defendant not having delivered any statement of defence,

It is this day adjudged that the plaintiffs recover possession of the land in the statement of claim herein mentioned and described as , in the City of , and costs to be taxed, and it is further adjudged that the plaintiffs recover against the defendant damages, to be assessed.

The above costs have been taxed and allowed at $, as appears by a taxing officer's certificate dated the day of , 19 .

(*Signed*)
Prothonotary (*or* Deputy Clerk of the Crown and Pleas).

R.S.M. c. 40, form 121.

No. 122.—INTERLOCUTORY JUDGMENT IN DEFAULT OF DEFENCE WHERE DEMAND NOT A DEBT, MONEY OR LIQUIDATED CLAIM.

(*Rule 610.*)

(*Title, etc.*)

The day of , 19

No statement of defence having been delivered by the defendant herein,

It is this day adjudged that the plaintiff recover against the defendant as in his statement of claim demanded.

R.S.M. c. 40, form 122.

No. 123.—JUDGMENT AFTER STATEMENT OF DEFENCE AND ORDER UNDER RULE 625.

(*Title, etc.*)

The day of , 19 .

The defendant having filed a statement of defence herein, and the plaintiff having by the order of , dated day of , 19 , obtained leave to sign judgment under the Rule of the Court for $,

It is this day adjudged that the plaintiff recover against the defendant $, and costs to be taxed.

(*Signed*)
Prothonotary (*or* Deputy Clerk of the Crown and Pleas).

The above costs have been taxed and allowed at $, as appears by a taxing officer's certificate dated the day of , 19 .

(*Signed*)
Prothonotary (*or* Deputy Clerk of the Crown and Pleas).

R.S.M. c. 40, form 123.

No. 124.—JUDGMENT IN DEFAULT OF DEFENCE, AFTER ASSESSMENT.

(*Rule 610.*)

(*Title, etc.*)

The day of , 19 .

No statement of defence having been delivered by the defendant herein, and the damages which the plaintiff was entitled to recover having been assessed at $, as by dated the , 19 , appears, it is adjudged that the plaintiff recover $ and costs to be taxed.

R.S.M. c. 40, form 124.

No. 125.—JUDGMENT IN CASE OF TRIAL BY JUDGE WITHOUT JURY.

(*Rule 590.*)

(*Title, etc.*)

The day of , 19 .

This action having, on the day of , 19 , been tried before , and the said , on the day of , 19 , having ordered that judgment be entered for the for $,

It is this day adjudged that the recover from the $, and costs to be taxed.

(*Signed*)

Prothonotary (*or* D. C. of C. and P.)

The above costs have been taxed and allowed at $, as appears by a taxing officer's certificate dated the day of , 19 .

R.S.M. c. 40, form 125.

No. 126.—JUDGMENT AFTER TRIAL BY A JURY.

(*Title, &c.*)

The day of , 19 .

This action having, on the 12th and 13th November, 19 , been tried before the Honorable Mr. Justice and a jury of the and the jury having found (*state findings as in Judge's or officer's certificate*), and the said Mr. Justice having ordered that judgment be entered for the plaintiff for $ and costs of suit (*or as the case may be*);

Therefore, it is adjudged that the plaintiff recover against the defendant $ and his costs of suit to be taxed (*or* that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff his costs of defence to be taxed, *or as the case may be*).

(For conclusion see Form 120.)

R.S.M. c. 40, form 126.

No. 127.—JUDGMENT AFTER TRIAL OF QUESTIONS OF ACCOUNT BY REFEREE.

(*Title, etc.*)

The day of , 19 .

The questions of account in this action having been referred to , and he having found that there is due from the to the the sum of $, and directed that the do pay the costs of the reference;

It is this day adjudged that the recover against the said $ and costs to be taxed.

(*Signed*)

Prothonotary (*or* D. C. of C. and P.)

The above costs have been taxed and allowed at $, as appears by a taxing officer's certificate dated the day of , 19 .

(*Signed*)

Prothonotary (*or* D. C. of C. and P.)

R.S.M. c. 40, form 127.

No. 128.—JUDGMENT ON MOTION GENERALLY.

(*Rule 631.*)

(*Title, etc.*)

having ordered that (*as in order of Court*);

This action having on the day of 19 , come on before the Court on motion for judgment on behalf of the , and the Court after hearing counsel for the having ordered that (*as in order of Court*);

It is this day adjudged that the recover against the the sum of $ and costs to be taxed.

(*Signed*)
Prothonotary (*or* D. C. of C. and P.)

The above costs have been taxed and allowed at $, as appears by a taxing officer's certificate dated the day of , 19 .

(*Signed*)
Prothonotary (*or* D. C. of C. and P.)

R.S.M. c. 40, form 128.

No. 129.—JUDGMENT IN PURSUANCE OF ORDER. (FOR USE WHERE LEAVE HAD BEEN GIVEN TO SIGN JUDGMENT UNLESS SOME CONDITION SHOULD BE COMPLIED WITH.)

(*Title, etc.*)

The day of , 19 .

Pursuant to the order of , dated , 19 , whereby it was ordered and default having been made;

It is this day adjudged that the plaintiff recover against the said defendant $ and costs to be taxed.

(*Signed*)
Prothonotary (*or* D. C. of C. and P.)

The above costs have been taxed and allowed at $, as appears by a taxing officer's certificate dated the day of , 19 .

(*Signed*)
Prothonotary (*or* D. C. of C. and P.)

R.S.M. c. 40, form 129.

No. 130.—JUDGMENT IN PURSUANCE OF ORDER. (FOR USE WHERE LEAVE HAS BEEN GIVEN TO SIGN JUDGMENT UNLESS MONEY SHOULD BE PAID INTO COURT.

(*Title, etc.*)

The day of , 19 .

Pursuant to the order of , dated the day of , 19 , whereby it was ordered that, unless be paid into Court by the defendant within a week, the plaintiff should be at liberty to sign final judgment for the amount endorsed on the

writ of summons, with interest, if any, and costs, and the said defendant not having paid into Court the said sum of $, as conditioned by the said order,

It is this day adjudged that the plaintiff recover against the defendant $, and $ for costs taxed.

R.S.M. c. 40, form 130.

No. 131.—JUDGMENT FOR DEFENDANT'S COSTS ON DISCONTINUANCE

(*Rule 560.*)

(*Title, etc.*)

The day of , 19 .

The plaintiff having by notice in writing, dated the day of , 19 , wholly discontinued this action (*or* withdrawn his claim in this action for *or* withddrawn so much of his claim in this action as relates to—*or as the case may be*),

It is this day adjudged that the defendant recover against the plaintiff costs to be taxed.

(*Signed*)

Prothonotary (*or* D. C. of C. and P.)

The above costs have been taxed and allowed at $, as appears by a taxing officer's certificate dated the day of , 19 .

(*Signed*)

Prothonotary (*or* D. C. of C. and P.)

R.S.M. c. 40, form 131.

No. 132.—JUDGMENT FOR COSTS AFTER ACCEPTANCE OF MONEY PAID INTO COURT.

(*Rule 556.*)

(*Title, etc.*)

The day of , 19 .

The defendant having paid into Court in this action the sum of $ in satisfaction of the plaintiff's claim, and the plaintiff having by his notice, dated the day of , 19 , accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within forty-eight hours after the said taxation,

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

(*Signed*)

Prothonotary (*or* D.C. of C. and P.)

The above costs have been taxed and allowed at $, as appears by a taxing officer's certificate dated the day of , 19 .

(*Signed*)

R.S.M. c. 40, form 132.

No. 133.—JUDGMENT ON MOTION AFTER TRIAL OF ISSUE.

(*Rule 636.*)

(*Title, etc.*)

The day of , 19 . (*Date of order of Court.*)

The (issues *or* questions) of fact arising in this action, by the order dated the day of , ordered to be tried before , having on the day of , been tried before , and the having found ,

Now, on motion before the Court for judgment on behalf of the , the Court having ,

It is this day adjudged that the recover against the sum of $ and costs to be taxed.

(*Signed*)
Prothonotary (*or* D. C. of C. and P.)

The above costs have been taxed and allowed at $, as appears by a taxing officer's certificate dated the day of , 19 .

(*Signed*)

Prothonotary (*or* D. C. of C. and P.)

R.S.M. c. 40, form 133.

No. 134.—FORM OF JUDGMENT FOR SALE OR FORECLOSURE, WITH REFERENCE AS TO ENCUMBRANCES, ETC., AND ORDERS FOR IMMEDIATE PAYMENT AND DELIVERY OF POSSESSION.

(*Rules 616, 658.*)

(*Title, etc.*)

The day of , 19 .

1. Upon the application of the plaintiff and upon reading an affidavit of proving the service of the statement of claim, and no statement of defence having been entered in the said action, as by the (books in the office of the at) appears,

2. It is ordered that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for redemption or sale (*or* redemption or foreclosure), and that for these purposes the cause be referred to the master of this Court at .

3. (*Where judgment is for immediate payment add,*) It is further ordered that the defendant do, forthwith after the making of the masters' report, pay to the plaintiff what shall be found due to him for principal money, interest and costs at the date of said report, and upon payment of the amount due to him (*where judgment is for sale add,* before the sale hereinbefore directed shall have taken place) that the plaintiff do assign and convey the mortgaged premises, and deliver up all documents relating thereto.

4. (*Where judgment is for immediate possession add,*) It is further ordered that the defendant do forthwith deliver to the plaintiff, or to whom he may appoint, possession of the lands and premises in question in this cause, or of such part thereof as may be in the possession of the said defendant.

R.S.M. c. 40, form 134.

No. 135.—FORM OF JUDGMENT FOR FORECLOSURE OR SALE, ACCOUNT TAKEN BY REGISTRAR, AND ORDERS FOR IMMEDIATE PAYMENT AND DELIVERY OF POSSESSION.

(*Rule 616.*)

(*Title, etc.*)

The day of , 19 .

1. Upon the application of the plaintiff and upon reading an affidavit of proving the service of the statement of claim herein upon the defendant, and no statement of defence having been entered in the said action, as by the (books in the office of the at) appears,

2. This Court finds that the subsequent interest at the rate of per centum per annum on the sum of principal money secured by the indenture of mortgage in the pleadings mentioned, up to the day of next, being the time appointed for payment as hereinafter mentioned, amounts to , and that the costs of the plaintiff amount to , which said subsequent interest and costs being added to the sum of claimed by the statement of claim served on the defendant make together the sum of .

3. And upon the said defendant paying the said sum of into the bank at the between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the day of next, to the joint credit of the plaintiff and the accountant (*where order for payment granted insert*, or in case the plaintiff shall [*where judgment is for sale add* before the sale hereinafter directed shall have taken place] recover the amount due to him under the order for payment hereinafter contained), it is ordered that the said plaintiff do assign and convey the mortgaged premises and deliver up all documents relating thereto;

4. But in default of said defendant making such payment by the time aforesaid, it is ordered (*where judgment is for foreclosure, after* "it is ordered," *say* "that the said defendant do stand absolutely debarred and foreclosed of and from all equity of redemption in and to the said premises"; *where judgment is for sale then after the words* "it is ordered," *say* "that the said premises be sold, with the approbation of the master of this Court at ").

5. (*If judgment is for foreclosure omit this section.*) And it is ordered that the purchasers do pay their purchase money into court, to the credit of this cause, and that the same when so paid in be applied in payment of what has been found due to the said plaintiff, together with subsequent interest and subsequent costs, to be computed and taxed by the said master, and that the balance do abide the further order of the Court.

6. (*Where judgment is for immediate payment, add*) It is further ordered that the defendant do forthwith pay to the plaintiff the sum of $, being the amount due to the plaintiff at the date hereof for principal money, interest and costs.

7. (*Where judgment is for immediate possession, add*) And it is further ordered that the defendant do forthwith deliver to the plaintiff or to whom he may appoint, possession of the mortgaged premises, or of such part thereof as may be in the possession of the said defendant.

R.S.M. c. 40, form 135.

No. 136.—FORM OF JUDGMENT FOR REDEMPTION ISSUED BY A LOCAL MASTER.

(*Rules 616, 658.*)

(*Title, etc.*)

The day of , 19 .

1. Upon the application of the plaintiff and upon reading an affidavit of proving the service of the statement of claim herein, and no statement of defence having been entered in the said action, as by the (books in the office of the at) appears,

2. It is ordered that all necessary inquires be made, accounts taken, costs taxed and proceedings had for the redemption of the premises in question, and that for this purpose the cause be referred to the master at ;

3. And it is ordered that, upon the plaintiff paying to the defendant what shall be found due to him or, in case nothing shall be found due to the defendant, then forthwith, after the confirmation of the said master's report, the defendant do reconvey the said mortgaged premises, and deliver up all documents relating thereto;

4. It is further ordered that, in case the plaintiff shall make default in payment as aforesaid of what may be found due to the defendant that the plaintiff's action do stand dismissed out of this Court, with costs to be paid by the plaintiff to the defendant forthwith after taxation thereof;

5. It is further ordered that, in case nothing shall be found due from the plaintiff to the defendant, the defendant do pay the plaintiff his costs of this suit forthwith after taxation thereof, and that in case any balance shall be found due from the defendant to the plaintiff, the defendant do pay such balance to the plaintiff forthwith after the confirmation of the masters' report.

R.S.M. c. 40, form 136.

No. 137.—FORM OF JUDGMENT FOR ADMINISTRATION.

(*Rule 775.*)

(*Formal parts as usual.*)

1. Upon the application of the above named plaintiff in the presence of the solicitor for the defendant (*or* no one appearing for the defendant although duly notified as by affidavit filed appears), and upon hearing read the affidavits and papers filed, and what was alleged by the solicitor for the applicant (*or* all parties),

2. It is ordered that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for the administration and final winding up of the personal (and real) estate of and for the adjustment of the rights of all parties interested therein, by the master of this Court at ;

3. And it is ordered that all balances which may be found due from the plaintiff or defendant (*or* any or either of them) to the said estate be, forthwith after the same shall have been ascertained as aforesaid, paid into Court to the credit of this cause, subject to the further order of the Court;

4. And it is ordered that such personal (and real) estate, or such parts thereof as the said master may hereafter direct, be sold, as the

said master may direct, and that the purchasers do pay their purchase money into Court to the credit of this cause, subject to the order of the Court;

5. It is further ordered that the master do execute conveyances for any infant parties who by reason of their tender years are unable to execute the same.

R.S.M. c. 40, form 137.

No. 138.—FORM OF JUDGMENT FOR PARTITION OR SALE.

(*Rule 794.*)

(*Formal parts as usual.*)

1. Upon the application of the above named plaintiff in the presence of the solicitor for the defendant (*or* no one appearing for the defendant, although duly notified as by affidavit filed appears), and upon hearing read the affidavits and papers filed, and what was alleged by the solicitor for (the applicant *or* all parties),

2. It is ordered that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for the partition or sale of the lands and premises in the said affidavits mentioned, and for the adjustment of the rights of all parties interested therein, or for a partition of part and sale of the remainder of the said lands as may be most for the interest of the parties entitled to share therein (*by the master of this Court at*);

3. And it is further ordered that the said lands, or such part thereof as the said master shall think fit, be sold, with the approbation of the said master, freed from the claims of such of the encumbrancers thereon, if any, whose claims were created by parties entitled to the said lands before the death of the said testator (*or* intestate) as shall have consented to such sale, and subject to the claims of such of them as shall not have consented (and freed also from the dower of , *as the case may be*), and that the said master do execute the conveyances on behalf of such of the infant parties as, by reason of their tender years, are unable to execute the same, and that the purchasers do pay their purchase money into Court to the credit of this cause, subject to the order of the Court.

4. And it is further ordered that, in the event of a partition of the whole of the said land, or in the event of a partition of a part and the proceeds of the sale of the remainder being insufficient to pay the costs in full, the costs, or so much thereof as remains unpaid, be borne and paid by the said parties according to their shares and interests in the said lands (*if there be any infant parties interested in the estate add*), and that the proportion of the said costs payable by the infant parties respectively be, and the same is hereby declared to be, a lien on their respective shares, and that the plaintiff do pay the guardian of the infant defendants, his costs of this suit and that the same be added to his own costs.

R.S.M. c. 40, form 138.

No. 139.—JUDGMENT OR ORDER FOR ADMINISTRATION ACCOUNTS.

(*Rule 659.*)

This Court doth order that the following accounts and inquiries be taken and made by the master of the Court (*or* by the local master at), that is to say:—

1. An account of the personal estate of A. B., deceased, the testator in the pladings mentioned, come to the hands of, etc.;

2. An account of the said testator's debts;

3. An account of the said testator's funeral expenses;

4. An account of the said testator's legacies;

5. An inquiry what parts, if any, of the said testator's personal estate are outstanding or undisposed of

(*If Ordered.*)

And it is ordered that the following further accounts and inquiries be taken and made, that is to say:—

6. An inquiry what real estate the said testator was seized of or entitled to at the time of his death;

7. An inquiry what incumbrances affect the said testator's real estate;

8. An account of the rents and profits of the said testator's real estate received by, etc.

(*If Sale Ordered.*)

9. An account what is due to such of the encumbrancers as shall consent to the sale hereinafter directed in respect of their encumbrances;

10. An inquiry of what are the priorities of such last mentioned encumbrances.

And it is ordered that the testator's real estate be sold, with the approbation of ;

And it is ordered that further directions and costs be reserved, until after the said master shall have made his report.

R.S.M. c. 40, form 139.

WRITS OF EXECUTION, &c.

No. 140.—WRIT OF FIERI FACIAS.

(*Rule 689.*)

In the King's Bench.

Between

A. B., plaintiff,

and

C. D. and others, defendants.

George the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To the sheriff of the Judicial District , 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 from the day of , (*day of the 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 the Justices of our Court of King's Bench in a certain action (*or* certain actions, *as the case may be*) wherein A. B. is plaintiff and C. D. and others are defendants (*or* in a certain matter there depending intituled "In the matter of E. F.," *as the case may be*), by a judgment (*or* order, *as the*

case may be) of our said Court, bearing date the day of , adjudged (*or* ordered, *as the case may be*) to be paid by the said C. D. to A. B., together with certain costs in the said judgment (*or* order, *as the case may be*) mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of $, as appears by the certificate of the said taxing master, 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 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 our Justices aforesaid at Winnipeg 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 our Justices aforesaid at Winnipeg immediately after the execution thereof. And have there then this writ.

Witness the honorable Chief Justice, etc.

The day of , 19 .

R.S.M. c. 40, form 140.

No. 141.—FIERI FACIAS ON ORDER FOR COSTS.

(*Rules 689-691.*)

(*Title, etc.*)

George the Fifth, etc.

To the sheriff of the Judicial District , greeting:

We command you that, of the goods and chattels of in your bailiwick, you cause to be made the sum of , for certain costs which by an order of our Court of King's Bench, dated the day of , 19 , were ordered to be paid by the said to , and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of 6 per centum per annum from the day of , 19 ; and that you have the said sum and interest before the Justices of our said Court at Winnipeg, immediately after the execution hereof, to be rendered to the said . And in what manner you shall have executed this our writ make appear to us immediately after the execution hereof. And have there then this writ.

Witness, etc.

The day of , 19 .

ENDORSEMENTS.

Levy $ and $ for costs of execution, etc., and also interest on $ at 6 per centum per annum from the day of , 19 , until payment; besides sheriff's poundage, officer's fees, costs of levying and all other legal incidental expenses.

This writ was issued by ,
of
agent for
of
solicitor for the .

The is a , and resides at in your bailiwick.

R.S.M. c. 40, form 141.

No. 142.—WRIT OF VENDITIONI EXPONAS.

(*Rule 687.*)

(*Title, etc.*)

George the Fifth, etc.

To the sheriff of the Judicial District , greeting:

Whereas, by our writ we lately commanded you that, of the goods and chattels of C. D. (*here recite fieri facias to the end*). And on the day of you returned to our Justices in our Court 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 in your hands unsold for want of buyers; Therefore, we, being desirous that the said A. B. should be satisfied his money and interest aforesaid, command you that you expose to 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 our Justices aforesaid, at , immediately after the execution hereof, to be paid to the said A. B. And have there then this writ.

Witness, etc.

The day of , 19 .

R.S.M. c. 40, form 142.

No. 143.—WRIT OF POSSESSION.

(*Rule 693.*)

(*Title, etc.*)

George the Fifth, etc.

To the sheriff of the Judicial District , greeting:

Whereas lately in our Court of King's Bench, by a judgment of the said Court, A. B. recovered (*or* E. F. was ordered to deliver to A. B.) possession of all that , with the appurtenances, in your bailiwick; Therefore, we command you that you enter the same, and without delay cause the said A. B. to have possession of the said land and premises, with the appurtenances; and that you defend and keep him and his assigns in peaceable and quiet possession when and as often as any interruption may or shall, from time to time, be given or offered to them or any of them.

Witness, etc.

R.S.M. c. 40, form 143.

No. 144.—WRIT OF DELIVERY.

(*Rule 695.*)

(*Title, etc.*)

George the Fifth, etc.

To the sheriff of the Judicial District , greeting:

We command you that without delay you cause the following chattels, that is to say (*here enumerate the chattels recovered by the judg-*

ment for the return of which execution has been ordered to issue), to be returned to A. B., which the said A. B. lately in our recovered against C. D. (*or* C. D. was ordered to deliver to the said A. B.) in an action in our said Court.* And we further command you that, if the said chattels cannot be found in your bailiwick, you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels. And in what manner you shall have executed this our writ make appear to the Justices of our said Court at Winnipeg immediately after the execution hereof. And have you there and then this writ.

Witness, etc.

R.S.M. c. 40, form 144.

No. 145.—THE LIKE, BUT INSTEAD OF A DISTRESS UNTIL THE CHATTEL IS RETURNED, COMMANDING THE SHERIFF TO LEVY ON THE DEFENDANT'S GOODS THE ASSESSED VALUE OF IT.

(*Proceed as in the preceding form until the* * *and then thus:*) And we further command you that, if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said C. D. in your bailiwick you cause to be made $ (*the assessed value of the chattels*). And in what manner you shall have executed this our writ make appear to the judges of our said court at Winnipeg, immediately after the execution hereof. And have you there then this writ.

Witness, etc.

R.S.M. c. 40, form 145.

No. 146.—WRIT OF ATTACHMENT.

(*Rules 701-704.*)

(*Title, etc.*)

George the Fifth, etc.

To the sheriff of the Judicial District , greeting:

We command you to attach C. D., so as to have him before us in our Court of King's Bench, 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.

R.S.M. c. 40, form 146.

No. 147.—WRIT OF SEQUESTRATION.

(*Rules 705, 708.*)

(*Title, etc.*)

George the Fifth, etc.

To the sheriff of the Judicial District , greeting:

Whereas lately in our Court of King's Bench, in a certain action there depending, wherein A. B. is plaintiff and C. D. and others are defendants (*or* in a certain matter there depending intituled in the

matter of E. F., *as the case may be*), by a judgment (*or* order, *as the case may be*) of our said Court recovered (*or* made) in the said action (*or* matter), and bearing date the day of , 19 , it was adjudged (*or* ordered) that the said C. D. should pay into Court to the credit of said action the sum of $ (*or as the case may be*); Know ye, therefore, that we have given and by these presents do give to you full power and authority to enter upon all the lands, tenements and real estate whatsoever of the said C. D., and to collect, receive and sequester in your hands, not only all the rents and profits of his said lands, tenements and real estate, but also all his goods, chattels and personal estate whatsoever; and, therefore, we command you that you do, at certain proper and convenient days and hours, go to and enter upon all the lands, tenements and real estate of the said C. D., and that you do collect, take and get into your hands, not only the rents and profits of his said real estate, but also all his goods, chattels and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall pay into Court, to the credit of the said action, the sum of $ (*or as the case may be*) and clear his contempt, or our said Court make other order to the contrary.

Witness, etc.

R.S.M. c. 40, form 147.

No. 148.—DELIVERY OF ASSESSED VALUE OF CHATTELS.

(*Title, etc.*)

George the Fifth, etc.

To the sheriff of the Judicial District , greeting:

We command you that without delay you cause to be returned to the following chattels, namely (*enumerate chattels recovered by judgment for the return of which execution has been ordered to issue*), which the said lately (recovered against *or* was ordered to deliver to the said), in an action in our Court of King's Bench;

And we further command you that, if the said chattels cannot be found in your bailiwick, then, of the goods and chattels of the said in your bailiwick, you cause to be made (*the assessed value of the chattels*). And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof. And have there then this writ.

Witness, &c.

ENDORSEMENTS.

If the chattels cannot be found in your bailiwick, levy $, the assessed value thereof, and interest thereon at 6 per centum per annum from the day of , 19 , until payment, besides sheriff's poundage, officer's fees, costs of levying and all other legal incidental expenses.

This writ was issued by , of agent for of solicitor to the , who resides at .

The defendant is a , and resides at in your bailiwick.

R.S.M. c. 40, form 148.

No. 149.—BENCH WARRANT.

(*Rule 475.*)

Province of Manitoba.

Between

A. B., plaintiff,

and

C. D., defendant.

To E. F.

Whereas proof has been made before me that H. N. was duly subpœnaed to give evidence on behalf of the plaintiff (*or as the case may be*), in the cause at the sittings of the Court (*or as the case may be*), at Winnipeg (*or as the case may be*), which commenced on the day of , 19 , that the presence of the said H. N. is material to the ends of justice, and that the said H. N. has failed to attend in accordance with the requirements of the subpœna;

These are, therefore, to command you to take the said H. N. and to bring and have him before me at the said sittings, or before such other Judge as may be presiding thereat, there to testify what he may know concerning the matters in question in the said cause, and that you detain him in your custody until he shall have given his evidence, or until the said sittings shall have ended, or until other order be made by the Court concerning him.

Given under my hand, this day of , A.D. 19 , at .

J. J. M.

R.S.M. c. 40, form 149; 3 Geo. 5, c. 12, s. 8.

PETITIONS OF RIGHT.

No. 150.—PETITION.

In the King's Bench.

To the King's Most Excellent Majesty.

The humble petition of A. B., of , by his solicitor, E. F., of , showeth that (*state the facts*).

(*Conclusion.*)

Your suppliant therefore humbly prays that, etc.

Dated this day of , 19 .

(*Signed*) A. B.
or C. D., counsel for A. B.
or E. F., solicitor for A. B.

R.S.M. c. 40, form 150.

No. 151.—CERTIFICATE OF JUDGMENT FOR PETITIONER.

To the Honorable the Treasurer of Manitoba.

Petition of right of A. B., in His Majesty's Court of King's Bench at Winnipeg.

I hereby certify that, on the day of , A.D. , it was by the said Court adjudged (*or* decreed *or* ordered) that the above named suppliant was entitled to, etc.

Judge's signature.

R.S.M. c. 40, form 151.

CERTIFICATES, BONDS, ETC.

No. 152.—FORM OF CERTIFICATE OF OFFICER AFTER TRIAL.

(*Title, etc.*)

I certify that this action was tried before the Honorable Mr. Justice (and a special jury at on the and days of October, 19).

The jury found (*state findings*).

(*If the Judge give instructions as to the judgment thereon, add*), and the said judge directed, etc. (*as* the case may be).

Dated the day of , 19 .

R.S.M. c. 40, form 152.

No. 153.—REPLEVIN BOND.

(*Rule 863.*)

Know all men by these presents that we, A. B. (*the plaintiff*), of , W. G., of , and J. S., of , are jointly and severally held and firmly bound to W. P., Esquire, sheriff of the Judicial District, in the sum of of lawful money of Canada, to be paid to the said sheriff, or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made we bind ourselves and each and every of us in the whole, our and each and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals.

Dated this day of , one thousand nine hundred and

The condition of this obligation is such that, if the above bounden A. B. do prosecute his suit with effect and without delay against C. D. for the taking and unjustly detaining (*or* unjustly detaining, *as the case may be*) of his cattle, goods and chattels, to wit: (*here set forth the property distrained, taken or detained*), and do make a return of the said property, if a return thereof shall be adjudged, and also do pay such damages as the defendant shall sustain by the issuing of the order of replevin if the said A. B. fails to recover judgment in his said suit, and (*in cases to which rule 864 applies*) also shall indemnify and save harmless the said C. D. from all loss and damage which he may sustain by reason of the seizure and of any deterioration of the property in the meantime, in the event of its being returned, and all costs, charges and expenses which the said C. D. may incur, including reasonable costs not taxable between party and party, and further do observe, keep and perform all rules and orders made by the court in the said suit, then this obligation shall be void, or else remain in full force and virtue.

Sealed and delivered)
in the presence of)

FORM OF ASSIGNMENT.

Know all men by these presents, that I, W. P., Esquire, sheriff of the Judicial District, have at the request of the within

named C. D., the avowant (*or person making cognizance*) in this cause, assigned over this replevin bond unto the said C. D., pursuant to the statutes in such case made and provided.

In witness whereof I have hereunto set my hand and seal of office this day of , one thousand nine hundred and .

Sealed and delivered)
in the presence of)

(*The bond may be the bond of any guarantee company authorized to transact business in this Province, if the sheriff approves of the same, in which case the form shall be varied accordingly.*)

R.S.M. c. 40, form 153; 3 Geo. 5, c. 12, s. 9.

No. 154.—CERTIFICATE OF TAXATION.

(*Rule 953.*)

(*Title, etc.*)

I certify that the costs of the have been taxed and allowed at $.

Dated, etc.

R.S.M. c. 40, form 154.

No. 155.—SATISFACTION PIECE.

(*Rule 669.*)

(*Title, etc.*)

Satisfaction is acknowledged between plaintiff, and defendant, in an action for $ and costs. And do hereby expressly nominate and appoint , solicitor, to witness and attest execution of this acknowledgment of satisfaction.

Judgment entered on the day .

Signed by the said in the presence of me of , one of the solicitors of His Majesty's Court of King's Bench for Manitoba. And I hereby declare myself to be solicitor for and on behalf of said expressly named by and attending at request to inform of the nature and effect of this acknowledgment of satisfaction (which I accordingly did before the same was signed by me). And I also declare that I subscribe my name hereto as such solicitor.

(*Signature*)
the above named plaintiff.

Date

R.S.M. c. 40, form 155.

No. 156.—FORM OF DEBT ATTACHMENT BOOK.

Form of Debt Attachment Book under Rule 771.

Name of plaintiff	Name of judgment debtor	Amount of judgment	Date of judgment	Name of garnishee	Date of order for attachment	Date of order that judgment creditor may proceed against garnishee	Amount ordered to be paid by garnishee	Date of such order	Date of order for execution against garnishee

R.S.M. c. 40, form 156.

No. 157.—INTERROGATORIES.

(*Rule 423.*)

In the King's Bench.

Between A. B., plaintiff, and C. D., E. F. and G. H., defendants.

Interrogatories on behalf of the above named (plaintiff *or* defendant C. D.) for the examination of the above named (defendants E. F. and G. H. *or* plaintiff).

1. Did not, etc.

2. Has not, etc.

(The defendant E. F. is required to answer the interrogatories numbered .)

(The defendant G. H. is required to answer the interrogatories numbered .)

5-6 Ed. 7, c. 17, s. 2, *part.*

No. 158.—ANSWER TO INTERROGATORIES.

(*Rule 423.*)

(Title as in No. 157 supra.)

The answer of the above named defendant E. F. to the interrogatories for his examination by the above named plaintiff.

In answer to the said interrogatories, I, the above named E. F. (*or* I, J. K., the secretary of the above named E. F.), make oath and say as follows:—

5-6 Ed. 7, c. 17, s. 2, *part.*

No. 159.—ORDER UNDER "THE FOREIGN TRIBUNALS EVIDENCE ACT, 1856."

(*Rule 520.*)

In the King's Bench, Manitoba.

(*a*) Referee in Chambers.

In the matter of "Foreign Tribunals Evidence Act, 1856" (19 and 20 Vict., c. 113);

And in the matter of a (*civil* or *commercial* or *criminal*) proceeding now pending before (*b*)
intituled as follows:—

Between

Plaintiff,

and

Defendant.

Upon reading the affidavit (if any) of
filed the day of
19 , and the certificate of (*c*)
that proceedings are pending in the (*d*)
in (*e*) and that
such Court is desirous of obtaining the testimony of (*f*)

It is ordered that the said witness do attend before (*g*)

who is hereby appointed examiner herein, at (*h*)
on the day of
19 , at
o'clock, or such other day and time as the said examiner may appoint, and do there submit to be examined upon oath, or affirmation, touching the testimony so required as aforesaid, and do then and there produce (*i*)

And it is further ordered that the said examiner do take down in writing the evidence of the said witness, or witnesses, according to the rules and practice of this Court pertaining to the examination and cross-examination of witnesses (or as may be otherwise directed); and do cause each and every such witness to sign his or her depositions in his, said examiner's presence; and do sign the depositions taken in pursuance of this order and when so completed do transmit the same, together with this order, to the prothonotary of this Court at Winnipeg for transmission to the said court or tribunal desiring the evidence of such witness or witnesses.

Dated this day of 19

7-8 Ed. 7, c. 11, Sch.

No. 160.—CERTIFICATE UNDER "THE FOREIGN TRIBUNALS EVIDENCE ACT, 1856."

(*Rule 522.*)

I, Prothonotary of the Court of King's Bench in Manitoba, hereby certify that the documents annexed hereto are (1) the original order of this Court dated the day of 19 ,
made in the matter of
pending in the at
in the of
directing the examination of certain witnesses to be taken before , and (2) the examination and depositions taken by the said
pursuant to the said order, and duly signed and completed by him on the day of 19

Dated this day of 19 .

7-8 Ed. 7, c. 11, Sch.

INDEX

The Volume is divided into two parts, the first comprising the Text, the second the Act and Rules. The page references in light are to part two (Act and Rules). The other references in heavy type are to part one (Text).

INDEX OF FORMS.

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