THE PRACTICE

OF THE

SUPREME COURT

OF

CANADA

BY

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AND

REPORTER OF THE COURT.

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INTRODUCTION TO FIRST EDITION.

By section 101 of the British North America Act, 1867, the Parliament of Canada was authorized to provide for the constitution, maintenance and organization of a general Court of Appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada. Under the power given by this section of the constitution, the Parliament of Canada, on the 8th April, 1875, passed an Act, 38 Vic. c. 11, establishing the Supreme Court of Canada and the Exchequer Court of Canada, the former to have an appellate, civil and criminal jurisdiction within and throughout the Dominion of Canada, and the latter court to exercise concurrent original jurisdiction with the courts of the Provinces in the Dominion of Canada in all cases in which it should be sought to enforce any law of the Dominion relating to the revenue, and in all other suits of a civil nature at common law or equity in which the Crown in the interest of the Dominion should be plaintiff or petitioner, and exclusive or original jurisdiction in all cases in which demand should be made or relief sought in respect of any matter which might in England be the subject of a suit or action in the Court of Exchequer on its revenue side against the Crown, or any officer of the Crown. As the scope of this work is confined entirely to the jurisdiction and practice of the Supreme Court of Canada, no further reference need be made to the Exchequer Court beyond mention of the fact that until the passing of 50-51 Victoria c. 16, the Judges of the Supreme Court were also Judges of the Exchequer Court, each Judge, sitting alone, constituting the latter court, and all the Judges, or at least five, constituting the appellate tribunal.

On the 17th September, 1875, by proclamation, the Act passed on the 8th April preceding, was brought into force as respected the appointment of judges, registrar, clerks, and servants of the court, the organization thereof, and the

making of general rules and orders. On the 8th of October following the judges and registrar were appointed; and the Chief Justice, the Hon. William Buell Richards, afterwards Sir William Buell Richards, took the oath of office before His Excellency Lieutenant-General Sir William O'Grady Haly, the Administrator of the Government, in Council. On the 8th of November following, the Chief Justice administered the oath of office to the puisne judges of the Court. On the 10th January, 1876, by proclamation, the 11th day of January, 1876, was appointed as the day and time at and after which the judicial functions of the Court should take effect and be exercised. And on the 7th February, 1876, general rules relating to the practice of the Supreme Court were promulgated by the judges. The first sitting of the Supreme Court for the hearing of appeals was on the 17th of January, 1876, but no appeals were ready to be heard. The first session of the Court at which appeals were heard was on the 5th day of June, 1876, when three appeals were argued. Since the organization of the Court over 800 appeals have been filed, representing directly in themselves a considerable amount of valuable results, and indirectly, no doubt, a far reaching beneficial influence on the jurisprudence and administration of justice throughout the country. The business of the Court has been steadily increasing, until for the present sittings, the third of the year, there stand inscribed for hearing about 60 appeals, sent from all parts of the Dominion.

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

PREFACE TO SECOND EDITION.

Since the first edition of this work was issued, in 1888, the Parliament of Canada has passed a number of Acts affecting the Supreme Court, by some of which the jurisdiction of the Court has been extended, and by others the procedure has been altered. The rules of the Court, also, have been to some extent amended, and many decisions have been given on questions relating to its practice and procedure. A second edition will, therefore, be a convenience to those practising before the Court.

The late Mr. Cassels realized the necessity for a second edition some time before he died, but was never able to undertake it. When he requested me to do so in his stead it was his intention to go over the whole of the original work with me and arrange the scope of the alterations and additions to be made, but after carrying out this intention in respect to the first fifty sections of the Supreme Court Act he was obliged to abandon it, and I had to complete it without further assistance.

The form of the original edition has been closely followed, except in one respect. The instructions to practitioners, which in this volume appears in Part I., was, in the former work, a part of the introduction.

Every decision of the Court relating to the construction of the Act, or to points of practice and procedure under it and the Rules of Court down to the October session of 1898, has been noted, and an endeavour has been made to have the index exhaustive as well as accurate.

In 1888 about 800 appeals had been filed in the Court since its organization. At the present time the number is over 1,800. It cannot be claimed that the annual business of the Court has increased during the last few years, but that is to be attributed to the like state of affairs in the Provincial Courts.

C. H. MASTERS.

Ottawa, November 25th, 1898.

PREFACE TO THIRD EDITION.

Nearly ten years have elapsed since the second edition of this work was published. In that time the Court has given numerous decisions on questions of jurisdiction and practice; the jurisdiction of the Court has been enlarged by provision being made for appeals from the Yukon Territorial Court, and from the Board of Railway Commissioners; and the Supreme Court Act and other Acts affecting the Court have been revised, the form being materially altered and a few changes made in the substance of these Acts. Moreover, the Rules of Court in use since its organization have been abolished and an entire new set of Rules came into force on September 1st of this year. For all these reasons a new edition of the work is desirable, and even necessary.

The general form of the other editions to which the profession has become accustomed, is followed for this. Special care has been taken to have the work free from errors and to make the index much more useful than heretofore.

C. H. MASTERS.

Ottawa, Oct., 1907.

INTRODUCTION TO THIRD EDITION.

SUMMARY OF PROCEEDINGS ON APPEAL TO THE SUPREME COURT.

Parts I., II. and III. of this volume contain the statutes and rules which regulate the practice of the Supreme Court of Canada, to which are added notes of all the decisions of the court since it was organized. For the benefit of solicitors and attorneys practising in the court, the following summary of the proceedings is inserted:—

If a solicitor is instructed to bring an appeal in a case governed by the Supreme Court Act (R. S. c. 139), the first point to be determined (upon which it is often advisable to have counsel's opinion) is: Has the Supreme Court jurisdiction to entertain the appeal? Provided the case is not one in which special leave would be required under sec. 48 of the Supreme Court Act, relating to Ontario appeals, or if a Quebec case, is of the appealable amount or within the exceptions of section 46 of the Act, both of which will be dealt with hereafter, the jurisdiction depends upon three conditions, each of which has its exceptions.

1. It must have originated in a Superior Court. Section 24 (*a*). The exceptions to this requirement are cases brought in the County Court, s. 37 (*b*); appeals from Saskatchewan and Alberta, s. 37 (*c*); cases relating to provincial or municipal assessments, s. 41; probate cases, s. 37 (*d*); certain cases from Quebec, s. 37 (*a*), and appeals from judgments on appeal from the Gold Commissioner in the Yukon Territory, s. 37 (*e*).

2. The judgment to be appealed from must be that of the court of last resort in the Province, ss. 36 and 42. The exceptions are Assessment cases, s. 41, and appeals from the Court of Review in Quebec, s. 40. By s. 42, sub-section (*a*) an appeal direct from the court of original jurisdiction can be taken by consent of parties, and by sub-section (*b*)

from the judgment of any Superior Court of any Province except Quebec, by leave of the Supreme Court or a judge thereof.

It must be remembered that the court of last resort is not such court for the particular class of cases to which the one proposed to be appealed may belong, but it is the highest court generally for the Province.

3. Such judgment must be a final judgment, ss. 36 and 44. The only exceptions in the Act to this requirement are —judgments upon a motion for a new trial, s. 38 (*b*); decrees or orders in equity suits, s. 38 (*c*); and appeals from interlocutory judgments of the Exchequer Court on demurrer or points of law.

It should be borne in mind also that s. 45 of the Act prohibits an appeal from any order made in the exercise of judicial discretion, except in equity proceedings, and also that although the court has jurisdiction, it will not as a rule entertain an appeal depending on questions of fact or matters of procedure.

If the appeal comes from the Province of Quebec, the amount in controversy, which in these cases means the amount demanded in the action, must be over $2,000, as provided by s. 46, or must come within the provisions of sub-sections (*a*) and (*b*) of that section; so, likewise, if it is an appeal from Ontario, the amount in controversy must be over $1,000, or come within the exceptions provided for by s. 48. But there are two important distinctions between the Ontario and Quebec appeals. In the Act governing Ontario appeals, the amount in controversy *in the appeal* must be over $1,000, the words in italics not being found in s. 46; the result of that is to make the sub-sections in the Ontario Act, providing that the amount demanded shall be the amount in controversy, inoperative, and in these appeals it would have to be the amount recovered. Another distinction is that if a case from Ontario is not appealable under the above mentioned Act, the Court of Appeal for Ontario or the Supreme Court of Canada may grant special leave to appeal.

Having satisfied himself that his case is appealable, or having obtained special leave to appeal, as above indicated, the solicitor must next consider whether or not notice of

intention to appeal must be given. See s. 70 of the Act. If necessary, it must be given within 20 days; if no notice is required, or, being required, if notice has been given, the next proceeding is to provide for the security for the costs of the appeal, and application for approval of the security must be made within 60 days from the signing, or entry, or pronouncing of the judgment appealed from. As to whether the time runs from the entry, or pronouncing of the judgment, see notes to s. 69 of the Act. If the application cannot be made within the time, an extension of time should be applied for to the court below or a judge thereof, under s. 71, but the extension can be obtained only under special circumstances. The application to approve of the security can be made either to the court below or a judge thereof, or to the Supreme Court or a judge thereof, and the solicitor, having determined upon which court or judge he shall apply to, prepares a bond in the form given on page 99, and, if applying to the court below, proceeds according to the practice of that court to have such bond approved; if the application is made in the Supreme Court, he must give four clear days' notice to the opposite party of the application, and send the necessary instructions to his Ottawa agent, who should be appointed for the purpose, if not previously appointed under the requirements of Rule 20; if the bond is in the proper form, and the sureties are satisfactory, the Court or the judge to whom the application is made, orders that it be accepted. If security is to be given by a deposit of money in the Supreme Court, an order should be obtained from a judge of the court allowing such deposit to be made. The money having been given to the Registrar of the Court with the necessary fees, it is then deposited by him in the usual way to the credit of the cause.

If the right of appeal is doubtful the appellant may apply in Chambers for an order affirming the jurisdiction when applying for approval of security or within a certain time after it has been approved below. See rules 1 to 5.

After the security has been approved, the appellant has forty days within which to settle and print the case. No special rules have been made by the Supreme Court as to the practice to be adopted on settling the case. The statute (section 73) provides that it shall be stated by the par-

ties, or, in the event of difference, be settled by the court appealed from or a judge thereof. The appellant's solicitor can send to the solicitor for the respondent a draft of the case and the respondent's solicitor can return it within a reasonable time, with such suggestions or alterations as he may think advisable, and the draft can be sent from one to the other until finally signed as agreed upon, or until a difference arises which can be settled only by an application to a judge. Or an agreement can be signed by the solicitors as to what documents, specifying them clearly, the case shall contain. Unnecessary material should be omitted. As to what should be inserted see section 73 of the Act and notes. Upon the appellant's solicitor will then fall the duty of having the case printed. The rules of the court regulating the form and style of the case should be closely followed, and attention is here called to the remarks on this subject under Rule 12. It may happen that the length of the case, or some other circumstance, makes it evident that with reasonable diligence it will not be possible to overtake the printing within the forty days after security has been allowed. The solicitor for the appellant, to avoid an application on the part of the respondent to dismiss the appeal for want of prosecution (Rule 9), should then apply in the Supreme Court, in Chambers, for further time, giving the usual four clear days' notice of the application to his opponent and filing an affidavit in the Supreme Court in support of his application. When printed, a copy of the case should be submitted to the proper officer of the court below, who, upon being satisfied that it is the case stated by the parties, or settled by the judge, and upon being paid the usual fees, should certify and transmit it to the Registrar of the Supreme Court, with a certified copy of the bond given as security. (See Rule 10). The case should be filed in the office of the Registrar of the Supreme Court twenty days before the first day of the session at which it is to be brought on for hearing. At least fifteen days before the first day of the session notice of hearing must be served. (See Rules 15, 18.)

Each party has in the meantime prepared and printed a concise but complete statement of the facts of the case and the reasons and authorities upon which he intends to

rely. This document is called a factum. The factums of both parties should be deposited with the Registrar at least fifteen days before the first day of the session. (Rule 29). As to what the factum should contain and how it should be printed see Rules 30 and 31. The appeal must be inscribed by the appellant for hearing, that is a request must be filed with the Registrar to place it on the list of appeals for hearing, at least fourteen days before the first day of the session at which the appeal is to be heard. (Rule 37.) The inscription cannot be made unless the appellant's factum has been deposited. If the respondent has failed to deposit his factum within the time limited by the rule in that behalf, the appellant inscribes *ex parte*. The appeal is then placed on the proper list by the Registrar (see section 90), and will be called by the court when reached.

The above is the procedure in an appeal that is entirely governed by the provisions of the Supreme Court Act. There are certain appeals which are regulated by othe Acts, namely, appeals in criminal cases, in Exchequer Court cases, in election cases, in cases under the Railway Act and in cases under the Winding-up Act. The special provisions respecting these will be found in Part II. of this book. Thus, in criminal appeals, 15 days' notice of intention to appeal must be given to the Attorney-General of the Province; no security is required and no factums are to be deposited. In Exchequer appeals 10 days' notice of appeal is required, and the security, if the appeal is by a subject, is given by a deposit of $50 in court, on which the appeal is immediately inscribed for hearing; if the appeal is by or on behalf of the Crown no deposit is required, but only the notice. In election appeals there is a special procedure provided for by Rules 68-71 inclusive; the record in these appeals is printed under an order of a judge of the Supreme Court, and consists of so much of the whole record forwarded by the clerk of the Election Court as such order directs. The appeal is inscribed by the Registrar by judge's order on application by appellant, and the factums need be deposited only three days before the session at which the appeal is to be heard, and may be dispensed with altogether by order. For cases under the Railway Act see p. 141.

In cases under the Winding-up Act, an appeal can be taken only by leave of the Supreme Court or a judge thereof; the amount in controversy must be $2,000 or upwards, to which there are no exceptions; the order having been made, and the security approved, the case then follows the procedure indicated above, in ordinary appeals, and generally the ordinary procedure applies in all the special cases where the special act makes no provision therefor, or contains nothing which would render such procedure inapplicable.

Next, as to the hearing of appeals: The solicitor having on appeal on the list for any term should be careful to obtain a copy of such list, and instruct his agent to see that he has proper notice so as to be present with his counsel, if any, when the appeal is called for hearing. The cases are called in their order on such list, unless by consent of counsel interested a change in the order of hearing is directed by the court, and if counsel for the appellant is not present when the case is called, it is liable to be struck off, and there is great difficulty in getting it restored. Only two counsel on each side as a rule are heard, unless different respondents having different interests choose to be represented separately. The factums should be prepared with a view to the hearing, and should contain pretty full notes of the argument. If authorities are cited which are not in the factum, the court will generally direct that a list of them may be furnished after the argument.

After judgment is delivered the agent for the successful party should apply to the Registrar for an appointment to settle the minutes of the judgment and to tax the costs. (See Rules 42-49.) The agent drafts the minutes and bill of costs and serves a copy of these papers with the appointment on the agent of the other party. Both agents attend before the Registrar at the time mentioned in the appointment, and the minutes of judgment are settled and the bill taxed by the Registrar, who issues to the agent an allocatur of the costs, and as soon as judgment is entered certifies and transmits it to the proper officer of the court of original jurisdiction, who thereupon makes all proper and necessary entries thereof; and all subsequent proceedings may be taken as if the judgment had been given or pronounced in that court.

ABBREVIATIONS.

[19—] A. C.	Law Report, Appeal Cases.
A. & E.	Adolphus and Ellis.
App. Cas.	Law Reports, Appeal Cases.
Art.	Article.
C.	Chapter.
Ch. D.	Law Reports, Chancery Division.
C. J.	Chief Justice.
C. L. J.	Canada Law Journal.
C. L. T.	Canadian Law Times.
C. P. D.	Law Reports, Common Pleas Division.
C. S. N. B.	Consolidated Statutes of New Brunswick.
H. M.	Her Majesty.
Ib.	At the same place.
J.	Judge.
JJ.	Judges.
L. N.	Legal News.
L. R.	Law Reports.
L. T.	Law Times Reports, New Series.
M. L. R. Q. B.	Montreal Law Reports, Queen's Bench.
M. R.	Master of the Rolls.
N. B.	New Brunswick.
O. R.	Ontario Reports.
Ont. App. R.	Ontario Appeal Reports.
Ont. P. R.	Ontario Practice Reports.
P.	Page.
P. D.	Law Reports, Probate Division.
P. Q.	Province of Quebec.
Q. B.	Queen s Bench.
Q. B. D.	Law Reports, Queen's Bench Division.
Q. R. S. C.	Quebec Official Reports, Superior Court.
R. S.	Revised Statutes of Canada, 1886.
R. S. O.	Revised Statutes of Ontario.
S.	Section.
SS.	Sections.
S-S.	Sub-section.
S. C.	Same case.
S. C. Dig.	Coutlee's Digest Supreme Court Reports.
S. C. R.	Reports of the Supreme Court of Canada.
Sch.	Schedule.
Times L. R.	Times Law Reports.
V.	Victoria.
W. R.	Weekly Reporter.
West. L. T.	Western Law Times.

TABLE OF CASES CITED.

A.

B.

C.

D.

E.

H.

J.

K.

Q.

R.

W.

Y.

ADDENDUM ET CORRIGENDA.

Page 68 at foot and page 193, line 19, add: "On November 5th, 1907, in Montreal Pipe Foundry Co. v. Jean, the Court being equally divided, the appeal was dismissed without costs.

Page 67, last line, for "London," read "Sandon."

Page 91, line 26, before "S. C. R." insert "15."

R. S. [1906] c. 139.

AN ACT RESPECTING THE SUPREME COURT OF CANADA.

SHORT TITLE.

1. This Act may be cited as the Supreme Court Act. R. S., c. 135, s. 1.

INTERPRETATION.

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

(*a*) 'the Supreme Court' or 'the court' means the Supreme Court of Canada.

(*b*) 'judge' means a judge of the Supreme Court of Canada and includes the Chief Justice;

(*c*) 'Registrar' means the Registrar of the Supreme Court;

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

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

(*f*) 'appeal' includes any proceeding to set aside or vary any judgment of the court appealed from;

(*g*) 'the court appealed from' means the court from which the appeal is brought directly to the Supreme Court, whether such court is one of original jurisdiction or a court of appeal;

(*h*) 'witness' means any person, whether a party or not, to be examined under the provisions of this Act. R. S. C. c. 135, ss. 2 and 96.

(*b*) The definition of judge is new.

(*c*) This is new.

(*d*) If there is a formal judgment of the court appealed from dismissing an appeal thereto the Supreme Court cannot go behind it and consider the effect of the refusal of two of the four judges constituting the court to take part in it. *Booth* v. *Rattè*, 21 S. C. R. 637.

An adjudication by the Ontario Court of Appeal that an attorney is guilty of contempt is an appealable judgment though no sentence is pronounced. *In re O'Brien*, 16 S. C. R. 197.

The judgment pronounced in open court and embodied in the formal decree transmitted by the registrar to the court below constitutes the judgment of the Supreme Court on an appeal. If inconsistent with the opinions of the judges when stating the grounds upon which the decision is based the latter must be disregarded. *Canadian Pac. Ry. Co.* v. *Blain*, 36 S. C. R. 159. Taschereau C.J., and Davies J. *contra.*

(*e*) and (*g*) See notes to sections 36 and 44, and p.

(*h*) was s. 96 of the former Act.

See also Interpretation Act, R. S. [1906] c. 1.

THE COURT.

3. The court of common law and equity in and for Canada now existing under the name of the Supreme Court of Canada is hereby continued under that name, as a general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a court of record. 6 E. VII., c. 50, s. 1.

The words "as a general Court of Appeal for Canada and as an additional Court for the better administration of the laws of Canada" were inserted in this section by 6 Ed. VII. c. 50 s. 1.

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

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

Under this section the Supreme Court of Canada was organized and established in 1875 by 38 V. c. 11. But it can be said to be in only a limited sense a general Court of Appeal for Canada, for the existing right of appeal in the various provinces to the Privy Council has been left untouched. Nor can it be called a final Court of Appeal for Canada, inasmuch as the Privy Council has frequently entertained appeals from its judgments by virtue of the exercise of the royal prerogative. See section 59 and notes. See also Criminal Appeals and notes Part II.

And the Court exercises a jurisdiction which is not appellate under the provisions of s. 60 authorizing the Governor in Council to refer certain matters for its opinion. And questions may be referred to the Court also under the Railway Act.

And see notes to s. 35.

THE JUDGES.

4. The Supreme Court shall consist of a chief justice to be called the Chief Justice of Canada, and five puisne judges, who shall be appointed by the Governor in Council by letters patent under the Great Seal. 59 V., c. 14, s. 1.

By an Act of the United Kingdom, passed in 1895 (58-59 V. c. 44), provision was made for the appointment of a judge or retired judge of any British colony, to the Judicial Committee of Her Majesty's Privy Council. Pursuant to this Act His Lordship Sir Henry Strong, Chief Justice of Canada, was, in June, 1896, sworn in a member of the Privy Council and thus became, by the terms of the Act, a member of the Judicial Committee. On his retirement from the office of Chief Justice of Canada in November, 1901, he was succeeded by Sir Elzear Taschereau, who also became a member of the Judicial Committee.

5. Any person may be appointed a judge who is or has been a judge of a superior court of any of the provinces of Canada, or a barrister or advocate of at least ten years' standing at the bar of any of the said provinces. R. S., c. 135, s. 4.

6. Two at least of the judges shall be appointed from among the judges of the Court of King's Bench, or of the Superior Court, or the barristers or advocates of the Province of Quebec. R. S., c. 135, s. 4.

7. No judge shall hold any other office of emolument either under the Government of Canada or under the government of any province of Canada. R. S., c. 135, s. 4.

By s. 33 of "The Judges Act" R. S. [1906] c. 138 it is provided that

JUDGES NOT TO ENGAGE IN BUSINESS.

33. No judge of the Supreme Court of Canada or of the Exchequer Court of Canada or of any superior or county court in Canada shall either directly, or indirectly as director or manager of any corporation, company or firm, or in any

other manner whatever, for himself or others, engage in any occupation or business other than his judicial duties; but every such judge shall devote himself exclusively to such judicial duties. 4-5 E. VII., c. 31, s. 7; c. 47, s. 3."

8. The judges shall reside at the city of Ottawa, or within five miles thereof. R. S., c. 135, s. 4.

9. The judges shall hold office during good behaviour, but shall be removable by the Governor General on address of the Senate and House of Commons. R. S., c. 135, s. 5.

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

"I, , do solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as chief justice (*or* as one of the judges) of the Supreme Court of Canada. So help me God." R. S., c. 135, s. 9;—50-51 V., c. 16, s. 57.

11. Such oath shall be administered to the Chief Justice before the Governor General, or person administering the Government of Canada, in Council, and to the puisné judges by the Chief Justice, or, in his absence or illness, by any other judge present at Ottawa. R. S., c. 135, s. 10.

Every judge on taking office is also required to take an oath of allegiance to the reigning Sovereign of the United Kingdom in the following form, and administered in the same manner.

"I do sincerely promise and swear that I will be faithful and bear true allegiance to His Majesty King Edward the Seventh as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Dominion of Canada, dependent on and belonging to the said Kingdom, and that I will defend Him to the utmost of my power against all traitorous conspiracies or attempts whatsoever which shall be made against His person Crown and Dignity, and that I will do my utmost endeavour to disclose and make known to His Majesty, His Heirs or Successors, all treasons or traitorous conspiracies and attempts which I shall know to be against Him or any of them; and all this I do swear without any equivocation, mental evasion or secret reservation, SO HELP ME GOD."

Section 7 of the former Act, R. S. C. c. 135, dealt with the salaries paid to judges, and s. 8 with their retiring allowances. These sections have been repealed. The salaries

are now provided for by s. 3 of The Judges Act, R. S. [1906] c. 138, and the retiring allowances by ss. 19 and 20 of the same Act. Section 27 provides the mode of paying salaries.

REGISTRAR AND OTHER OFFICERS.

12. The Governor in Council may, by an instrument under the Great Seal, appoint a fit and proper person, being a barrister of at least five years' standing, to be the Registrar of the Supreme Court. R. S., c. 135, s. 11.

13. The Registrar shall hold office during pleasure and shall reside and keep an office at the city of Ottawa. R. S., c. 135, s. 11.

14. The Registrar shall have the rank of a Deputy Head of a Department and shall be paid a salary beginning on his appointment at three thousand five thousand dollars per annum with an annual increase of one hundred dollars, until a maximum salary is reached of four thousand dollars. 3 E. VII., c. 69, s. 1.

15. The Registrar shall, subject to the direction of the Minister of Justice, oversee and direct the officers, clerks, and employees appointed to the Court. 3 E. VII., c. 69, s. 3.

16. The Registrar shall give his full time to the public service and shall not receive any pay, fee or allowance in any form in excess of the amount hereinbefore provided. 3 E. VII., c. 69, s. 3.

17. The Registrar shall, under the supervision of the Minister of Justice, have the management and control of the Library of the Court and the purchase of all books therefor. 51 V., c. 37, s. 4.

18. The Registrar shall, until otherwise provided, publish the reports of the decisions of the Court. 50-51 V., c. 16, s. 57.

19. The Registrar shall have such authority to exercise the jurisdiction of a judge sitting in chambers as may be conferred upon him by general rules or orders made under this Act. 50-51 V. c. 16, s. 57.

See section 109.

By rules 82 to 89 the Registrar has been given all the powers and authority of a judge in chambers, except in *habeas corpus* and *certiorari* matters, subject to an appeal to a judge.

20. The Governor in Council may appoint a reporter and assistant reporter who shall report the decisions of the Court and who shall be paid such salaries respectively as the Governor in Council determines. 50-51 V., c. 16, s. 57.

21. The Governor in Council may from time to time appoint such other clerks and servants of the Court as are necessary, all of whom shall hold office during pleasure. 50-51 V., c. 16, s. 57.

The power of the Governor in Council to appoint clerks and servants of the Court would seem to be independent of the Civil Service Act.

22. The provisions of the Civil Service Act and of the Civil Service Superannuation and Retirement Act shall so far as applicable extend and apply to such officers, clerks, and servants at the seat of Government. R. S., c. 135, s. 14.

23. The Sheriff of the county of Carleton in the Province of Ontario shall be *ex-officio* an officer of the Court and shall perform the duties and functions of a sheriff in connection therewith. R. S., c. 135, s. 15.

The remuneration of the sheriff for attendance on the Supreme Court is regulated by order-in-council passed on June 7th, 1883.

By Supreme Court Rules 120 to 140, provision is made for the issue of writs of execution out of the Supreme Court. Forms of writ are given in the schedule, and a tariff of fees to the sheriff in connection with their execution and for services generally.

BARRISTERS AND SOLICITORS.

24. All persons who are barristers or advocates in any of the Provinces of Canada may practise as barristers, advocates and counsel in the Supreme Court. R. S., c. 135, s. 16;—50-51 V., c. 16, s. 57.

25. All persons who are attorneys or solicitors of the Superior Courts in any of the Provinces of Canada may practise as attorneys, solicitors and proctors in the Supreme Court. R. S., c. 135, s. 17:—50-51 V., c. 16, s. 57.

26. All persons who may practise as barristers, advocates, counsel, attorneys, solicitors or proctors in the Supreme Court shall be officers of the Court. R. S., c. 135, s. 18;—50-51 V., c. 16, s. 57.

In *O'Connor* v. *Gemmill*, a Divisional Court *held*, 29 O. R. 47, that an Ontario solicitor was not subject to the summary jurisdiction of the High Court under the Solicitor's Act of Ontario as to taxation of costs for services rendered in the Exchequer Court. The case went to the Court of Appeal, 26 Ont. A. R. 27, where two of the judges held the opposite view, two expressed no opinion and one agreed with the Divisional Court.

For persons entitled to practise, see sections 24 and 25, and see Rule 20 and notes as to the appointment of agents or election of domicile by solicitors and attorneys practising in the Supreme Court.

No roll has to be signed by any barrister or solicitor practising in the Supreme Court of Canada.

SESSIONS AND QUORUM.

27. Any five of the judges of the Supreme Court shall constitute a quorum and may lawfully hold the Court. 51 V., c. 37, s. 1.

See also sections 30 and 31.

28. It shall not be necessary for all the judges who have heard the argument in any case to be present in order to constitute the court for delivery of judgment in such case, but in the absence of any judge, from illness or any other cause, judgment may be delivered by a majority of the judges who were present at the hearing. 51 V., c. 37, s. 1.

29. Any judge who has heard the case and is absent at the delivery of judgment, may hand his opinion in writing to any judge present at the delivery of judgment, to be read or announced in open court, and then to be left with the registrar or reporter of the court. 51 V., c. 37, s. 1.

These provisions have been considered by the Court sufficiently wide to enable judgment to be given by a majority of judges in cases in which one of the five judges who constituted the quorum of the Court for hearing such cases died before the delivery of judgment.

It is not clear whether or not this section requires a majority of the judges who heard a case argued to be actually present in court to deliver the judgment. It is open to the construction that only one judge need be present, and he may read or announce the opinions of the others and leave them with the registrar or reporter.

30. No judge against whose judgment an appeal is brought, or who took part in the trial of the cause or matter or in the hearing in a court below, shall sit or take part in the hearing of or adjudication upon the proceedings in the Supreme Court.

2. In any cause or matter in which a judge is unable to sit or take part in consequence of the provisions of this section, any four of the other judges of the Supreme Court shall constitute a quorum and may lawfully hold the court. 52 V., c. 37, s. 1.

On May 9th, 1894, in the case of *Grant* v. *Maclaren*, a question arose under this section as to the right of Mr. Justice King to hear the case, he having heard the argument before the Supreme Court of New Brunswick, though he took no part in the judgment of that court, and had not presided at the original hearing. The other members of

the Court (Strong C.J., and Fournier, Taschereau and Sedgewick JJ.) were of opinion that he was disqualified, and he withdrew from the bench.

31. Any four judges shall constitute a quorum and may lawfully hold the court in cases where the parties consent to be heard before a court so composed. 59 V., c. 14, s. 2.

Rule 111 provides that, "If it happens at any time that the number of judges necessary to constitute a quorum for the transaction of the business to be brought before the Court is not present, the judge or judges then present may adjourn the sittings of the Court to the next or some other day, and so on from day to day, until a quorum shall be present."

32. The Supreme Court, for the purpose of hearing and determining appeals, shall hold in each year, at the city of Ottawa, three sessions.

2. The first session shall begin on the third Tuesday of February, the second on the first Tuesday in May, and the third on the first Tuesday in October, in each year.

3. Each of the said sessions shall be continued until the business before the court is disposed of. R. S., c. 135, s. 20;—54-55 V., c. 25, s. 1.

See section 90 as to entry of appeals for the several sessions and the order in which they shall be heard.

33. The Supreme Court may adjourn any session from time to time and meet again at the time appointed for the transaction of business.

2. Notice of such adjournment and of the day fixed for the continuance of such session shall be given by the Registrar in the *Canada Gazette*. R. S., c. 135, s. 21.

34. The Court may be convened at any time by the Chief Justice, or, in the event of his absence or illness, by the senior puisné judge, in such manner as is prescribed by the rules of Court. R. S., c. 135, s. 22.

Rule 16 provides for the publication in the *Canada Gazette* of a notice convening the Court, and for the form of such notice see Schedule appended to the rules, form A.

Rule 111 provides that, "If it happens at any time that the number of judges necessary to constitute a quorum for the transaction of the business to be brought before the Court is not present, the judge or judges then present may adjourn the sittings of the Court to the next or some other

day, and so on from day to day, until a quorum shall be present."

35. The Supreme Court shall have, hold and exercise an appellate, civil and criminal jurisdiction within and throughout Canada. R. S., c. 135, s. 23.

Section 101 of the B. N. A. Act, authorizes the establishment of a general Court of Appeal for Canada. As pointed out in the notes to section 3 the only jurisdiction conferred on the Court by this Act which is not purely appellate is that provided for by section 60, empowering the Governor-General in Council to refer questions for hearing and consideration.

Under section 62 a judge in chambers may issue a writ of *habeas corpus ad subjiciendum* in a criminal case and he may refer an application for the writ to the Court for adjudication. *In re Richard*, 38 S. C. R. 394; Rule 72.

36. Except as hereinafter otherwise provided, an appeal shall lie to the Supreme Court from any final judgment of the highest court of final resort now or hereafter established in any Province of Canada, whether such court is a court of appeal or of original jurisdiction, in cases in which the court of original jurisdiction is a superior court: Provided that

(*a*) There shall be no appeal from a judgment in any case of proceedings for or upon a writ of *Habeas Corpus*, *Certiorari* or Prohibition arising out of a criminal charge, or in any case of proceedings for or upon a writ of *Habeas Corpus*, arising out of any claim for extradition made under any treaty; and,

(b) There shall be no appeal in a criminal case except as provided in the Criminal Code. R. S., c. 135, ss. 24 and 31;—54-55 V., c. 25, s. 2;—55-56 V., c. 29, ss. 742 and 750.

"Except as hereinafter otherwise provided." This expression is only required in a clause denying or restricting the jurisdiction. There is no exception in the Act to any provision of this section, but in appeals from Quebec, Ontario and the Yukon Territory the right of appeal is limited by secs. 46, 48 and 49.

"The highest court of final resort." That is the court of last resort generally and indicates a special tribunal in each province not the last court to which litigants may resort under provincial legislation taking away an appeal to the court of last resort. *Dangou* v. *Marquis*, 3 S. C. R. 251; *Macdonald* v. *Abbott*, 3 S. C. R. 278; *James Bay Ry. Co.* v. *Armstrong*, 38 S. C. R. 511. In *Farquharson* v. *Imper-*

ial Oil Co., 30 S. C. R. 188, Strong C.J., and Gwynne J., were of opinion that there was an appeal as of right from the judgment of a Divisional Court in Ontario from which no appeal lay to the Court of Appeal. Taschereau and Sedgewick JJ., were of the contrary opinion, which was affirmed in *Ottawa Electric Co.* v. *Brennan*, 31 S. C. R. 311.

For remarks on the several requirements as to jurisdiction under this section, see pp. 54-63. See also sec. 44 and notes thereto.

Sub-section (*a*). The prohibition as to appeals in *habeas corpus, certiorari* and prohibition arising out of a criminal charge must have been inserted here through excessive caution. The same prohibition is necessarily implied in the provision for an appeal in such cases not arising out of a criminal charge. Sec. 39 (*e*). The other provision as to *habeas corpus*, was sec. 31 of the former Act. Inasmuch as proceedings by *habeas corpus* arising out of a claim for extradition, must arise out of a criminal charge, such appeal is prohibited also by sec. 39 (*e*).

In the case of *In re Lazier*, 29 S. C. R. 630, an application was made to the Court to fix a day for hearing an appeal from a judgment of the Court of Appeal for Ontario, refusing to grant a writ of *habeas corpus* to discharge a prisoner under order for extradition. The Court refused the application on the ground that the matter was *coram non judice* and the appeal could not be heard.

Sub-section (*b*). See post Part II. "Criminal Appeals."

37. Except as hereinafter otherwise provided, an appeal shall lie to the Supreme Court from any final judgment of the highest court of final resort now or hereafter established in any Province of Canada, whether such court is a court of appeal or of original jurisdiction, where the action, suit, cause, matter or other judicial proceeding has not originated in a superior court, in the following cases:—

(*a*) In the Province of Quebec if the matter in controversy involves the question of or relates to any fee of office, duty, rent, revenue, sum of money payable to His Majesty, or to any title to lands or tenements, annual rents and other matters or things where rights in future might be bound; or amounts to or exceeds the sum or value of two thousand dollars;

"Except as hereinafter otherwise provided"; there is no provision to the contrary in the Act.

In the former Act this sub-section formed part of sec. 29 relating generally to appeals from Quebec.

The Superior Court only, in Quebec, could entertain an action to recover the sum of $2,000, so that the sub-section is inoperative, so far as the pecuniary amount required is concerned. As to the other matters mentioned, the Circuit Court has jurisdiction; Art. 55 C. C.; but no appeal has ever come to the Supreme Court in proceedings originating therein.

See sec. 46 and notes as to Quebec appeals generally and the restrictions thereon.

(*b*) In the Provinces of Nova Scotia, New Brunswick, British Columbia and Prince Edward Island, if the sum or value of the matter in dispute amounts to two hundred and fifty dollars or upwards, and in which the court of first instance possesses concurrent jurisdiction with a superior court;

In these Provinces the County Court alone has concurrent jurisdiction with the Supreme Court. See for Nova Scotia R. S. [1900] c. 156, ss. 28-31 and 87; for New Brunswick Cons. Stats. [1903] c. 116, ss. 9-12 and c. 111, s. 379; for British Columbia R. S. [1897] c. 52, ss. 23, 27, 32, 40, and 42, and for Prince Edward Island, 41 V. c. 12.

In Prince Edward Island the pecuniary extent of jurisdiction in the county court is only $150. An appeal would lie only in actions on bonds given under the Act, or in certain statutory actions.

Extracts from these various statutes are printed in the appendix.

(*c*) In the provinces of Saskatchewan and Alberta by leave of the Supreme Court of Canada or a judge thereof.

In the former Act an appeal was given, by leave, from a decision of the Supreme Court of the North-West Territories, though the matter did not originate in a superior court.

That court remained the court of last resort for the new Provinces until courts were established therein in Sept. 1907. In the present Act the insertion in the main portion of this section 37 of the words "now or hereafter established," makes

sub-sec. (*c*) apply to decisions from the respective Supreme Courts of the new Provinces.

An appeal will lie under section 36 from judgments of the Supreme Courts of these new Provinces, as the words "now or hereafter established" are in that section and were in the corresponding section of the former Act. For such an appeal leave will not be necessary.

The leave under sub-sec. (*c*) must be granted by the Supreme Courts of these new Provinces, the words "now or hereafter established" are in that section and were in the corresponding section of the former Act. For such an appeal leave will not be necessary.

(*d*) From any judgment on appeal in a case or proceeding instituted in any Court of Probate in any Province of Canada other than the Province of Quebec, unless the matter in controversy does not exceed five hundred dollars;

Before the passing of this provision in 1889, it was held that an appeal would not lie from a judgment of the Supreme Court of Nova Scotia in a case originally instituted in the Court of Wills and Probate, which was not a Superior Court within the meaning of s. 24 (*a*), of R. S. C. c. 135 (now sec. 36); *Beamish* v. *Kaulbach*, 3 Can. S. C. R. 704. The only appeals under this enactment are *Lamb* v. *Cleveland*, 19 S. C. R. 78; *Kaulbach* v. *Archbold*, 31 S. C. R. 387; *McNiell* v. *Cullen*, 35 S. C. R. 510; *British and Foreign Bible Soc.* v. *Tupper*, 37 S. C. R. 100. *In re Daly Estate*, 39 S. C. R. 122.

(*e*) In the Yukon Territory in the case of any judgment upon appeal from the Gold Commissioner: 50-51 V., c. 16 s. 57;—51 V., c. 37, ss. 2, 3;—52 V., c. 37, s. 2;—54-55 V., c. 25, s. 3;—56 V., c. 29, s. 2;—2 E. VII., c. 35, s. 4.

By 62 & 63 V., c. 11, s. 7, the Supreme Court of British Columbia was made a Court of Appeal from judgments of the Yukon Territorial Court, and by sec. 13, an appeal was given to the Supreme Court of Canada from any judgment of the Territorial Court in a case originating before the Gold Commissioner under the Order in Council of 1871, and this, notwithstanding said order provided that the judgment of the Territorial Court in such cases should be final and conclusive. *Hartley* v. *Matson*, 32 S. C. R. 575. The above provisions were, however, repealed by 4 Edw. VII., c. 35.

In sec 41, which provides for appeals in matters of assessment, is another instance of an appeal being allowed where the proceedings did not originate in a Superior Court.

38. Except as hereinafter otherwise provided, an appeal shall lie to the Supreme Court from the judgment, whether final or not, of the highest court of final resort now or hereafter established in any Province of Canada, whether such court is a court or appeal or of original jurisdiction, where the court of original jurisdiction is a superior court, in the following cases:

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

(*b*) Upon any motion for a new trial;

(*c*) In any action, suit, cause, matter or other judicial proceeding originally instituted in any superior court of equity in any Province of Canada other than the Province of Quebec, and from any judgment in any action, suit, cause, matter or judicial proceeding, in the nature of a suit or proceeding in equity originally instituted in any superior court in any Province of Canada other than the Province of Quebec. R. S., c. 135, s. 24;—54-55 V., c. 25, s. 2.

"Except as hereinafter otherwise provided." There are no provisions in the Act to the contrary.

The words "whether final or not" were not in the Act formerly in respect to any of these provisions. They are not applicable to sub-sec. (*a*), as the judgment on the matters mentioned therein is always final. And the other two sections in terms apply to both final and interlocutory judgments so as to them the descriptive words are unnecessary. As to sub-sec. (*c*) see *Grant* v. *McLaren*, 23 S. C. R. 310.

VERDICT OR NONSUIT.

(*a*) Upon any motion to enter a verdict or nonsuit upon a point reserved at the trial;

Notice of such appeal must be given within twenty days from the date on which the decision appealed from was given; sec. 70.

Apparently no appeal has ever been brought under this provision.

Cases have come before the Court where the court appealed from has refused to set aside the verdict at the trial and enter a nonsuit or verdict for the opposite party, but in such cases the appeal has lain under the provisions of sec. 36. In *Trustees of St. John Y. M. C. A. v. Hutchinson*, S. C. Dig.

997, the defendants moved for nonsuit at the trial, which was refused, but leave was reserved for a motion to the full Court for a nonsuit on the whole evidence. So in *Andreas* v. *Canadian Pac. Ry. Co.*, 37 S. C. R. 1, the motion for nonsuit was on the case generally; in none of the cases was it made to enter a nonsuit or verdict on *a point reserved at the trial*.

NEW TRIAL.

(*b*) Upon any motion for a new trial.

Prior to the passing of the Act 54 & 55 V. c. 25 the appeal was given only from the judgment on a motion for a new trial on the ground that the judge had not ruled according to law which, as was held in *Halifax Street Ry. Co.* v. *Joyce*, 17 S. C. R. 709, was applicable to jury cases only. Under that provision an appeal was quashed where the motion for a new trial was based on the insufficiency of the answers of the jury to one of the questions submitted. *Barrington v. Scottish Union Ins. Co.*, 18 S. C. R. 615. And in *Accident Ins. Co.* v. *McLachlan*, 18 S. C. R. 627, where the Court appealed from ordered a new trial *suo motu* an appeal from such judgment was quashed, as it was not a judgment "upon a motion for a new trial." See also *O'Sullivan* v. *Lake*, 16 S. C. R. 636. On the other hand the appeal was entertained and disposed of in *Vaughan* v. *Wood*, 18 S. C. R. 703, where the new trial was granted because the trial judge had improperly ordered a nonsuit, and in *Halifax Banking Co.* v. *Smith*, 18 S. C. R. 710, where it was granted for improper admission and rejection of evidence.

By the Act passed in 1891, the section was amended by striking out the words "on the ground that the judge had not ruled according to law," and since then an appeal lies "from the judgment on any motion for a new trial" as given above. After the amendment no appeal from a judgment on motion for a new trial was quashed by the court, until *Canada Carriage Co* v. *Lea*, 37 S. C. R. 672, was decided in Nov. 1906, as was also *Toronto Ry. Co.* v. *King*, in the following term.

These decisions have made a radical change in the jurisprudence of the Court under this sub-section. They were

based on the sole ground that the order for the new trial was made in the exercise of judicial discretion, and the appeal was prohibited under the provisions of sec. 27 of the repealed Act (now sec. 45), nothwithstanding that section 30 (47) provides that sec. 27 (45) does not apply to cases of rules for new trials.

As remarked above, no appeal from the judgment on a motion for a new trial has hitherto been quashed for want of jurisdiction since 1891, and none has ever before been quashed on the sole ground of judicial discretion. These recent decisions will, if the Court continues to follow them, very largely prohibit an appeal from a judgment granting a new trial as it will seldom happen that such a judgment will not be more or less an exercise of discretion.

An appeal from a judgment refusing a new trial is in a different position. In that case the verdict or judgment moved against stands, and the judgment appealed from is final and comes under the provisions of sec. 36.

As provided in sec. 70, notice of appeal from the judgment on motion for a new trial must be given the opposite party within twenty days, or such further time as may be allowed, after the judgment is given. Unless such notice is given the appeal cannot be heard. *Vaughan* v. *Richardson*, 17 S. C. R. 703.

If a motion is made to the court below for judgment, or, in the alternative, for a new trial, no appeal lies to the Supreme Court from the refusal to enter judgment if a new trial is granted. *Mutual Reserve Ins. Co.* v. *Dillon*, 34 S. C. R. 141. And when a new trial is not specifically asked for, but it is provided by statute that an appeal to the provincial Court of Appeal from a final judgment shall be deemed to include a motion for a new trial, there is no appeal for the purpose of obtaining the relief asked for when a new trial is granted. *Corporation of Delta* v. *Wilson*, March, 1905, Cout. Cas. 334.

No appeal lies under sections 1013 and 1024 of the Criminal Code from the judgment of the Court of Appeal of a Province ordering a new trial as authorized by sec. 1018. *Viau* v. *The Queen*, 29 S. C. R. 90.

Section 52 of the Supreme Court Act provides that on any appeal the Court may, in its discretion, order a new trial,

if the ends of justice seem to require it, even though the same is deemed necessary on the ground that the verdict is against the weight of evidence.

EQUITY CASES.

(c) In any action, suit, cause, matter or other judicial proceeding originally instituted in any superior court of equity in any Province of Canada other than the Province of Quebec, and from any judgment in any action, suit, cause, matter or judicial proceeding, in the nature of a suit or proceeding in equity, originally instituted in any superior court in any Province of Canada other than the Province of Quebec.

It was not necessary that an appeal under this provision in the former Act should be from a final judgment. In *Grant* v. *McLaren*, 23 S. C. R. 310, the appeal was from a judgment confirming the report on a reference to take the accounts of trustees under a will though the matter of removal of the trustees, for which the suit was taken, had not been dealt with.

Where, on a reference under the Vendors and Purchasers Act of Ontario to settle the title under a written agreement for a lease, the Master ruled that evidence might be given to shew what covenants the lease should contain, the Supreme Court held that the above clause did not authorize an appeal from the judgment of the Court of Appeal affirming such ruling. *Canadian Pacific Railway Co.* v. *City of Toronto*, 30 S. C. R. 337.

In matters under this sub-section an appeal lies directly from the court of original jurisdiction by leave of the Court or a judge. See sec. 42 and notes.

39. Except as hereinafter otherwise provided, an appeal shall lie to the Supreme Court:—

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

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

(c) From the judgment in any case of proceedings for or upon a writ of *habeas corpus*, *certiorari* or prohibition not arising out of a criminal charge;

(d) In any case or proceeding for or upon a writ of *mandamus*; and,

(c) In any case in which a by-law of a municipal corporation has been quashed by a rule or order of court, or the rule or order to quash has been refused after argument. R. S., c. 135, s. 24;—54-55 V., c. 25, s. 2.

Sub-sec. (*a*) was 24 (*d*), sub-sec. (*b*) 24 (*f*), and the remainder 24 (*g*) of the former Act.

"Except as herein otherwise provided;" there are no provisions to the contrary.

SPECIAL CASE.

An appeal lies,

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

The special case must raise a question of law for decision. If submitted to the court below on matters of fact only, the judgment thereon is *extra cursum curiae* and not susceptible of appeal. *Burgess* v. *Morton* [1896] A. C. 136.

Thus in *Halifax and Cape Breton Coal and Ry. Co.* v. *Gregory*, S. C. Dig. 310, on appeal from a judgment of the Supreme Court of Nova Scotia, a new party was brought in, and it was agreed that the appeal should be decided on the merits irrespective of the pleadings or any technical defence raised thereon. The Supreme Court having affirmed the judgment appealed from, the Judicial Committee of the Privy Council refused leave to appeal therefrom, holding that the Supreme Court did not exercise its jurisdiction as a Court of Appeal, but acted under the special reference; see 11 App. Cas. 229. And in *Canadian Pacific Ry. Co.* v. *Fleming*, 22 S. C. R. 33, counsel for both parties consented at the trial that the case should be withdrawn from the jury and referred to the full Court, with power to draw inferences of fact, and on the law and facts either to assess damages to the plaintiff or enter a judgment of nonsuit. The full Court having assessed the damages an appeal by the company to the Supreme Court was quashed on the ground that the court appealed from acted under the agreement as a quasi-arbitrator, and its decision, not having been given in the regular course of judicial procedure, was not open to review on appeal.

In *Draper* v. *Radenhurst*, 14 Ont. P. R. 376, on application for approval of security under sec. 75, Maclennan J.A., discusses the nature of the "special case" mentioned in this clause. It was contended before him, that every appeal to the Supreme Court was on a special case, and required the notice mentioned in sec. 70.

Notice of appeal under this clause must be given within twenty days after the decision appealed from. Sec. 70.

Where a case has been stated by consent of parties the Court cannot alter its terms except with the like consent. *Smyth* v. *McDougall*, 1 S. C. R. 114.

AWARD.

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

The appeal under this sub-section is restricted to cases in which a motion is made to set aside, or by the way of appeal from, an award.

No appeal lies from a judgment on a motion for liberty to enforce an award. *Township of Langley* v. *Duffy*, S. C. Dig. 134. Nor from the judgment on a petition to increase the amount of the award. *Judah* v. *Atlantic and N. W. Ry. Co.*, Cam. Prac. 114.

The report of a referee under the Drainage Trials Act of Ontario is not an award from which an appeal will lie under this paragraph. *Township of Harwich* v. *Raleigh*, 18th May, 1895. S. C. Dig. 58.

On an appeal against an award under this provision in proceedings by arbitration under the Ontario Municipal Act, the Supreme Court increased the amount of damages awarded without a cross-appeal. *Town of Toronto Junction* v. *Christie*, 25 S. C. R. 551.

An appeal will lie under this sub-section where the reference to arbitration was voluntary, but provided for the same right of appeal as if made by reference in an action under R. S. O. (1877) c. 50, s. 189. *Bickford* v. *Canada Southern Railway Co.*, 14 S. C. R. 743.

As to the appeal from a judgment on award on expropriation for railway purposes, see Part II. "Appeals under the Railway Act."

(c) From the judgment in any case of proceedings for or upon a writ of *habeas corpus, certiorari* or prohibition not arising out of a criminal charge.

HABEAS CORPUS.

No security for costs is required on an appeal in a matter of *habeas corpus*. Sec. 75. The first step in the appeal is the filing of the case, which must be done within 60 days from the pronouncing of the judgment appealed against. See *In re Smart*, 16 S. C. R. 396.

Under the rules of court hitherto in force the case on an appeal in a matter of *habeas corpus* did not require to be printed, and no factums were necessary. Under the new rules, however, owing to an obvious error in drafting, all the provisions as to printing and depositing factums apply to the appeal under sec. 39, and are made non-applicable to an appeal from the refusal of a judge in chambers to grant the writ under sec. 62. See Rules 64-67.

As a rule no costs are given on this appeal. *In re Johnson*, S. C. Dig. 389. But where the appeal was brought after the applicant for the writ was at large, it was dismissed with costs. *Fraser* v. *Tupper*, S. C. Dig. 383.

There is no appeal in any case of proceedings for or upon a writ of *habeas corpus* arising out of any claim for extradition made under any treaty. Sec. 36 (*a*). Where the prisoner in an extradition case sought to appeal from the judgment of the Court of Appeal for Ontario refusing to grant a writ of *habeas corpus* the Court refused to fix a day for hearing a motion to quash as the matter was *coram non judice*, and the motion unnecessary. *In re Lazier*, 29 S. C. R. 630.

The prisoner need not be in court on the hearing of the appeal unless the court so directs. Sec. 64. And the court or a judge may bail, discharge or commit him, direct him to be detained in custody or otherwise deal with him as any court, judge or justice of the peace having jurisdiction in any such matters in any province. Sec. 63.

The appeal in a *habeas corpus* matter shall be heard at an early day whether in or out of a session of the Court. Sec.

65. Rule 16 provides for publication of a notice to convene the court, under sec. 34, for the purpose of hearing such appeals.

Sections 62 to 64 provide for the issue of writs of *habeas corpus* by a judge in chambers.

CERTIORARI.

There have been very few appeals from judgment on certiorari. In *The Queen* v. *The Sailing Ship "Troop" Co.*, 29 S. C. R. 662, the Supreme Court of New Brunswick made absolute a rule *nisi* for a writ of certiorari to bring up the proceedings before the Police Magistrate of St. John in order to have the judgment thereon quashed. The action was brought in the Magistrate's Court by the Liverpool Board of Trade under the Merchants Shipping Act, 1854, to recover money disbursed for a sick seaman. On appeal the Supreme Court reversed the judgment of the Supreme Court of New Brunswick, and ordered the rule for certiorari to be discharged.

In this case the appeal was entertained though the writ of certiorari had not issued.

In *Jones* v. *City of St. John*, 30 S. C. R. 122, the appeal was from a judgment of the Supreme Court of New Brunswick, discharging a rule *nisi* for certiorari to bring up an assessment against the appellant in order to have it quashed. The judgment was reversed and the rule made absolute.

In *Bigelow* v. *The Queen*, 31 S. C. R. 128, a judge in Nova Scotia ordered the writ to issue against a conviction by a magistrate for violation of the Liquor License Act. On appeal the judgment of the Supreme Court of Nova Scotia vacating the order was affirmed.

See also *In re Trecothic Marsh*, 37 S. C. R. 79.

As to the issue of the writ of certiorari by the Supreme Court of Canada or a judge thereof see sec. 66.

PROHIBITION.

The appeal in prohibition cases was given by statute for the first time in 1891, but the Court evidently considered that it would lie under the general provisions conferring juris-

diction and entertained a number of such appeals before that date. In 1881 an appeal from a judgment of the Court of Queen's Bench, Quebec, on petition for the writ to restrain municipal officers from selling land for taxes, was heard and decided. *Coté* v. *Morgan*, 7 S. C. R. 1. And a number of appeals were afterwards entertained ending with *Godson* v. *City of Toronto*, 18 S. C. R. 36 in 1889. They are collected in Cameron's Practice at pages 125-128. In none of them was the question of jurisdiction raised.

The right of appeal is confined to cases not arising out of a criminal charge. Therefore an appeal from a judgment refusing the writ to restrain an extradition commissioner from investigating the charge on which he had issued a warrant was quashed. *Gaynor and Green* v. *United States*, 36 S. C. R. 247.

An appeal lies from the judgment on a writ to restrain the Montreal Bar Society from suspending an advocate. *Honan* v. *Bar of Montreal*, 30 S. C. R. 1. Or to restrain the Board of Notaries of Quebec from proceeding with an inquiry into charges against a member though the conduct charged against him amounts to felony. *Tremblay* v. *Bernier*, 21 S. C. R. 409.

Though all the above cases except *Godson* v. *City of Toronto* came from Quebec, the objection was taken in *Shannon* v. *Montreal Park & Island Ry. Co.*, 28 S. C. R. 374 that there was no appeal from judgments in prohibition cases rendered in that Province. The Court held, however, that 54 & 55 Vict. c. 25 sec. 2, providing for such appeals applied to Quebec as well as the other Provinces.

MANDAMUS.

(*d*) In any case or proceeding for or upon a writ of *mandamus*.

The appeal in cases of mandamus was given in the original Act constituting the Court. By sec. 47 it is not subject to the limitations placed on Quebec appeals by sec. 46 and it is expressly given in sec. 49 relating to appeals from the Yukon Territory. But in cases from Ontario it does not lie as of right unless it comes within some of the provisions of sec. 48 respecting the right of appeal from judgments of the Court of Appeal. See *Attorney-General* v. *Scully*, 33 S. C. R. 16.

The appeal lies from judgments of the Court of Review in Quebec in the cases provided for by 54 & 55 Vict. c. 25, sec. 3, (sec. 40 of the present Act) But not where the Court of Review reverses the judgment of the Superior Court and an appeal could be taken to the King's Bench. *Barrington* v. *City of Montreal*, 25 S. C. R. 202.

The appeal does not lie from an interlocutory judgment. *Langevin* v. *Les Commissaires d'Ecole de St. Marc*, 18 S. C. R. 599.

Where the Supreme Court of Nova Scotia made absolute a rule *nisi* for an alternative, not peremptory, order leaving the merits to be determined on the return the Court held, on appeal therefrom, that the issue of the writ was in the discretion of the court below, which discretion could not be questioned. *Town of Dartmouth* v. *The Queen*, 9 S. C. R. 509.

The Supreme Court of Nova Scotia quashed the return to said writ on demurrer and ordered a peremptory writ to issue and an appeal from such judgment was heard and decided on the merits, an objection that demurrer would not lie in Nova Scotia to a return of the writ being overruled. *Dartmouth* v. *The Queen*, S. C. Dig. 118.

MUNICIPAL BY-LAWS.

(e) In any case in which a by-law of a municipal corporation has been quashed by a rule or order of court, or the rule or order to quash has been refused after argument.

The limitations of the right of appeal in Quebec cases do not apply to appeals under this clause. Sec. 47. But the appeal does not lie in Ontario cases unless it comes within some of the provisions of sec. 48; *Aurora* v. *Markham*, 32 S. C. R. 457; or in a case from the Yukon Territory within some clause of sec. 49.

The appeal is given by this clause from the judgment on a rule or order to quash a by-law. It does not authorize an appeal in proceedings to quash a procès-verbal. *Toussignant* v. *County of Nicolet*, 32 S. C. R. 353; *Leroux* v. *Ste. Justine de Newton*, 37 S. C. R. 321. *Reburn* v. *Ste. Anne*, 15 S. C. R. 92 is overruled as to this.

And the proceedings must be by rule or order to quash under the English practice. There is no appeal under the clause from the judgment in an action to annul. *Vercheres* v. *Varennes*, 19 S. C. R. 365; *City of Sherbrooke* v. *McManamy*, 18 S. C. R. 594; *Bell Telephone Co.* v. *City of Quebec*, 20 S. C. R. 230; *Dubois* v. *Ste. Rose*, 21 S. C. R. 65; *Toussignant* v. *County of Nicolet*, *supra*.

But the petition to quash in Quebec is equivalent to proceedings by rule or order and an appeal lies from the judgment thereon. *Webster* v. *City of Sherbrooke*, 24 S. C. R. 52. But not in an action by a ratepayer contesting the validity of an homologated valuation roll. *McKay* v. *Hinchinbrooke*, 24 S. C. R. 55.

The Court refused to entertain an appeal after the by-law attacked in the proceedings had been repealed. *Moir* v. *Village of Huntington*, 19 S. C. R. 363; and see *McKay* v. *Hinchinbrooke*, 24 S. C. R. 55. And it does not lie from the judgment of the Queen's Bench, on petition, quashing an appeal to that court for want of jurisdiction. *Ste. Cunegonde* v. *Gougeon*, 25 S. C. R. 78.

Though an appeal may not lie under the above clause it may by virtue of the general provisions of the Act or of the special provisions relating to appeals from Quebec, Ontario, and the Yukon Territory. See *Murray* v. *Town of Westmount*, 27 S. C. R. 579 and cases collected in Cameron's Practice, pages 140 *et seq.* in which the jurisdiction has been exercised.

COURT OF REVIEW.

40. In the Province of Quebec an appeal shall lie to the Supreme Court from any judgment of the Superior Court in Review where that Court confirms the judgment of the court of first instance, and its judgment is not appealable to the Court of King's Bench, but is appealable to His Majesty in Council. 54-55 V., c. 25, s. 2.

In the former Act this provision formed part of the section (now sec. 46) limiting the right of appeal in all cases from Quebec. These limitations apply to appeals from the Court of Review as well as to those from the King's Bench and there seems to be no good reason for separating them.

The appeal from the Court of Review was first given in 1891 by 54 & 55 V. c. 25, s. 3. Since then the ground

upon which *Danjou* v. *Marquis*, 3 S. C. R. 251, and *Macdonald* v. *Abbott*, 3 S. C. R. 278 were decided, namely, that the appeal could only come from the Queen's Bench, no longer applies.

For an appeal to lie under this section it is necessary that the judgment of the Court of Review should be appealable to the Judicial Committee of the Privy Council. Where such an appeal depends on the amount in controversy such amount must be £500 sterling and an appeal does not lie to the Supreme Court unless it involves a controversy over the same amount. *Couture* v. *Bouchard*, 21 S. C. R. 281; *Dufresne* v. *Guevremont*, 26 S. C. R. 216. So the anomaly is produced that an appeal lies from the Court of King's Bench if $2,000 is in dispute but from the Court of Review it must be nearly $500 more.

To allow of an appeal the judgment of the Court of Review must confirm the judgment of the court of first instance. Where it reverses an appeal lies to the King's Bench and not to the Judicial Committee. Therefore in *Barrington* v. *City of Montreal*, 25 S. C. R. 202, the appeal was quashed as the Court of Review had reversed the judgment of the Superior Court.

A decision of the Court of Review varying the judgment of the Superior Court by increasing the amount of damages thereby awarded does not confirm the latter so as to permit of an appeal under this section. *Simpson* v. *Palliser*, 29 S. C. R. 6.

And there is no appeal where the proceedings are by petition to the Superior Court for recusation of respondent as commissioner in expropriation proceedings for improvement of a public street in Montreal as an appeal to the Judicial Committee would not lie in such case. *Ethier* v. *Ewing*, 29 S. C. R. 446.

In Quebec cases the amount in controversy is the amount demanded, not that recovered. So an appeal lay from a judgment of the Court of Review awarding $2,000 damages when the action was for $5,000. *Citizens' Light & Power Co.* v. *Parent*, 27 S. C. R. 316.

And see notes to sec. 46.

ASSESSMENT CASES.

41. An appeal shall lie to the Supreme Court from the judgment of any court of last resort created under provincial legislation to adjudicate concerning the assessment of property for provincial or municipal purposes, in cases where the person or persons presiding over such court is or are by provincial or municipal authority authorized to adjudicate, and the judgment appealed from involves the assessment of property at a value of not less than ten thousand dollars. 52 V., c. 37, s. 2.

This appeal was first given by 52 V. c. 37 by which it lay "in cases where the person or persons presiding over such court is or are appointed by provincial or municipal authority." Under that provision the appeal in *Toronto* v. *The Toronto Ry. Co.* 27 S. C. R. 640 was quashed. The Ontario Assessment Act provides for an appeal from the decision of the Board of Revisors to the County Court Judge who may associate with him the judges of the two adjoining districts. The Court held in the above cases that the County Court Judges from whose decision the appeal was taken were not "appointed by provincial or municipal authority" and that the appeal did not lie. Under the wording of section 41 that case is of no authority.

This appeal was given to enable the Court to review the merits of an assessment on property of large value. Assessment cases had previously come before the Court on certiorari but that only went to the jurisdiction of the assessors and could only result in the assessment being quashed. Now it might be amended.

The Act was passed after the decision in *Angus* v. *Calgary School Trustees*, 16 S. C. R. 716 in 1888. That decision was that an appeal did not lie from the judgment of the Supreme Court of the N. W. Territories on appeal from the Court of Revision, a tribunal for adjudicating on assessments, as the case did not originate in a Superior Court.

An appeal does not lie under this section from the decision or proceedings by a ratepayer against Commissioners on expropriation of land for improving public streets. *Ethier* v. *Ewing*, 29 S. C. R. 446.

APPEAL PER SALTUM.

42. Except as otherwise provided in this Act or in the Act providing for the appeal, no appeal shall lie to the Supreme Court but

from the highest court of last resort having jurisdiction in the Province in which the action, suit, cause, matter or other judicial proceeding was originally instituted, whether the judgment or decision in such action, suit, cause, matter or other judicial proceeding was or was not a proper subject of appeal to such highest court of last resort: Provided that, an appeal shall lie directly to the Supreme Court without any intermediate appeal being had to any intermediate court of appeal in the Province.

(*a*) From the judgment of the court of original jurisdiction by consent of parties.

(*b*) By leave of the Supreme Court or a judge thereof from any judgment pronounced by a superior court of equity or by any judge in equity, or by any superior court in any action, cause, matter or other judicial proceeding in the nature of a suit or proceeding in equity; and,

(*c*) By leave of the Supreme Court or a judge thereof from the final judgment of any superior court of any province other than the Province of Quebec in any action, suit, cause, matter or other judicial proceeding originally commenced in such superior court. R. S., c. 135, s. 26.

"Except as otherwise provided in this Act." These exceptions are cases respecting municipal or provincial assessments, s. 41; judgments of the Court of Review, Quebec, s. 40; and appeals *per saltum* under the above section.

"Or in the Act providing for the appeal." In election cases an appeal lies from the judgment of the judges trying an election petition; in Admiralty cases from the judgment of a local judge of the Exch. Court for an Admiralty district; and under the Railway Act from decisions of the Board of Railway Commissioners.

"Whether the judgment or decision * * * was or was not a proper subject of appeal to such highest court of last resort." This applies to cases in which the court of last resort has taken jurisdiction and given judgment on the merits. *Blachford* v. *McBain*, 19 S. C. R. 42, in which the Court of Queen's Bench held that the action was improperly brought in the Superior Court and dismissed it, which judgment was affirmed on appeal. In *Ste. Cunegonde* v. *Gougeon*, 25 S. C. R. 78, it was held that no appeal would lie from a judgment of the Court of Queen's Bench quashing an appeal to that court for want of jurisdiction.

Sub-section (*a*) does not apply to Quebec appeals; see s. 46. And by their terms sub-sections (*b*) and (*c*) do not apply to such appeals.

For decisions as to appeals being restricted to judgments of the highest court of last resort, see p. 55.

APPEAL BY CONSENT.

In *Severn* v. *The Queen*, 2 S. C. R. 70 the question raised by the appeal was whether or not the Ontario Act, 37 V. c. 32 was *intra vires*. The parties signed a consent to the appeal from the judgment of the Court of Queen's Bench being heard without an appeal being first taken to the Court of Appeal.

In *Blackburn* v. *McCallum*, 33 S. C. R. 65 the parties to a case stated for construction of a will consented to an appeal direct from the judgment of the High Court of Justice for Ontario. The statement on page 69 of the report that leave to appeal was obtained is incorrect.

These are the only appeals brought by consent under this section.

APPEAL BY LEAVE.

If there is no appeal *de plano* to the intermediate Court of Appeal in the Province leave cannot be granted. *Ottawa Electric Co.* v. *Brennan*, 31 S. C. R. 311; *James Bay Ry. Co.* v. *Armstrong*, 38 S. C. R. 511.

In *Farquharson* v. *Imperial Oil Co.*, 30 S. C. R. 188 leave was granted for an appeal direct from the judgment of the High Court of Justice which by statute was the court of last resort in the Province for that case. But that case is overruled as to this question by the case of *Ottawa Electric Co.* v. *Brennan*.

The leave cannot be granted after the expiration of sixty days from the signing, entry or pronouncing of the judgment appealed against; *Stewart* v. *Skulthorpe*, Dec. 1894; *Roberts* v. *Donovan*, June, 1895; *County of Elgin* v. *Robert*, 36 S. C. R. 27; even if the time for appealing is extended, as provided by sec. 71. *Barrett* v. *Syndicat Lyonnais du Klondyke*, 33 S. C. R. 667.

And see notes to sec. 69.

This section does not apply to proceedings under the Dominion Winding-up Act. In re *Cushing Sulphite-Fibre Co.*, 36 S. C. R. 494.

Special circumstances must be shown to obtain the leave to appeal *per saltum* and it may be stated generally that it

must appear that the intermediate court of appeal could not decide the case in favour of the appellant without overruling its own decisions. Thus in *Moffat* v. *The Merchants Bank*, 11 S. C. R. 46, leave to appeal direct was given on the ground that the Court of Appeal for Ontario would be bound by a decision in a similar case, the effect of which the appellant sought to avoid.

But in *Canada Co.* v. *Kyle*, 15 S. C. R. 188, Mr. Justice Strong held that it was not a sufficient reason for allowing an appeal directly to the Supreme Court, that the Court of Appeal for Ontario had already decided the abstract point of law in dispute, and the proposed appellant asserted that that court would adhere to its previous decision, although subsequent cases in England had since decided the point otherwise.

On January 13th, 1896, an application for leave to appeal *per saltum* was made to the Registrar sitting as a judge in chamber in a case of *Lewis* v. *The City of London*, based on the ground that it had, in effect, been already decided by the Court of Appeal in another case of *Lewis* (the same appellant) v. *Alexander*. The Registrar refused to make the order inasmuch as, though the two cases might have been identical as to the facts, the questions of law were not the same, and to allow the appeal *per saltum* they must be identical in both respects.

On December 22nd, 1894, application was made to the Registrar, sitting as a judge in chambers, for leave to appeal *per saltum*. The action in the case was brought to obtain from defendant, formerly clerk of the municipality (plaintiffs) the books and papers in his possession as such clerk. Judgment was given at the trial directing the books and papers to be given up with $5 damages and High Court costs. This judgment was affirmed by the Divisional Court and leave to appeal to the Court of Appeal (special leave being necessary), was refused. The Registrar refused the application as all the judges before whom the case had come had declared the defence to be without merits as to the matters in issue, and no special circumstances had been shown to justify a further appeal. The decision of the Registrar was subsequently affirmed by a judge in chambers, and by the full court: *Bartram* v. *The Village of London West*, 24 S.C.R. 705.

In *Attorney-General* v. *The Vaughan Road Co.*, 21 S. C. R. 631, leave to appeal *per saltum* was given by the Registrar in May, 1892, on it appearing that the Court of Appeal for Ontario had really decided the merits of the appeal by its judgment on an application for an injunction. In *Miller* v. *Robertson* the order was made on similar grounds in 1904.

In *Dumoulin* v. *Langtry*, 13 S. C. R. 258, leave was given for an appeal direct from the Chancery Division of the High Court, Ont., though no appeal lay to the Court of Appeal except by leave of that court. Under *Ottawa Electric Co.* v *Brennan*, however, it seems that there must be an appeal as of right to the Court of Appeal in order to obtain an appeal *per saltum*.

In *Schultz* v. *Wood*, 6 S. C. R. 585, the order was made under this clause where it appeared that the intermediate Court of Appeal was composed of two judges, one of whom was plaintiff in the cause and the other had given the judgment appealed against.

But the fact that two of the five judges composing the court were disqualified and another absent and his return uncertain and that three constituted a quorum did not warrant the court in granting leave. *Sewell* v. *British Columbia Towing Co.*, S. C. Dig. 112.

Leave was granted in a case raising an important question of constitutional law it appearing that neither party would be satisfied with the judgment of the intermediate court. *Ontario Mining Co.* v. *Seybold*, 31 S. C. R. 125.

Per Taschereau C.J.: Where leave is granted on the ground that the intermediate Court of Appeal had already decided the questions in issue the appellant should not be allowed to support his appeal on grounds not urged below. *Miller* v. *Robertson*, 35 S. C. R. 80. The Court in that case, however reversed the judgment appealed from on the new grounds advanced.

The decision of a judge on an application for leave to appeal *per saltum* is not subject to an appeal to the full court. See *Ex parte Stevenson* [1892] 1 Q. B. 394; *Re Central Bank of Canada*, 17 Ont. P. R. 395; *Farquharson* v. *Imperial Coal Co.*, 30 S. C. R. 188.

JURISDICTION UNDER OTHER ACTS.

43. Notwithstanding anything in this Act contained the Court shall shall also have jurisdiction as provided in any other Act conferring jurisdiction. R. S., c. 135, s. 25.

This section is substituted for sec. 25 of the former Act which provided that in addition to that conferred the Court should also have jurisdiction in appeals in criminal cases, in appeals from the Exchequer Court; in election cases; and cases under the Winding-up Act. These are all separately dealt with hereafter and the provisions of the respective statutes conferring such jurisdiction set out.

Apparently the Commissioners on the present revision have not appreciated the object of that repealed section. It was not required to give jurisdiction as to the matters specified. Its purpose was to enable any one to find all the sources of jurisdiction in the Supreme Court Act. That purpose might well have been served by retaining the section with a reference to the Criminal Code as the source of jurisdiction in criminal cases, adding appeals under the Dominion Railway Act and striking out the reference to appeals from the Maritime Court of Ontario which no longer exists.

"Notwithstanding anything in this Act contained;" there is nothing in the Act purporting to deprive the Court of jurisdiction in any such case.

GENERAL JURISDICTION.

44. Except as provided in this Act or in the Act providing for the appeal, an appeal shall lie only from final judgments in actions, suits, causes, matters and other judicial proceedings originally instituted in the Superior Court of the Province of Quebec, or originally instituted in a superior court in any of the Provinces of Canada other than the Province of Quebec. R. S., c. 135, s. 28.

See section 36 and notes, and sec. 47.

"Except as provided in this Act," The Act allows an appeal from other than final judgments in the following cases: Judgments on motion for a new trial s. 38 (*b*). Decrees or orders in equity ss. 38 (*c*) and 42.

An appeal is allowed in cases not originating in a Superior Court in County Court cases, s. 37 (*b*); in cases from the Provinces of Alberta and Saskatchewan, 37 (*c*); in Assessment cases, s. 41; in Probate cases, s. 37 (*d*); in cases from

the Province of Quebec, s. 37 (*a*); and in those originating before the Gold Commissioner of the Yukon Territory, s. 37 (*e*).

"Or in the Act providing for the appeal." The Exchequer Court Act gives an appeal from interlocutory judgments on demurrer. In election cases an appeal lies from the decision of a judge on preliminary objections. In admiralty cases there is an appeal from the judgment of a local judge. The Railway Act provides for an appeal from the Board of Railway Commissioners.

And see remarks p. 54.

45. No appeal shall lie from any order made in any action, suit, cause, matter or other judicial proceeding made in the exercise of the judicial discretion of the court or judge making the same; but this exception shall not include decrees and decretal orders in actions, suits, causes, matters or other judicial proceedings in equity, or in actions or suits, causes, matters or other judicial proceedings in the nature of suits or proceedings in equity instituted in any superior court. R. S., c. 135, s. 27.

By sec. 47 this provision does not apply to appeals in Exchequer cases, cases of rules for new trial, and cases of mandamus, *habeas corpus* and municipal by-laws.

An order for discharge of bail on a writ of capias, for failure to enter special bail as required by rule of court is an exercise of judicial discretion under this section and no appeal lies from a judgment affirming such order: *Scammell* v. *James*, 16 S. C. R. 593.

Nor from a judgment on a petition by an owner of land to vacate a mechanic's lien as a cloud upon his title: *Virtue* v. *Hayes; In re Clarke*, 16 S. C. R. 721.

An order on return of a summons to show cause, allowing judgment to be entered on a specially indorsed writ, is made in the exercise of judicial discretion, and no appeal lies from a judgment affirming it: Per Patterson J., in *Rural Municipality of Morris* v. *London and Canadian Loan and Agency Co.*, 19 S. C. R. 434. Nor, likewise, from a judgment affirming an order to perpetually restrain plaintiff from proceeding with an action against a bankrupt. Per Patterson J., in *Maritime Bank* v. *Stewart*, 20 S. C. R. 105. Nor from a judgment on an order for taxation of costs under R. S. O. (1887) c. 147, s. 42: *McGugan* v. *McGugan*, 21 S. C R. 267, per Taschereau and Patterson JJ.

A refusal to amend the pleadings in an action is also an exercise of judicial discretion under s. 27 (45). *Williams* v. *Leonard*, 26 Can. S. C. R. 406. *Porter* v. *Pelton*, 33 S. C. R. 449.

And so is an application to re-open the pleadings in a cause after judgment by default for want of appearance has been entered. *O'Donohoe* v. *Bourne*, 27 S. C. R. 654.

Proceedings on a reference under the Vendors' and Purchasers' Act of Ontario are not proceedings in equity within the exception from the operation of this section. *Canadian Pacific Ry. Co.* v. *City of Toronto*, 30 S. C. R. 337.

A decision in a case of constructive contempt of Court is not a matter of judicial discretion under this section. *In re O'Brien*, 16 S. C. R. 197.

Even where it has jurisdiction the Court will generally refuse to review the discretion of the court appealed from, as, for instance, in a suit in equity for the removal of executors and trustees under a will, the decision of a Court of Equity as to items in the trustees' account. *Grant* v. *Maclaren*, 23 S. C. R. 310. And the decision of a judge in dispensing with notice of action under the Ontario Municipal Act. *City of Kingston* v. *Drennan*, 27 S. C. R. 46.

The Supreme Court refused to interfere where the matter in dispute related to the exercise of disciplinary powers by the Conference of the Methodist Church. *Ash* v. *The Methodist Church*, 31 S. C. R. 497.

Where the Court of King's Bench reversed the judgment of the Court of Review allowing an amendment, the Supreme Court held that as the latter court had power to allow the amendment, and there had been no abuse of its discretion, the Court of King's Bench should not have interfered, and its judgment was reversed. *Price* v. *Fraser*, 31 S. C. R. 505.

So in *Creese* v. *Fleischman*, 34 S. C. R. 279, the Court would not interfere with the discretion exercised by the Territorial Court of the Yukon in refusing to amend its formal judgment.

But a judgment ordering a new trial is not an exercise of discretion with which the Court will decline to interfere. *Confederation Life Assocn.* v. *Borden*, 34 S. C. R. 338. In

this case the judgment was set aside and the verdict at the trial restored. But see *Canada Carriage Co.* v. *Lea*, 37 S. C. R. 672.

Per Ritchie C.J.:—A Court of Appeal should not interfere with the order of the court below on a matter of discretion unless it is made absolutely clear that such discretion has been wrongly exercised. *Jones* v. *Tuck*, 11 S. C. R. 197.

It is only when some fundamental principle of justice has been ignored or some other gross error appears that the Supreme Court will interfere with the discretion of provincial court in awarding or withholding costs. *Smith* v. *St. John City Ry. Co.*, 28 S. C. R. 603.

46. No appeal shall lie to the Supreme Court from any judgment rendered in the Province of Quebec in any action, suit, cause, matter or other judicial proceeding unless the matter in controversy,—

(*a*) Involves the question of the validity of an Act of the Parliament of Canada, or of the legislature of any of the Provinces of Canada, or of an Ordinance or Act of any of the councils or legislative bodies of any of the territories or districts of Canada; or

(*b*) Relates to any fee of office, duty, rent, revenue, or any sum of money payable to His Majesty, or to any title to lands or tenements, annual rents and other matters or things where rights in future might be bound; or

(*c*) Amounts to the sum or value of two thousand dollars.

2. In the Province of Quebec whenever the right to appeal is dependent upon the amount in dispute, such amount shall be understood to be that demanded and not that recovered, if they are different. R. S., c. 135, s. 29;—54-55 V., c. 25, s. 3;—56 V., c. 29, s. 1.

Sec. 47 exempts from the operation of these restrictive provisions Exchequer Court Cases, cases of new trials and those of mandamus, *habeas corpus* and municipal by-laws.

See sec. 40 and notes as to appeals from the Court of Review.

By sec. 37 a case within the terms of (*b*) or (*c*) is appealable even if it did not originate in a Superior Court.

Except as provided in the two sections last mentioned, and in this section 46, appeals from the Province of Quebec are subject to the requirements mentioned on pages 54 *et seq.* for the jurisdiction of the Court over appeals generally.

An opposition under the procedure in Quebec is a "judicial proceeding" within the meaning of this section. See *Turcotte* v. *Dansereau*, 26 S. C. R. 578, a case of opposition to judgment. *King* v. *Dupuis*, 28 S. C. R. 388, of opposition to seizure. *Canadian Breweries Co.* v. *Gariepy*, 38 S. C. R. 236, of *tierce-opposition*. So also in an intervention which is similar to interpleader in the English practice. *Cote* v. *James Richardson Co.*, 38 S. C. R. 41. *Attorney-General* v. *Scott*, 34 S. C. R. 282. And a petition in avowal to open up a judgment by default. *Dawson* v. *Dumont*, 20 S. C. R. 709.

But the judgment in an action *en separation de corps* is not appealable. *Talbot* v. *Guilmartin*, 30 S. C. R. 482. *O'Dell* v. *Gregory*, 24 S. C. R. 661. Nor in a petition for cancellation of the appointment of a tutor. *Noel* v. *Chevrefils*, 30 S. C. R. 327.

Appeals from the Court of Review under sec. 40 are subject to the limitations in this section except that the amount in controversy in such appeals must be £500 sterling.

VALIDITY OF ACT OR ORDINANCE.

By sec. 60 (*b*) the Governor-General in Council may refer to the Supreme Court for hearing and consideration, important questions of law, or fact touching "the constitutionality or interpretation of any Dominion or Provincial legislation." And by sec. 67, when it is provided by legislation in a Province that the Supreme Court shall have jurisdiction in cases where the parties to any proceeding have by their pleading raised the question of validity of an Act of Parliament or of the legislature of such Province the presiding judge may, if he deems such question material, order the case to be removed to the Supreme Court for decision thereon.

To an action for penalties under The Pharmacy Act of Quebec, defendant pleaded, *inter alia*, that the Act was *ultra vires*. This issue gave an appeal to the Supreme Court from the judgment of the Court of Queen's Bench dismissing the action for want of proof. *L'Association Pharmaceutique* v. *Livernois*, 30 S. C. R. 400.

When the appeal came on for hearing, counsel for the respondent stated that the plea of *ultra vires* had been abandoned, and again moved to quash, but the Court held that ap-

pellant could not thus be deprived of his right to appeal. *L'Association Pharmaceutique* v. *Livernois*, 31 S. C. R. 43.

In *Reed* v. *Mousseau*, 8 S. C. R. 408, the Court entertained an appeal from the judgment of the Court of Queen's Bench in proceedings for contempt involving the validity of the Provincial statute 43 & 44 V. c. 9, the Attorney General of the Province having obtained leave to intervene.

In *Ball* v. *McCaffrey*, 20 S. C. R. 319, the defendant pleaded that an Act of the Legislature was *ultra vires*, and the Attorney-General intervened. His intervention was maintained by the Superior Court, and the defendant appealed to the Queen's Bench in the main action, abandoning his right of appeal on the intervention. On further appeal to the Supreme Court he was not allowed to attack the judgment of the Superior Court on the intervention.

FEE OF OFFICE.

Prior to the amendment substituting "and other matters or things" for "such like matters or things" it was held that the words "where rights in future might be bound" should be read as qualifying all the words in this sub-section. If, for instance, a fee of office is claimed, but the right to it is denied by the defendant, the case is appealable. But if, in an action for a fee of office, the defendant pleads payment, the case is not appealable if under $2,000. *Per* Taschereau, J., in *Bank of Toronto* v. *Le Cure, etc., de la Paroisse de la Nativité*, 12 S. C. R. 25.

In *O'Dell* v. *Gregory*, 24 S. C. R. 661, it was held that after the amendment the words "where rights in future might be bound" must by application of the principle *ejusdem generis* be real and not personal rights. It is not certain whether that decision means that the words apply to fee of office, duty, rent, etc., or only to title to lands and annual rents.

The matter relating to the fee of office must be that really in controversy in the suit, and not something merely collateral thereto. *Chagnon* v. *Normand*, 16 S. C. R. 661. The clause does not give jurisdiction in a case in which the action is for penalties under the Quebec Election Act (R. S. Q. Art. 429), though the effect of the judgment may be to disqualify the appellant from holding office under the Crown for seven years. *Ibid.*

An action by a school mistress for a sum due her as fees collected by the School Commissioners under C. S. L. C. c. 15, s. 68, does not relate to a fee of office. *Lariviere* v. *School Commissioners of Three Rivers,* 23 S. C. R. 723.

MONEY PAYABLE TO THE CROWN.

The words "Duty, Rent, Revenue" refer to claims by the Crown. *O'Dell* v. *Gregory,* 24 S. C. R. at p. 663. Such claims are, as a rule, tried out in proceedings in the Exchequer Court. See "Exchequer Court Appeals" Part II.

In an action brought against the collector of customs at Montreal to recover the sum of $222.80, the difference of duty between 20 and 30 per cent. *ad valorem* on the value of certain importations: *Held,* that the case came within the statute and was appealable, although it was contended that by a recent amendment to the tariff it was declared that for the future, goods of the kind should be subject to a duty of 30 per cent., and that therefore appellant's future rights could not be affected. *Darling* v. *Ryan,* S. C. Dig. 57.

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

In *Attorney-General of Canada* v. *City of Montreal,* 13 S. C. R. 352, unless the appeal lay under this clause, which seems impossible, it is difficult to understand how it lay at all. The city sued the owner of land for taxes amounting to $1,832. The defendants pleaded that the land had been leased to the Crown and was exempt from taxation. The Attorney-General intervened and set up the same defence, and he appealed to the Supreme Court from the judgment of the Queen's Bench dismissing his intervention. So far as the report shews no objection to the jurisdiction was raised either by the respondent or the Court. No title to land was in question and the amount in dispute was under $2,000, but the Court not only entertained the appeal but reversed the Court below.

TITLE TO LAND.

Possessory actions always involve, in a secondary manner, title to land and come within this clause. *Delisle* v. *Arcand,* 36 S. C. R. 23. But the title must be in dispute on the ap-

peal it not being sufficient that it is claimed by the declaration alone. Thus where, in a possessory action claiming $200 damages the defendant admitted plaintiff's title, but claimed to hold as tenant his appeal from a judgment dismissing the possessory conclusions and awarding the plaintiff $200 as rent was quashed. *Davis* v. *Roy,* 33 S. C. R. 345.

The appeal must relate to the title. It is not sufficient that it may affect the possession of land or even something incidental to the title. Thus an opposition to a writ of possession issued in execution of a judgment allowing a right of way over opposant's land does not relate to title. *Cully* v. *Ferdais,* 30 S. C. R. 330. And there is no appeal from a judgment refusing an injunction against encroachment on land. *Emerald Phosphate Co.* v. *Anglo-Continental Guano Works,* 21 S. C. R. 422.

An appeal would not lie from a judgment merely ordering a bornage. But where parties had agreed to a bornage but one objected to the line when run and refused to relinquish possession of a strip of land assigned to the other an action to have the line declared the true boundary and for possession of such strip related to title. *McGoey* v. *Leamy,* 27 S. C. R. 193.

Plaintiffs had, by statute, the exclusive right to maintain a toll bridge over a river, being bound to rebuild in case it was destroyed or became impassable, and in the meantime to maintain a ferry across the river, for which they might collect tolls. The bridge having been carried away by ice, defendant built a temporary bridge across the river, though a ferry was maintained by plaintiffs, who brought an action claiming $1,000 damages and demolition of defendant's bridge. It was held that an appeal would lie from the judgment in such action, as it related to the title to an immovable. *Galarneau* v. *Gilbault,* 16 S. C. R. 579. And see *Rouleau* v. *Pouliot,* 36 S. C. R. 26.

And an appeal lies from the judgment in an action to vacate a sheriff's sale of an immovable. *Lefeuntum* v. *Veronneau,* 22 S. C. R. 203.

The Court held that no title to lands nor future rights were in question on appeal from a judgment condemning defendants to complete within a certain time works and

drains in a lane separating the properties of the parties to prevent water entering plaintiff's house on the slope below. *Wineberg* v. *Hampson*, 19 S. C. R. 369.

And an action by a lessee to have the lease set aside on the ground that it was a simulated deed and that the plaintiff was the owner of the property leased does not relate to title to land. *Frechette* v. *Simonneau*, 31 S. C. R. 12.

But an action for possession of land alleged to have been purchased from a married woman to which defendants pleaded and the Court of Queen's Bench held that the deeds were simulated and were only intended to operate as security did relate to title. *Klock* v. *Chamberlin*, 15 S. C. R. 325.

An action by a lessor asking for a declaration that the lease was terminated and for possession of the land which defendant refuses, alleging the right to hold it under an agreement for sale, relates to title. *Blachford* v. *McBain*, 19 S. C. R. 42.

In an action to quash a by-law passed for the expropriation of land, the controversy relates to a title to land, and an appeal lies from the judgment therein, although the amount in controversy may be less than $2,000. *Murray* v. *The Town of Westmount*, 27 S. C. R. 579. So, likewise, in an action to revindicate a strip of land admitted to have been encroached upon by the erection of a building extending beyond the boundary line, and for demolition and removal of the walls and eviction of defendant. *Delorme* v. *Cusson*, 28 S. C. R. 66.

In an action by the City of Hull claiming real property under a grant from the Government of Quebec, the Attorney-General of the Province was allowed to intervene and take up the *fait et cause* of the plaintiffs. *Held*, that the intervenant had a right of appeal to the Supreme Court though the Government could only be condemned to return the price of the land ($1,000) as the sole issue between the parties was as to the title. *Attorney-General* v. *Scott*, 34 S. C. R. 282.

But an opposition to a writ ordering the sheriff to put the respondent in possession of a road described in the judgment in an action against another person, the opposant claiming that the judgment had been satisfied by his giving respond-

ent another right of way is only a contestation over execution of the judgment and not over rights relating to land. *Cully* v. *Ferdais*, 30 S. C. R. 330.

And the plea to an action for the price of land sold with warranty alleging troubles and fear of eviction under a prior hypothec to secure rent charges on the land does not raise questions affecting the title. *Carrier* v. *Sirois*, 36 S. C. R. 221.

And where in an action *au petitiore* and *en bornage* the title has been settled, an order defining the manner in which the boundary line between the properties shall be established is not appealable. *City of Hull* v. *Scott*, 34 S. C. R. 617.

ANNUAL RENTS.

This term means ground rents (*rentes foncières*) and not annuities or life charges or obligations. *Rodier* v. *Lapierre*, 21 S. C. R. 69. In this case plaintiff was entitled to an allowance, under a will, of $200 per month. An appeal did not lie from the judgment in an action for a monthly instalment.

And an action to set aside a lease for 4 years and 9 months at a rental of $250 per annum did not relate to annual rents. *Frechette* v. *Simonneau*, 31 S. C. R. 12.

FUTURE RIGHTS.

The appeal is given also when the controversy relates to "other matters or things where rights in future might be bound."

The "other matters or things" must be *ejusdem generis* with those specifically mentioned, that is rights analogous to title to lands and annual rents and not personal rights. *O'Dell* v. *Gregory*, 24 S. C. R. 661. In that case it was held that an appeal would not lie in any case of an action *en séparation de corps*, and that the fact that a judgment against the wife might cause a forfeiture of her annuity under the marriage contract did not give an appeal under this clause. See also *Raphael* v. *McLaren*, 27 C. C. R. 319, where the action was for a half yearly payment of interest on $70,000, at 5 per cent. *Macdonald* v. *Galivan*, 28 S. C. R. 258, for a monthly payment for support of an infant in an action *en déclaration de paternité*. *Banque du Peuple* v. *Trottier*,

28 S. C. R. 422, action for several monthly payments of an annuity of $3,000 per annum. *Lapointe* v. *Montreal Police Benevolent Society,* 35 S. C. R. 5, action for one month's instalment of a pension. *Winteler* v. *Davidson,* 34 S. C. R. 274, a question of future payments of alimony. All these cases were decided on the principle land down in *O'Dell* v. *Gregory.*

In *Wheeler* v. *Black,* M. L. R. 2 Q. B. 159, it was held, *per* Cross, J., that a question of servitude is a question involving future rights within the meaning of the Act. The appeal was entertained and disposed of by the Supreme Court, 14 Can. S. C. R. 242. But in *Wineberg* v. *Hampson,* 19 S. C. R. 369, the Supreme Court held that the fact that a question of servitude arose in the action would not give it jurisdiction. The actions in these two cases were of the same nature and in the latter Taschereau J., states that the question of jurisdiction was not raised in *Wheeler* v. *Black.* In *Chamberland* v. *Fortier,* 23 S. C. R. 371, it was held that the judgment in an *action negatoire* to have a servitude declared nonexistent, bound future rights.

By a *procès-verbal* made by a municipal council, one R. was ordered to improve a portion of road fronting his land. On his refusal to do the work, the council had it performed at a cost of $200, for which amount they sued R. *Held, per* Fournier, Henry and Gwynne JJ. (Strong and Taschereau JJ. dissenting, and Ritchie C.J., expressing no opinion on the point), that the charge or servitude imposed on R. was in its nature permanent, and had necessarily the effect of affecting the future rights of R. in the free enjoyment of his property and the case was therefore appealable. *Reburn* v. *Ste. Anne du Bout de L'Isle,* 15 S. C. R. 92.

Future rights may be bound by the judgment in an action by a municipal corporation to recover the amount of a special assessment for a drain along the property of the defendants. *Les Ecclesiastiques de St. Sulpice de Montreal* v. *The City of Montreal,* 16 S. C. R. 399. And see *Stevenson* v. *The City of Montreal,* 27 S. C. R. 187.

Future rights could not be bound by the judgment in an action for payment of a business tax, holding that the by-law imposing it was not authorized by statute. *City of Sherbrooke* v. *McManamy,* 18 S. C. R. 594.

Nor by a judgment setting aside for irregularity a municipal by-law defining who were to be liable for the rebuilding and maintenance of a bridge. *County of Vercheres* v. *The Village of Varennes*, 19 S. C. R. 365.

The right of a ratepayer to have a road kept in repair by the municipality, as provided by by-law, is not "future rights" under sub-section (*b*). *Dubois* v. *Le Village de Ste. Rose*, 21 S. C. R. 65.

AMOUNT IN CONTROVERSY.

If an appeal does not fall within any of the exceptions mentioned in sub-sections (*a*) and (*b*) it must involve a dispute over an amount of at least $2,000 to give the Court jurisdiction to hear it. Sub-section (*c*). And sub-section 2 provides that such amount shall be determined by the demand.

Where the amount demanded exceeds $2,000 an appeal lies though it is reduced by payment *pendente lite* and the judgment appealed from awards less. *Dufresne* v. *Fee*, 35 S. C. R. 8. *Coghlin* v. *La Fonderie de Joliette*, 34 S. C. R. 153.

And even where it was made to amount to $2,000 by including a claim for interest as to which there was no right of action such claim not having been opposed nor objected to in the proceedings below. *Ayotte* v. *Boucher*, 9 S. C. R. 460.

But the demand does not necessarily give a right of appeal to both parties. Where an action claiming more than $2,000 was dismissed and the Court of King's Bench affirmed such dismissal, but ordered defendant to pay a portion of the costs amounting to about $600 the latter could not appeal, the only matter in dispute as to him being payment of such costs. The plaintiff would have had a right of appeal from the judgment against him. *Beauchemin* v. *Armstrong*, 34 S. C. R. 285.

Prior to the passing of 54 & 55 V. c. 25, s. 3, the amount recovered by the judgment appealed from had to be $2,000. Under this rule a plaintiff who recovered $2,000 in the Superior Court which the Queen's Bench reduced to $500 had a right to appeal to the Supreme Court but the defendant had not. *Cossette* v. *Dun*, 18 S. C. R. 222.

Interest cannot be added to bring the amount up to $2,000. *Dufresne* v. *Guevremont*, 26 S. C. R. 216. Except interest claimed by the action and included in the amount awarded by the judgment. *Canadian Railway Accident Co.* v. *McNevin*, 32 S. C. R. 194.

The $2,000 must be directly claimed. Where the cause of action is of a class not appealable jurisdiction is not conferred by the inclusion of a money demand for that amount which is only incidental to the principal demand. See *Talbot* v. *Guilmartin*, 30 S. C. R. 482, in which, to an action *en séparation de corps* was joined a demand for delivery up of property worth $18,000, and *O'Dell* v. *Gregory*, 24 S. C. R. 661, in which a similar action affected a right to an annuity.

If plaintiff demands less than $2,000 the fact that defendant's pleas raise issues involving a controversy of that amount will not confer jurisdiction. *Standard Life Assurance Co.* v. *Trudeau*, 30 S. C. R. 308.

Where the amount in controversy is not shewn by the record the appellant may establish by affidavit that it amounts to $2,000. *McCorkill* v. *Knight*, S. C. Dig. 56.

As where the matter in dispute was the ownership of bank shares, it was held that their actual, and not their par value at the time the action was instituted, should determine the right to appeal under this section, and that such actual value could be established by affidavit. *Muir* v. *Carter; Holmes* v. *Carter*, 16 S. C. R. 473.

But where a motion to quash an appeal was supported by a affidavit that the amount in controversy was insufficient, which was met by a counter affidavit that it was over the required sum, the Court dismissed the motion, but made the appellant pay the costs. *Dreschel* v. *Auer Incandescent Light Mfg. Co.*, 28 S. C. R. 268.

In case of opposition to seizure where the ownership of the property seized is in question, the opposant has an appeal if such property is of the value of $2,000. *King* v. *Dupuis*, 28 S. C. R. 388. *Coté* v. *James Richardson Co.*, 38 S. C. R., 41.

In the cases of *Champoux* v. *Lapierre*, and *Gendron* v. *McDougall*, S. C. Dig. 56, appeals by the opposant were quashed,

but, as pointed out by Taschereau J., in *King* v. *Dupuis*, the title to the property seized was not in dispute in either case.

And in case of opposition to judgment an appeal lies if principal and interest due on the judgment at the time the opposition was filed amounts to $2,000. *Turcotte* v. *Dansereau*, 26 S. C. R. 578.

But though the *opposant* might have an appeal the plaintiff contesting the opposition would not unless his pecuniary interest amounted to $2,000. See *Kinghorn* v. *Larue*, 22 S. C. R. 347. *Gendron* v. *McDougall*, S. C. Dig. 56.

Canadian Breweries Co. v. *Gariepy*, 38 S. C. R. 236, was a case of a *tierce-opposition* to vacate a judgment declaring respondent to be owner of property worth over $2,000. The Court held that no pecuniary amount was in controversy, and an appeal by the opposant was quashed.

It should be borne in mind that in the case of an opposition the provision making the amount in controversy depend on the demand does not apply as the demand is not made against the *opposant*, and there can be no question of difference between the amount demanded and that recovered. See *King* v. *Dupuis*, *supra*.

Real estate valued at over $11,000, was sold, subject to a mortgage with right of *réméré* for a year. The vendor having assigned creditors for the sum of $1,880 brought action to have the sale set aside as made in fraud of creditors. On appeal from a judgment dismissing such action, it was held that as appellants' claim was under $2,000, and they did not represent the creditors as a body, the case was not appealable. *Flatt* v. *Ferland*, 21 S. C. R. 32. But see *Robinson* v. *Scott*, 38 S. C. R. 490.

Plaintiff, in an action, claimed, 1. Rescission of a building contract. 2. $1,000 damages. 3. $545 for value of bricks in possession of defendant. The Superior Court dismissed the claim for damages, but granted the other conclusions. The Court of Queen's Bench dismissed the action. On appeal to the Supreme Court, it was held that the building for which the contract had been made having been completed since the action was brought, only the claim for $545 and the costs was in controversy, and the appeal would not lie. *Cowen* v. *Evans*, 22 S. C. R. 328.

Where appellant proved a claim of $920 against an insolvent estate, and contested a collocation of respondent's claim for $2,044.66, he was held not to be entitled to appeal to the Supreme Court from a judgment against him, although his contestation might result in restoring to the estate a sum of over $2,000. *Lachance* v. *La Societe de Prêt et de Placements de Quebec,* 26 S. C. R. 200.

But in *Robinson & Co.* v. *Scott,* 38 S. C. R. 490, where the appellants, on behalf of themselves and all other creditors of an insolvent took action to set aside the transfer of a cheque by the latter to Scott the Court held that the amount of the cheque only was in controversy and that amount was sufficient to give an appeal.

The two last cases are inconsistent in one respect. In the *Lachance Case* the appeal was quashed because the appellant's claim was insufficient and the amount he sought to bring in for purpose of distribution was not regarded. In the later case the amount to be brought in conferred jurisdiction.

In an action by an agent for $1,471.07 for balance of accounts as *negotiorum gestor* of his principal against the latter's executors, there was a plea of compensation for $3,416 and interest. Replication, that this sum was paid by a *dation en paiement* of immovables, and answer that the transaction was not a giving in payment but a giving of security. The Court of Queen's Bench held that defendants had been paid by the *dation en paiement,* and owed a balance of $1,154 to plaintiff. *Held,* that the defendants' interest affected by this judgment was more than $2,000, over and above the plaintiff's claim, and they had a right of appeal to the Supreme Court. *Hunt* v. *Taplin,* 24 S. C. R. 36.

47. Nothing in the three sections last preceding shall in any way affect appeals in Exchequer cases, cases of rules for new trials, and cases of *mandamus, habeas corpus,* and municipal by-laws R. S., c. 135, s. 30.

The first of three preceding sections, sec. 44, provides that appeals shall lie from final judgments only.

The appeal in Exchequer cases is regulated by sections 82 *et seq.* of the Exchequer Court Act. By sec. 82 there is an appeal from any judgment on demurrer or point of law raised by the pleadings.

As to the appeal in cases of rules for new trials see sec. 38. If the new trial is granted the judgment is necessarily not final.

Sec. 39 provides for the appeal in the other cases mentioned. In a case of mandamus the judgment appealed from must be final. See *Langevin* v. *Commissaires d'Ecole de St. Marc,* 18 S. C. R. 599. And in the case of a municipal by-law the appeal is given only from the judgment quashing or refusing to quash the by-law, which is always a final judgment.

Sec. 45 prohibits an appeal from an order made in the exercise of judicial discretion. See *Canada Carriage Co.* v. *Lea,* 37 S. C. R. 672, as to appeal from a judgment ordering, in exercise of judicial discretion, a new trial of the action.

See also notes to sec. 46.

48. No appeal shall lie to the Supreme Court from any judgment of the Court of Appeal for Ontario, unless,—

(*a*) the title to real estate or some interest therein is in question;

(*b*) the validity of a patent is affected;

(*c*) the matter in controversy in the appeal exceeds the sum or value of one thousand dollars exclusive of costs;

(*d*) the matter in question relates to the taking of an annual or other rent, customary or other duty or fee, or a like demand of a general or public nature affecting future rights; or

(*e*) special leave of the Court of Appeal for Ontario or of the Supreme Court of Canada to appeal to such last-mentioned court is granted.

2. Whenever the right to appeal is dependent upon the amount in dispute such amount shall be understood to be that demanded and not that recovered, if they are different. 60-61 V., c. 34, s. 1.

In 1881 the Legislature of the Province of Ontario by section 43 of the Ontario Judicature Act which has been re-enacted in the Revised Statutes for 1887 and 1897 attempted to limit appeals to the Supreme Court from that Province to cases where more than $1,000 was in dispute, with certain exceptions.

In *Forristal* v. *McDonald,* S. C. Dig. p. 112, the Supreme Court of Canada intimated that it considered this section unconstitutional and *ultra vires* of the Ontario Legislature, and an appeal was allowed although the matter in controversy was less than $1,000 and leave had been refused by the Court of Appeal for Ontario. Several appeals were after-

wards entertained as a matter of right and heard by the Supreme Court, notwithstanding the objection that the cases were not appealable under this section.

In *Clarkson* v. *Ryan*, 17 S. C. R. 251, the Act was expressly held *ultra vires* of the Legislature.

By 60 & 61 V. c. 34, the Parliament of Canada enacted substantially the same provisions for limiting Ontario appeals in the terms of the above section.

"No appeal shall lie." The limitation in this section applies to cases of rules for new trials and of mandamus, *habeas corpus*, and municipal by-laws, which by section 47 are not subject to the limitations on Quebec appeals. Cases of mandamus are also excepted in the next section relating to appeals from the Yukon.

As to these special appeals and also those in cases of *certiorari* and prohibition, the appeal as of right is practically taken away. See *Town of Aurora* v. *Markham*, 32 S. C. R. 457. *Canada Carriage Co.* v. *Lea*, 37 S. C. R. 672, *per* Davies J.

The appeal in cases of rules for new trial, however, could come within any of the exceptions mentioned in the section, and lie as of right if not otherwise defective. And the case of a municipal by-law might affect title to land.

The limitation does not effect appeals in criminal cases provided for by the Criminal Code. *Rice* v. *The King*, 32 S. C. R. 480.

TITLE TO LAND.

An appeal lies under this section in a case in which "the title to real estate or some interest therein is in question." This is substantially the same as in the section respecting Quebec appeals which lie in cases relating to "any title to lands or tenements. See sec. 46 and notes.

No title to real estate or interest therein is in question on an appeal from the judgment in an action to set aside a second mortgage for over $1,000, where the first mortgage had been foreclosed pending the proceedings, and the appellant could only benefit by succeeding in his appeal to the extent of receiving some $270, the balance due on the proceeds of sale. *Jermyn* v. *Tew*, 28 S. C. R. 497.

No title to real estate or interest therein is in question in proceedings for an injunction against the construction of a ditch which would injure plaintiff's land. *Waters* v. *Manigault*, 30 S. C. R. 304.

VALIDITY OF PATENT.

Patent in this and the next section means patent of invention.

Prior to 1902 proceedings affecting the validity of a patent were made the special ground of an appeal to the Supreme Court from judgments of the Court of Appeal for Ontario, and the Exchequer Court of Canada. It now pertains also in appeals from a judgment of the Territorial Court of the Yukon Territory.

There is an appeal in cases from the Quebec Court which fall within the special provisions respecting appeals from that Province and in cases from the other Provinces where the general provisions of this Act are complied with.

For an appeal to lie under sub-sec. (*b*) the validity of the patent must be affected. Where in an action for infringement the only question was whether or not the manufacture and sale pending the application for the patent constituted an infringement, an appeal to the Supreme Court was quashed. *Victor Sporting Goods Co.* v. *Wilson Co.*, 21 Nov. 1904. Cout. Cas. 330.

This restriction is not the same as that relating to appeals from the Exchequer Court. An appeal lies from a judgment of that Court "affecting any patent of invention."

AMOUNT IN CONTROVERSY.

An appeal lies under sec. 48 "where the matter in controversy in the appeal exceeds the sum or value of one thousand dollars, exclusive of costs."

The words "in the appeal" are not in the section relating to Quebec appeals nor in sec. 49 as to appeals from the Yukon Territory. In *City of Ottawa* v. *Hunter*, 31 S. C. R. 7, it was held that these words meant that the matter in controversy before the Supreme Court must exceed $1,000 and that subsection 2 which makes the amount demanded the criterion must be construed as meaning the amount demanded in the

appeal. Hence under this decision the judgment of the Court of Appeal must award more than $1,000 to give the successful party an appeal under sub-sec. 1 (*c*).

Interest cannot be added to the judgment to make the amount exceed $1,000. *Dufresne* v. *Guevremont,* 26 S. C. R. 216.

But an appeal lies from a judgment for $1,000 with interest from a date prior to the action. *Canadian Ry. Acc. Ins. Co.* v. *McNevin,* 32 S. C. R. 194.

In Quebec cases the rule at first was that the amount in controversy was the amount demanded. *Joyce* v. *Hart,* 1 S. C. R. 321; *Levi* v. *Reed,* 6 S. C. R. 482. In 1888 the rule was adopted, pursuant to the decision of the Judicial Committee in *Allan* v. *Pratt,* 13 App. Cas. 780, that it should be determined by the judgment appealed against, and that continued to be the rule until the Act 54 & 55 V., c. 25 was passed providing that it should be governed by the demand. As in Ontario cases it is the amount recovered that is in controversy, the following cases decided when the rule was the same for Quebec appeals may usefully be referred to.

In *Hood* v. *Sangster,* 16 S. C. R. 723, the action was brought for the partition and licitation of property worth $3,000, but it being admitted that the plaintiff only claimed a half interest, an appeal by the defendant was quashed as the amount in controversy was less than $2,000. And in *Labelle* v. *Barbeau,* 16 S. C. R. 390, on petition for payment to appellants of $3,000 paid into court and judgment thereon for half that amount, respondent claiming only the other half ,there was no appeal.

But where plaintiff recovered judgment for $2,000 in the Superior Court and the Court of Queen's Bench reduced it to $500, he was held entitled to appeal to have the first judgment restored, the amount in controversy as to him not being only the difference between the two sums. *Cossette* v. *Dunn,* 18 S. C. R. 222. In this case the defendant could not have appealed.

In *Flatt* v. *Ferland,* 21 S. C. R. 32, a creditor of an insolvent whose claim was for $1,880, brought an action to set aside a deed of sale from the insolvent to one of the respondents of property valued at over $11,000 and his appeal from the judgment dismissing the action was quashed as his claim

was under $2,000. But see *Robinson* v. *Scott*, 38 S. C. R. 490. In *Lachance* v. *Société de Prêts*, 26 S. C. R. 200, where the action was the same as in *Flatt* v. *Ferland*, the appeal was quashed on the same ground.

ANNUAL OR OTHER RENT.

A case is appealable under s. 48 if it relates, irrespective of the pecuniary amount in dispute, to the taking of an annual or other rent. In Quebec cases there is an appeal where the matter relates to "annual rents" which would exclude cases in which the term of the lease is for less than a year which would be appealable in Ontario cases. On the other hand the appeal in Ontario cases is restricted to matters relating to "the taking" of rent which is probably equivalent to "title to rent" in Exchequer Appeals, so that an appeal would lie in a case from Quebec but not from Ontario, where the dispute was as to whether or not the tenant had set-off and the like. In appeals from the Exchequer Court the wording is "title to * * * * annual rent," restricting them, as in Quebec, to yearly tenancies.

The decision in *Davis* v. *Roy*, 33 S. C. R. 345, appears to be a restriction by the Court on the right to appeal in a case relating to annual rents. The plaintiff's possessory action was met by a plea that the defendant held the lands as tenant and the judgment below decided and ordered that he pay $200 as rent. An appeal to the Supreme Court by the defendant was quashed.

It should be noted, however, that the defendant was not condemned to pay an "annual rent;" also that having succeeded in establishing the status of tenant invoked by himself his appeal to escape payment of rent had no merits.

"Annual rents" in the section respecting Quebec appeals means "ground rents" (*rentes foncières*); *Rodier* v. *Lapierre*, 21 S. C. R. 69. In the above section 48 it was no doubt intended to mean rent from real estate.

An annuity or like charge is not an annual rent. *Ib.*

An action to cancel a lease for the term of five years at a rental of $250 per annum does not relate to "annual rents." *Frechette* v. *Simmoneau*, 31 S. C. R. 12. There was no controversy as to rent in that case, but only whether or not the lease should be set aside as simulated.

DUTY OR FEE.

An appeal also lies under sub-sec. 1 (*d*) from the judgment of the Court of Appeal in a case relating to "the taking of a customary or other duty or fee."

This language is quite unlike that used in the section governing appeals in Quebec cases, namely, "relates to fee of office, duty, rent, revenue or any sum of money payable to His Majesty" the words "payable to His Majesty," qualifying duty, rent and revenue, as well as "any sum of money."

A "customary duty or fee" is, no doubt, a duty or fee established by custom and having the force of law. It would thus include a fee of office and a duty payable to Her Majesty. But the use of the word "other" would seem to render the term "customary" needless and give an appeal in a case relating to the taking of any duty or fee.

The same words occur in the provision respecting appeals to the Judicial Committee of the Privy Council from the Court of Appeal for Ontario, but they have never been interpreted by the Committee.

Taxing land for a share of the cost of constructing a ditch expected to benefit it is not a taking of duty or fee under this section. *Waters* v. *Manigault*, 30 S. C. R. 304.

For cases respecting fee of office see notes to sec. 46, page 35.

FUTURE RIGHTS.

By sub-sec. 1 (*d*) there is an appeal, not only where the case relates to "the taking of an annual or other rent, customary or other duty or fee" but also where it relates "to a like demand of a general or public nature affecting future rights."

Under this the demand affecting future rights must not only be *ejusdem generis* with the subjects mentioned, but it must be "of a general or public nature." This requirement is not attached to appeals from Quebec, nor to those from the Exchequer Court. It is to appeals from the Yukon Territorial Court; sec. 49.

Assessing land for a share of the cost of a ditch by construction of which it is benefited does not effect future

rights. *Waters* v. *Manigault*, 30 S. C. R. 304. For other cases see notes relating to Quebec appeals, p. 39.

LEAVE TO APPEAL.

By sub-sec. 1 (*e*) of sec. 48 an appeal from a judgment of the Court of Appeal for Ontario may, when denied by the terms of the section, come to the Supreme Court by leave of that court or of the Court of Appeal. The Exchequer Court Act provides for the only other case of appeal by leave when it does not lie as of right by reason of a pecuniary limitation thereon.

In cases from Nova Scotia, New Brunswick, Prince Edward Island, Manitoba and British Columbia where the only restrictions on the right of appeal are that the case must originate in a superior Court and the judgment appealed from be that of the Court of last resort in the Province and be final, there is no provision for leave to appeal. In cases from Quebec and the Yukon Territory in which there is also a pecuniary limit, there is no such provision. Leave to appeal *per saltum* is only granted for convenience to avoid the necessity of an abortive appeal to the intermediate Court of Appeal for the Province. In cases under the Winding-up Act there is a pecuniary limit but the leave to appeal is essential in every case and is not granted merely because the restriction as to amount prevents an appeal in a case in which it should be entertained.

Leave may be granted for an appeal from a judgment of the Supreme Court of Alberta or of Saskatchewan in cases not originating in a superior court. Sec. 37 (*c*).

Application to the Supreme Court under sec. 48 (*e*) must be within sixty days from the signing, entry or pronouncing of the judgment appealed against and cannot be granted afterwards even though the time is extended under sec. 71. See *Canadian Mutual Ins. Co.* v. *Lee*, 34 S. C. R. 224.

But the Court of Appeal may grant leave within the time as extended and the Supreme Court will, in a proper case, refrain from quashing the appeal and permit the appellant to apply to the Court of Appeal if he can obtain an extension. *City of Hamilton* v. *Hamilton Distillery Co.*, 38 S. C. R. 239; *Connell* v. *Connell*, 9th June, 1905.

. The Supreme Court will not grant leave after it has been refused by the Court of Appeal. *Aurora* v. *Markham*, 32 S. C. R. 457.

The principles on which leave may be granted do not permit of any thing approaching exhaustive definition but it may well be granted in a case involving matters of public interest, or some important question of law, or the construction of Imperial or Dominion Statutes, or a conflict between provincial and Dominion authority, or questions of law applicable to the whole Dominion. *Lake Erie & Detroit Ry. Co.* v. *Marsh*, 35 S. C. R. 197.

But even though a case may involve any of these matters the leave will be refused if the judgment appealed against is clearly right. Ib. *Daily Telegraph Newspaper Co.* v. *McLaughlin* [1904] A. C. 776; *Aurora* v. *Markham*, 32 S. C. R. 457. And error in the judgment is not of itself a ground for granting leave. *Atty.-Gen.* v. *Scully*, 33 S. C. R. 16.

In *Fisher* v. *Fisher*, 28 Can. S. C. R. 494, special leave was refused, the court holding that the fact of the decision in the case being of special importance to benefit insurance companies and persons insured therein, was not a ground for granting the leave.

And where the question was raised under the Railway Act of the liability of a company for having on a train an American car of a height more than that prescribed for passing under a bridge leave was refused. *G. T. Ry. Co.* v. *Atchison*, S. C. Dig. 116. And it was refused also where the courts below had granted a nonsuit pursuant to rule not in accord with modern decisions. *G. T. Ry. Co.* v. *Vallee*, S. C. Dig. 116.

In *Atty-Gen.* v. *Scully, supra*, the court refused leave to appeal from a judgment granting a writ of mandamus to compel the Attorney-General to issue a a fiat to enable a person acquitted on a criminal charge to obtain a copy of the proceedings. In refusing leave the court stated that it might have been granted had the writ been refused as the matter then would have been of public interest.

The fact that the judgment appealed from awarded damages of $1,000, and as much more had been incurred for costs is not a ground for granting leave. *Goold Bicycle Co.* v. *Laishley*, 35 S. C. R. 184.

If the case would not have been appealable before 60 & 61 Vict. c. 34 was passed leave cannot be granted. *Tucker* v. *Young*, 30 S. C. R. 185. In this case the action originated in a county court in Ontario.

See also under "Exchequer Court Appeals," post part II., notes to sec. 83 of c. 140.

49. No appeal shall lie to the Supreme Court from any final judgment of the Territorial Court of the Yukon Territory, other than upon an appeal from the Gold Commissioner, unless:—

(*a*) the matter in question relates to the taking of an annual or other rent, customary or other duty or fee, or a like demand of a public or general nature affecting future rights:

(*b*) the title to real estate or some interest therein is in question;

(*c*) the validity of a patent is affected:

(*d*) it is a proceeding for or upon a *Mandamus*, Prohibition, or Injunction; or

(*e*) the matter in controversy amounts to the sum or value or two thousand dollars or upwards. 2 E. VII. c. 35, s. 4.

With the exception of sub-secs. (*d*) and (*e*), the provisions of the section are identical with those in sec. 48 relating to Ontario appeals and those in (*a*) and (*b*) are substantially the same as those governing appeals from Quebec, sec. 46.

In *O'Brien* v. *Allen*, 30 S. C. R. 340, an appeal was taken from the judgment of the Territorial Court to recover the sum of $1.25 exacted from the respondents as a toll for freight on a toll-road constructed by appellants under authority of the Executive Council of the Territory. So far as the report shows no objection to the jurisdiction of the Supreme Court was raised but the case was clearly appealable as relating "to the taking of a customary or other duty or fee," as provided in 62 & 63 V. c. 11, s. 7, under which the appeal was brought.

Sub-sec. (*d*). This exempts proceedings in Mandamus, Prohibition and Injunction from the restrictions imposed on appeals generally under this section.

As to Mandamus and Prohibition see notes to sec. 39.

The appeal in proceedings for or upon Injunction is only given expressly in cases from the Yukon Territory but, except in Quebec cases and probably also in Ontario cases (because of the provisions of sec. 48) it would lie under sec. 38 (*c*) relating to proceedings in equity. See *Kearney* v. *Dickson*, S. C. Dig. 656, where the court refused to interfere

with the judgment of the Supreme Court of Nova Scotia dissolving an injunction obtained *ex parte*, but did not quash the appeal.

REMARKS ON JURISDICTION.

Subject to the limitations on appeals in Quebec cases (sec. 46) in Ontario cases (sec. 48) and in cases from the Yukon Territory (sec. 49) an appeal will lie under the Supreme Court Act if the judgment appealed against comes within the three conditions imposed by secs. 36 and 44, and as there are exceptions provided from each of said conditions it lies also in any case coming within such exceptions.

ORIGIN OF CASE.

The conditions are:

1. The case must have originated in a superior court. Except certain cases from the Province of Quebec (sec. 37*a*), County Court cases in Nova Scotia, New Brunswick, British Columbia. and Prince Edward Island (s. 37*b*); cases from the provinces of Alberta and Saskatchewan (s. 37*c*); probate cases (37*d*); cases originating before the Gold Commissioner of the Yukon Territory (s. 37*e*); and assessment cases (s. 41).

See *Beamish* v. *Kaulbach*, 3 S. C. R. 704, in which the cause originated in the Court of Wills and Probate of Lunenburg, Nova Scotia. Since 52 V. c. 37 an appeal lies in such case. Sec. 37 (*d*).

Major v. *The Corporation of the City of Three Rivers*, S. C. Dig. 71, followed in *Mayor, etc., of Terrebonne* v. *The Sisters of the Providence Asylum*, *Ib.* 72, in which the action originated in the Circuit Court of the Province of Quebec.

The Queen v. *Nevins*, *Ib.* 71, in which the proceedings originated in a conviction by a justice of the peace, and had been brought by *certiorari* before the Court of Queen's Bench for Manitoba.

C. P. Railway Co. v. *Ste. Therese*, 16 S. C. R. 606, in which the original proceeding was an order by a judge in chambers, for payment out of court of money deposited in expropriation proceedings under the Railway Act.

Angus v. *Calgary School Trustees*, 16 S. C. R. 716, where the proceedings originated in a judgment of the Court of

Revision for adjudicating upon assessments for school rates in the North-West Territories. But see ss. 37 (*c*) and 41.

McGugan v. *McGugan*, 21 S. C. R. 267, per Taschereau J., where the original proceeding was an order by a judge of the High Court of Justice for Ontario to tax the costs of plaintiff's solicitor under R. S. O. (1887) c. 147, s. 42, which allows such order to be made by a judge of the High Court or County Court under certain circumstances.

An action commenced in an inferior Court and, for want of jurisdiction, transferred to a superior Court is not appealable. *Tucker* v. *Young*, 30 S. C. R. 185.

On the other hand an appeal will lie when the case was originally instituted in the Superior Court of Quebec, though the judgment appealed from held that it should have been brought in the Circuit Court and the appeal results in such judgment being affirmed. *Blachford* v. *McBain*, 19 S. C. R. 42.

And where the first proceeding in a cause was by petition to a judge of the Supreme Court of Nova Scotia, under section 454 of the Charter of the City of Halifax, for the removal of a building erected upon or close to the line of the street without the certificate of the city engineer for the location of the line having been first obtained, it was held that an appeal would lie. *City of Halifax* v. *Reeves*, 23 S. C. R. 340.

So also where the original proceeding was the confirmation of a tax sale by a judge of the Supreme Court of the North-West Territories under s. 97 of The Land Titles Act, 1894, the Supreme Court could entertain an appeal from the judgment of the full court affirming it. *North British Canadian Investment Co.* v. *Trustees of St. John District*, No. 16 N. W. T., 35 S. C. R. 461.

COURT OF LAST RESORT.

2. The appeal must come from the highest court of final resort in the Province.

This means the court of last resort generally and not for the particular case in appeal. See *Danjou* v. *Marquis*, 3 S. C. R. 251. *Macdonald* v. *Abbott*, 3 S. C. R. 278. *Farquhar-*

son v. *Imperial Oil Co.*, 30 S. C. R. 188. *Ottawa Electric Co.* v. *Brennan*, 31 S.C. R. 311. *James Bay Ry. Co.*, v. *Armstrong*, 38 S.C.R. 511. And see notes to sec. 36.

The exceptions to this requirement are, appeals from the Court of Review for Quebec (sec. 40), in assessment cases (sec. 41). *per saltum* (sec. 42), and under The Railway Act (Part II.)

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

Where by statute the decision of the Superior Court in Quebec is final no appeal lies to the Supreme Court from a judgment of the Court of Queen's Bench quashing an appeal to that Court for want of jurisdiction under such statute. *City of Ste. Cunegonde de Montreal* v. *Gougeon*, 25 S. C. R. 71.

"The highest Court of final resort" in Ontario is the Court of Appeal. In Quebec the Court of King's Bench, appeal side. In Nova Scotia the Supreme Court *en banc*. In New Brunswick the Supreme Court *en banc*, but when the Judicature Act of that Province is brought into force it will be the Court of Appeal. In Prince Edward Island the Supreme Court *en banc*. In Manitoba the Court of Appeal. In British Columbia the Supreme Court *en banc*. In Alberta and Saskatchewan the Supreme Court *en banc*.

FINAL JUDGMENT.

3. The appeal must be from a final judgment except in appeals in equity cases (sec. 28) from a judgment ordering a new trial (sec. 38) and from the judgment of the Exchequer Court on a demurrer or point of law. R. S. [1906], c. 140, s. 82.

A rule setting aside a judgment obtained against an insolvent, who had neglected to plead his discharge before judgment, as he might have done, and who the Court held was estopped from setting it up afterwards to defeat the execution, is a final judgment, from which an appeal will lie. *Wallace* v. *Bossom*, 2 S. C. R. 488. But see *Schroeder* v. *Rooney*. S. C. Dig. 97, in which it was doubted if an appeal

lay from a judgment dealing with an order made by the judge of first instance setting aside a judgment for fraud.

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

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

In an action instituted in the Superior Court of the Province of Quebec against ten defendants, the declaration claimed an administration of certain property and demanded a *partage* of all the real estate described in the declaration in which the plaintiff claimed an undivided share. Three of the defendants demurred, except as to two lots of land in which they acknowledged that the defendant had an undivided share. The Superior Court sustained the demurrers and the judgment was affirmed by the Court of Queen's Bench for Lower Canada (appeal side). *Held*, that the judgment of the Court of Queen's Bench finally determined and put an end to the appeal, which was a judicial proceeding within the meaning of section 9, of the Supreme and Exchequer Courts Act, 1879, (sec. 2 (*e*) of this Act), and was a final judgment from which an appeal would lie.

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

This case was followed in *Shields* v. *Peak*, 8 S. C. R. 579. The declaration in that case contained, in addition to the common counts, a count alleging fraud against the defendant under The Insolvent Act of 1875. The defendant pleaded that the contract under which the alleged cause of action

arose was made in England and not in Canada. The judgment on a demurrer to that plea was held to be a final judgment in a judicial proceeding, and appealable to the Supreme Court of Canada.

Where a judgment of the Court of Appeal (P. Q.) declared plaintiff entitled to a balance on a building contract, but remitted the case to the Superior Court to enable experts to decide what amount should be deducted for defective work: *Held*, that this judgment was a final judgment from which an appeal would lie; and that although on an appeal from a final judgment an appellant may have the right to impugn an interlocutory judgment rendered in the cause, yet he loses this right if he voluntarily and without reserve acts upon such interlocutory judgment. *Shaw* v. *St. Louis*, 8 S. C. R. 385.

Where a capias had issued under Art. 798, of the C. C. P. (P. Q.) and the prisoner petitioned to be discharged under Art. 819, C. C. P., which petition was dismissed after issue joined on the pleadings under Art. 820, C. C. P., and the judgment of dismissal affirmed by the Court of Queen's Bench for Lower Canada: *Held*, that the latter judgment was a final judgment in a judicial proceeding within the meaning of section 28, Supreme and Exchequer Courts Act, and therefore appealable. *Mackinnon* v. *Keroack*, 15 S. C. R. 111.

A judgment on an interpleader issue at the instance of a sheriff under the procedure in Ontario is a final judgment from which an appeal will lie. *Whiting* v. *Hovey*, 14 S. C. R. 515. And so is a judgment on an interpleader issue between landlord and tenant when the landlord claims a lien on the lessee's goods for rent. *Lynch* v. *Seymour*, 15 S. C. R. 341.

But an appeal will not lie from a judgment on a demurrer which does not finally put an end to any part of an action. *Kandick* v. *Morrison*, 2 S. C. R. 12. *Reid* v. *Ramsay*, S. C. Dig. 87. *Bank B. N. A.* v. *Walker*, *Ibid*, p. 88. *Roblee* v. *Rankin*, 11 S. C. R. 137. *Shaw* v. *Canadian Pacific Ry. Co.*, 16 S. C. R. 703, *Griffith* v. *Harwood*, 30 S. C. R. 315.

Where the plaintiff in an action died before judgment and respondent petitioned to be allowed to continue the suit as legatee, under a will which was contested on the ground that

the will was revoked by a later one, a judgment holding the later will void and allowing the suit to be continued was held to be a final judgment and appealable. *Baptist* v. *Baptist*, 21 S. C. R. 425.

In an appeal from Quebec an order dissolving an interim injunction was held not a final judgment from which an appeal would lie. *Stanton* v. *Canada Atlantic Ry. Co.*, S. C. Dig. p. 89. But an appeal was entertained from a judgment of the Supreme Court of Nova Scotia, affirming an *ex parte* order granted to the plaintiff in an action of trespass restraining the defendants from digging trenches and laying pipes. *Kearney* v. *Dickson*, S. C. Dig. 656.

A judgment of the Supreme Court of New Brunswick making absolute a rule for attachment for contempt, the object of which is to bring the party into Court to enable him to purge his contempt if he can, is not a final judgment. *Ellis* v. *Baird*, 16 S. C. R. 147. But a decision of the Court of Appeal for Ontario in a case of constructive contempt was held a final judgment in an action or suit under s. 24 (*a*) (s. 36) and also "in a matter or other judicial proceeding" within the meaning of s. 42. *In re O'Brien*, 16 S. C. R. 197. But see *Ellis* v. *The Queen*, 22 S. C. R. 7, in which it was held that contempt of Court is a criminal matter as to which the appeal is governed by the Code. The same case decided that a decision adjudging the party guilty of contempt but deferring sentence, was not a final judgment from which an appeal would lie.

A petition was presented by the owner of land to the Divisional Court to have a judgment allowing a mechanic's lien set aside as a cloud on his title, and the petitioner was allowed to defend the action for lien on terms. A judgment dismissing the petition for non-compliance with such terms was held not a final judgment. *Virtue* v. *Hayes, In re Clarke*, 16 S. C. R. 721.

And a judgment of the Court of Queen's Bench for Lower Canada, quashing a writ of appeal from the decision of the Court of Review on the ground that it had been issued *de plano*, and not in accordance with the provisions of Art. 1116 C. C. P., was not final. *Ontario & Quebec Ry. Co.* v. *Marcheterre*, 17 S. C. R. 141.

No appeal lies from interlocutory judgments in proceedings for a writ of mandamus. *Langevin* v. *Les Commissaires d'Ecole pour la Municipalite de St. Marc,* 18 S. C. R. 599.

A judgment ordering a new trial on the ground that the answer of the jury to one of the questions submitted is insufficient to enable the Court to dispose of the whole case, is not a final judgment. *Barrington* v. *The Scottish Union & National Ins. Co.,* 18 S. C. R. 615. Nor is an order for a *venire de novo* on the ground that the assignment of facts was defective and insufficient and the answers of the jury insufficient and contradictory. *Accident Ins. Co.* v. *McLachlan,* 18 S. C. R. 627. Nor a judgment of an appellate court ordering a new trial where the pleadings in the cause had been amended since the verdict and a new cause of action thereby set up which had never been presented to a jury. *Canadian Pacific Ry. Co.* v. *The Cobban Mfg. Co.,* 22 S. C. R. 132.

A judgment of the Court of Queen's Bench, reversing the decision of the Superior Court which quashed on petition a seizure before judgment, and ordering the petition contesting the seizure to be proceeded with at the hearing of the main action, is not appealable. *Molson* v. *Barnard,* 18 S. C. R. 622.

Nor a judgment of the Supreme Court of the North-West Territories, affirming the refusal of a judge in chambers to set aside a writ served out of the jurisdiction on the ground that defendant was not subject to the process of the Court, and if he was the writ was not in proper form. *Martin* v. *Moore,* 18 S. C. R. 634.

A judgment confirming a judge's order on return of a summons, allowing plaintiffs to enter judgment on a specially indorsed writ, is not a final judgment. *Rural Municipality of Morris* v. *London and Canadian Loan and Agency Co.,* 19 S. C. R. 434. Nor is a judgment confirming an order which perpetually restrains parties from proceeding with an action against a bankrupt but reserves liberty to apply. *Maritime Bank of Canada* v. *Stewart,* 20 S. C. R. 105.

A judgment refusing an application to be admitted an attorney is not a final judgment. *In re Cahan,* 21 S. C. R. 100, per Taschereau and Patterson JJ. Nor is the judg-

ment on application for an order to tax costs under R. S. O. (1887) c. 147, s. 42. *McGugan* v. *McGugan*, 21 S. C. R. 267, per Ritchie C.J., and Taschereau J. Nor a judgment of the Court of Appeal for Ontario affirming the decision of the Divisional Court on appeal from the report of a taxing officer on a reference to tax costs. Per Taschereau J., in *McDougall* v. *Cameron*, 21 S. C. R. 379.

A judgment of the Court of Queen's Bench on a petition for leave to intervene in a cause is interlocutory only and not appealable. *Hamel* v. *Hamel*, 26 S. C. R. 17. And so is a judgment affirming the refusal of the trial judge to grant a trial by jury. *Demers* v. *The Bank of Montreal*, 27 S. C. R. 197.

A judgment affirming the dismissal of a petition for removal of one of the commissioners named in proceedings to expropriate land for a public street is not final. *Ethier* v. *Ewing*, 29 S. C. R. 446.

Nor is a judgment affirming dismissal of a plea of prescription when other pleas remain on the record. *Griffith* v. *Harwood*, 30 S. C. R. 315.

Where, on a reference under the Vendor and Purchaser Act to settle the title under an agreement for a lease, the Master ruled that evidence might be given to shew what covenants the lease would contain a judgment confirming such ruling is not final. *Canadian Pacific Ry. Co.* v. *City of Toronto*, 30 S. C. R. 337.

And an order requiring *opposant à fin de charge* to furnish security that the lands seized in execution if sold subject to the charge claimed, should realize sufficient to satisfy the claim of the execution creditor is interlocutory only, and no appeal lies from a judgment affirming it. *Desaulniers* v. *Payette*, 33 S. C. R. 340.

The appeals in Quebec, Ontario and The Yukon cases are subject to the same conditions and also to the limitations provided for in the respective sections governing said appeals.

In Ontario cases special leave to appeal may be granted in a case not otherwise appealable under s. 48. The application for leave to the Supreme Court must be made within 60 days from the pronouncing, signing or entry of the judg-

ment of the Court of Appeal, but if made to the latter court it may be within an extension of such time under s. 71. See *Canadian Mutual Loan Co.* v. *Lee*, 34 S. C. R. 224, and other cases in notes to said section.

But leave to appeal under s. 106 of The Winding-up Act can only be granted by a judge of the Supreme Court, and must be applied for within the 60 days.

For appeals under The Criminal Code, The Exchequer Court Act, The Controverted Election Act, The Railway Act and The Winding-up Act see Part II.

Nor, although it has jurisdiction, will the court entertain an appeal from a judgment or order dealing with a mere matter of procedure. *Gladwin* v. *Cummings*, S. C. Dig. 88; *Dawson* v. *Union Bank*, *Ib.* 125; *O'Donohoe* v. *Beatty*, 19 S. C. R. 356; *South Colchester* v. *Valade*, 24 S. C. R. 622; *Ferrier* v. *Trepannier*, 24 S. C. R. 86; *Arpin* v. *The Merchants Bank*, 24 S. C. R. 142; *Williams* v. *Leonard*, 26 S. C. R. 406. Nor when the appeal depends on mere questions of fact. *Arpin* v. *The Queen*, 14 S. C. R. 736; *Titus* v. *Colville*, 18 S. C. R. 709; *Schwersenski* v. *Vineberg*, 19 S. C. R. 243; *Bickford* v. *Hawkins*, 19 S. C. R. 362; *Welland Election Case*, 20 S. C. R. 376. Especially when it is the second appellate court before which the case has come. *Warner* v. *Murray*, 16 S. C. R. 720; *Demers* v. *Montreal Steam Laundry Co.*, 27 S. C. R. 537.

But the Court may reverse on questions of fact even against the concurrent findings of two courts below. *North British & Mercantile Ins. Co.* v. *Tourville*, 25 S. C. R. 177; *Lefeunteum* v. *Beaudoin*, 28 S. C. R. 89; *Village of Granby* v. *Ménard*, 31 S. C. R. 14; *Chicoutimi Pulp Co.* v. *Price*, 39 S. C. R. 81.

In cases tried by a judge without a jury, the appellate court may deal with questions of fact as fully as the trial judge, there being a difference in this respect between jury and non-jury cases. *Phoenix Ins. Co.* v. *McGhee*, 18 S. C. R. 61.

Nor will an appeal lie for the purpose of deciding a mere question of costs. *Moir* v. *The Village of Huntingdon*, 19 S. C. R. 363; *McKay* v. *Hinchinbrook*, 24 S. C. R. 55. But where

there has been a mistake upon some matter of law or of principle, which the party appealing has an actual interest in having reviewed, and which governs or affects the costs, he is entitled to the benefit of correction by appeal: *Archbald* v. *de Lisle*, 25 S. C R. 1.

JUDGMENTS.

50. The Court may quash proceedings in cases brought before it in which an appeal does not lie, or whenever such proceedings are taken against good faith. R. S., c. 135, s. 59.

Many appeals to the Supreme Court have been quashed for want of jurisdiction, but none because the proceedings were taken against good faith. In *Fontaine* v. *Payette*, 36 S. C. R. 613, however, where the appeal was dismissed, Taschereau C.J., stated that had a motion to that effect been made he would have been of opinion that the appeal should be quashed as the proceedings were taken in bad faith.

In *Schloman* v. *Dowker*, 30 S. C. R. 323, the appeal was quashed because it involved only a question of costs, the Court saying that to avoid expense, such course would be adopted in future when practicable. This rule of procedure however, has not been adhered to.

If the jurisdiction of the Court is doubtful the appeal will be quashed. *Cully* v. *Ferdais*, 30 S. C. R. 330. And see *Langevin* v. *Commissionaires d'Ecole de St. Marc*, 18 S. C. R. 599. Though in such case the Court may assume jurisdiction on deciding to dismiss the appeal. *Bain* v. *Anderson*, 28 S. C. R. 481. *Bastien* v. *Filiatrault*, 31 S. C. R. 129.

When an appeal is quashed for want of jurisdiction, the Court may order the taxation and payment of costs. *Beamish* v. *Kaulbach*, S. C. Dig. 1108.

A motion to quash should be made to the Court, and not to a judge in chambers, and should be made at the earliest convenient moment. The new rules, 1 to 5, provide for an application by appellant after security is allowed for an order affirming the jurisdiction or immediate notice by respondent of motion to quash with a stay of proceedings in either case.

In *The Queen* v. *Nevins*, S. C. Dig. 71, although the objection was taken by the Court, the appellant was allowed costs.

But when the objection to the jurisdiction is taken at the hearing by the Court, as a general rule no costs will be given. *Major* v. *The Corporation of Three Rivers*, S. C. Dig. 71; *Champoux* v. *Lapierre, Gendron* v. *McDougall*, S. C. Dig. 56. *Bank of Toronto* v. *Le Cure, etc., of the Parish of The Nativity*, 12 S. C. R. 25. *Domville* v. *Cameron*, S. C. Dig. 122. In this last case the appeal was heard *ex parte*, the respondent not appearing.

When the objection to the jurisdiction is taken by the respondent in his factum, and the motion made to the Court at the earliest convenient time, the general costs of the appeal will be given, and a counsel fee as on motion to quash. *Danjou* v. *Marquis*, 3 S. C. R. 251. *McGowan* v. *Mockler*, S. C. Dig. 122. *Le Maire, etc., de Terrebonne* v. *Les Soeurs de la Providence*, *ib.* 72. But see rule 4.

On a motion to quash, a fee of $25 may be allowed, according to discretion of the Registrar, subject to be increased by order of the Court or a judge. In *Danjou* v. *Marquis* (*supra*), the fee was increased to $75. In *McGowan* v. *Mockler* (*supra*), the fee was increased to $50. In *Haggart* v. *Brampton*, December, 1897, $30 was taxed.

DISPOSITION OF APPEAL.

51. The Court may dismiss an appeal or give the judgment and award the process or other proceedings which the court, whose decision is appealed against, should have given or awarded. R. S., c. 135, s. 60.

The Court or a judge may dismiss an appeal for delay. Sec. 82.

And it is dismissed if the judges are equally divided in opinion. See *London, L. & G. Ins. Co.* v. *Wyld*, 1 S. C. R. 604, and other cases mentioned in notes to sec. 53.

The decision appealed against must be on the merits of the case. An appeal does not lie from a judgment quashing an appeal for want of jurisdiction. *Ste. Cunegonde* v. *Gougeon*, 25 S. C. R. 78.

And where the application to the court whose decision was appealed against was for a nonsuit or, in the alternative, a new trial, the latter having been granted the Court would

not consider whether or not the appellant was entitled to the other relief. *Mutual Reserve Ins. Co.* v. *Dillon*, 34 S. C. R. 141. *Delta* v. *Wilson*, Cout. Cas. 334.

ORDER FOR NEW TRIAL.

52. On any appeal, the Court may, in its discretion, order a new trial, if the ends of justice seem to require it, although such new trial is deemed necessary upon the ground that the verdict is against the weight of evidence. R. S., c. 135, s. 61.

Section 20 of the original Act, 38 V. c. 11, gave an appeal from the judgment on motion for a new trial on the ground that the judge had not ruled according to law, and sec. 22 provided that no appeal should lie where the new trial was granted in the exercise of judicial discretion, as for instance, on the ground that the verdict was against the weight of evidence. In 1880, by 43 V. c. 34, s. 4, section 22 of said Act was repealed and the above provision substituted for it.

In 1885 the Court refused to interfere with a judgment granting a new trial on the ground that the verdict was against the weight of evidence, but the appeal was not quashed. *Eureka Woolen Mills Co* v. *Moss*, 11 S. C. R. 90.

From the short note of the case of *Pudsey* v. *Dominion Atl. Ry. Co.*, 25 S. C. R. 691, it might be supposed that the Supreme Court ordered a new trial under the above section, which was not the case. The report of the decision appealed against in 27 N. S. Rep. 498, shews that a new trial was moved for and two of the judges below were in favour of granting it.

In *Burland* v. *City of Montreal*, 33 S. C..R. 373, an action to recover the value of a strip of land of which defendant was illegally in possession was dismissed by the courts below on the ground that plaintiff had misconceived his remedy. The Supreme Court reversed the judgment appealed against, and ordered the record to be remitted to the Superior Court to have the extent of the property in defendant's possession ascertained and restored to plaintiff. This was not an order for a new trial, but an order made to cease litigation.

In *C. P. Ry. Co.* v. *Blain*, 34 S. C. R. 74, the Court ordered a new trial unless plaintiff would consent to a reduction of damages. See, however, *Watt* v. *Watt*, [1905] A. C. 115, as to this practice in England in an action of tort.

COSTS.

53. The Court may, in its discretion, order the payment of the costs of the court appealed from, and also of the appeal, or any part thereof, as well when the judgment appealed from is varied or reversed as when it is affirmed. R. S., c. 135, s. 62.

This is taken from the latter part of section 38 of the Supreme and Exchequer Courts Act of 1875, but that section read "as well when the judgment appealed from is reversed, as where it is affirmed." It has been thought necessary or advisable to provide specially for the case where the judgment is varied.

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

By section 32 of the Supreme Court Amendment Act of 1876, it was provided that the judges of the Supreme Court or any five of them might, under the 79th section of the Act of 1875, from time to time make general rules and orders for awarding and regulating costs in the Supreme and Exchequer Courts in favour of and against the Crown as well as the subject. The provisions of section 79 of the Act, and section 32 of the Act of 1876, will be found in section 109 of this Act.

Rule 91 provides that costs in appeal between party and party shall be taxed pursuant to the tariff of fees contained in Form I. in the Schedule.

Payment of a fixed sum for costs may be ordered. Rule 92.

Rule 93 provides for apportionment and setting off of costs and 94 for reserving any question arising on taxation for the opinion of a judge.

Rule 95 authorizes the Registrar on taxation to administer oaths and examine witnesses and order the production of necessary books and documents.

Rules 96 and 97 provide for reconsideration of taxation by the Registrar on objection filed, and Rules 98 and 99 for appeals to a judge.

The Court has not thought it advisable to regulate costs between solicitor and client. The Registrar does not tax such costs. *Boak* v. *Merchants Marine Ins. Co.*, S. C. Dig. 388.

The general rule has been to allow costs to the successful party, even when an appeal has been quashed for want of jurisdiction. But not when the objection to the jurisdiction has been taken by the Court itself. See notes to section 50.

When an appeal was allowed on an objection taken for the first time on the argument of the appeal before the Supreme Court, no costs were given. *Canada Southern Ry. Co.* v. *Norvell*, S. C. Dig. 146.

In an appeal from Quebec, where an objection that the action had been prescribed was taken by the appellant (defendant) for the first time on the argument of the appeal, the Court held that it was bound to give effect to the objection, but the appeal was allowed without costs in any of the courts. *Dorion* v. *Crowley*, Cass. Dig. 2nd ed. 709.

But in *McKelvey* v. *Le Roi Mining Co.*, 32 S. C. R. 664, the Court held that questions of law appearing on the record might be relied on though urged for the first time on the appeal where evidence to affect them could not have been produced if they had been raised at the trial. In this case the appeal was allowed with costs. See also *Gray* v. *Richford*, 2 S. C. R. 431; *Scott* v. *Phoenix Ins. Co.*, Stu. K. B. 354, in the Privy Council.

In the *City of Montreal* v. *Hogan*, 31 S. C. R. 1, in which the action was to recover land of which the city had illegally taken possession, the appeal was allowed in part but Taschereau, J., said in concluding his judgment delivered for the Court: "As to costs, considering the tyrannical conduct of the appellants and the flagrant illegality of their doings in the matter, we order that all the costs in all the Courts be paid by them to the said respondent."

But generally where an appeal is allowed in part only costs are withheld. Thus in *City of Montreal* v. *Canadian Pac. Ry. Co.*, 33 S. C. R. 396, the judgment of the majority of the court as to this was: "As the contentions of the appellant are not fully adopted, no costs will be allowed before this Court." See also *London Water Works Co.* v. *Byron N.*

White Co., 35 S. C. R. 309; *Deserres* v. *Brault*, 37 S. C. R. 613; *City of Toronto* v. *Metallic Roofing Co.*, 37 S. C. R. 692; *Hamilton Brass Mfg. Co.* v. *Barr Cash and Package Carrier Co.*, 38 S. C. R. 216. In *Gosselin* v. *Ontario Bank*, 36 S. C. R. 406, and *Toronto Ry. Co.* v. *Toronto*, 37 S. C. R. 430, costs were given in such case.

And where the appeal is dismissed but the judgment is varied costs may be withheld. *Knock* v. *Owen*, 35 S. C. R. 168.

In *Angers* v. *Mutual Reserve Fund Life Assoc.*, 35 S. C. R. 330, an action for return of premiums paid on a policy failed on technical grounds, but as the appellant had been misled by statements in the policy the appeal was dismissed without costs.

And in an action by a mortgagee, one of several affecting the title to certain lands, which failed because the proper proceedings were not taken an appeal to the Supreme Court was dismissed without costs. *Gibson* v. *Nelson*, 35 S. C. R. 181.

Where the Supreme Court amended the record and then reversed the judgment appealed against restoring a former judgment with the addition ordered by the amendment the appeal was allowed without costs. *Hill* v. *Hill*, 34 S. C. R. 13.

In *C. P. Ry. Co.* v. *Blain*, 34 S. C. R. 74, the appellant was allowed to elect between a reduction of damages and a new trial and his appeal was allowed without costs.

See also *Creese* v. *Fleischman*, 34 S. C. R. 279; *Chambly Mfg. Co.* v. *Willet*, 34 S. C. R. 502; *Couture* v. *Couture*, 34 S. C. R. 716; *Cushing Sulphite Fibre Co.* v. *Cushing*, 37 S. C. R. 427; *Yukon Election Case*, 37 S. C. R. 495.

For a long time the rule prevailed that no costs would be given where the judges were equally divided in opinion. See *London L. & G. Ins. Co.* v. *Wyld*, 1 S. C. R. 604, and other cases cited in Cameron's Practice, p. 232. In 1903 this practice was abandoned and in *Montreal St. Ry. Co.* v. *McDougall*, Cout. Cas. 284, and *Calgary & Edmonton Ry. Co.* v. *The King*, 33 S. C. R. 673, the appeals were dismissed with costs on an equal division of the Court. In the last case of the kind, however, *Coté* v. *James Richardson Co.*, 38 S. C. R. 41, no costs were given.

Costs will be given for or against the Crown as in other cases. *Lovitt* v. *Atty.-Gen. of Nova Scotia*, 33 S. C. R. 350; and cases in note on p. 369.

Section 109 (*d*) empowers the Court to make rules for awarding and regulating costs in favour of and against the Crown as well as the subject.

In *habeas corpus* appeals and criminal appeals, as a general rule no costs are given. *In re G. R. Johnson*, S. C. Dig. 389.

But where an appeal in a *habeas corpus* matter was proceeded with after the discharge of the prisoner and for the mere purpose of obtaining a decision on the question of costs, the appeal was dismissed with costs. *Fraser* v. *Tupper*, S. C. Dig. 104.

Section 107 provides that: "An order in the Supreme Court for payment of money, whether for costs or otherwise, may be enforced by such writs of execution as the Court prescribes." Rules 120 to 140 provide for such writs.

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

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

But with respect to costs of the court below in an election case, see section 76 of the Dominion Controverted Elections Act, and Election Appeals, *post*, Part II.

For interlocutory costs, a writ of execution may be obtained from the Supreme Court. In *Black* v. *Huot*, Cout. Cas. 106, a writ of *fi. fa.* was issued for costs of motion to approve security.

As to distraction of costs, it has been held that where distraction has not been asked for by the pleadings, or by the factum, it should be asked for when judgment is rendered.

If not then asked for, any subsequent application must be made to the Court upon notice to the other side. *Letourneux* v. *Dansereau*, S. C. Dig. 391. But since the new code of procedure came into force in Quebec distraction is allowed in every case in which costs are given.

When no one appears on behalf of appellant when an appeal is called for hearing and counsel for respondent asks for the dismissal of the appeal, it will be dismissed with costs. S. C. Dig. 1111, *Burnham* v. *Watson*, and other cases.

See further, Rules 91 to 99 and notes, for the practice relating to costs generally, and the taxation and enforcement of payment of costs.

AMENDMENTS.

54. At any time during the pendency of an appeal before the Court, the Court may, upon the application of any of the parties, or without any such application, make all such amendments as are necessary for the purpose of determining the appeal, or the real question or controversy between the parties, as disclosed by the pleadings, evidence or proceedings. R. S., c. 135, s. 63.

55. Any such amendment may be made, whether the necessity for the same is or is not occasioned by the defect, error, act, default or neglect of the party applying to amend. R. S., c. 135, s. 64.

56. Every amendment shall be made upon such terms as to payment of costs, postponing the hearing or otherwise as to the court seems just. R. S., c. 135, s. 65.

As to amending a record by adding a plea of justification under writ, in an action against sheriff for seizing logs under writ of replevin, see *Swim* v. *Sheriff*, S. C. Dig. 1312.

As to amending pleadings in action brought by a corporation against defendant for selling without license contrary to by-laws, see *Pichè* v. *City of Quebec*, S. C. Dig. 1447.

As a rule the Court will not interfere with the discretion of the Court below in refusing an amendment.

Appeal dismissed from a judgment of the court below refusing motion for leave to file new pleas. *Dawson* v. *Union Bank*, S. C. Dig. 125.

And in *Porter* v. *Pelton*, 33 S. C. R. 449, an application to add to the statement of claim was refused, having been refused by the court below.

But in *Baker* v. *Societe de Construction Metropolitaine*, 22 S. C. R. 364, the Court allowed an amendment of a date in an allegation as to possession of property to make it conform to the evidence, though such amendment had been refused by the Superior Court and the Court of Queen's Bench.

In *Price v. Fraser*, 31 S. C. R. 505, the Court of Review, where an appeal had inadvertently been inscribed in the name of the deceased defendant, allowed the inscription to be amended by substituting the names of his executors *es qualité*. The Court of King's Bench reversed this, holding that the Court of Review acted without jurisdiction. The Supreme Court restored the judgment of the Court of Review.

And in *Hill* v. *Hill*, 34 S. C. R. 13, the Court allowed a petition in revocation of a judgment to be amended so as to include an attack on an earlier judgment, though the court below had refused it.

In *Burland* v. *City of Montreal*, 33 S. C. R. 373, where the action for the value of land illegally retained by the city had been dismissed on the ground that the proper remedy was an action *en bornage* or *au petitoire* the Supreme Court sent back the record to have the extent of the land affected by the trespass ascertained, ordered that it be restored to the plaintiff and that all necessary amendments should be considered to have been made.

In a suit for specific performance the Court refused an amendment to make a case not only at variance with, but antagonistic to, that set out in the bill, especially as it was not asked for until the hearing. *Porter* v. *Hale*, 23 S. C. R. 265.

In an action to set aside a conveyance as made in fraud of creditors, the defendant was allowed to amend his pleadings on terms by alleging that there was no debt due and that, therefore, no such fraud could exist and that the conveyance was not made to hinder, delay or defeat creditors. The case was remitted to have the issue on such plea tried. *Syndicat Lyonnais du Klondyke* v. *McGrade*, 36 S. C. R. 251.

An application to amend the "case" should be made to a judge in chambers.. *Aetna Ins. Co.* v. *Brodie*, S. C. Dig. 1099.

Rule 8 of the Supreme Court rules provides that the Court or a judge may order the case to be remitted to the court below for correction or addition of further matter. See notes to rule 8, Part III.

As to what the "case" should contain see section 73 of this Act and Rules 6 and 7.

AMENDING JUDGMENT.

When it is clear that by oversight or mistake an error has occurred in its judgment, the Court will of its own motion or on application amend its judgment to make it conform to the intention of the Court, and the principles upon which it was based. *Rattray* v. *Young*, S. C. Dig. 1123; *Penrose* v. *Knight*, *Ib.*, 1122; *Smith* v. *Goldie*, *Ib.*, 1123.

A motion to amend must not be practically a motion to reverse the judgment of the Court. *Reeves* v. *Gerriken*, *Ib.*, 1122.

When the judgment is amended to conform to the intention of the Court, the judgment will be made to read *nunc pro tunc*. *Smith* v. *Goldie*, *supra*.

When a new trial had been ordered by the Supreme Court, on the ground that an important question had not been submitted to or answered by the jury, a motion to set aside the judgment and re-open the hearing, supported by affidavits stating that as a matter of fact such question had actually been answered by the jury, was refused with costs, the Court holding that it was bound by the case as transmitted, and as forming the material upon which the hearing was based. *Providence Washington Ins. Co.* v. *Gerow*, 14 S. C. R. 731.

In an election case where the respondent was ordered to pay the costs the Court refused to amend such order so as to compel the trial judge to tax costs of certain witnesses examined as to matters not included in the appeal. *Soulanges Election Case*, S. C. Dig. 1122.

Where the decree appealed against was varied by an order that appellant was entitled to immediate specific performance, but that respondent should have his costs in the original action, the Court on motion to vary the minutes as settled, ordered the insertion therein of a clause providing that ap-

pellant should not be obliged to pay such costs until delivery to him of a proper conveyance. *Millard* v. *Darrow*, S. C. Dig. 1123.

The Court refused to vary the minutes of judgment for purposes of a proposed appeal to the Privy Council but directed the Registrar to grant a certificate of the same. *Consumers' Cordage Co.* v. *Connolly*, S. C. Dig. 1165.

In *Creese* v. *Fleischman*, 34 S. C. R. 279, the Court refused to interfere with the discretion of the provincial court in refusing to amend its formal judgment, but considered that the circumstances justified a dismissal of the appeal without costs in either court.

In *Rutledge* v. *United States Savings & Loan Co.*, 38 S. C. R. 103, the appeal had been dismissed with costs, but on motion to vary the minutes of judgment by inserting a direction that the respondent should not have the costs of defence which they had abandoned in the court below, the matter was referred to the trial judge to dispose of such costs as he should see fit.

INTEREST.

57. If, on appeal against any judgment, the Court affirms such judgment, interest shall be allowed by the court for such time as execution has been delayed by the appeal. R. S., c. 135, s. 66.

The question of allowance of interest under this section is one which the Court will dispose of *ex mero motu*. *McQueen* v. *Phoenix Ins. Co.*, S. C. Dig. 728.

But an application to vary the judgment of the Court by inserting therein a direction that interest be allowed for the time during which the appeal was pending must be on notice. *Trust & Loan Co.* v. *Ruttan*, S. C. Dig. 1122.

In an appeal from New Brunswick it was held that interest should be allowed on the principal sum from last day of term after verdict. *Clark* v. *Scottish Imperial Ins. Co.*, S. C. Dig. 1120.

By 50-51 V. c. 16, s. 33, the Exchequer Court, in adjudicating upon any claim against the Crown on a contract in writing shall not allow any interest thereon unless the same has been stipulated for by a written agreement. In *The Queen* v. *McLean*, S. C. Dig. 727, the Supreme Court held

the suppliant not entitled to interest on a claim for damages for breach of a contract in writing. In *St. Louis* v. *The Queen*, 25 S. C. R. 665, interest was allowed against the Crown, but the question of the suppliant's right to it was not argued. It is now settled, by *The Queen* v. *Henderson*, 28 S. C. R. 425, that in cases from the Province of Quebec interest will be allowed where the claim against the Crown is not founded upon a contract in writing. In that case it was for the price of goods delivered to and used by the Crown. As to the other Provinces, the question is still open.

In a case before the Exchequer Court for return of duties improperly imposed, judgment was given against the claimants. This was afterwards affirmed by the Supreme Court, but reversed by the Privy Council, and judgment ordered to be entered for the suppliant for the amount claimed and costs. On the case coming again before the Exchequer Court, judgment was entered for the principal sum only, interest being refused, and an appeal was taken to the Supreme Court for the interest. In the meantime the Crown presented a petition to the Judicial Committee of the Privy Council, praying for a declaration that the claimants were not entitled to interest under their Lordship's judgment. The petition was dismissed, their Lordships stating that interest having been claimed, and the question not having been argued in any of the Courts, it should be allowed. The Crown thereupon consented, under sec. 52 (81) of the Act, to the judgment of the Exchequer Court being reversed on the appeal to the Supreme Court. *Toronto Railway Co.* v. *The Queen*, S. C. Dig. 728.

In the *Queen* v. *Armour*, 31 S. C. R. 499, the judgment of the Supreme Court awarding the respondent $14,185 with interest was affirmed. By direction of the Chief Justice the Registrar inserted in the judgment as settled a provision that respondent was entitled to interest on said sum from the date of said judgment at six per cent. per annum. See Cameron's Prac. 249.

Arbitrators fixing the compensation for injurious affection to land by construction of a public work cannot allow interest on the amount of damages awarded. *Leak* v. *City of Toronto*, 30 S. C. R. 321.

To entitle a creditor to interest under the Imperial Act 3 & 4 Wm. 4, c. 42, s. 28 (respecting assessment of damages

by a jury), the written instrument under which it is claimed must show by its terms that there was a debt certain payable at a time certain. It is not sufficient that the same may be made certain by some process of calculation or some act to be performed in the future. *Sinclair* v. *Preston*, 31 S. C. R. 408.

In *Dunn* v. *The King*, S. C. Dig. 728, it was held that the Dominion Government was not liable for interest on moneys illegally exacted from the suppliant before confederation by the Province of New Brunswick, there being no statutory liability nor express contract therefor, and the fact that both the Province and the Dominion had from time to time made payment of such interest did not create a liability.

CERTIFICATE OF JUDGMENT.

58. The judgment of the Court in appeal shall be certified by the Registrar to the proper officer of the court of original jurisdiction, who shall thereupon make all proper and necessary entries thereof; and all subsequent proceedings may be taken thereupon as if the judgment had been given or pronounced in the said last mentioned court. R. S., c. 135, s. 67.

When certified under this section the judgment in appeal becomes the judgment of the court of original jurisdiction for all interests and purposes, and special leave is not necessary for the issue of execution in such court for the costs given by said judgment. *Ex parte Jones*, S. C. Dig. 1124.

After the judgment is certified the Supreme Court cannot entertain a petition, by *requete civile*, for revocation of its judgment. *Durocher* v. *Durocher*, 27 S. C. R. 634. And see *Dawson* v. *Macdonald*, S. C. Dig. 1135.

JUDGMENT FINAL AND CONCLUSIVE.

59. The judgment of the Court shall, in all cases, be final and conclusive, and no appeal shall be brought from any judgment or order of the Court to any court of appeal established by the Parliament of Great Britain and Ireland, by which appeals or petitions to His Majesty in Council may be ordered to be heard, saving any right which His Majesty may be graciously pleased to exercise by virtue of his royal prerogative. R. S., c. 135, s. 71.

Except in Admiralty cases, to be dealt with later, there is no appeal as of right to the Judicial Committee of the Privy Council from a judgment of the Supreme Court of Canada. Such appeal lies only by special leave of the Committee on

petition therefor and certain rules have been laid down as to the cases in which the leave will be granted.

In *Clergue* v. *Murray* [1903], A. C. 521, their Lordships of the Judicial Committee stated that when a suitor, having the option of appealing to the Committee or to the Supreme Court, chooses the latter the special leave would only be granted in a very strong case. And in *Can. Pac. Ry.* v. *Blain*, [1904] A. C. 453, leave was refused on the same ground, no question of law being involved of sufficient importance to justify its being granted. See, too, *Ewing* v. *Dominion Bank* [1904], A. C. 806.

In *Prince* v. *Gagnon*, 8 App. Cas. 103, the judgment of the Committee said that their Lordships were not prepared to advise Her Majesty to exercise her prerogative by admitting an appeal from the Supreme Court of Canada "save where the case is of gravity involving matter of public interest, or some important question of law, or affecting property of considerable amount, or where the case is otherwise of some public importance or of a very substantial character." And see *Lake Erie & Detroit River Ry. Co.* v. *Marsh*, 35 S. C. R. 197, as to granting leave to appeal to the Supreme Court from a judgment of the Court of Appeal for Ontario. *Victorian Railway Commissioners* v. *Brown* [1906], A. C. 381.

But leave will not necessarily be granted in a case involving the features named in *Prince* v. *Gagnon*. "A case may be of a substantial character, may involve matter of great public interest and may raise an important question of law, and yet the judgment from which leave to appeal is sought may appear to be plainly right, or at least to be unattended with sufficient doubt to justify their Lordships in advising Her Majesty to grant leave to appeal." *City of Montreal* v. *St. Sulpice*, 14 App. Cas. 660, *per* Lord Watson, at p. 662. This principle was applied in *Daily Telegraph Newspaper Co.* v. *McLaughlin* [1904], A. C. 776.

The Supreme Court has no jurisdiction to grant or refuse leave to appeal to the Privy Council. *Kelly* v. *Sulivan*; *Moore* v. *Connecticut Mutual Ins. Co.*; *Queens Ins. Co.* v. *Parsons*. S. C. Dig. 1164. Notice of intention to apply for leave should not be put on the motion paper. *Nasmith* v. *Manning*, *Ib.*, 1132.

The usual practice is to apply to the Registrar of the Supreme Court for a certified copy of the case, factums, judgment and reasons of the judges. The Judicial Committee has held that it will not entertain any application for leave to appeal, unless the final judgment of the Supreme Court has been drawn up and entered. *Pion* v. *North Shore Ry. Co.* After obtaining the certified copy of the papers, the proceedings before the Judicial Committee are by petition and affidavit. See Wheeler & Safford, Privy Coun. Prac. 730.

In *Canada Cent. Ry. Co.* v. *Murray*, 8 App. Cas. 574, their Lordships said that parties petitioning for leave to appeal would be expected to state succinctly, but fully, in their petition the grounds on which the demand would be based and to confine themselves to the petition and not refer to extraneous matter, such as the record and proceedings, over which the Committee at that stage had no control.

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

In several appeals recently allowed the Judicial Committee has accepted the papers already certified by the Registrar as sufficient, and has dispensed with the transmission of any others, the documents transmitted by the Registrar, in obedience to the order, being the same as those furnished to the appellant and laid by him before the Judicial Committee. See *Chapelle* v. *The King*, Cam. Prac. 255.

If he wishes to do so, the appellant may print the record before it is transmitted to England, but he must be careful to comply with the rules of the Judicial Committee regulating the size of type, style, etc. These rules will be found on p. 68, appendix to Macpherson's Privy Council Practice, 2nd ed. See also appendix to this volume. The type used for the Privy Council is pica, a size not much used in this country, most of our statutes, reports, etc., being printed in small pica. (By rule 12 of the new rules the case and factums on an appeal to the Supreme Court must now be printed in pica.) If the record is not printed at all, or not printed in accordance with the rules of the Judicial Committee, the printing must be done in London.

In Lattey's Handibook on Privy Council Practice it is stated, p. 3: "One great objection to the record being printed

abroad is, that a successful appellant is unable to recover the cost of printing from the respondent, whilst if the record is printed in England such charges are always included in the solicitor's bill, and are allowed on taxation."

The order in appeal of the Privy Council is given to the solicitor of the successful party. If it reverses the judgment of the Supreme Court it should, on motion, be made an order of that Court (*Lewin* v. *Wilson*, 14 S. C. R. 722), be entered on the records of the Court and then certified to the Court below. If the judgment of the Supreme Court be affirmed it is not necessary to have the order of the Privy Council made an order of the Supreme Court. It is sufficient to make it an order of the Court of original jurisdiction.

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

After leave to appeal is granted respondent must enter an appearance within three months from the filing of the petition, or else the appeal will be inscribed *ex parte*. See Order of the Judicial Committee of 20th March, 1905, *post*, Appendix.

The Committee may grant leave to appeal *in forma pauperis* and if it does the record will be transmitted from the Supreme Court without payment of any fees. *Dominion Cartridge Co.* v. *McArthur*, Cam. Prac. 256.

A judge of the Supreme Court cannot stay proceedings pending an appeal to the Judicial Committee. *Adams* v. *Bank of Montreal*, 31 S. C. R. 223.

Section 1025 of the Criminal Code provides that "Notwithstanding the Royal prerogative," there shall be no appeal to His Majesty in Council in a criminal case.

Section 69 of the Controverted Elections Act provides that the judgment of the Supreme Court in any election case shall be final. In the *Glengarry Case*, 59 L. T. 279. the Judicial Committee refused leave but did not say anything as to their power to grant it.

ADMIRALTY CASES.

By 54 & 55 V., c. 29, the Exchequer Court was constituted a Court of Admiralty for Canada in accordance with the provisions of "the Colonial Courts of Admiralty" Act, 1890, and provision was made for the appointment of local judges

in the several Admiralty districts. In addition to the appeal from judgments of the Exchequer Court in such cases section 14 authorized an appeal direct to the Supreme Court from a decision of a local judge.

Until 1905 an appeal to the Privy Council from the judgment of the Supreme Court in an Admiralty case was always on leave of the Committee. In the case of *S.S. Cape Breton* v. *Richelieu & Ontario Navigation Co.*, application was made to a judge of the Supreme Court in chambers to fix bail for an appeal to His Majesty in Council and His Lordship made the order. See 36 S. C. R. 592. In the case of *The Albano* v. *Allan Line, S. S. Co.*, a similar order was made by the Court. When the Cape Breton case came before the Judicial Committee the preliminary question was raised by respondents that leave to appeal should have been obtained but their Lordships held that under sec. 6 of the Colonial Courts of Admiralty Act, 1890, the appeal lay as of right. See [1907] A. C. 112.

And see further as to Admiralty cases, *post*, Part II. "Exchequer Appeals."

SPECIAL JURISDICTION.

60. Important questions of law or fact touching,—

(*a*) the interpretation of *The British North America Acts, 1867 to to 1886;* or,

(*b*) the constitutionality or interpretation of any Dominion or provincial legislation; or,

(*c*) the appellate jurisdiction as to educational matters, by *The British North America Act, 1867*, or by any other Act or law vested in the Governor in Council; or

(*d*) the powers of the Parliament of Canada, or of the legislatures of the provinces, or of the respective governments thereof, whether or not the particular power in question has been or is proposed to be executed; or,

(*e*) any other matter, whether or not in the opinion of the court *ejusdem generis* with the foregoing enumerations, with reference to which the Governor in Council sees fit to submit any such question;

may be referred by the Governor in Council to the Supreme Court for hearing and consideration; and any question touching any of the matters aforesaid, so referred by the Governor in Council, shall be conclusively deemed to be an important question.

2. When any such reference is made to the Court it shall be the duty of the Court to hear and consider it, and to answer each question so referred; and the Court shall certify to the Governor in Council, for his information, its opinion upon each such question, with the reasons for each such answer; and such opinion shall be pro-

nounced in like manner as in the case of a judgment upon an appeal to the Court; and any judge who differs from the opinion of the majority shall in like manner certify his opinion and his reasons.

3. In case any such question relates to the constitutional validity of any Act which has heretofore been or shall hereafter be passed by the legislature of any province, or of any provision in any such Act, or in case, for any reason, the government of any province has any special interest in any such question, the attorney-general of such province shall be notified of the hearing in order that he may be heard if he thinks fit.

4. The Court shall have power to direct that any person interested, or, where there is a class of persons interested, any one or more persons as representatives of such class, shall be notified of the hearing upon any reference under this section, and such persons shall be entitled to be heard thereon.

5. The Court may, in its discretion, request any counsel to argue the case as to any interest which is affected and as to which counsel does not appear, and the reasonable expenses thereby occasioned may be paid by the Minister of Finance out of any moneys appropriated by Parliament for expenses of litigation.

6. The opinion of the Court upon any such reference, although advisory only, shall, for all purposes of appeal to His Majesty in Council, be treated as a final judgment of the said Court between parties. 54-55 V., c. 25, s. 4;—6 E. VII. c. 50, s. 2.

In a report to His Excellency on the advisability of a reference to the Court to determine the validity of The Jesuits' Estates Act of Quebec, the late Sir John Thompson, Minister of Justice, refers to these proceedings as follows: "The provision which confers that power on your Excellency was undoubtedly intended to enable the Governor-General to obtain an opinion from the Supreme Court of Canada in relation to some order which his government might be called on to make or in relation to some action which his officers might be called on to adopt. For the guidance of your Excellency, or of your officers, the provision may be a valuable one, but, used as a means of solving legal problems in which the Government of Canada has no direct concern, however much they may interest or excite the public mind, as the petitioner seems to propose, or used to compel an adjudication on private rights and interest, it would be perverted, the undersigned humbly submits, into an arbitrary and inquisitorial power, anticipating and interfering with the ordinary course of justice. Used in that manner it would become in time a means of depriving the provincial courts of their functions to a considerable extent, as every inportant and influential interest affected by legislation would seek the opinion of the Supreme Court of Canada by application to the Governor in Council to have such opinion obtained, and the provincial courts would be

in a great degree bound by the opinions so pronounced, however inadequately the parties concerned might have been represented. The rights of parties concerned would be practically concluded without their having had the opportunity which the laws of the respective provinces give them of submitting those rights voluntarily for decision in the mode, and on the proof, which may seem best adapted to elicit a thorough investigation. If the parties interested did not take part in such inquiries before the Supreme Court of Canada, the *ex parte* decision on their rights would be an unsatisfactory method of disposing of the questions involved; if they did participate, under the compulsion of the proceeding by which the government in sending the question to the Court had actually acted as a plaintiff, in calling them to the bar of the tribunal, the Supreme Court would, to that extent, be turned into a court of first instance, instead of being what Parliament declared it should be, a court of appeal.

"Those whose rights are in any way affected by legal questions should, unless, some interest on the part of the government being involved, a different course is necessary, be permitted to raise and discuss such questions in the form, at the time, and before the tribunal of their own choice, without being hampered by an opinion certified by the highest tribunal on an *ex parte* argument, it may be, or at any rate, without the presentation of facts and testimony which may have an important influence on the decision which should be arrived at, and which are presented in the course of ordinary legal proceedings.

"It may be safely concluded, therefore, that the object and scope of the enactment are not to obtain a settlement by this summary procedure of legal questions even of great public interest, or to obtain an adjudication upon private rights, but solely to obtain advice which is needed by the Crown in affairs of administration. This being the case, your Excellency might, not inappropriately, give to the petitioner an answer like that which was given on the 13th December, 1872, by the Registrar of Her Majesty's Privy Council to a request that the opinion of the Judicial Committee might be obtained as to the validity of a statute of New Brunswick. In that answer it was stated that Her Majesty could not be advised

to refer to a committee of the Council in England a question which Her Majesty had no authority to determine and on which the opinion would not be binding on the parties. Indeed, there seems much reason to doubt, both from this authority, and from general principles, that the decision of the Supreme Court on such a reference would be binding on any parties or on any interests involved. It would simply advise your Excellency as to the opinions entertained by the members of the Court." 12 Legal News, pp. 286-7.

And see 24 Am. Law Rev. 369, as to the like proceedings in the United States.

The view of Sir John Thompson would perhaps be modified by the extended provisions of the present section, but it is confirmed in one respect by the remarks of Mr. Justice Taschereau in his judgment on the reference respecting Provincial Fisheries, 26 S. C. R. 444, at p. 539, namely: "Our answers are merely advisory, and we have to say what is the law as heretofore judicially expounded, not what is the law according to our opinion. We determine nothing. We are mere advisers, and the answers we give bind no one, not even ourselves."

In the Brewers' Case [1896], A. C. 348, Lord Watson, delivering judgment for the Judicial Committee said: "These questions, being in their nature academic rather than judicial are better fitted for the consideration of the officers of the Crown than of a Court of law. * * It must, therefore, be understood that the answers which follow are not meant to have, and cannot have, the weight of a judicial determination." . . . .

And in *Atty.-Gen. of Ontario* v. *Hamilton Street Ry. Co.* [1903], A. C. 524, their Lordships of the Judicial Committee refused to answer most of the questions referred on the ground that any opinions they might express would be worthless as being speculative opinions on hypothetical questions.

In his judgment on the reference as to the validity of the Manitoba Public Schools Act, 22 S. C. R. 577, Taschereau, J., doubted the authority of Parliament to provide for these proceedings, as by the B. N. A. Act only a *Court of Appeal* for the Dominion can be established.

Section 37 of c. 135 Rev. Stats. 1886, authorized the Governor-General in Council to refer questions touching the mat-

ters mentioned in pars. (*b*) and (*c*) of this section "or touching any other matter with reference to which he sees fit to exercise this power." In *The Sunday Observance Case*, 35 S. C. R. 581, the Court held that "any other matter" meant matters *ejusdem generis* with those specially mentioned, and also that hypothetical questions should not be referred. In consequence of this decision the section was amended by 6 Edw. VII. c. 50, and put in its present form.

INTERPRETATION OF B. N. A. ACT.

Important questions of law or fact touching (*a*) The Interpretation of The British North America Acts, 1867 to 1886.

Prior to the amendment questions as to the constitutionality of a Dominion or Provincial Act could be referred, and the Court evidently regarded the interpretation of the B. N. A. Act as *ejusdem generis* therewith when it heard and considered the references as to Representation of New Brunswick, 33 S. C. R. 475, and of Prince Edward Island, 33 S. C. R. 594, in the House of Commons. Several of the other cases referred to the Court by the Governor-General in Council have involved the interpretation of portions, especially sections 91 and 92, of the Imperial Act.

LEGISLATION.

(*b*) The constitutionality or interpretation of any Dominion or Provincial Legislation.

Questions as to Dominion Legislation were referred in *In re Can. Temp. Act*, 1878, and *County of Perth*, S. C. Dig. 223; *In re C. T. Act* and *County of Kent*, S. C. Dig. 223; *In re Criminal Code*, bigamy sections, 27 S. C. R. 461; *In re Railway Act Amendment*, 36 S. C. R. 136; *In re Provincial Fisheries*, 26 S. C. R. 444.

Those respecting Provincial Legislation were: Manitoba Railway Crossings Case; *In re Statutes of Manitoba relating to Education*, 22 S. C. R. 577; [1895[, A. C. 202; *In re Prohibitory Liquor Laws*, 24 S. C. R. 170; *In re Provincial Fisheries*, 26 S. C. R. 444; *In re Sunday Legislation*, 35 S. C. R. 581; *Thrasher Case*, S. C. Dig. 273.

EDUCATIONAL MATTERS.

(c) Appellate Jurisdiction as to Educational Matters.

The Manitoba School Act Case, *supra*, was referred under this provision.

POWERS.

(d) Parliamentary or legislative powers or powers of government.

All the above mentioned cases deal with the powers of Parliament and the Legislatures respectively. And the Provincial Fisheries Case relates to the powers of the Dominion and Provincial Governments to make regulations as to fishing.

OTHER MATTERS.

(e) Any other matter.

Under this clause any important question of law or fact of any nature or kind may be referred. It expressly provides that the matter need not be *ejusdem generis* with those specifically mentioned in the clauses preceding as was formerly required. See *Sunday Labour Case*, 35 S. C. R. 581. And hypothetical or academic questions may be referred, for though in the case last mentioned the Court expressed the contrary opinion yet they answered all the questions and gave their opinions thereon at length.

HEARING AND CONSIDERATION.

Sub-section 2.

The original Act, in providing for this reference, only required the judges to consider the questions and certify their opinion thereon without giving any reasons. By 54 & 55 V. c. 25, s. 4, an amendment was passed in the terms of subsection 2.

NOTICE TO ATTORNEY-GENERAL.

Sub-section 3.

In the cases of *In re Prohibitory Liquor Laws*, 24 S. C. R. 170; *In re Provincial Fisheries*, 26 S. C. R. 444; and *In re Sunday Labour*, 35 S. C. R. 581, the Attorney-General of each Province was notified of the hearing and in each case a number of the Provincial Governments were represented by counsel. In the cases *In re Representation in the House of Commons of New Brunswick*, 33 S. C. R. 475, and of *Prince Edward Island*, 33 S. C. R. 594, the Provinces of On-

tario, Quebec, Nova Scotia, New Brunswick and Prince Edward Island were all interested and all, except Nova Scotia, were represented at the hearing.

PERSONS INTERESTED.

Sub-section 4.

In the case of *In re Prohibitory Liquor Laws*, the Court ordered that The Brewers' and Distillers' Association should be notified and counsel appeared for them at the hearing. In *The Sunday Labour Case* in addition to counsel for the Dominion Government and the Provinces of Ontario and Quebec counsel appeared for the Lord's Day Alliance, several railway companies and an industrial company.

COUNSEL APPOINTED.

Sub-section 5.

In The Manitoba School Act Case, 22 S. C. R. 577, the Court requested the late Christopher Robinson, Q.C., to argue the appeal on behalf of the Province.

APPEAL.

Sub-section 6.

A number of the cases mentioned above have been taken to the Privy Council under this provision. See *In re Prohibitory Liquor Laws*, [1896] A. C. 348; *In re Provincial Fisheries*, [1898] A. C. 700; *In re Representation in House of Commons*, [1905] A. C. 37; *In re Railway Act Amendment*, [1907] A. C. 65.

Supreme Court Rule 80 provides that a reference under this section shall be inscribed by order of the Court or a judge and factums shall be filed by all parties as in case of an appeal.

61. The Court, or any two of the judges thereof, shall examine and report upon any private bill or petition for a private bill presented to the Senate or House of Commons, and referred to the Court under any rules or orders made by the Senate or House of Commons. R. S., c. 135, s. 38.

In 1876 the bill to incorporate The Brothers of the Christian School in Canada was referred to the Court under sec. 53 of the original Supreme and Exchequer Courts Act, 38 V. c. 11, which was in the same terms as this section. On that reference Sir W. J. Ritchie C.J. expressed a doubt as to whether Parliament, by this enactment, intended that the judges should express their opinion on the constitutional right of Parliament to pass a bill. See Cout. Cas. 1.

Two bills were referred in 1882, one to incorporate The Quebec Timber Co. In reporting on this the Court refrained from answering a question submitted, namely, "whether a company already incorporated under 'The Companies Acts of 1862 to 1880' of the Imperial Parliament for the purposes mentioned in the bill has a legal corporate existence in Canada," on the ground that it affected private rights which might come before it judicially and which should not be passed upon without a trial. Cout. Cas. 43.

The other was the bill to incorporate the Canada Provident Association. Four of their Lordships reported as their opinion that the bill was not a measure falling within the subjects allotted to Provincial Legislatures under sec. 92, B. N. A. Act, 1867. The Chief Justice and Fournier J. thought the matter should be argued before the Court. Cout. Cas. 48.

HABEAS CORPUS.

62. Every judge of the Court shall, except in matters arising out of any claim for extradition under any treaty, have concurrent jurisdiction with the courts or judges of the several provinces, to issue the writ of *habeas corpus ad subjiciendum*, for the purpose of an inquiry into the cause of commitment in any criminal case under any Act of the Parliament of Canada.

2. If the judge refuses the writ or remands the prisoner, an appeal shall lie to the Court. R. S., c. 135, s. 32.

It will be observed that the applicant for the writ must be committed in a criminal case, while the appeal to the Court, under sec. 39 (*c*), is only given in proceedings for or upon a writ of *habeas corpus* not arising out of a criminal charge.

An application for the writ was made to a judge in Nova Scotia and referred by him to the full court by which it was refused. On a subsequent application to Mr. Justice Sedgewick under the above section, he held that as a judge of the Supreme Court of Nova Scotia would be bound by the decision of the full court he, exercising a concurrent jurisdiction with such judge was equally bound and he refused to entertain the application. *In re White*, 31 S. C. R. 383. And see *In re Boucher*, S. C. Dig. 635. But in a later case Mr. Justice Killam entertained an application under precisely similar circumstances, and on appeal from his refusal to issue the writ Mr. Justice Sedgewick delivered judgment

for the Court, but made no reference to *White's Case* or to want of jurisdiction in Judge Killam. *In re Vancini*, 34 S. C. R. 621.

In the case of *In re Poitvin*, S. C. Dig. 637, Mr. Justice Strong held that a judge could not issue the writ in case of commitment for murder which is a common law offence, and not a "Criminal Case under any Act of the Parliament of Canada." See also *per* Strong J. in *In re Sproule*, 12 S. C. R. 140.

A commitment on conviction for selling liquor in violation of the provisions of a Provincial License Act; *ex parte Macdonald*, 27 S. C. R. 683; or of The Canada Temperance Act; *In re Richard*, 38 S. C. R. 394; is a commitment in a criminal case under this section.

The judge can only inquire into the "cause of commitment," and will not go behind a conviction, regular on its face, and made by proper authority, to inquire into the merits of the case and ascertain if the evidence warranted it. *In re Trepannier*, 12 S. C. R. 111; *Ex parte Macdonald, supra.*

"If the judge refuses the writ or remands the prisoner an appeal shall lie to the Court."

Rules 64 to 67 provide for procedure on such appeal.

No appeal is given by the Act in case the writ is granted, but in such case the Court may exercise the power inherent in every superior court of inquiring into the regularity or abuse of its process and will set aside the writ if improvidently issued. *In re Sproule*, 12 S. C. R. 140.

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

If the record of a superior Court, produced on an application for a writ of *habeas corpus*, contains the recital of acts requisite to confer jurisdiction it is conclusive and cannot be contradicted by extrinsic evidence. *Ibid.*

As a general rule no costs are given in *habeas corpus* proceedings. *In re Johnson*, S. C. Dig. 389.

By rule 72 the judge to whom an application is made for issue of the writ may refer it to the Court. And he could do so before the rule was made. *In re Richard*, 38 S. C. R. 394.

See rules 72 and 79, both included, for procedure on the application. Rule 72 and Sch. forms D. and E. provide for form of summons. Rule 73 for service on Attorney-General, and rule 75 for service on the person named therein. By rule 76 disobedience of the writ may be punished by attachment, and rules 77, 78, and 79, relate to the return. Rule 74 authorizes the judge to order the prisoner's discharge on argument of the summons instead of by the writ.

Rule 16 provides for convening the Court for the purpose, *inter alia*, of hearing *habeas corpus* matters.

BAIL.

63. In any *habeas corpus* matter before a judge of the Supreme Court, or on any appeal to the Supreme Court in any *habeas corpus* matter, the Court or judge shall have the same power to bail, discharge or commit the prisoner or person, or to direct him to be detained in custody or otherwise to deal with him as any court, judge or justice of the peace having jurisdiction in any such matters in any Province of Canada. R. S., c. 135, s. 33.

The powers given to a judge by this section have never been exercised.

PRESENCE OF PRISONER.

64. On any appeal to the Court in any *habeas corpus* matter the Court may by writ or order direct that any prisoner or person on whose behalf such appeal is made shall be brought before the Court.

2. Unless the Court so direct it shall not be necessary for such prisoner or person to be present in court but he shall remain in the charge or custody to which he was committed or had been remanded, or in which he was at the time of giving the notice of appeal, unless at liberty on bail, by order of a judge of the court which refused the application or of a judge of the Supreme Court. R. S., c. 135, s. 34.

This section relates to appeals under sec. 39 of the Act.

As a matter of practice the prisoner or appellant is never present when the appeal is argued.

SPEEDY HEARING.

65. An appeal to the Supreme Court in any *habeas corpus* matter shall be heard at an early day, whether in or out of the prescribed sessions of the Court. R. S., c. 135, s. 35.

See rule 16 as to convening the Court out of session for the purpose of hearing appeals in matters of *habeas corpus*. The case of *In re Sproule*, was heard in September under rule 12 of the former rules which was in the same terms as 16.

When the Court is in session *habeas corpus* appeals are given precedence over those on the regular list.

CERTIORARI.

66. A writ of *certiorari* may, by order of the Court or a judge thereof, issue out of the Supreme Court to bring up any papers or other proceedings had or taken before any court, judge or justice of the peace, and which are considered necessary with a view to any inquiry, appeal or other proceeding had or to be had before the Court. R. S., c. 135, s. 36.

This section provides for the issue of a writ of *certiorari*, by order of the Court or a judge. But it must be considered necessary with a view to any inquiry, appeal or other proceding had or to be had before the Court. Therefore, a judge cannot order the issue of such a writ in any proceeding before him in a *habeas corpus* matter. Nor does the section authorize the Court to issue a writ of *certiorari* in such proceedings. To do so would be to assume appellate jurisdiction over the inferior court. *In re Trepannier*, 12 S. C. R. 111.

This decision was followed by Mr. Justice Patterson on an application for a writ of *habeas corpus* in April, 1890. *In re Arabin alias Ireda*, Cout. Cas. 95.

Writ of *certiorari* moved for to bring up papers from the Supreme Court of British Columbia, the Chief Justice of that Court having made an order staying execution on the judgment of the Supreme Court of Canada, certified to the court below in the usual way, on the ground that an appeal was being proceeded with to the Privy Council. Motion refused. *Sewell* v. *British Columbia Towing Co.*, S. C. Dig. 233.

Section 39 provides for an appeal from the judgment in any case of procedings for or upon a writ of *certiorari*.

CASES REMOVED BY PROVINCIAL COURTS.

67. When the Legislature of any Province of Canada has passed an Act agreeing and providing that the Supreme Court of Canada shall have jurisdiction in any of the following cases, that is to say:—

(*a*) Of suits, actions or proceedings in which the parties thereto by their pleading have raised the question of the validity of an Act of the Parliament of Canada when in the opinion of a judge of the court in which the same are pending such question is material;

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

the judge who has decided that such question is material shall at the request of the parties, and may without such request, if he thinks fit, in any suit, action or proceeding within the class or classes of cases in respect of which such Act so agreeing and providing has been passed, order the case to be removed to the Supreme Court for the decision of such question, whatever may be the value of the matter in dispute, and the case shall be removed accordingly.

(2) The Supreme Court shall thereupon hear and determine the question so raised and shall remit the case with a copy of its judgment thereon to the court or judge whence it came to be then and there dealt with as to justice appertains.

3. There shall be no further appeal to the Supreme Court on any point decided by it in any such case, nor, unless the value of the matter in dispute exceeds five hundred dollars, on any other point in such case.

4. This section shall apply only to cases of a civil nature. R. S. c. 135, ss. 72, 73 and 74.

Sections 72 and 73 of R. S. c. 135, provided that when a provincial legislature passed an Act providing therefor, the Exchequer Court should have jurisdiction in controversies between the Dominion and such Province, or between the latter and any other Province or Provinces which had passed a like Act, and an appeal should lie in any such case to the Supreme Court. This provision will now be found in s. 32 of the Exchequer Court Act, c. 140 of these Revised Statutes.

The legislatures of Ontario (R. S. O. [1897] c. 49), Nova Scotia (R. S. [1900] c. 154) New Brunswick (C. S. [1903] c. 110), British Columbia (R. S. [1897] c. 53), and Manitoba (R. S. [1902] c. 33, s. 7), have passed Acts consenting to the exercise of the jurisdiction provided for by this section.

PROCEDURE IN APPEALS.

68. Proceedings in appeals shall, when not otherwise provided for by this Act, or by the Act providing for the appeal, or by the general rules and orders of the Supreme Court, be as nearly as possible in conformity with the present practice of the Judicial Committee of His Majesty's Privy Council. R. S., c. 135, s. 39.

The procedure in the Supreme Court is so fully provided for in this and other Acts and by the rules of Court, that there is little for this section to operate upon.

See notes to s. 82 as to practice of the Judicial Committee on applications to dismiss for want of prosecution.

For practice of the Committee, see Preston's Privy Council Practice and Safford & Wheeler's Practice.

TIME FOR APPEAL.

69. Except as otherwise provided, every appeal shall be brought within sixty days from the signing or entry or pronouncing of the judgment appealed from. 50-51 V., c. 16, s. 57.

This provision only applies to appeals provided for by the Supreme Court Act, and not to appeals in Criminal Cases, in Election Cases, from the Exchequer Court, from the Board of Railway Commissioners, or under The Winding-up Act.

In Quebec Cases (ss. 40 and 46), the sixty days always runs from the pronouncing of the judgment appealed from. In other cases, it runs from the pronouncing of the judgment, unless the settlement of the minutes of the judgment appealed from is moved against in the court giving such judgment, or some substantial question affecting the rights of the parties has not been clearly disposed of thereby. *County of Elgin* v. *Robert*, 36 S. C. R. 27.

As to the time when the sixty days begins to run, there is no distinction between suits in equity and actions at law. *Ib.*

In *O'Sullivan* v. *Harty*, 13 S. C. R. 431, and *Martley* v. *Carson*, 13 S. C. R. 439, the minutes were spoken to in the court below, and the time for appealing ran from the entry of judgment. See also *Robblee* v. *Rankin*, 11 S. C. R. 137; *Robertson* v. *Wigle*, S. C. R. 214.

In *Walmsley* v. *Griffith*, 13 S. C. R. 434, and *Martin* v. *Sampson*, 26 S. C. R. 707, it ran from the pronouncing of the judgment.

By section 71 of this Act, the sixty days may be extended by order of the court appealed from or a judge thereof. But such extension will not avail to permit of an application to the Supreme Court or a judge thereof for leave to appeal when leave is necessary. Thus an application for special leave under sec. 48 (*e*) to appeal from a judgment of the Court of Appeal for Ontario must always be made to the Supreme Court within the sixty days. *Canadian Mutual Ins. Co.* v. *Lee*, 34 S. C. R. 224. But the Court of Appeal

for Ontario can grant such leave within the time as extended; *Hamilton Brass Mfg. Co.* v. *Barr Cash & Package Carrier Co.*, 38 S. C. R. 216.

The application for leave to appeal *per saltum* must also be made within the sixty days. *Barrett* v. *Syndicat Lyonnais du Klondyke*, 33 S. C. R. 667; *Elgin* v. *Robert*, 36 S. C. R. 27.

The delay prescribed by this section, is not suspended during the vacations of the court. *News Printing Co.* v. *Macrae*, 26 S. C. R. 695.

This section applies to appeals in matters of habeas corpus. *In re Smart*, 16 S. C. R. 396.

NOTICE.

70. No appeal upon a special case or from the judgment upon a motion to enter a verdict or non-suit upon a point reserved at the trial, or from the judgment upon a motion for a new trial, shall be allowed, unless notice thereof is given in writing to the opposite party, or his attorney of record, within twenty days after the decision complained of, or within such further time as the court appealed from, or a judge thereof, allows. R. S., c. 135, s. 41.

The cases referred to are those specified by ss. 39 (*a*) and 38 (*a*) and (*b*). "Within 20 days after the decision complained of" would exclude the day upon which the decision is rendered and include the last of the 20 days, unless the last of such days should happen to fall on a holiday. See rule 112 and notes.

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

(*a*) Criminal appeals—Notice of appeal has to be served on Attorney-General for the proper Province within 15 days after the affirmance of conviction, or such further time as the Supreme Court or a judge thereof allows. Criminal Code, sec. 1024. See Criminal Appeals.

(*b*) In Exchequer Appeals, including appeals in Admiralty cases, notice of the setting down of the appeal must be given within 10 days. Exchequer Court Act, sec. 82.

If the appeal is on behalf of the Crown a preliminary notice takes the place of a deposit under the Act. Exchequer Court Act, sec. 85.

(*c*) Election appeals—Notice of setting down an appeal for hearing must be given within three days. Dominion Controverted Elections Act, section 67. See Election Appeals.

The notice is not an initiation of the appeal, and cannot be set aside before the security has been given: *Smith* v. *Smith*, 11 Ont. P. R. 6. And see as to effect of notice *Reg.* v. *McGauley*, 12 Ont. P. R. 259; *Ex parte Saffrey*, 5 Ch. D. 365.

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

The giving of a notice is a condition precedent (*Vaughan* v. *Richardson*, 17 S. C. R. 703), which must be shewn to have been complied with before the appeal can be allowed, but when the notice has been given, either within the twenty days or within the extended time fixed by a judge under this section, the appellant would be obliged to bring his appeal within the sixty days from the entry or pronouncing of the judgment or to apply under section 71 for an extension.

The "special case" mentioned in section 70 has no reference to the case prepared, under Cons. Rule 413, for an appeal to the Court of Appeal for Ontario. Therefore, the latter Court overruled an objection to a bond for security for costs of an appeal to the Supreme Court on the ground that notice should have been given under said section, it being contended that every appeal from that court is on a "special case." *Draper* v. *Radenhurst*, 14 Ont. P. R. 376.

EXTENSION OF TIME.

71. Notwithstanding anything herein contained the court proposed to be appealed from, or any judge thereof, may, under special circumstances, allow an appeal, although the same is not brought within the time hereinbefore prescribed in that behalf.

2. In such case, the court or judge shall impose such terms as to security or otherwise as seems proper under the circumstances.

3. The provisions of this section shall not apply to any appeal in the case of an election petition. R. S., c. 135, s. 42.

The expression "allow an appeal" has led to some confusion. The power given to the court below, or a judge thereof, is only that of allowing the security after expiration of the

time prescribed by section 69 within which the appeal must be brought. See *News Printing Co.* v. *Macrae*, 26 S. C. R. 695. In that case the Registrar held, affirmed by Girouard J., that he could not approve the security within the time as extended. But see per Ritchie C.J. in *Walmsley* v. *Griffith*, S. C. Dig. 113.

The judgment of the Court of Appeal in plaintiff's favour was pronounced on March 5th, 1889. On March 16th defendant's solicitors wrote to their clients suggesting an appeal, but received no instructions until April 2nd. On April 3rd, an application was made under sec. 42 (71) to extend the time for appealing. The only explanation given for the delay was the production of a telegram to the solicitors from an officer of the defendant company, giving instructions to appeal, and suggesting that the matter had been overlooked by another officer. The court held that these were not "special circumstances," under this section, and the application was refused. *Rowlands* v. *The Canada Southern Railway Co.*, 13 Ont. P. R. 93.

Approving of the security is a mode of allowing the appeal. *Fraser* v. *Abbott*, S. C. Dig. 111; *The Queen* v. *Taylor*, 1 S. C. R. 65; *Walmsley* v. *Griffith*, 13 S. C. R. 434; *Vaughan* v. *Richardson*, 17 S. C. R. 703; *News Printing Co.* v. *Macrae*, 26 S. C. R. 695.

When a judge of the court below has made an order allowing the security he is *functus officio*, and the appeal is then subject to the jurisdiction of the Supreme Court. Orders made in the cause by the court below after the allowance of the security will be disregarded by the Supreme Court. *Lakin* v. *Nuttall*, 3 S. C. R. 691; *Walmsley* v. *Griffith*, S. C. Dig. 113; *Starrs* v. *Cosgrave Brewing and Malting Co.*, *Ib.*

The power of allowing an appeal under special circumstances is given by this section 71 only to the court below or a judge thereof. Therefore if an application be made to the Supreme Court or a judge thereof under section 75 it should be made within the sixty days given by section 69 or an extension thereof. *Walmsley* v. *Griffith*, S. C. Dig. 113.

The Court of Appeal for Ontario has held that no appeal lies to that court from the order of a judge extending the time

for appealing. *Neill* v. *Travellers' Ins.* Co., 9 Ont. App. R. 54; *Re Central Bank of Canada*, 17 Ont. P. R. 395.

Wherever power is given to a legal authority to grant or refuse leave to appeal, the decision of that legal authority is final and conclusive. *Ex parte Stevenson*, [1892] 1 Q. B. 394.

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

As to what are "special circumstances" within the meaning of this section see authorities cited on page 1116 of the Annual Practice, 1897, and in Wilson's Judicature Acts, 6th edition, page 446. Most of the cases will also be found in Holmested & Langton's Judicature Act, 3rd ed., page 136. See also *Langdon* v. *Robertson*, 12 Ont. P. R. 139, approving of *Sievewright* v. *Leys*, 9 Ont. P. R. 200; *Re Gabourie, Casey* v. *Gabourie*, 12 Ont. P. R. 252; *Platt* v. *Grand Trunk Railway Co.*, 12 Ont. P. R. 380.

No uniform rule can be deduced from the cases, but if any rule can be laid down it seems to be, that to do justice in the particular case is above all other considerations, as was said in *Re Gabourie, supra*. In *Re Manchester Economic Building Society*, 24 Ch. D. 488, in which application for special leave to appeal was made after the expiration of the time fixed, Brett, M.R., says, at p. 497: "I know of no rule other than this, that the court has power to give the special leave, and exercising its judicial discretion, is bound to give the special leave, if justice requires that that leave should be given."

NO WRIT REQUIRED.

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

2. Whenever error in law is alleged, the proceedings in the Supreme Court shall be in the form of an appeal. R. S., c. 135, s. 43.

See notes to preceding section.

Sec. 75 provides for the security to be given.

But notice of appeal must be given in certain cases. See section 70 and notes.

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

CASE.

73. The appeal shall be upon a case to be stated by the parties, or, in the event of difference, to be settled by the court appealed from, or a judge thereof; and the case shall set forth the judgment objected to and so much of the pleadings, evidence, affidavits and documents as is necessary to raise the question for the decision of the court. R. S., c. 135, s. 44.

The case cannot be filed unless it contains the formal judgment of the court appealed from. *Reid* v. *Ramsay*, S. C. Dig. 1101; *Kearney* v. *Kean, Ib; Wallace* v. *Souther, Ib.* 1102; *St. Stephen* v. *Charlotte, Ib.* 1104; In *re Daly*, 39 S. C. R. 122.

In one case from British Columbia it was ordered that the Registrar should be at liberty to file the case as received without the formal order, the appellant within six weeks to attach the formal order to the case and copies. *Bank of B. N. A.* v. *Walker*, S. C. Dig. 1101.

It ought also to contain the formal judgment order or decree of the court of original jurisdiction. *Wright* v. *Huron* S. C. Dig. 1101. Rule 7 provides that it shall contain copies of all judgments made in the courts below.

And Rule 6 provides that in addition to the proceedings mentioned in the section, the case shall invariably contain a transcript of all the opinions or reasons for their judgment delivered by the judges of the court or courts below, or a certificate signed by the clerk, or an affidavit that such reasons cannot be procured, with a statement of the efforts made to procure the same.

By Rule 7 it is required that the case shall also contain a copy of any order which may have been made by the court below or any judge thereof enlarging the time for appealing.

Rule 8 provides for the remitting of the case to the court below for correction, or in order that it may be made more complete by the addition thereto of further matter. See notes to sections 54, 55 and 56 as to amendments.

The Registrar will not tax the costs of printing any immaterial documents which an appellant inserts in a case, or allows to be inserted without protest. The appellant should apply to a judge of the Supreme Court in chambers for an order to dispense with unnecessary printing, but such application should not be made until the case has been settled, as provided by the section. *Carrier* v. *Bender*, S. C. Dig. 1101.

The case should not contain matter that was not before the court of original jurisdiction. *Lionais* v. *The Molsons Bank*, 10 S. C. R. 526; *Montreal Loan and Mortgage Co.* v. *Fauteaux*, 3 S. C. R. 411 at p. 425; *Exchange Bank of Canada* v. *Gilman*, 17 S. C. R. 108.

Where, after the institution of proceedings in an appeal, judges of the court below filed documents with the prothonotary purporting to be additions to their respective opinions such documents were improperly allowed to form part of the case on appeal, and could not be considered by the appellate court. *Per* Taschereau J., in *Mayhew* v. *Stone*, 26 S. C. R. 58.

The case should be filed within forty days after the security required by the Act shall have been allowed, otherwise the respondent may move to dismiss, pursuant to section 82 of the Act. (Rule 9.)

But the Supreme Court or a judge thereof may extend the time. (Rule 108.)

The case must be accompanied by a certificate under the seal of the court below stating that the appellant has given proper security to the satisfaction of the court whose judgment is appealed from or of a judge thereof, and setting forth the nature of the security to the amount of $500, as required by the 75th section of the Act, and a copy of any bond or other instrument by which security may have been given must be annexed to the certificate. (Rule 10.) See *McDonald* v. *Abbott*, 3 S. C. R. 278. And see notes to section 75 and Rule 10.

Rules 11 and 12 provide for the printing of the case and regulate its style, size, number of copies to be printed and deposited, etc.

If these rules are not complied with or the press is not properly corrected the registrar shall not file the case without leave. Rule 13.

Rule 14 provides that, together with the case, the original record and all exhibits and documentary evidence filed in the case are to be transmitted to the registrar.

An application to amend a case should be made to a judge in chambers and not to the court. *Aetna Ins. Co.* v *Brodie*, S. C. Dig. 1099. But no application should be made with respect to the contents of a case, or to dispense with printing any part of it, until it has been settled between the parties, or by a judge of the court below, pursuant to the statute. *Carrier* v. *Bender*, S. C. Dig. 1101.

These rules as to printing do not apply to criminal appeals and appeals in matters of *habeas corpus* under sec. 62 which may be heard on a written case. (Rule 65.)

See rules 68 and 69 as to election appeals.

TRANSMISSION OF CASE.

74. The clerk or other proper officer of the court appealed from shall, upon payment to him of the proper fees and the expenses of transmission, transmit the case forthwith after such allowance to the Registrar, and further proceedings shall thereupon be had according to the practice of the Supreme Court. R. S., c. 135, s. 45.

This section should follow section 75. "Forthwith after such allowance" can only refer to the approval of security under the latter. It cannot mean the allowance of the appeal mentioned in sec. 71, for that only deals with the case in which the appeal is not brought within sixty days.

By rule 9 if the case is not filed within forty days after the security is allowed the respondent may move to dismiss for want of prosecution.

The word "forthwith" in statutes and rules of court must be construed with reference to the objects of the provision and the circumstances of the case. *Ex parte Lamb*, 19 Ch. D. 169; *Maxwell* v. *Scarfe*, 18 O. R. 529.

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

But in appeals from the Yukon Territorial Court the Registrar has been directed to receive a typewritten case certified by the clerk of the court and allow the appellant to have it printed in Ottawa.

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

2. This section shall not apply to appeals by or on behalf of the Crown or in election cases, in cases in the Exchequer Court, in criminal cases, or in proceedings for or upon a writ of *habeas corpus*. R. S., c. 135, s. 46. 50-51 V., c. 16, s. 57.

The bond may be in the following form:-

2. BOND FOR SECURITY OF COSTS.

(To be given under section 75 of the Supreme and Exchequer Courts Act.)

Know all men by these presents, that we A. B., of the of , in the county of , and Province of , C. D. of the same place , and E. F. of the same place , are jointly and severally held, and firmly bound unto G. H., in the penal sum of $500, for which payment well and truly to be made we bind ourselves and each of us binds himself, our and each of our heirs, executors and administrators firmly by these presents.

Dated this day of , A.D. 18 .

Whereas a certain action was brought in the Queen's Bench Division of the High Court of Justice for Ontario by the said A. B., plaintiff, against the said G. H., defendant. And whereas judgment was given in the said Court against the said A. B., who appealed from the said judgment to the Court of Appeal for Ontario. And whereas judgment was given in the said action in the said last mentioned Court on the day of , A.D. 19 . And whereas the said A. B. complains that in giving of the last mentioned judgment in the said action upon the said appeal manifest error hath intervened, wherefore the said A. B. desires to appeal from the said judgment of the Court of Appeal for Ontario to the Supreme Court of Canada.

Now the condition of this obligation is such, that if the said A. B. shall effectually prosecute his said appeal and pay such costs and damages as may be awarded against him by the Supreme Court of Canada, then this obligation shall be void, otherwise to remain in full force and effect.

Signed, sealed and delivered in presence of

A. B. (SEAL.)
C. D. (SEAL.)
E. F. (SEAL.)

If, during the appeal, an appellant is added or substituted for the original appellant, either a new bond should be filed or an undertaking by the sureties to be bound by the bond, notwithstanding the change of parties.

3. AFFIDAVIT OF EXECUTION.

Province of
County of
To Wit:

I, X. Y., of the of in the County of , and Province of , (*occupation*), make oath and say:

1. That I was personally present and did see the within instrument duly signed, sealed and executed by A. B., C. D. and E. F., three of the parties thereto.
2. That the said instrument was executed at
3. That I know the said parties.
4. That I am a subscribing witness to the said instrument.

Sworn before me at the of in the county of and Province of this day of A.D. 19 .

X. Y.

(Signed)
A Commissioner, etc.

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4. AFFIDAVIT OF JUSTIFICATION BY SURETIES.

I, C. D., of the of , in the County of , and Province of , make oath and say, That I am a resident inhabitant of the Province of , and am a freeholder in the of aforesaid, and that I am worth the sum of $1,000, over and above what will pay all my debts.

And I, E. F., of the of in the County of , and the Province of , make oath and say, That I am a resident inhabitant of the said Province of , and am a freeholder in the of aforesaid, and that I am worth the sum of $1,000, over and above what will pay all my debts.

(Signed) C. D.
E. F.

The above named deponents, C. D. and E. F., were severally sworn before me in the of in the County of , and Province of , this day of A.D. 19 .

(Signed)
A Commissioner, etc.

The affidavit should be entitled in the court in which the security is given.

See *Jamieson* v. *London & Canadian L. & A. Co.*, 18 Ont. P. R. 413, and *Young* v. *Tucker*, 18 Ont. P. R. 449, for examples of defective forms.

As to security in election appeals, see section 65 of the Dominion Controverted Elections Act.

The security in Exchequer appeals is provided for by sections 82 and 85 Exchequer Court Act.

Application for special leave to appeal under " The Winding-up Act," must be made to a judge of the Supreme Court of Canada, while the security may be given to the satisfaction either of the court below or a judge thereof, or of the Supreme Court or a judge thereof.

In appeals in criminal cases, or in proceedings for or upon a writ of *habeas corpus* no security is required.

Security may be given by payment of $500 into court, but the appellant must obtain the approval of the Court or judge in such case as well as where it is given by bond. *Macdonald* v. *Abbott*, 3 S. C. R. 278.

The provisions of this section must be strictly followed. The Court cannot dispense with it. *Fraser* v. *Abbott*, S. C. Dig. 111. Nor can the respondent waive it or consent to a reduction of the amount below $500. *Holsten* v. *Cockburn*, 35 S. C. R. 187.

And the Court cannot admit an appeal in *formâ pauperis*. *Fraser* v. *Abbott*, S. C. Dig. 111. And in *Dominion Cartridge Co.* v. *Cairns*, Sedgewick J., refused an application for a certified copy of the record without payment of the Court fees, on the ground of the applicant's poverty.

On appeal from an order of a judge of the Supreme Court of New Brunswick in chambers, discharging the bail to the sheriff on an arrest under a writ of capias, it was held that as the bail, the only parties really interested in the appeal, were not before the Court, and not entitled to the benefit of the bond for security for costs given by the plaintiff in the action, the appeal must be quashed for want of proper security. *Scammell* v. *James*, 16 S. C. R. 593.

And where an appeal was brought from the refusal of the Supreme Court of Nova Scotia to admit the appellant as an attorney, there was no person interested in opposing the application or the appeal and no security for costs was given. *Held*, that the Court had no jurisdiction to entertain the appeal. *In re Cahan*, 21 S. C. R. 100.

Per Ritchie C.J., and Taschereau J.—Except in the cases specially provided for, no appeal can be heard by this court unless the security for costs has been given as provided by sec. 46 (75) of the Supreme and Exchequer Courts Act. *Ib.*

The appellant is not a necessary party to the bond, but if made a party he should sign it. *Robertson* v. *Harris*, 14 Ont. P. R. 373, *per* Osler J.A.

As a municipality has the ordinary right of suing and being sued, it can, as incident to such right, properly join in a bond for security under this section given in a suit in which it was a party. *London and Canadian Loan and Agency Co.* v. *Morris*, 1 West. L. T. 215, *per* Taylor C.J.

The bond should not provide for security for anything but the costs of the appeal, as required by section 75. Thus, where the condition of the bond was that appellants should "effectually prosecute their said appeal and pay such costs and damages as may be awarded against them by the Supreme Court of Canada, and shall pay the amounts by said judgments respectively directed to be paid, either as a debt or for damages or costs or the part thereof as to which the said judgments may be affirmed if they or either of them be affirmed only as to part, and all damages awarded against the said Bank of Hamilton on such appeal," the Registrar refused to approve it. *Bank of Hamilton* v. *Halstead*, April 1897.

And a bond conditioned to pay costs "in case the appeal should be dismissed," was refused in *Bazinet* v. *Gadomy*, February, 1892. No such condition is attached to the security by s. 75, and a respondent is not obliged to accept it.

In *Laine* v. *Beland*, February, 1896, a bond was refused for a similar defect. See, too, *Davidson* v. *Fraser*, 17 Ont. P. R. 246.

An objection to the form of a bond should be by application in chambers to dismiss. *Union Bank* v. *Whitman*, 16 S. C. R. 410.

The application to the court below or a judge thereof to have the security allowed must be made within the sixty days limited by s. 69 subject to the right to make an application under s. 71.

In every appeal the time within which an application may to made to the Supreme Court or a judge thereof, is limited to the sixty days, even if the time is extended by a judge of the Court below. *News Co.* v. *Macrae*, 26 S. C. R. 695. But see *Walmsley* v. *Griffith*, S. C. Dig. 112. Even when

the appeal comes direct from the court of original jurisdiction under s. 42 (*b*) and (*c*).

The approval of the security is a mode of allowing the appeal, and after such approval has been given and appeal allowed, the court below ceases to have any jurisdiction over the case, except under the provisions relating to the stay of execution (see 76 *et seq.*); and any order thereafter made by the court below will be disregarded by the Supreme Court. *Walmsley* v. *Griffith*, S. C. Dig. 113; *Starrs* v. *Cosgrave Brewing and Malting Co.*, *Ib.*

Where the order of the provincial court granting leave to appeal made no provision as to costs in case of dismissal for want of prosecution ("effectually prosecute his appeal") the Judicial Committee of the Privy Council held that the said court had power to correct the omission in its order. *Milson* v. *Carter*, 69 L. T. 735.

When an appeal from the Court of Queen's Bench for Lower Canada has been regularly allowed, and the case is before the Supreme Court, the Superior Court has no power to suspend, by injunction, proceedings on the appeal. *McManamy* v. *The City of Sherbrooke*, 13 Legal News, 290.

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

Where an application had been made to a judge in chambers and refused, the Court refused to entertain a similar application. *McNab* v. *Wagler*, S. C. Dig. 1126.

But it is no bar to an application to the Supreme Court or a judge thereof that a similar application has been made to the court or a judge below, and refused. *Ontario and Quebec Railway Co.* v. *Marcheterre*, 17 S. C. R. 141. This is not an infringement of the rule that where a judge has discretionary power the exercise of his discretion is final, since the allowance of the appeal is a matter of right, and not of discretion, where the requirements as to jurisdiction are fulfilled.

The Court has no discretion to increase the amount of security on appeal to the Supreme Court of Canada fixed by

this section at $500, although there may be a number of respondents all in different interests. *Per* Osler, J.A., *Archer* v. *Severn*, 12 Ont. P. R. 472; *Bonsack Machine Co.* v. *Falk*, Q. R. 9 Q. B. 355 *per* Hall, J.

In *Wheeler* v. *Black*, M. L. R. 2 Q. B. 159, it was held by Cross J., of the Court of Queen's Bench (P.Q.), after consultation with the other members of that Court, that personal security is sufficient, and that the sureties need not justify on real estate. And an officer of the Court appealed from may be a surety. *Wilkins* v. *McLean*, 7 C. L. T. (Occ. N.), 5.

As to the effect of the bond in staying execution in certain cases, see section 76.

The security required to obtain a stay of execution may be given by the same instrument whereby the security under section 75 is given. (Section 76 sub-section 3.) But this only applies when the security is approved by the court below or a judge thereof. In an application in the Supreme Court the bond cannot be so encumbered.

In an application to a judge of the Court of Appeal the object of the bond was not only to secure payment of the costs which might be awarded by the Supreme Court of Canada under section 75, but also, under section 76 (*d*), to procure a stay of execution of the judgment appealed from as to the costs thereby awarded against the appellant. The condition was "shall effectually prosecute the said appeal and pay such costs and damages as may be awarded against the appellant by the Supreme Court of Canada, and shall pay the amount *by the said mentioned judgment* directed to be paid either as a debt or for damages or costs," etc. *Held*, that this did not cover the costs awarded against the appellant by the judgment appealed from, as in strictness the language refers to the judgment of the Supreme Court. *Robinson* v. *Harris*, 14 Ont. P. R. 373.

By sub-section 27 of section 34 of the Interpretation Act, it is provided that, "The expression 'sureties' means sufficient sureties, and the expression 'security' means sufficient security, and whenever these words are used, one person shall be sufficient therefor, unless otherwise expressly required."

As a rule there is no *viva voce* examination of sureties on an application in the Supreme Court for approval of a bond

under section 75, though it has been permitted in some cases. If the respondent has not had sufficient time to satisfy himself as to the sureties the hearing on the application will be enlarged to enable him to do so, and if necessary, both parties will be permitted to file affidavits in respect of the sufficiency of the security. *Union Fire Ins. Co.* v. *Shoolbred*, May 28th, 1889.

Where security is given by deposit of money into Court certain fees are payable under the tariff, namely, one per cent. on the amount of the deposit, and $2 for the order.

The order allowing such deposit should specify clearly its purpose, and state that it was given to the satisfaction of a judge.

STAY OF PROCEEDINGS.

76. Upon the perfecting of such security, execution shall be stayed in the original cause: Provided that:—

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

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

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

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

2. If the court appealed from is a court of appeal and the assignment or conveyance, document, instrument, property or thing, as aforesaid, has been deposited in the custody of the proper officer of the court in which the cause originated, the consent of the party desiring to appeal to the Supreme Court, that it shall so remain to abide the judgment of the Supreme Court, shall be binding on him and shall be deemed a compliance with the requirements in that behalf of this section;

3. In any case in which execution may be stayed on the giving of security under this section, such security may be given by the same instrument whereby the security prescribed in the next preceding section is given. R. S., c. 135, s. 47.

77. When the security has been perfected and allowed, any judge of the court appealed from may issue his fiat to the sheriff, to whom any execution on the judgment has issued, to stay the execution, and the execution shall be thereby stayed, whether a levy has been made under it or not;

2. If the court appealed from is a court of appeal, and execution has been already stayed in the case, such stay of execution shall continue without any new fiat, until the decision of the appeal by the Supreme Court;

3. Unless a judge of the court appealed from otherwise orders no poundage shall be allowed against the appellant, upon any judgment appealed from, on which any execution is issued before the judge's fiat to stay the execution is obtained. R. S., c. 135, s. 48.

78. If, at the time of the receipt by the sheriff of the fiat, or of a copy thereof, the money has been made or received by him, but not paid over to the party who issued the execution, the party appealing may demand back from the sheriff the amount made or received under the execution, or so much thereof as is in his hands not paid over, and in default of payment by the sheriff, upon such demand, the party appealing may recover the same from him in an action for money had and received, or by means of an order or rule of the court appealed from. R. S., c. 135, s. 49.

79. If the judgment appealed from directs the delivery of perishable property, the court appealed from, or a judge thereof, may order the property to be sold and the proceeds to be paid into court, to abide the judgment of the Supreme Court. R. S., c. 135, s. 50.

See Holmsted and Langton, Judicature Act, 3rd ed., pp. 1064 *et seq.*, for like rules in Ontario and decisions thereon.

On an appeal to the Court of Appeal for Ontario, the appellant had deposited money in court as security for costs and obtained a stay of execution. His appeal being dismissed he was allowed to deposit a further sum of $500 as security under section 46 (75) for an appeal to the Supreme Court, and it was held that the stay of execution operated in respect of the further appeal, and a new order was not necessary. *Agricultural Ins. Co. of Watertown* v. *Sargent*, 16 Ont. P. R. 397.

Security against waste is not required in an action *en déclaration d'hypothèque* as there is a personal recourse against the holders of the immovables under Acts 2054-5. *C. C. Consumers' Cordage Co.* v. *Converse*, 2 Que. P. R. 54, *per* Hall J.

On appeal from a judgment condemning appellant to pay $37,500 when he had $30,400 to his credit in a bank he applied for leave to pay the latter sum into court and give security for the balance instead of the whole amount in order to stay execution. The Court held that it had no jurisdiction to make such order. *Villeux* v. *Price & Ordway*, S. C. Dig. 108.

A judge in chambers should not grant an order staying execution of a judgment when applicant has had an opportunity to apply to the full Court. *Dawson* v. *Macdonald*, S. C. Dig. 1135, *per* Taschereau J.

The Court of Appeal for Ontario has no jurisdiction to stay proceedings pending an application for leave to appeal to the Supreme Court under section 48 (*e*). *Royal Templars* v. *Hargrove*, 2 Ont. L. R. 126.

The Superior Court, Quebec, will not stay execution on the mere affidavit of the unsuccessful party that he intends to appeal to the Privy Council. *Macdougall* v. *Montreal Street Ry. Co.*, Q. R. 24 S. C. 509.

A judge of the Supreme Court cannot stay proceedings on granting leave to appeal under the Winding-up Act. *In re Cushing Sulphite Fibre Co.*, January, 1906.

And he cannot stay proceedings pending an appeal from the judgment of the Court to the Judicial Committee of the Privy Council. *Adams & Burns* v. *Bank of Montreal*, 31 S. C. R. 223.

DISCONTINUANCE.

80. An appellant may discontinue his proceedings by giving to the respondent a notice entitled in the Supreme Court and in the cause, and signed by the appellant, his attorney or solicitor, stating that he discontinues such proceedings.

2. Upon such notice being given, the respondent shall be at once entitled to the costs of and occasioned by the proceedings in appeal; and may, in the court of original jurisdiction, either sign judgment for such costs or obtain an order from such court, or a judge thereof, for their payment, and may take all further proceedings in that court as if no appeal had been brought. R. S., c. 135, s. 51.

See Rule 62 as to costs of appeal.

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

CONSENT TO REVERSAL.

81. A respondent may consent to the reversal of the judgment appealed against, by giving to the appellant a notice entitled in the Supreme Court and in the cause, and signed by the respondent, his attorney or solicitor, stating that he consents to the reversal of the judgment; and thereupon the Court, or any judge thereof, shall pronounce judgment of reversal as of course. R. S., c. 135, s. 52.

A policy of life insurance provided that if the premium was not paid when due the policy would be void. A note given for the premium was renewed at maturity and a second renewal was unpaid at death of the insured, but while it was running the policy was assigned for value with consent of the company. In a suit in equity by the assignee his bill was dismissed at the hearing, but on appeal to the full Court the judgment dismissing it was reversed and judgment given against the company, two of the five Judges dissenting. The company appealed to the Supreme Court and counsel for plaintiff filed a consent that the appeal should be allowed. *Confederation Life Assur. Co.* v. *Wood*, May, 1902. Cout. Cas. 265.

In an action against the Crown for refund of duties the suppliant obtained judgment in the Privy Council and then proceeded in the Exchequer Court to recover interest which the Court refused. The suppliant appealed to the Supreme Court pending which the Crown applied by petition to the Judicial Committee for a declaration that suppliants were not entitled to interest. The petition was dismissed, their Lordships stating that interest should be allowed and the Crown then filed a consent in the Supreme Court for the reversal of the judgment of the Exchequer Court. *Toronto Ry. Co.* v. *The Queen*, October, 1897.

DISMISSAL FOR DELAY.

82. If an appellant unduly delays to prosecute his appeal, or fails to bring the appeal on to be heard at the first session of the Supreme Court, after the appeal is ripe for hearing, the respondent may, on notice to the appellant, move the Supreme Court, or a judge thereof in chambers, for the dismissal of the appeal:

2. Such order shall thereupon be made as the said Court or judge deems just. R. S., c. 135, s. 53.

Rule 9 of the Supreme Court provides, that if the appellant does not file his case in appeal with the Registrar, within forty days after the security required by the Act is allowed, he shall be considered as not duly prosecuting his appeal, and the respondent may move to dismiss. The time may be extended by the Supreme Court or a judge thereof. (Rule 108).

But any unreasonable delay will expose the appellant to a motion to dismiss. And if the motion be granted by a judge in chambers in the reasonable and proper exercise of his discretion the Court will not interfere. *Whitfield* v. *The Merchants Bank*, S. C. Dig. 1110; *Winnipeg* v. *Wright*, 13 S. C. R. 441. In *Whitfield* v. *The Merchants Bank*, it was held that respondent not being ready to proceed was no excuse for delay on the part of the appellant.

And such a motion should be made in the first instance to a judge in chambers. *Martin* v. *Roy*. S. C. Dig. 1111.

In election appeals it was formerly considered that motions to dismiss for want of prosecution must be made to the Court; *North York Election Case*, S. C. Dig. 1113; but in the *Halton Election Case*, 19 S. C. R. 557, the Court referred such a motion to a judge in chambers, and since then the Registrar has heard them. *Chicoutimi and Saguenay Election Case*, S. C. Dig. 1113.

Rule 59 provides that unless an appeal is brought on for hearing by the appellant within one year next after the security shall have been allowed, it shall be held to have been abandoned without any order to dismiss being required, unless the Supreme Court or a judge thereof shall otherwise order.

See Rule 108 and notes for other cases relating to the granting or refusing an extension of time for the prosecution of appeals.

By rule 29 each party to an appeal must deposit twenty-five copies of his factum with the Registrar at least fifteen days before the first day of the sessions at which the appeal is to be heard, and rule 32 provides that if the appellant does not deposit his factum within said time, respondent may move to dismiss the appeal for delay.

In *Foran* v. *Handley*, Mar., 1892, the Registrar had ordered that the appeal stand dismissed if the case was not filed at a certain date and he afterwards vacated his order and granted a further extension on satisfactory excuse for the delay being shown.

DEATH OF PARTIES.

83. In the event of the death of one of several appellants, pending the appeal to the Supreme Court, a suggestion may be filed of his death, and the proceedings may, thereupon, be continued at the suit of and against the surviving appellant, as if he were the sole appellant. R. S., c. 135, s. 54.

84. In the event of the death of a sole appellant, or of all the appellants, the legal representative of the sole appellant, or of the last surviving appellant, may, by leave of the Court or a judge, file a suggestion of the death, and that he is such legal representative, and the proceedings may thereupon be continued at the suit of and against such legal representative as the appellant.

2. If no such suggestion is made, the respondent may proceed to an affirmance of the judgment, according to the practice of the Court, or take such other proceedings as he is entitled to. R. S., c. 135, s. 55.

85. In the event of the death of one of several respondents, a suggestion may be filed of such death, and the proceedings may be continued against the surviving respondent. R. S., c. 135, s. 56.

86. Any suggestion of the death of one of several appellants or of a sole appellant or of all the appellants or of one of several respondents, if untrue, may on motion be set aside by the Court or a judge. R. S., c. 135, ss. 54, 55 and 56.

87. In the event of the death of a sole respondent, or of all the respondents, the appellant may proceed, upon giving one month's notice of the appeal and of his intention to continue the same, to the representative of the deceased party, or if no such notice can be given, then upon such notice to the parties interested as a judge of the Supreme Court directs. R. S., c. 135, s. 57.

88. In the event of the death of a sole plaintiff or defendant before the judgment of the court in which an action or an appeal is pending is delivered, and if such judgment is against the deceased party, his legal representatives, on entering a suggestion of the death, shall be entitled to proceed with and prosecute an appeal in the Supreme Court, in the same manner as if they were the original parties to the suit. 52 V., c. 37, s. 3.

89. In the event of the death of a sole plaintiff or sole defendant before the judgment of the court in which an action or an appeal is pending is delivered, and if such judgment is in favour of such deceased party, the other party, upon entering a suggestion of the death shall be entitled to prosecute an appeal to the Supreme Court against

the legal representatives of such deceased party. Provided that the time limited for appealing shall not run until such legal representatives are appointed. 52 V., c. 37, s. 4.

These provisions relate only to the contingency of the death of a party to the appeal. But Rule 50 supplements these sections by providing as follows: "In any case not already provided for by the Act, in which it becomes essential to make an additional party to the appeal, either as appellant or respondent, and whether such proceeding becomes necessary in consequence of the death or insolvency of any original party, or from any other cause, such additional party may be added to the appeal by filing a suggestion which may be in the Form C. in the schedule to these rules."

Rules 51 and 53 provide a mode of setting aside such suggestion, and of trying any question of fact arising out of it, and rule 52 for serving notice on the opposite party.

In the event of the death of a party interested in an appeal between the hearing of the appeal and the delivery of judgment, the judgment of the Supreme Court will be entered *nunc pro tunc* as of the date of hearing. *Merchants' Bank* v. *Smith*; *Merchants' Bank* v. *Keefer*; *Ontario and Quebec Railway Co.* v. *Philbrick*, S. C. Dig. 1131.

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

In an appeal from Quebec, where it was sought to add a party as co-respondent on the ground that he had obtained from the respondents a notarial assignment of all their interest in the suit, made prior to the hearing of the case by the Court of Appeal of the Province, the Supreme Court held that the application to add the assignee should have been made on the earliest opportunity to the Court below, and was not one the Supreme Court should be called upon to decide. *Dorion* v. *Crowley*, S. C. Dig. 1130.

But where a party has been improperly joined, as co-plaintiff or co-defendant, the Supreme Court will order him to be struck out of the record. *Caldwell* v. *Stadacona F. & L. Ins. Co.*, 11 S. C. R. 212.

And where a party was, by the judgment of the Court, made liable for the costs of the appeal, although he had in fact not been a party to such appeal, nor interfered in the

appeal by depositing a factum, or appearing by counsel at the argument, the judgment was amended by the Court. *Long* v. *Hancock* (not reported).

And where parties, other than those on the record, have an interest entitling them to prosecute an appeal in the name of the plaintiff on the record, the Supreme Court will permit them to do so, on such terms as may seem just. *Langtry* v. *Dumoulin*, 13 S. C. R. 258.

Where a party was not in the case as originated, but received notice of appeal, and was represented by counsel at the hearing, he was allowed to tax his costs of the appeal. *Hogaboom* v. *Receiver-General*, December, 1897.

Where the unsuccessful party to a suit died after verdict and before judgment on a rule for a new trial, and judgment *nunc pro tunc* as of a day prior to his death was entered by order of a judge, and a suggestion of the death entered on the record, the Court refused to quash an appeal by his executors. *Muirhead* v. *Sheriff*, 14 Can. S. C. R. 735.

But where, in an action against a railway conductor for damages on account of personal injuries caused by negligence of the defendant, the plaintiff died between the verdict of non-suit and the judgment of the full court granting a new trial, a suggestion of his death being entered on the record, an appeal by the defendant against his executors was quashed, it being held that an entirely new cause of action had arisen under C. S. N. B. c. 86, the equivalent in New Brunswick of Lord Campbell's Act, the original cause of action being entirely gone, and incapable of being revived. *White* v. *Parker*, 16 S. C. R. 699.

ENTRY OF CAUSES.

90. The appeals set down for hearing shall be entered by the Registrar on a list divided into three parts, and numbered and headed as follows: "Number one, Maritime Provinces Cases;" "Number two, Quebec Cases;" "Number three, Ontario Cases;" and the Registrar shall enter all appeals from the Provinces of Nova Scotia, New Brunswick and Prince Edward Island on part numbered one, and all appeals from the Province of Quebec on part numbered two, and all appeals from the provinces of Ontario, Manitoba, British Columbia, Saskatchewan, Alberta, and the Yukon Territory, on part numbered three, in the order in which they they are respectively received; and such appeals shall be heard and disposed of in the order in which they are so entered, unless otherwise ordered by the Court.

2. The Court may by order direct in what order the cases in part number one and part number three shall be entered: Provided that

at the October sittings of the Court the appeals entered on part number two shall be first heard, then those entered on part number three, and finally those entered on part number one. R. S., c. 135, s. 58;—50-51 V., c. 16, s. 57;—52 V., c. 37, s. 5;—54-55 V., V., c. 25, s. 5.

The order that has been adopted pursuant to this section is to put cases from the most distant province at the head, and those from the nearest province at the foot of the respective lists. Thus, in list No. 1 the order would be 1, Prince Edward Island; 2, Nova Scotia, and 3, New Brunswick cases; and in list No. 3, Yukon Territory, British Columbia, North-West Territories, Manitoba and Ontario.

Criminal and *habeas corpus* appeals are always given precedence and placed at the head of the list. Election Appeals are, as a rule, placed together before number one mentioned in the section, as are also appeals from the Board of Railway Commissioners.

EVIDENCE.

91. All persons authorized to administer affidavits to be used in any of the superior courts of any Province, may administer oaths, affidavits and affirmations in such Province to be used in the Supreme Court. R. S., c. 135, s. 91.

92. The Governor in Council may, by commission, from time to time, empower such persons as he thinks necessary, within or out of Canada, to administer oaths, and take and receive affidavits, declarations and affirmations in or concerning any proceeding had or to be had in the Supreme Court.

2. Every such oath, affidavit, declaration or affirmation so taken or made shall be as valid and of the like effect, to all intents, as if it had been administered, taken, sworn, made or affirmed before the court, or before any judge or competent officer thereof in Canada.

3. Every commissioner so empowered shall be styled "a commissioner for administering oaths in the Supreme Court of Canada." R. S., c. 135, s. 92.

93. Any oath, affidavit, affirmation or declaration concerning any proceeding had or to be had in the Supreme Court administered, sworn, affirmed or made out of Canada shall be as valid and of like effect to all intents as if it had been administered, sworn, affirmed or made before a commissioner appointed under this Act, if it is so administered, sworn, affirmed or made out of Canada before,—

(*a*) any commissioner authorized to take affidavits to be used in His Majesty's High Court of Justice in England; or,

(*b*) any notary public and certified under his hand and official seal; or,

(*c*) a mayor or chief magistrate of any city, borough, or town corporate in Great Britain or Ireland, or in any colony or possession of His Majesty out of Canada, or in any foreign country, and certified under the common seal of such city, borough, or town corporate; or,

(*d*) a judge of any court of superior jurisdiction in any colony or possession of His Majesty, or dependency of the Crown out of Canada; or,

(*e*) any consul, vice-consul, acting consul, pro-consul or consular agent of His Majesty exercising his functions in any foreign place and certified under his official seal. R. S., c. 135, s. 93.

94. Every document purporting to have affixed, imprinted or subscribed thereon or thereto the signature of any,—

(*a*) commissioner appointed under this Act; or,

(*b*) person authorized to take affidavits to be used in any of the superior courts of any province; or,

(*c*) commissioner authorized to receive affidavits to be used in His Majesty's High Court of Justice in England; or,

(*d*) notary public under his official seal; or,

(*e*) mayor or chief magistrate of any city, borough or town corporate in Great Britain or Ireland, or in any colony or possession of His Majesty out of Canada, or in a foreign country, under the common seal of the corporation; or,

(*f*) judge of any court of superior jurisdiction in any colony or possession of His Majesty, or dependency of the Crown out of Canada under the seal of the court of which he is such judge; or,

(*g*) consul, vice-consul, acting consul, pro-consul or consular agent of His Majesty exercising his functions in any foreign place under his official seal;

in testimony of any oath, affidavit, affirmation or declaration having been administered, sworn, affirmed or made by or before him, shall be admitted in evidence without proof of any such signature or seal or of the official character of such person. R. S., c. 135, s. 94.

95. No informality in the heading or other formal requisites of any affidavit, declaration or affirmation, made or taken before any person under any provision of this or any other Act, shall be an objection to its reception in evidence in the Supreme Court, if the court or judge before whom it is tendered thinks proper to receive it; and if the same is actually sworn to, declared or affirmed by the person making the same before any person duly authorized thereto, and is received in evidence, no such informality shall be set up to defeat an indictment for perjury. R. S., c. 135, s. 95.

96. If any party to any proceeding had or to be had in the Supreme Court is desirous of having therein the evidence of any person, whether a party or not, or whether resident within or out of Canada, the Court or any judge thereof, if in its or his opinion it is, owing to the absence, age or infirmity, or the distance of the residence of such person from the place of trial, or the expense of taking his evidence otherwise, or for any other reason, convenient so to do, may, upon the application of such party, order the examination of any such person upon oath, by interrogatories or otherwise, before the Registrar of the Court, or any commissioner for taking affidavits in the Court, or any other person or persons to be named in such order, or may order the issue of a commission under the seal of the Court for such examination.

2. The court or a judge may by the same or any subsequent order, give all such directions touching the time, place and manner of such examination, the attendance of the witnesses and the production of papers thereat, and all matters connected therewith, as appears reasonable. R. S., c. 135, s. 96.

97. Every person authorized to take the examination of any witness, in pursuance of any of the provisions of this Act, shall take such examination upon the oath of the witness, or upon affirmation, in any case in which affirmation instead of oath is allowed by law. R. S., c. 135, s. 97.

98. The Supreme Court, or a judge thereof, may, if it is considered for the ends of justice expedient so to do, order the further examination before either the Court or a judge thereof, or other person, of any witness; and if the party on whose behalf the evidence is tendered neglects or refuses to obtain such further examination, the Court or judge, in its or his discretion, may decline to act on the evidence. R. S., c. 135, s. 98.

99. Such notice of the time and place of examination as is prescribed in the order, shall be given to the adverse party. R. S., c. 135, s. 99.

100. When any order is made for the examination of a witness, and a copy of the order, together with a notice of the time and place of attendance, signed by the person or one of the persons to take the examination, has been duly served on the witness within Canada, and he has been tendered his legal fees for attendance and travel, his refusal or neglect to attend for examination or to answer any proper question put to him on examination, or to produce any paper which he has been notified to produce, shall be deemed a contempt of court and may be punished by the same process as other contempts of court: Provided that he shall not be compelled to produce any papers which he would not be compelled to produce, or to answer any question which he would not be bound to answer in court. R. S., c. 135, s. 100.

101. If the parties in any case pending in the court consent, in writing, that a witness may be examined within or out of Canada by interrogatories or otherwise, such consent and the proceedings had thereunder shall be as valid in all respects as if an order had been made and the proceedings had thereunder. R. S., c. 135, s. 101.

102. All examinations taken in Canada, in pursuance of any of the provisions of this Act, shall be returned to the Court; and the depositions, certified under the hands of the person or one of the persons taking the same, may, without further proof, be used in evidence, saving all just exceptions. R. S., c. 135, s. 102.

103. All examinations taken out of Canada, in pursuance of any of the provisions of this Act, shall be proved by affidavit of the due taking of such examinations, sworn before some commissioner or other person authorized under this or any other Act to take such affidavit, at the place where such examination has been taken, and shall be returned to the Court; and the depositions so returned, together with such affidavit, and the order or commission, closed under the hand and seal of the person or one of the persons authorized to take the examination, may, without further proof, be used in evidence, saving all just exceptions. R. S., c. 135, s. 103.

104. When any examination has been returned, any party may give notice of such return, and no objection to the examination being read shall have effect, unless taken within the time and in the manner prescribed by general order. R. S., c. 135, s. 104.

GENERAL PROVISIONS.

105. The process of the Court shall run throughout Canada, and shall be tested in the name of the chief justice, or in case of a vacancy in the office of chief justice, in the name of the senior puisné judge of the Court, and shall be directed to the sheriff of any county or other judicial division into which any Province is divided.

2. The sheriffs of the said respective counties or divisions shall be deemed and taken to be *ex officio* officers of the Supreme Court, and shall perform the duties and functions of sheriffs in connection with the Court.

3. In any case where the sheriff is disqualified, such process shall be directed to any of the coroners of the county or district. R. S., c. 135, s. 105;—50-51 V., c. 16, s. 57.

In *Black* v. *Huot*, Cout. Cas. 106, a writ of *fieri facias* was issued out of the Supreme Court, to levy the costs of an order refusing to approve security on the appeal and directed to to sheriff of the District of

See rules 72 to 79 for writs of *habeas corpus* and rules 120 to 140 for writs for payment of money.

106. Every commissioner for administering oaths in the Supreme Court, who resides within Canada, may take and receive acknowledgments or recognizances of bail, and all other recognizances in the Supreme Court. R. S., c. 135, s. 106;—50-51 V., c. 16, s. 57.

107. An order in the Supreme Court for payment of money, whether for costs or otherwise, may be enforced by such writs of execution as the Court prescribes. 50-51 V., c. 16, s. 57.

Rules 120 to 140 provide for the issue of writs under this section.

108. No attachment as for contempt shall issue in the Supreme Court for the non-payment of money only. 50-51 V., c. 16, s. 57.

109. The judges of the Supreme Court, or any five of them, may, from time to time, make general rules and orders;—

(*a*) for regulating the procedure of and in the Supreme Court, and the bringing of cases before it from courts appealed from or otherwise, and for the effectual execution and working of this Act, and the attainment of the intention and objects thereof;

(*b*) for empowering the Registrar to do any such thing and transact any such business as is specified in such rules or orders, and to exercise any authority and jurisdiction in respect of the same as is now or may hereafter be done, transacted or exercised by a judge of the Court sitting in chambers in virtue of any statute or custom or by the practice of the Court;

(*c*) for fixing the fees and costs to be taxed and allowed to, and received and taken by, and the rights and duties of the officers of the Court;

(*d*) for awarding and regulating costs in such court in favour of and against the Crown, as well as the subject;

(*e*) with respect to matters coming within the jurisdiction of the Court, in regard to references to the Court by the Governor in Council, and in particular with respect to investigations of questions of fact involved in any such reference.

2. Such rules and orders may extend to any matter of procedure or otherwise not provided for by this Act, but for which it is found necessary to provide, in order to insure the proper working of this Act and the better attainment of the objects thereof.

3. All such rules which are not inconsistent with the express provisions of this Act shall have force and effect as if herein enacted.

4. Copies of all such rules and orders shall be laid before both Houses of Parliament at the session next after the making thereof. 50-51 V., c. 16, s. 57;—54-55 V., c. 25, s. 4.

Section 31 (*g*) of the Interpretation Act provides that "if a power is conferred to make any rules, regulations or by-laws the power shall be construed as including a power, exercisable in the like manner, and subject to the like consent and conditions, if any, to rescind, revoke, amend or vary the rules, regulations, or by-laws and make others.

The Court has recently rescinded the rules hitherto in force and made others coming into operation 1st September, 1907. See Part III.

110. Any moneys or costs awarded to the Crown shall be paid to the Minister of Finance, and he shall pay out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada, any moneys or costs awarded to any person against the Crown. 50-51 V., c. 16, s. 57.

111. All fees payable to the Registrar under the provisions of this Act shall be paid by means of stamps, which shall be issued for that purpose by the Minister of Inland Revenue, who shall regulate the sale thereof.

2. The proceeds of the sale of such stamps shall be paid into the Consolidated Revenue Fund of Canada. R. S., c. 135, s. 111.

PART II.

Appeals under Special Acts.

PART II.

APPEALS UNDER SPECIAL ACTS.

I. Under the Criminal Code.

II. Under the Exchequer Court Act.

III. Under the Controverted Elections Act.

IV. Under the Railway Act.

V. Under the Winding-up Act.

APPEALS UNDER THE CRIMINAL CODE.

Appeals to the Supreme Court of Canada in criminal cases were at first provided for in the Supreme and Exchequer Courts Act, but when the Criminal Code of 1892 came into force the sections of said Act making such provision were repealed and the appeal is now governed by the provisions of the Code.

The present Code is c. 146 of The Revised Statutes, 1906. The appeal to the Supreme Court is given in sections 1013, 1024 and 1025 of that Act.

1013. An appeal from the verdict or judgment of any court or judge having jurisdiction in criminal cases, or of a magistrate proceeding under section seven hundred and seventy-seven, on the trial of any person for an indictable offence, shall lie upon the application of such person if convicted, to the court of appeal in the cases hereinafter provided for, and in no others.

2. Whenever the judges of the court of appeal are unanimous in deciding an appeal brought before the said court their decision shall be final.

3. If any of the Judges dissent from the opinion of the majority, an appeal shall lie from such decision to the Supreme Court of Canada as hereinafter provided. 55-56 V., c. 29, s. 742.

1024. Any person convicted of any indictable offence, whose conviction has been affirmed on an appeal taken under section ten hundred and thirteen may appeal to the Supreme Court of Canada against the affirmance of such conviction: Provided that no such appeal can be taken if the court of appeal is unanimous in affirming the conviction, nor unless notice of appeal in writing has been served on the

Attorney General within fifteen days after such affirmance or such further time as may be allowed by the Supreme Court of Canada or a judge thereof.

2. The Supreme Court of Canada shall make such rule or order thereon, either in affirmance of the conviction or for granting a new trial, or otherwise, or for granting or refusing such application, as the justice of the case requires, and shall make all other necessary rules and orders for carrying such rule or order into effect.

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

4. The judgment of the Supreme Court shall, in all cases, be final and conclusive. 55-56 V., c. 29, s. 750.

1025. Notwithstanding any royal prerogative, or anything contained in the Interpretation Act or in the Supreme Court Act, no appeal shall be brought in any criminal case from any judgment or order of any court in Canada to any court of appeal or authority, by which in the United Kingdom appeals or petitions to His Majesty in Council may be heard. 55-56 V., c. 29, s. 751.

INTERPRETATION OF TERMS.

Section 2 sub-sections (2) and (7) of the Code contain the following interpretation of terms.

(2) "Attorney General" means the Attorney General or Solicitor General of any province in Canada in which any proceedings are taken under this Act, and, with respect to the North-west Territories and the Yukon Territory, the Attorney General of Canada;

(7) "court of appeal" includes,

(*a*) in the province of Ontario, the Court of Appeal for Ontario,

(*b*) in the province of Quebec, the Court of King's Bench, appeal side,

(*c*) in the provinces of Nova Scotia, New Brunswick, and British Columbia, the Supreme Court in banc,

(*d*) in the province of Prince Edward Island, the Supreme Court,

(*e*) in the province of Manitoba, the Court of Appeal,

(*f*) in the provinces of Saskatchewan and Alberta, the Supreme Court of the North-west Territories in banc, until the same is abolished, and thereafter such court as is by the legislature of the said provinces respectively substituted therefor;

(*g*) in the Yukon Territory, the Supreme Court of Canada;

(*f*) The legislatures of the Provinces of Saskatchewan and Alberta have passed acts providing for the establishment of a Supreme Court in each.

According to the terms of section 1013 an appeal would lie from a conviction under Part XVIII of the Code relating to speedy trials, from a conviction on indictment, and from a conviction by a magistrate under section 777, namely, in case of the summary trial of an indictable offence by consent of the prisoner.

The only case of an appeal where the conviction was by a magistrate is that of *Saunders* v. *The King*, 38 S. C. R. 382, in which the appellants were convicted by keeping a common betting house. In *Lafferty* v. *Lincoln*, 38 S. C. R. 620, in which respondent was convicted for practising medicine without license, the Court apparently considered it was not a criminal case and granted leave to appeal under the provisions of section 37 (*c*) of the Supreme Court Act.

There is no appeal unless the conviction is affirmed. Hence an appeal does not lie from a judgment ordering a new trial. *Viau* v. *The Queen*, 29 S. C. R. 90.

Nor does an appeal lie if the judgment of the Court of Appeal is unanimous.

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

Where a motion for a reserved case made on two grounds was refused, and the Court of Queen's Bench for Lower Canada was unanimous in sustaining the refusal as to one of such grounds but not as to the other, it was held that an appeal to the Supreme Court could only be based on the one as to which there was a dissent. *McIntosh* v. *The Queen*, 23 S. C. R. 180. And see *Gilbert* v. *The King*, 38 S. C. R. 284.

Contempt of Court is a criminal proceeding and unless it comes within section 68 of The Supreme Court Act (sec. 1024 of the Code) an appeal does not lie to the Supreme Court from a judgment in proceedings therefor. *Ellis* v. *The Queen*, 22 S. C. R. 7. And conviction for violating the C. T. Act is a conviction in a criminal case. *Re Richard*, 38 S. C. R. 394.

The provision of section 48 of the Supreme Court Act, limiting the right of appeal from judgments of the Court of Appeal for Ontario do not apply to appeals in criminal cases which are governed solely by the above sections of the Code. *Rice* v. *The King*, 32 S. C. R. 480.

For the sake of convenience it has been thought better to deal with the appeals in this part separately, but it must be borne in mind that all the general provisions of the Supreme

Court Act apply to such appeals, unless the special Act relating to any particular class of appeals otherwise provides, or the provisions of such special Act are inconsistent with such an application.

The procedure in criminal appeals in the Supreme Court is regulated by rules 64 to 67.

No printed case, or factum, is required, and no fees have to be paid to the Registrar. Cassell's Dig. 2 ed. p. 684, No 85. And no security has to be given. See section 75 subsection 2, Supreme Court Act.

And the appeal must be brought on for hearing at the session of the Supreme Court, during which such affirmance takes place, or the session next thereafter if the said Court is not then in session, unless otherwise ordered. (Section 1024 sub-sec. 3.)

By section 1024, sub-section 4, and section 1025, the judgment of the Supreme Court is final, and no appeal can be had to the Privy Council, notwithstanding the royal prerogative.

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

Section 59 of the Supreme Court Act provides as follows: "The judgment of the Supreme Court shall in all cases be final and conclusive and no appeal shall be brought from any judgment or order of the Court to any Court of Appeal established by the Parliament of Great Britain and Ireland by which appeals or petitions to His Majesty in Council may be ordered to be heard; saving any right which His Majesty may be graciously pleased to exercise by virtue of his royal prerogative."

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

By section 91 of British North America Act the exclusive legislative authority of the Parliament of Canada is declared to extend to all matters coming within the classes of subjects

therein enumerated and, among others, "No. 27, the criminal law, except the constitution of Courts of criminal jurisdiction, but including the procedure in criminal cases."

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

As the right of appeal now stands in Canada the Supreme Court of Canada, as we have seen, is not a final Court, section 59 of the Supreme Court Act expressly saying, "saving any right which Her Majesty may be graciously pleased to exercise by virtue of her royal prerogative," and it having been the continued practice of the Judicial Committee to entertain appeals from the Supreme Court where it has considered that any error of law has been made, and substantial interests have been involved.

See notes to section 59 of the Supreme Court Act.

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

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

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

II. APPEAL UNDER THE EXCHEQUER COURT ACT.

These appeals are governed by the provisions of sections 82 to 86 of the Exchequer Court Act, R. S. (1906) c. 140.

APPEALS.

82. Any party to any action, suit, cause, matter or other judicial proceeding, in which the actual amount in controversy exceeds five hundred dollars, who is dissatisfied with any final judgment, or with any judgment upon any demurrer or point of law raised by the pleadings, given therein by the Exchequer Court, in virtue of any jurisdiction now or hereafter, in any manner, vested in the Court and who is desirous of appealing against such judgment, may, within thirty days from the day on which such judgment has been given, or within such further time as the judge of such Court allows, deposit with the Registrar of the Supreme Court the sum of fifty dollars by way of security for costs.

2. The Registrar shall thereupon set the appeal down for hearing by the Supreme Court at the nearest convenient time according to the rules in that behalf of the Supreme Court, and the party appealing shall within ten days after the said appeal has been so set down as aforesaid, or within such other time as the Court of a judge thereof shall allow, give to the parties affected by the appeal, or their respective attorneys or solicitors, by whom such parties were represented before the Exchequer Court, a notice in writing that the case has been so set down to be heard in appeal as aforesaid, and the said appeal shall thereupon be heard and determined by the Supreme Court.

3. In such notice the said party so appealing may, if he so desires, limit the subject of the appeal to any special defined question or questions.

4. A judgment shall be considered final for the purpose of this section if it determines the rights of the parties, except as to the amount of the damages or the amount of liability. 53 V., c. 35, s. 1; 2 E. VII., c. 8, s. 2; 6 E. VII., c. 11, s. 1.

The words "or with any judgment upon any demurrer or point of law raised by the pleadings" were added to this section by 2 E. VII., c. 8, s. 2.

An appeal lies from an interlocutory as well as a final judgment on demurrer or point of law. But there must be a judgment and therefore no appeal lies from an order of the Exchequer Court postponing the decision on issues raised by demurrer. *Toronto Type Foundry Co.* v. *Mergenthaler Linotype Co.*, 36 S. C. R. 593.

An appeal from a judgment of the Exchequer Court must be brought within thirty days from the day on which such judgment is given. In appeals under the Supreme Court Act the time limited is sixty days.

The time may be extended by the Exchequer Court Judge. See notes to section 71 of the Supreme Court Act which gives the same power to the court from which an appeal comes under that Act, or a judge of such court. See also *Clark* v. *The Queen*, 3 Ex. C. R. 1; *McLean & Rogers* v. *The Queen*, 4 Ex. C. R. 257; *The Queen* v. *Woodburn*, 29 S. C. R. 712.

The extension of the ten days for giving notice under subsection 2 was not in the Act before the revision.

After the deposit of fifty dollars as security for costs the Registrar must set the appeal down for hearing. Where an appeal was taken from a judgment pronounced in November, 1877, and security given, it was not set down for hearing and six years later the appellant applied for and obtained an order directing the Registrar to set it down. *Berlinguet* v. *The Queen*, 13 S. C. R. 26.

Sub-section 4 was added to this section in 1906 by 6 E. VII., c. 11, s. 1. It provides for an appeal where the issues are finally determined, but the damages are to be assessed later. The Court has frequently heard an appeal under the Supreme Court Act where the whole case has been disposed of with exception of the amount of damages.

APPEAL BY LEAVE.

83. No appeal shall lie from any judgment of the Exchequer Court in any action, suit, cause, matter or other judicial proceeding, wherein the actual amount in controversy does not exceed the sum or value of five hundred dollars, unless such appeal is allowed by a judge of the Supreme Court, and such action, suit, cause, matter or other judicial proceeding,—

(*a*) involves the question of the validity of an Act of the Parliament of Canada, or of the legislature of any of the provinces of Canada, or of an ordinance or act of any of the councils or legislative bodies of any of the territories or districts of Canada; or,

(*b*) relates to any fee of office, duty, rent, revenue or any sum of money payable to His Majesty, or to any title to lands, tenements or annual rents, or to any question affecting any patent of invention, copyright, trade mark or industrial design, or to any matter or thing where rights in future might be bound. 50-51 V., c. 16, s. 52; 54-55 V., c. 26, s. 8.

These provisions are similar to those contained in sections 46, 48 and 49 of the Supreme Court Act respecting appeals from Quebec, Ontario and the Yukon Territory respectively.

In cases coming under section 48 special leave may be given for an appeal which otherwise would not lie in conse-

quence of the restrictions contained in that section. Under the above provision leave to appeal must be obtained in every case where the amount involved is under five hundred dollars.

A motion to quash an appeal from a judgment of the Exchequer Court was supported by an affidavit stating that the amount in controversy was insufficient. This was met by a counter affidavit in which it was sworn that the patent, the validity of which was in issue, was of greater value than $500. The Court dismissed the motion to quash, but made the appellant pay the costs as the jurisdiction of the Court to hear the appeal was not apparent until his affidavit was produced. *Dreschel* v. *Auer Light Co.*, 28 S. C. R. 268.

Another difference between this section and section 48 of the Supreme Court Act is that in the latter an appeal lies if the *validity* of any patent is in question. By this section it is given if it relates to "any question affecting any patent of invention, copyright, trade mark or industrial design."

Under sections 46, 48 and 49 Supreme Court Act for an appeal to lie because rights in future may be bound such rights must relate to title to lands, etc. Under the above section there is no such restriction, but any case which may bind future rights is appealable by leave.

See notes to section 48 respecting leave to appeal.

APPEAL BY CROWN.

84. Notwithstanding anything in this Act contained, an appeal shall lie on behalf of the Crown from any final judgment given by the Court in any action, suit, cause, matter or other judicial proceeding wherein the Crown is a party, in which the actual amount in controversy does not exceed five hundred dollars; if,—

(*a*) such final judgment or the principle affirmed thereby affects or is likely to affect any case or class of cases then pending or likely to be instituted wherein the aggregate amount claimed or to be claimed exceeds or will probably exceed five hundred dollars; or,

(*b*) in the opinion of the Attorney General of Canada, certified in writing, the principle affirmed by the decision is of general public importance; and,

(*c*) such appeal is allowed by a judge of the Supreme Court.

2. In case of such appeal being allowed by a judge of the Supreme Court, he may impose such terms as to costs and otherwise as he thinks the justice of the case requires. 2 E. VII., c. 8, s. 4.

This is an extension of the provisions of section 83 as to cases involving a controversy over $500 or less.

85. If the appeal is by or on behalf of the Crown no deposit shall be necessary, but the person acting for the Crown shall file with the Registrar of the Supreme Court a notice stating that the Crown is dissatisfied with such decision, and intends to appeal against the same, and thereupon the like proceedings shall be had as if such notice were a deposit by way of security for costs. 50-51 V., c. 16, s. 53.

The amount of the security to be given for payment of costs may not be material in actions by or against the Crown. But the Exchequer Court tries patent and other cases between private parties in which large interests are involved and $50 is very inadequate in such cases when $500 is required in appeals under the Supreme Court Act.

ENTRY ON LIST.

86. Every appeal from the Exchequer Court set down for hearing before the Supreme Court shall be entered by the Registrar on the list for the province in which the action, matter or proceeding, the subject of the appeal, was tried or heard by the Exchequer Court; or if such action, matter or proceeding was partly heard or tried in one province and partly in another, then on such list as the Registrar thinks most convenient for the parties to the appeal. 54-55 V., c. 26, s. 9.

Prior to 1891 when this provision was first enacted Exchequer Court appeals were placed in a list by themselves at each session and were usually the last cases argued.

Exchequer appeals are subject to the rules respecting appeals under the Supreme Court Act, except as otherwise provided in the Exchequer Court Act; Rule 63.

The following section also provides for an appeal to the Supreme Court.

SPECIAL JURISDICTION.

32. When the legislature of any province of Canada has passed an Act agreeing that the Exchequer Court shall have jurisdiction in cases of controversies,—

(a) between the Dominion of Canada and such province;

(b) between such province and any other province or provinces which have passed a like Act;

the Exchequer Court shall have jurisdiction to determine such controversies.

2. An appeal shall lie in such cases from the Exchequer Court to the Supreme Court. R. S., c. 135, s. 72.

See section 67 Supreme Court Act.

ADMIRALTY CASES.

The Admiralty Act, c. 141 R. S. [1906], gives the Exchequer Court jurisdiction in Admiralty and provides for appeals to the Supreme Court in Admiralty cases.

3. The Exchequer Court is and shall be, within Canada, a Colonial Court of Admiralty, and, as a Court of Admiralty, shall, within Canada, have and exercise all the jurisdiction, powers and authority conferred by the *Colonial Courts of Admiralty Act, 1890*, and by this Act, 54-55 V., c. 29, s. 3.

The Colonial Courts of Admiralty Act, 1890 (Imp.) abolished the existing courts of Vice-Admiralty and empowered Parliament to establish Courts of Admiralty in Canada, which was done by the Admiralty Act, 1891, of which this ch. 141 is a consolidation. Sec. 6 empowers the Governor in Council to constitute any part of Canada an Admiralty district. Sec. 7 makes each Province except Manitoba, Saskatchewan and Alberta, such a district until otherwise provided.

8. The Governor in Council may, from time to time, appoint any judge of a superior or county court, or any barrister of not less than seven years' standing, to be a local judge in Admiralty of the Exchequer Court in and for any Admiralty District.

2. Every such local judge shall hold office during good behaviour, but shall be removable by the Governor-General on address of the Senate and House of Commons.

3. Such judge shall be designated a local judge in Admiralty of the Exchequer Court.

10. Every local judge in Admiralty shall, within the Admiralty district for which he is appointed, have and exercise the jurisdiction, and the powers and authority relating thereto, of the judge of the Exchequer Court in respect of the Admiralty jurisdiction of such court. 54-55 V., c. 29, s. 9.

20. Any appeal from any final judgment, decree or order of any local judge in Admiralty, may be made,—

(*a*) to the Exchequer Court; or,

(*b*) subject to the provisions of the Exchequer Court Act regarding appeals, direct to the Supreme Court of Canada.

2. On security for costs being first given, and subject to such provisions as are prescribed by general rules and orders, an appeal, with the leave of the Judge of the Exchequer Court or of any local judge, may be made to the Exchequer Court from any interlocutory decree or order of such local judge. 54-55 V., c. 29, s. 14.

"Any appeal" at the beginning of this section should read "an appeal."

See sec. 59 as to appeal from a judgment of the Supreme Court in Admiralty cases to His Majesty in Council.

III. APPEALS UNDER CONTROVERTED ELECTIONS ACT.

Appeals in election cases are governed by the provisions of the Controverted Elections Act, R. S. [1906], c. 7.

64. An appeal by any party to an election petition who is dissatisfied with the decision shall lie to the Supreme Court of Canada from

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

(*b*) The judgment or decision on any question of law or of fact of the judges who have tried such petition. R. S., c. 9, s. 50.

Section 19 of the Act provides for the filing of preliminary objections to an election within five days after service of the petition. If none are filed within that time the petition is at issue. It is at issue also, after the expiration of five days after the decision on the preliminary objections; sec. 20.

By section 39 the trial of the petition must be commenced within six months from its presentation or such further time as may be allowed under the provisions of section 40.

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

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

There is no appeal from the decision of a judge in chambers on a motion to have preliminary objections to an election petition struck out for not being filed in time which is not

a decision on preliminary objections within section 64, and if it were no judgment on such motion could put an end to the petition. *The West Assiniboia Case,* 27 S. C. R. 215.

An objection to the correctness of a clause in a substituted petition allowed to be filed when the original was lost is not a question raised by preliminary objection nor on the merits at the trial. *Two Mountains Case,* 32 S. C. R. 55.

And a charge that the petitioner was not in good faith but had allowed his name to be used cannot be raised by preliminary objection. *North Simcoe Case,* Hodg. El. Cas. 617.

APPEAL FROM JUDGMENT AT TRIAL.

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

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

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

Nor will an appeal lie from a judgment on a motion made to the Court to dismiss an election petition because the trial has not been commenced within six months from the time when such petition has been presented, as required by section 39 of the Dominion Controverted Elections Act. *L'Assomption Case,* 14 S. C. R. 429.

But when at the trial, an objection was made on this ground to the jurisdiction which the trial judge overruled, it was held that an appeal lay from his decision. *The Glengarry Case,* 14 S. C. R. 453.

An objection to the sufficiency of the notice of trial under section 38 of the Dominion Controverted Elections Act is

not an objection which can be relied on in an appeal under section 64. *The Pontiac Case,* 20 S. C. R. 626.

The ruling of the Election Court on an objection that the trial judges could not proceed with the petition, because it and another petition filed against the appellant had not been bracketed together by the prothonotary as directed by section 37 of the Act, is not an appealable judgment or decision under section 64. *The Vaudreuil Case,* 22 S. C. R. 1.

Where a judge by order fixed 30 days after judgment of the Supreme Court on preliminary objections for trial of the petition no appeal lay from his order, made after such judgment was given, interpreting the former order and naming a definite date for the trial. *Beauharnois Case,* 32 S. C. R. 111.

A judgment dismissing a petition for want of prosecution within the six months is not appealable. *Richelieu Case,* 32 S. C. R. 118; *Cauchon* v. *Langelier,* 11 L. N. 83.

Where a preliminary objection was overruled "without prejudice to the right of respondent to raise the same objection at trial of petition" and no appeal was taken from such judgment, the judge at the trial had no jurisdiction to entertain it. *Prescott Case,* 20 S. C. R. 196.

An order fixing the thirtieth judicial day after judgment on appeal from decision on preliminary objections as the date for commencing the trial operates as a stay of proceedings. *St. James Case,* 33 S. C. R. 137. And see *McDougall* v. *Davin,* 2 N. W. T. Rep. 417. And fixing the trial for a day after the prescribed time is an enlargement. *Halifax Case,* 37 S. C. R. 601.

Appeals to the Supreme Court of Canada in Election Cases should be prosecuted diligently. *Two Mountains Case,* S. C. Dig. 531.

DEPOSIT.

65. The party so desiring to appeal shall, within eight days from the day on which the decision appealed from was given, deposit with the clerk of the court with whom the petition was lodged, or with the proper officer for receiving moneys paid into court, at the place where the hearing of the preliminary objections, or where the trial of the petition took place, as the case may be, if in the Province of Quebec, and at the chief office of the court in which the petition was presented if in any other province, in cases of appeal other than from a judgment, rule, order or decision on any preliminary objection the

sum of three hundred dollars, and in such last-mentioned cases the sum of one hundred dollars as security for costs, and also a further sum of ten dollars as a fee for making up and transmitting the record to the Supreme Court of Canada; and such deposit may be made in legal tender or in the bills of any chartered bank doing business in Canada. 54-55 V., c. 20, s. 12.

TRANSMISSION OF RECORD.

66. Upon such deposit being so made, the said clerk or other proper officer shall make up and transmit the record of the case to the Registrar of the Supreme Court of Canada, who shall set down the said appeal for hearing by the Supreme Court of Canada at the nearest convenient time and according to the rules of the Supreme Court of Canada in that behalf. R. S., c. 9, s. 51.

In the case of other appeals the time for appealing may be extended under special circumstances. (Section 71, Supreme Court Act.) But the provisions of this section (71) "shall not apply in the case of an election petition," and the time in such case cannot be enlarged.

The rules specially regulating appeals in election cases are 68 to 71, both inclusive, which refer to the printing of the record and the deposit and printing of the factums. Rule 16 provides for the convening of a special session of the Court for the hearing of election appeals, among others.

Rules 90 to 99, providing for the payment of fees to the Registrar and taxation of costs are also applicable. The Registrar will not enter the appeal for hearing without the preliminary fee of $10 being paid.

There are certain other rules which by the practice of the Court have been followed as closely as possible with regard to election appeals; special mention may be made of Rule 20, providing for the entry of the name of an agent in the agents' book, and of the rules respecting interlocutory applications, Rules 54 to 57. By rule 68 these are made to apply.

NOTICE.

67. The party so appealing shall, within three days after the said appeal has been so set down as aforesaid, or within such other time as the court or trial judges by whom such decision appealed from was given allow, give to the other parties to the said petition affected by such appeal, or the respective attorneys, solicitors or agents by whom such parties were represented on the hearing of such preliminary objections or at the trial of the petition, as the case may be, notice in writing of such appeal having been so set down for hearing as aforesaid, and may in such notice if he so desires, limit the subject of the said appeal to any special and defined question or questions.

2. The appeal shall thereupon be heard and determined by the Supreme Court of Canada, which shall pronounce such judgment upon questions of law or of fact, or both, as in the opinion of such Court ought to have been given by the court or the trial judges whose decision is appealed from; and the Supreme Court of Canada may make such order as to the money deposited as aforesaid, and as to the costs of the appeal as it thinks just; and, in case it appears to the Court that any evidence duly tendered at the trial was improperly rejected, the Court may cause the witness to be examined before the Court or a judge thereof, or upon commission. R. S., c. 9, s. 51.

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

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

In addition to the costs of the appeal, provided for by this section, the Supreme Court has full power by section 76 of the Dominion Controverted Elections Act to deal with the costs of the Court below. (See *infra*, p. 139).

68. If an appeal as provided by this Act is made to the Supreme Court of Canada from the judgment or decision of the trial judges, they shall make to the Supreme Court of Canada the report and certificate with respect to corrupt practices hereinbefore directed to be made, and may make the special report as to any matters arising in the course of the trial as hereinbefore provided, and the same, together with the decision and findings, if any, with respect to corrupt practices by agents hereinbefore provided for, shall form a part of the record in the said matter to be transmitted to the Supreme Court on such appeal. 54-55 V., c. 20, s. 14.

The report as to corrupt practices is provided for in secs. 58, 59 and 60 of the Controverted Elections Act.

CERTIFICATE TO SPEAKER.

69. The Registrar shall certify to the Speaker of the House of Commons the judgment and decision of the Supreme Court, confirming, changing or annulling any decision, report or finding of the trial judges upon the several questions of law as well as of fact upon which the appeal was made, and therein shall certify as to the matters and things as to which the trial judge would have been required to report to the Speaker, whether they are confirmed, annulled or changed, or left unaffected by such decision of the Supreme Court; and such decision shall be final. 54-55 V., c. 20, s. 13.

Before an appeal from the judgment on trial of an election petition could be heard Parliament was dissolved which put an end to the proceedings on the petition. The respondent, in order to obtain payment of his costs out of the money deposited in court for security, moved before a judge in chambers to have the appeal dismissed for want of prosecution or the record remitted to the court below. The learned judge refused the motion, and being of opinion that the money deposited for security should be disposed of by the Election Court, he directed the Registrar to certify to that court that the appeal was not heard and that the petition dropped by reason of the dissolution of Parliament. *Halton Election Case*, 19 S. C. R. 557.

With respect to the finality of the decision of the Supreme Court, it has been decided by the Judicial Committee that no appeal in a controverted election case will be entertained by the Privy Council. *Glengarry Case*, *Kennedy* v. *Purcell*, 59 L. T. 279.

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

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

"It is now urged by the petitioner that inasmuch as the questions decided are important questions of law affecting the construction of the election statutes, and there is good ground for doubts as to the soundness of the decision, Her Majesty in Council should entertain an appeal. On the other side the importance of the questions is not denied, nor is it denied that the decisions on them are fairly open to argument. But it is contended, first, that the subject matter is not one with respect to which the prerogative of the Crown exists; and secondly, that if the prerogative does exist, it is not proper to exercise it.

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

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

"Their Lordships do not think that for the present purpose any useful or substantial distinction can be taken between the statute which was the subject of decision in *Theberge* v. *Landry*, that which was the subject of decision in

Valin v. *Langlois*, and those which are now in question. In all three cases there is the broad consideration of the inconvenience of the Crown interfering in election matters, and the unlikelihood that the Colonial Legislation should have intended any such result. In all three there is the creation of a special tribunal for the trial of petitions, in the sense that the litigation is not left to follow the course of an ordinary lawsuit, but is subjected to a special procedure and limitations of its own. And in all three there is the same expression of the intention to make the Colonial decision final. But such variance as there is between the two cited cases is only to this extent, that the committee in the latter case must have thought that the question of the existence of the prerogative was still susceptible of argument, when the dispute went to the very root of the validity of a law passed by Parliament to take effect in a province. Their opinion on an *ex parte* hearing, and on the sole question whether or no there should be any further argument on the matter at all, cannot be put higher than that.

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

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

"The next observation is that the statutes shew throughout a desire to have these matters decided quickly. There are the most obvious reasons for such a desire. The legal duration of a Parliament, is, as their Lordships understand, five years, and its usual duration four years. It is most im-

portant that no long time should elapse before the constitution of the body is known. And yet if the Crown were to entertain appeals in such cases, the necessary delays attending such appeals would greatly extend the time of uncertainty which the Legislature has striven to limit.

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

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

COSTS.

The following section relates to costs to be given on an appeal.

76. In appeals under this Act to the Supreme Court of Canada, the said Supreme Court may adjudge the whole or any part of the costs in the court below to be paid by either of the parties; and any order directing the payment of such costs shall be certified by the Registrar of the Supreme Court of Canada to the court in which the petition was filed, and the same proceedings for the recovery of such costs may thereupon be taken in the last-mentioned court as if the order for payment of costs had been made by that court or by the judges before whom the petition was tried. R. S. c. 9, s. 54.

The usual practice has been to certify the judgment of the Supreme Court to the court below, and to leave to the latter court the enforcement of the payment of the costs. But the Court may issue writs to enforce payment of the costs of an election appeal. This was done in the North Ontario Election case (*Wheler* v. *Gibbs*), but the execution was stayed

by Taschereau J., to permit an application to the Court for an amendment of the judgment, to enable the respondent to set-off, against the costs of appeal, costs allowed respondent in court below. The amendment was made, and execution stayed by the Court, February, 1881. The payment of interlocutory costs will be enforced by writs of execution issued by the Supreme Court. This was done in the North Ontario Election case on the 23rd January, 1880.

A motion to dismiss an election appeal either by an appellant who wishes to dicontinue, or by a respondent, should be made to the Court. *Soulanges Election case*; S. C. Dig. 503; *North York case, Ib.* 1113.

IV. APPEALS UNDER THE RAILWAY ACT.

By The Railway Act, 1903, the Board of Railway Commissioners for Canada was established and provision was made for appeal to the Supreme Court from its decisions. These provisions are now contained in the Railway Act, R. S. [1906] c. 37.

STATED CASE.

55. The Board may, of its own motion, or upon the application of any party, and upon such security being given as it directs, or at the request of the Governor in Council, state a case, in writing, for the opinion of the Supreme Court of Canada upon any question which in the opinion of the Board is a question of law.

2. The Supreme Court of Canada shall hear and determine the question or questions of law arising thereon, and remit the matter to the Board with the opinion of the Court thereon. 3 E. VII. c. 58, s. 43.

The case of *In re Branch Lines Can. Pac. Ry. Co.*, 36 S. C. R. 42, was submitted to the Court by the Board under this provision.

Sec. 13 (2) of the Act provides that "The Chief Commissioner, when present, shall preside (at sittings of the Board) and his opinion upon any question which, in the opinion of the Commissioners, is a question of law shall prevail."

APPEAL.

56. The Governor in Council may, at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion and without any petition or application, vary or rescind any order, decision, rule or regulation of the Board, whether such order or decision is made *inter partes* or otherwise, and whether such regulation is general or limited in its scope and application; and any order which the Governor in Council may make with respect thereto shall be binding upon the Board and upon all parties.

2. An appeal shall lie from the Board to the Supreme Court of Canada upon a question of jurisdiction, but such appeal shall not lie unless the same is allowed by a judge of the said Court upon application and upon notice to the parties and the Board, and hearing such of them as appear and desire to be heard; and the costs of such application shall be in the discretion of the judge.

3. An appeal shall also lie from the Board to such Court upon any question which in the opinion of the Board is a question of law, upon leave therefor having been first obtained from the Board; and the granting of such leave shall be in the discretion of the Board.

4. Upon such leave being obtained the party so appealing shall deposit with the Registrar of the Supreme Court of Canada the sum

of two hundred and fifty dollars, by way of security for costs, and thereupon the Registrar shall set the appeal down for hearing at the nearest convenient time; and the party appealing shall, within ten days after the appeal has been so set down, give to the parties affected by the appeal, or the respective solicitors by whom such parties were represented before the Board, and to the Secretary, notice in writing that the case has been so set down to be heard in appeal as aforesaid; and the said appeal shall be heard by such Court as speedily as practicable.

5. On the hearing of any appeal, the Court may draw all such inferences as are not inconsistent with the facts expressly found by the Board, and are necessary for determining the question of jurisdiction, or law, as the case may be, and shall certify its opinion to the Board, and the Board shall make an order in accordance with such opinion.

6. The Board shall be entitled to be heard by counsel or otherwise, upon the argument of any such appeal.

7. The Court shall have power to fix the costs and fees to be taxed, allowed and paid upon such appeals, and to make rules of practice respecting apeals under this section; and, until such rules are made, the rules and practice applicable to appeals from the Exchequer Court shall be applicable to appeals under this Act.

The appeal on the question of jurisdiction of the Board lies only on leave of a judge of the Court and his decision on an application for leave is final. No appeal lies therefrom to the Court. *Williams* v. *G. T. Ry. Co.*, 36 S. C. R. 321.

On application for leave, notice must be given to the Board which may be represented by counsel thereon and on the hearing before the Court if leave is granted.

For the principles on which leave may be granted see *Lake Erie & D. R. Ry. Co.* v. *Marsh*, 35 S. C. R. 197; *Montreal St. Ry. Co.* v. *Montreal Terminal Ry. Co.*, 35 S. C. R. 478. In the latter case leave to appeal was granted, the judge entertaining grave doubts as to the jurisdiction of the Board and the questions raised being of sufficient public importance.

In this case the Montreal Terminal Co. had obtained from the Board an order directing the appellant company to remove their rails from a street in Montreal. The order granting leave to appeal was made upon terms (all parties consenting) that pending the appeal the Terminal Co. could remove the rails from said street so far as necessary for construction of their own railway thereon, subject to the obligation to replace them if required by the decision on the appeal.

In *James Bay Ry. Co.* v. *G. T. Ry. Co.*, 37 S. C. R. 372, leave was granted for leave to appeal from a portion of an order of the Board imposing, on granting an application of the James Bay Co. for leave to carry their line under the track of the G. T. Ry. Co., the condition that the masonry work of the under crossing should be sufficient to allow of the construction of an additional track on the Grand Trunk line though no evidence was given of any intention to build such additional track at any time. The appeal was dismissed by the Court, the majority being of opinion that the question was one of law rather than of jurisdiction and should have come up on leave of the Board (sub-sec. 3) or been carried before the Governor-General in council as provided in the main portion of this section.

The order of the Board granting leave should state that in its opinion the question raised on said appeal is a question of law.

There is no provision for extending the time (ten days) within which the notice under sub-sec. 4 is to be given.

Rule 81 of the Supreme Court Rules provides that the appeal from a decision of the Board shall be on a case to be stated by the parties, or, in the event of difference, to be settled by the Board or its Chairman. It also provides for certain materials to be set forth in the case.

Rules 1 to 62 shall apply to such appeals except in so far as the Railway Act otherwise provides. Rule 81 (2).

Rule 81 only relates to an appeal from a *decision* of the Board, not to an appeal on a question of jurisdiction.

APPEAL FROM AWARD.

In providing for compensation by arbitration for lands taken for, or injuriously affected by, the construction of a railway, sec. 209 of the Railway Act provides as follows:—

209. Whenever the award exceeds six hundred dollars, any party to the arbitration may, within one month after receiving a written notice from any one of the arbitrators or the sole arbitrator, as the case may be, of the making of the award, appeal therefrom upon any question of law or fact to a superior court; and upon the hearing of the appeal such court shall decide any question of fact upon the evidence taken before the arbitrators, as in a case of original jurisdiction.

By the Interpretation Act, sec. 34, sub-sec. 26, the expression "Superior Court" means, in the Province of Ontario, the High Court of Justice or the Court of Appeal.

Held, that if an appeal is taken from an award to the High Court of Justice there can be no further appeal to the Supreme Court of Canada, which cannot even grant special leave therefor under the provisions of sec. 48, Supreme Court Act. *James Bay Ry. Co.* v. *Armstrong*, 38 S. C. R. 511.

V. APPEALS UNDER WINDING-UP ACT.

The Winding-up Act is ch. 144 of R. S. [1906]. The sections relating to appeals are the following.

101. Except in the Northwest Territories, any person dissatisfied with an order or decision of the court or a single judge in any proceeding under this Act may,—

(*a*) if the question to be raised on the appeal involves future rights; or,

(*b*) If the order or decision is likely to affect other cases of a similar nature in the winding-up proceedings; or,

(*c*) if the amount involved in the appeal exceeds five hundred dollars;

by leave of a judge of the court, appeal therefrom. R. S., c. 129, s. 74.

102. Such appeal shall lie,—

(*a*) in Ontario, to the Court of Appeal for Ontario;

(*b*) in Quebec, to the Court of King's Bench; and,

(*c*) in any of the other provinces, and the Yukon Territory, to a superior court in banc. R. S., c. 120, s. 14.

103. In the Northwest Territories, any person dissatisfied with an order or decision of the court or a single judge, in any proceeding under this Act may, by leave of a judge of the Supreme Court of Canada, appeal therefrom to the Supreme Court of Canada. R. S., c. 129, s. 74.

104. All appeals shall be regulated, as far as possible, according to the practice in other cases of the court appealed to, but no appeal hereinbefore authorized shall be entertained unless the appellant has, within fourteen days from the rendering of the order or decision, or within such further time as the court or judge appealed from, or, in the Northwest Territories, a judge of the Supreme Court of Canada, allows, taken proceedings therein to perfect his appeal, nor unless, within the said time, he has made a deposit or given sufficient security, according to the practice of the court appealed to, that he will duly prosecute the said appeal and pay such damages and costs as may be awarded to the respondent. R. S., c. 129, s. 74.

105. If the party appellant does not proceed with his appeal, according to this Act and the rules of practice applicable, the court appealed to, on the application of the respondent, may dismiss the appeal with or without costs. R. S., c. 129, s. 75.

106. An appeal, if the amount involved therein exceeds two thousand dollars, shall, by leave of a judge of the Supreme Court of Canada, lie to that Court from,—

(*a*) the Court of Appeal for Ontario;

(*b*) the Court of King's Bench in Quebec; or,

(*c*) a superior court in banc in any of the other provinces, or in the Yukon Territory. R. S., c. 129, s. 76.

In addition to its appellate jurisdiction the Supreme Court may act under the following section:

125. The courts of the various provinces, and the judges of the said courts respectively, shall be auxiliary to one another for the purposes of this Act; and the winding-up of the business of the company or any matter or proceeding relating thereto may be transferred from one court to another with the concurrence, or by the order or orders of the two courts, or by an order of the Supreme Court of Canada. R. S., c. 129, s. 84.

In June, 1898, the Acting Registrar in Chambers held that an appeal to the Supreme Court of Canada under the Winding-up Act does not lie from an interlocutory judgment. *McCaskill* v. *Common.* Nor from the judgment of the Court of Queen's Bench for Lower Canada quashing an appeal to that Court for want of jurisdiction. *Ibid,* affirmed by King J., Oct., 1898, who held that the proposed appeal had no merits, and leave should also be refused on that ground.

And *In re Cushing Sulphite Fibre Co.,* 37 S. C. R. 173 Mr. Justice Davies refused leave to appeal, because the judgment appealed against was not a final judgment.

The amount in controversy must exceed $2,000, or an appeal does not lie to the Supreme Court. A judgment setting aside an order made under the Winding-up Act for postponement of foreclosure proceedings and directing that the same be continued does not involve a controversy over any pecuniary amount. Leave to appeal from such judgment was refused on that ground also. *Ib.* Nor does a judgment refusing to set aside a winding-up order involve a dispute over any pecuniary amount. In *Re Cushing Sulphite Fibre Co.,* 37 S. C. R. 427.

Application was made for leave to appeal from a judgment of the Court of Appeal for Ontario relieving from liability six persons who had been placed by the master on the list of contributories of an insolvent company, one for $1,000, and the other five for $900 each. The application was refused on the ground that the position was the same as if the proceedings had been taken separately against each of the six persons and the respective sums for which each was liable could not be added together to make a controversy over more than $2,000. *Stephens* v. *Gerth,* 24 S. C. R. 716.

Leave to appeal *per saltum* under sec. 42 of the Supreme Court Act cannot be granted in a case under the Winding-up Act. *In re Cushing Sulphite Fibre Co.*, 36 S. C. R. 494. The application in that case for leave to appeal from the judgment of the full court was refused on the ground that the judge, on petition for a winding-up order, had made no formal order and the proceedings before the full court were more in the nature of a reference than an appeal from his decision.

The application for leave to appeal under sec. 106 must be made within 60 days from the signing, entry or pronouncement of the judgment appealed against and the time cannot be extended for the purposes of such application. See *Barrett* v. *Syndicat Lyonnais du Klondyke*, 33 S. C. R. 667; *Canadian Mutual Loan Co.* v. *Lee*, 34 S. C. R. 224.

In one case, Sir Henry Strong C.J., expressed a doubt as to the power of the Registrar, sitting as a judge in chambers, to grant leave to appeal under sec. 106 and now the applications are made to a judge.

The rules of court governing appeals under The Supreme Court Act apply to appeals under sec. 106 also.

PART III.

Supreme Court Rules.

PART III.

SUPREME COURT RULES.

TABLE OF RULES.

Sec. 109 of the Supreme Court Act empowers the judges to make rules for regulating the procedure of the Court and for other purposes and by sec. 31 (*g*) such power includes that of altering, amending or repealing such rules, and substituting others therefor. Pursuant to these provisions the Court, in May last, abolished the rules heretofore in force, and issued the following, which came into operation on Sept. 1st, 1907.

ORDER AFFIRMING JURISDICTION.

RULE 1.—Any party proposing to appeal to the Supreme Court, may at the time of his application to have the security approved, when the application is made in the Supreme Court, and in the Yukon Territory within twenty days, and in all other cases within ten days after the security has been approved by the court below, or has been deposited in Court as provided by the Act giving an appeal, or within such further time as may be allowed, apply to a judge of the Supreme Court in chambers, on notice, for an order affirming the jurisdiction of the Court to hear the appeal.

This and the four following rules are new and their object is to avoid the expense of printing the case and factums where the appeal may be quashed for want of jurisdiction under section 50. Under that section the Court only can quash and as a time is prescribed by the Act (s. 69) within which the appeal must be brought it has been generally necessary to have the expense of printing incurred before an application to quash could be made. By rules 1 and 2 the jurisdiction conferred by section 50 may be indirectly exercised by a judge in chambers.

In proceeding under this rule there will be delay in the appeal being disposed of if the jurisdiction is finally affirmed. It will only be resorted to, of course, in a doubtful case and one of the parties will certainly take the appeal to the Court provided for by rule 3 if it applies, in which case the further proceedings, namely, the printing and filing of the case and factums, cannot be proceeded with without a special order which could not be granted without defeating the object of the rule. Consequently the appeal cannot be heard at the ensuing session of the Court and must go over to the session following. The same result will ensue if the appellant does not apply under this rule and the respondent gives the notice provided for by rule 4.

"As provided by the Act." See sec. 75.

"Or has been deposited in Court." That is by payment into Court of $500.

RULE 2.—When the application to allow the security is made in the Supreme Court, the respondent may, on the return of the motion, move to have the security refused on the ground that the Court has no jurisdiction to hear the appeal.

This rule embodies the practice heretofore generally followed. The Registrar sitting as a judge in chambers, has

frequently refused to approve the security if satisfied that the appeal did not lie, thereby, if his ruling stands, indirectly quashing the appeal.

Rule 3.—Any party dissatisfied with the order made upon any such motion, may appeal therefrom to the Court, and upon a notice of such appeal being served, all further proceedings in the main appeal shall be stayed until after the hearing of the said motion, unless a judge of the Supreme Court shall otherwise order.

This appeal is no doubt intended to be given in case of an order made under rule 1 as well as that on the motion for approval of security, though construed strictly it would only apply to the latter. As to the effect of an appeal in the former case, see remarks under rule 1.

In case of an appeal from an order made on application to approve the security the stay of proceedings will have no effect if it is refused, as no proceedings can be had until the security is approved.

The notice of appeal under this rule must be for the first day of the next ensuing session. If the Court is sitting when the order is made the judge would, no doubt, direct notice to be given for a special day during such session.

RULE 4.—When the appellant has not, within the time above limited, applied to have the jurisdiction of the Court affirmed, any respondent who desires to object to the jurisdiction of the Court to hear the appeal shall, in the Yukon Territory within thirty days, and in all other cases within fifteen days after the security has been approved by the court below, or within such time as may be extended by a judge of the Supreme Court in chambers, serve the appellant, his solicitor or agent, with a notice of motion to quash the appeal returnable at the then present, or on the first day of the next ensuing session of the Court, and in default thereof, in the event of the appeal being quashed the respondent may, in the discretion of the Court, be ordered to pay all or part of the costs of the appeal.

Notice may be given under this rule if the security has been allowed in the Court below. If allowed in the Supreme Court, respondent may proceed under rule 2.

Heretofore, if the respondent moved to quash on the first day of the session or on the appeal being called for hearing he was, in case of his motion succeeding, usually allowed the costs of the motion. If the objection to the jurisdiction was taken by the Court and the appeal quashed, no costs were given. See notes to sec. 50 of the Act. Under this rule

the respondent may have to pay costs even if he succeeds as a punishment for not doing all in his power to save expense to his adversary.

RULE 5.—Upon service of a notice of motion to quash an appeal for want of jurisdiction as hereinbefore provided, all further proceedings in the appeal shall be stayed until the motion has been disposed of, unless a judge of the Supreme Court shall otherwise order.

See remarks under rule 1 as to the effect of this stay of proceedings.

CASE TO CONTAIN REASONS FOR JUDGMENT.

RULE 6.— The case provided for by the Supreme Court Act certified under the seal of the court appealed from, shall be filed in the office of the Registrar, and in addition to the proceedings mentioned in said section, shall invariably contain a transcript of all the opinions or reasons for their judgment delivered by the judges of the court or courts below, or a certificate signed by the clerk of such court or courts or an affidavit that such reasons cannot be procured, and stating the efforts made to obtain the same.

This is substantially the same as the former rule 2, which, however, did not provide for the certificate of the Clerk. But the certificate that the reasons could not be procured has always been accepted in lieu of the affidavit in cases from the Province of Quebec.

Sec. 73 of the Act provides for what the case shall contain.

When the opinions of the judges of the courts below have been already issued in the regular reports, the Court of Appeal for Ontario has dispensed with the re-printing of such opinions in the appeal book, which merely contains a reference to the report and page at which such opinions may be found. See Cons. Rule 805 Holmested & Langton, 3rd ed. 1053. Cases have sometimes been sent to the Supreme Court thus prepared, but this practice is irregular under rule 6. When it is thought desirable to dispense with printing of the opinions in the case the more regular practice would be to apply in Supreme Court chambers for an order. The affidavit referred to in this rule should be filed and a copy of it printed in the case.

Attention has been called by the court to the fact that Quebec cases frequently contain a certificate as to the opinions in the Court of Queen's Bench, and to those in the Superior Court the rule is not complied with.

CASE TO CONTAIN COPY OF JUDGMENTS BELOW AND ANY ORDER ENLARGING TIME.

RULE 7.—The case shall also contain a copy of all judgments made in the courts below, and a copy of any order which may have been made by the court below, or any judge thereof, enlarging the time for appealing.

Sec. 71 of the Act provides for the order mentioned in this rule. Orders extending the time for filing the case are made by a judge of the Supreme Court. They are frequently printed in the appeal book, but it is not necessary that they should be.

The provision that the case shall contain a copy of all judgments made in the courts below was not in the former rule (rule 3). Sec. 73 of the Act requires the judgment objected to to be set forth, which, in an Ontario case would mean the judgment of the Court of Appeal and in a Quebec case of the Court of King's Bench or Court of Review. This rule requires the judgment of the original and intermediate Courts to be inserted as well, which has been the almost invariable practice in the past. See *In re Daly*, 39 S. C. R. 122, per Davies J.

CASE MAY BE REMITTED TO COURT BELOW.

RULE 8.—The Court, or a judge of the Supreme Court in chambers, may order the case to be remitted to the court below for correction, or in order that it may be made more complete by the addition thereto of further matter.

This is the former rule 4 with the addition of the words "for correction." In practice the old rule was treated as if it contained said expression.

Under the statute, section 73, the case is to be stated by the parties, or in the event of difference to be settled by the court appealed from or a judge thereof. A party feeling aggrieved by the omission of what he may consider necessary or proper material may apply to a judge of the Supreme Court in chambers, on notice, to have the case remitted for correction. The application should not be made in the first instance to the court. See *Aetna Ins. Co.* v. *Brodie*, S. C. Dig. 1009. Where material has been unnecessarily added, no application to remit is required. The unnecessary matter will be disregarded by the court, and, as a general rule, will not be allowed on taxation when its insertion has been objected to at the proper time.

The judge of the court below, when settling the case, should not abstain from exercising his judgment as to whether certain material should or should not form part of the case. Where a judge of the court below certified that the examination of one D. was made part of the case *quantum valeat*, the case was remitted to the court below to have it made clear whether the examination did or did not form part of the case. *McCall* v. *Wolff*, S. C. Dig. 1099.

The printed case certified to the Registrar of the Supreme Court will be remitted to the court below for correction, if not a correct print of the case settled by the judge. In *Parker* v. *Montreal City Passenger Railway Company*, S. C. Dig. 1101, where it appeared that certain papers which a judge of the court below had directed should form part of the case had been incorrectly printed, especially the factum of the respondent in said court, which had been translated, and in which interpolations had been made, the Registrar, on application of the respondent, was directed to remit the case to the court below to be corrected.

MOTION TO DISMISS FOR DELAY.

RULE 9.—If the appellant does not file his case in appeal with the Registrar within forty days after the security required by the Act shall be allowed, he shall be considered as not duly prosecuting his appeal, and the respondent may move to dismiss the appeal pursuant to the provisions of the Act in that behalf.

Rule 5 of the former rules required the case to be filed within one month after allowance of security. The time is now extended to forty days.

Section 82 of the Act is as follows:

"If an appellant unduly delays to prosecute his appeal, or fails to bring the appeal on to be heard at the first session of the Supreme Court after the appeal is ripe for hearing, the respondent may, on notice to the appellant, move the Supreme Court, or a judge thereof in chambers, for the dismissal of the appeal.

"2. Such order shall thereupon be made as the said court or judge deems just."

See notes to this section at pp. 109, *et seq.*

The immediate consequence of failing to file the case with the Registrar of the Supreme Court within the forty

days after security has been allowed, is that the appellant lays himself open to a motion to dismiss for want of prosecution. If, therefore the appellant sees that it will be impossible to print his case within the time given by the rule, and has been unable to obtain or unwilling to ask the consent of the respondent to any extension of time, he must apply before the expiry of the month, if possible, to the Registrar of the Supreme Court in chambers, for further delay. The application should be on the usual four clear days' notice and be supported by affidavit, setting forth the reasons for making it. See rules 54, 55, 56 and 108.

Rule 108 gives power to the court or a judge to enlarge or abridge the time for doing any act under the rules.

A motion to dismiss for want of prosecution should not be made to the court, but in chambers. *Martin* v. *Roy*, S. C. Dig. 1111; *The steam propeller St. Magnus*—before the full court, 1887.

And the court has refused to interfere with the discretion exercised by a judge in chambers. See *Whitfield* v. *The Merchants Bank*, S. C. Dig. 1110; *Winnipeg* v. *Wright*, 13 S. C. R. 441.

It was formerly held that in an election appeal, the motion should be made to the court. *North York Election Case*, S. C. Dig. 1113; *Charlevoix Election Case*, 106. But since *The Halton Case*, 19 S. C. R. 557, such motions have been made in chambers. See notes to sec. 82 p. 109, *ante*.

It is not sufficient excuse for not inscribing an appeal for hearing that the respondent has not filed his factum. *Whitfield* v. *The Merchants Bank*, S. C. Dig. 1110.

It is the duty of the appellant's solicitor to prosecute his appeal with all reasonable despatch, and to inscribe it for hearing *ex parte* if the respondent be in default in depositing his factum; and any carelessness or neglect in acquainting himself and complying with the requirements of the rules may lay him open to the serious penalty of the dismissal of the appeal, or at least to the payment of a considerable amount of costs, that great "instrument of correction in the hands of the court." See *Coté* v. *Stadacona Ass. Co.*, S. C. Dig. 1111.

Under exceptional circumstances an order directing an appeal to stand dismissed if the case is not filed at a certain date may be vacated and further time to file it allowed. See notes to sec. 82.

Rule 59 provides that unless an appeal is brought on for hearing by the appellant within one year next after the security shall have been allowed, it shall be held to have been abandoned without any order to dismiss being required, unless the Supreme Court or a judge thereof shall otherwise order.

CERTIFICATE OF SECURITY GIVEN.

RULE 10.—The case shall be accompanied by a certificate under the seal of the court below, stating that the appellant has given proper security to the satisfaction of the court whose judgment is appealed from, or of a judge thereof, and setting forth the nature of the security to the amount of five hundred dollars as required by the said Act, and a copy of any bond or other instrument by which security may have been given, shall be annexed to the certificate.

Section 75 of the Act provides for the giving of security. See notes to that section p. 99.

The security may be allowed by the Supreme Court or a judge thereof, in which case this rule does not apply.

Security may be given by payment of five hundred dollars into Court in the mode directed by rule 104. But even in such case the security must be approved.

A copy of the bond by which security is given is generally printed in the case, but this is not necessary. A copy certified under the seal of the court appealed from may be forwarded with the original case.

CASE TO BE PRINTED AND TWENTY-FIVE COPIES DEPOSITED WITH REGISTRAR.

RULE 11.—The case shall be printed by the party appellant, and twenty-five printed copies thereof shall be deposited with the Registrar for the use of the judges and officers of the Court.

2. As soon as the case has been printed the solicitor for appellant shall, on demand, deliver to the solicitor for the respondent, three printed copies thereof.

The second part of this rule is new. Though the respondent will always have, or can easily procure, all the material that goes into the case it will, no doubt, be more

convenient for him to have the printed copies. There is no obligation on the appellant to supply them except on demand.

The case as settled between the parties, or by the judge of the court below, is to be printed, but there have been many appeals in which a portion of the printing has been dispensed with, such as pamphlets or other printed documents, books of account, statements, etc.; sometimes evidence which has been printed for use in the court below, although not in the form required by the rules of the Supreme Court, and only a few copies can be procured. The judges have invariably relaxed the requirements as to printing, when doing so would save large expense, and not cause any serious inconvenience.

But no application should be made to dispense with any part of the printing until the case has been settled: *Carrier* v. *Bender*, S. C. Dig. 1101; and such an application should be made to a judge of the Supreme Court and not to a judge of the court below.

In some cases an order has been made by a judge of the Supreme Court allowing less than twenty-five copies of the case to be deposited, but this will only be done when the circumstances are exceptional.

In appeals from the High Court to the Court of Appeal for Ontario, Cons. Rule 810 provides that in addition to the number of copies required for the use of that court, thirty copies are to be deposited with the Registrar for the purpose of being delivered, in the event of an appeal to the Supreme Court of Canada, to the party appealing to that Court, for use upon such appeal. Holmested & Langton, 3rd ed., 1055.

As to what the case should contain see sec. 73 of the Act and rules 6 and 7.

FORM OF CASE.

RULE 12.—The case shall be in *demy quarto* form. It shall be printed on paper of good quality, and on one side of the paper only with the printed pages to the left, and the type shall be pica, and the size of the case shall be eleven inches by eight and one-half inches, and every tenth line shall be numbered in the margin. Where evidence is printed there shall be a head-line on each page, giving name of witness, and shewing whether the evidence is examination-in-chief, cross-examination, or as the case may be. All exhibits shall

be grouped together and printed in chronological order. All pleadings, judgments, and other documents, shall be printed in full unless dispensed with by the Registrar. The title page shall contain the name of the court and Province from which the appeal comes, and the style of the cause, putting the appellant's name first, as follows:

A. B.
(Plaintiff or defendant, as the case may be),
AND *Appellant.*
C. D.,
(Defendant or plaintiff, as the case may be),
Respondent.

The names of solicitors and agents may also be added.

There shall be an index at the beginning of the case, which shall set out in detail the entire contents of the case in four parts as follows:

Part I. Each pleading, rule, order, entry, or other document with its date, in chronological order.

Part II. Each witness by name, stating whether for plaintiff or defendant, examination-in-chief or cross-examination or as the case may be, giving the page.

Part III. Each exhibit with its description, date, and number, in the order in which they were filed.

Part IV. All judgments in the courts below, with the reasons for judgment, and the name of the judge delivering the same.

2. If the appellant desires, the case may be printed according to the regulations as to form and type in appeals to His Majesty in Council.

This rule adds considerably to the requirements as to printing contained in the former rule 8 and also makes certain changes which it will be necessary for solicitors to observe. Most of the provisions in this rule have been for some years past printed on the inside of the front cover of each number of the Supreme Court reports.

The first new requirement is that the printed pages shall be to the left side of the book. This will be found more convenient for making notes on the blank page opposite.

The next change is in the size of the type, which hereafter must be pica instead of small pica leaded, as has been the rule.

The provisions as to head lines to the evidence, to the grouping and printing of exhibits and to the printing in full of pleadings, &c., were not in the former rule, but, except as to the head-lines, it was the usual practice to print as is now required.

Each page should have the lines numbered separately.

The remainder was not in the former rule, but was printed on the cover of the numbers of reports. The requirements for the index are, however, fuller in the rule than in the reports.

To have the index precede the case has not heretofore been prescribed by rule, but has been the practice of solicitors in nearly all the provinces.

In the case the exhibits are to be printed in chronological order, but in the index in the order of filing. The reason for the distinction is not apparent.

Printing portions of the case in italics for the purpose of emphasis is a violation of this rule. See *May* v. *McArthur*, S. C. Dig. 1101.

The rules as to the form and type required on appeals to His Majesty in Council will be found in the appendix.

A synopsis of the rule will be found on the cover of No. 2, vol. 39, and of subsequent numbers of the reports.

CASE NOT TO BE FILED UNLESS RULES COMPLIED WITH.

RULE 13.—The Registrar shall not file the case without the leave of the Court, or a judge, if the foregoing order has not been complied with, nor if it shall appear that the press has not been properly corrected, and no costs shall be taxed for any case not prepared in accordance with this order.

The case is to be printed so as to procure a certain degree of uniformity, and all that is required is a substantial compliance with Rule 12: *May* v. *McArthur*, S. C. Dig. 1101.

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

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

The printing should average from forty to forty-seven lines to the page, and not be uselessly leaded or paragraphed.

The price paid should be a reasonable price, and the affidavit of disbursements, in addition to stating that the printing charges have been paid, should state that such charges are usual and reasonable in the locality in which the work has been done.

DISPENSING WITH PRINTING. ORIGINAL RECORD.

RULE 14.—The Court or a judge in chambers may dispense with the printing or copying of any of the documents or plans forming part of the case.

2. The original record in the court appealed from and all exhibits and documentary evidence filed in the cause, shall be transmitted to the Registrar with the certified case provided for in the Act.

This is a new rule. The first clause, however, only embodies the practice. The judges have invariably relaxed the requirements as to printing, when large expense would thereby be avoided, if no serious inconvenience would result.

By rule 10 of the superseded rules certified copies of all original documents and exhibits used in evidence in the court of first instance were to be deposited with the registrar along with the case unless their production was dispensed with by an order. And the Court or a judge could order the transmission of the originals. Under the above rule these originals must be transmitted in every case.

NOTICE OF HEARING OF APPEAL.

RULE 15.—After the filing of the case, a notice of the hearing of the appeal shall be given by the appellant for the next following session of the Court as fixed by the Act, or as specially convened for hearing appeals according to the provisions thereof, if sufficient time shall intervene for that purpose, and if between the filing of the case and the first day of the next ensuing session there shall not be sufficient time to enable the appellant to serve the notice as hereinafter prescribed, then such notice of hearing shall be given for the session following the then next ensuing session.

The notice must be served at least fifteen days before the first day of the session. Rule 18. And the case must be filed twenty days, and the appeal inscribed fourteen days before the first day. Rule 37.

The notice may be in the Form B. in the schedule. Rule 17.

By rule 67, notice of hearing in criminal appeals, and in appeals in matters of *habeas corpus*, under sec. 62 of the Act, shall be served at least five days before the day on which it is proposed to hear the appeal.

See Part II, "Exchequer appeals" and "Election appeals," for notice in those cases respectively.

SPECIAL NOTICE CONVENING COURT—FORM OF.

RULE 16.—The notice convening the Court for the purpose of hearing election or criminal appeals, or appeals in matters of *habeas corpus*, or for other purposes under the provision of the Act in that behalf, shall, pursuant to the directions of the chief justice or senior puisné judge, as the case may be, be published by the Registrar in the *Canada Gazette*, and shall be inserted therein for such time before the day appointed for such special session as the said chief justice or senior puisné judge may direct, and may be in the form given in Form A, of the Schedule to these Rules.

Sec. 34 of the Act provides that: "The Court may be convened at any time by the Chief Justice, or, in the event of his absence or illness, by the senior puisné judge, in such manner as is prescribed by the rules of the court."

FORM OF NOTICE OF HEARING.

RULE 17.—The notice of hearing may be in the form given in Form B, of the Schedule to these Rules.

When the appeal is heard *ex parte* the Court will require an affidavit proving service of notice of hearing. *Kearney* v. *Kean*; *Domville* v. *Cameron*, S. C. Dig. 1118.

WHEN TO BE SERVED.

RULE 18.—The notice of hearing shall be served at least fifteen days before the first day of the session at which the appeal is to be heard.

This does not apply to election appeals; Controverted Elections Act, sec. 67; nor to criminal appeals nor appeals in matters of habeas corpus; rules 64 and 67.

HOW NOTICE OF HEARING TO BE SERVED.

RULE 19.—Such notice shall be served on the attorney or solicitor, who shall have represented the respondent in the court below, at his usual place of business, or on the booked agent, or at the elected domicile of such attorney or solicitor at the City of Ottawa, and if such attorney or solicitor shall have no booked agent or elected domicile at the City of Ottawa, the notice may be served by affixing the same in some conspicuous place in the office of the Registrar, and mailing on the same day a copy thereof prepaid to the address of such attorney or solicitor.

2. Where the validity of a Statute of the Parliament of Canada is brought in question in an appeal to the Supreme Court, notice of hearing, stating the matter of jurisdiction raised, shall be served on the Attorney General of Canada.

3. Where the validity of a Statute of a Legislature of a Province of Canada is brought in question in an appeal to the Supreme

Court, notice of hearing stating the matter of jurisdiction raised shall be served on the Attorney General of Canada and the Attorney General of the Province.

Paragraphs 2 and 3 of this rule are new. By sec. 60 of the Act the validity of a provincial statute may be in question on a reference by the Governor-General in Council, but notice in such case is given to the Attorney-General of the Province only.

Service may be made on the booked agent of the respondent. See the next rule respecting "The Agents' Book."

Rules 24 and 25 provide for service of all papers on a party to any appeal who appears in person. Rule 55 provides for service of notices of motion.

"THE AGENT'S BOOK"

RULE 20.—There shall be kept in the office of the Registrar of this court, a book to be called "The Agent's Book," in which all advocates, solicitors, attorneys and proctors practising in the said Supreme Court may enter the name of an agent (such agent being himself a person entitled to practise in the said court), at the said City of Ottawa, or elect a domicile at the said City.

The Supreme Court Act contains the following provisions:

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

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

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

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

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

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

The tariff of fees Sch. Form I. provides that an allowance shall be taxed to the duly entered agent in any appeal, in the discretion of the Registrar to $20.

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

SUGGESTION BY APPELLANT OR RESPONDENT WHO APPEARS IN PERSON.

RULE 21.—In case any appellant or respondent who may have been represented by attorney or solicitor in the court below, shall desire to appear in person in the appeal, he shall immediately after the allowance by the court appealed from, or a judge thereof, of the security required by the Act, file with the Registrar a suggestion in the form following:

"A. v. B.

"I, C. D., intend to appear in person in this appeal.

(SIGNED) C. D."

This and the four following rules provide for the case of either party to an appeal appearing in person. In the former rule such provision applied to the case of a respondent alone.

The rule does not provide for filing the suggestion when the security is allowed by the Supreme Court, but in such case the same procedure can be followed.

When a party conducts an appeal in person he should be careful to comply with rule 24 and elect some domicile or place at the city of Ottawa at which all notices and papers may be served upon him, otherwise by rule 25 the notice of hearing may be served upon him by being affixed in some conspicuous place in the office of the Registrar, and by rule 55 service of all notices of motion may be made on him in the same way.

When a party to an appeal appears in person he will be entitled to tax, if successful, and granted costs, the usual costs between party and party other than counsel fees. A respondent who is an advocate and who has argued the appeal in person cannot tax counsel fees. *Charlevoix Election Case* (*Valin* v. *Langlois*), S. C. Dig. 388.

IF NO SUGGESTION FILED.

RULE 22.—If no such suggestion be filed, and until an order have been obtained as hereinafter provided for a change of solicitor or attorney, the solicitor or attorney who appeared for any party in the court below shall be deemed to be his solicitor or attorney in the appeal to this court.

SUGGESTION BY APPELLANT OR RESPONDENT WHO ELECTS TO APPEAR BY ATTORNEY.

RULE 23.—When an appellant or respondent has appeared in person in the court below, he may elect to appear by attorney or solicitor in the appeal, in which case the attorney or solicitor shall file a suggestion to that effect in the office of the Registrar, and thereafter all papers are to be served on such attorney or solicitor as hereinbefore provided.

ELECTION OF DOMICILE BY APPELLANT OR RESPONDENT WHO APPEARS IN PERSON.

RULE 24.—An appellant or respondent who appears in person may, by a suggestion filed in the Registrar's office, elect some domicile or place at the City of Ottawa, at which all notices and papers may be served upon him, in which case service at such place of all notices and papers shall be deemed good service.

SERVICE WHEN APPELLANT OR RESPONDENT APPEARS IN PERSON WITHOUT ELECTING DOMICILE.

RULE 25.—In case the appellant or respondent who shall have appeared in person in the court appealed from, or who shall have filed a suggestion under Rule 21 shall not, before service, have elected a domicile at the City of Ottawa, service of all papers may be made by affixing the same in some conspicuous place in the office of the Registrar.

CHANGING ATTORNEY OR SOLICITOR.

RULE 26.—Any party to an appeal may, on an *ex parte* application to the Registrar, obtain an order to change his attorney or solicitor, and after service of such order on the opposite party, all services of notices and other papers are to be made on the new attorney or solicitor.

One attorney's name only should appear on record. In an application to change the name of solicitor, it was shown that Messrs. A. and B. appeared on the case as solicitors, and that A. had died. It was desired to have the name of B. alone inserted as solicitor. Application refused by the Chief Justice of the Supreme Court as unnecessary: *Gilmour & Rankin* v. *Bull*, 1 Kerr, N. B. 94, referred to. *The Exchange Bank* v. *Springer*, 24th February, 1887.

SUBSTITUTIONAL SERVICE.

RULE 27.—Where personal service of any notice, order or other document is required by these Rules, or otherwise, and it is made to appear to the Court or a judge in chambers that prompt personal service cannot be effected, the Court or judge in chambers may make such order for substitutional or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just.

This rule is identical with the English rule, order 67, R. 6. An. Prac. 1907, p. 937. And see Holmested & Langton's Jud. Acts, 3 ed., pp. 283, *et seq*, as to the Ontario rule.

Rule 25 provides for service on a party to an appeal appearing in person but failing to elect a domicile at Ottawa by affixing the paper to be served in some conspicuous place in the Registrar's office. By rule 55 notice of motion may be served in the same way.

AFFIDAVITS OF SERVICE.

RULE 28.—Affidavits of service shall state, when, where and how and by whom such service was effected.

This is identical with order 67, R. 9, in England. An. Prac. 1907, p. 976.

FACTUMS TO BE DEPOSITED WITH REGISTRAR.

RULE 29.—At least fifteen days before the first day of the session at which the appeal is to be heard, the parties appellant and respondent shall each deposit with the Registrar, for the use of the court and its officers, twenty-five copies of his factum or points of argument in appeal.

The last day for depositing factums is the third Saturday before the opening day of each session. By rule 112 the time is computed by excluding the first and including the last day. By computing in this manner fifteen days from the third Saturday the last will fall on Sunday, which by rule 114 means Monday.

CONTENTS OF FACTUM.

RULE 30.—The factum or points for argument in appeal shall consist of three parts, as follows:

Part 1. A concise statement of the facts.

Part 2. A concise statement setting out clearly and particularly in what respect the judgment is alleged to be erroneous. When the error alleged is with respect to the admission or rejection of evidence, the evidence admitted or rejected shall be stated in full. When the error alleged is with respect to the charge of the judge to the jury, the language of the judge and the objection of counsel shall be set out *verbatim*.

Part 3. A brief of the argument setting out the points of law or fact to be discussed, with a particular reference to the page and line of the case and the authorities relied upon in support of each point. When a statute, regulation, rule, ordinance or by-law is cited, or relied on, so much thereof as may be necessary to the decision of the case shall be printed at length.

The former rule respecting factums only required that they should contain a concise statement of the facts of the points of law to be relied on and of the arguments and authorities to be urged and cited. The present is almost identical with the rule of the United States Supreme Court respecting briefs in that tribunal. It will tend to make the factums uniform so far as the diverse nature of the cases will permit.

HOW TO BE PRINTED.

RULE 31.—The factum or points for argument in appeal shall be printed in the same form and manner as hereinbefore provided for with regard to the case in appeal, and shall not be received by the Registrar unless the requirements hereinbefore contained, as regards the case, are all complied with.

See rule 12 as to printing.

MOTION OF RESPONDENT TO DISMISS APPEAL ON GROUND OF DELAY IN FILING FACTUM.

RULE 32.—If the appellant does not deposit his factum or points for argument in appeal within the time limited by Rule 29, the respondent shall be at liberty to move to dismiss the appeal on the ground of undue delay under the provisions of the Act in that behalf.

By sec. 82 of the Act a respondent may move to dismiss the appeal if the appellant unduly delays its prosecution.

APPELLANT MAY INSCRIBE EX PARTE IF FACTUM NOT FILED.

RULE 33.—If the respondent fails to deposit his factum or points for argument in appeal within the said prescribed period, the appellant may set down or inscribe the cause for hearing *ex parte*.

Rule 37 provides for inscribing the appeal.

SETTING ASIDE INSCRIPTION EX PARTE.

RULE 34.—Such setting down or inscription *ex parte* may be set aside or discharged upon an application to a judge in chambers sufficiently supported by affidavits.

REGISTRAR TO SEAL UP FACTUMS FIRST DEPOSITED.

RULE 35.—The factum or points for argument in appeal first deposited with the Registrar shall be kept by him under seal, and shall in no case be communicated to the opposite party until the latter shall himself bring in and deposit his own factum or points.

INTERCHANGE OF FACTUMS.

RULE 36.—As soon as both parties shall have deposited their said factum or points for argument in appeal, each party shall, at the request of the other, deliver to him three copies of his said factum or points.

Parties should bear in mind that these rules respecting factums have been passed for the convenience of the court. They must be strictly complied with: *Lord* v. *Davidson*, S. C. Dig. 1102: and cannot be waived by consent of parties: *Coté* v. *Stadacona Assur. Co.*, *Ib.* The factum should be as complete as possible, but the Court has never refused leave to counsel to hand in for the use of the judges a list of authorities cited at the hearing not already mentioned in the factum. An additional argumentative factum is never, or very rarely, received, and would not be accepted by the Registrar for distribution among the judges without special leave of the Court. Copies of the additional list

of authorities should be sent to the Registrar as soon as possible after the argument of the appeal. The factum should not contain irrelevant matter, or reproduce documents already printed in the case, when a reference to them will answer the purpose.

The facts of the case and points for argument should be concisely and yet completely set out. In one case when a point was raised at the hearing which was not in the factum, and counsel for respondent objected that he was not prepared to argue it, the Court adjourned the hearing for a week: *Western Counties Ry. Co.* v. *Windsor & Annapolis Ry. Co.*, S. C. Dig. 1129. Any improper reflections upon the conduct of the judges of the courts below will be ordered to be struck out and subject the solicitor to the censure of the Court and the loss of his costs: *Wallace* v. *Souther*, S. C. Dig. 1102; or the Court may order the factum to be taken off the files: *Vernon* v. *Oliver*, 11 S. C. R. 156.

Objections to a factum as containing unnecessary matter may be urged at the hearing: *Coleman* v. *Miller*, S. C. Dig. 1101; or may be urged before the Registrar on taxation.

The cost of printing a translation of judges' notes or other matter in or with the factum will not be taxed.

Default on the part of the respondent in depositing a factum does not justify the appellant in neglecting to deposit his, or relieve him from the risk of a motion to dismiss under rule 32: *Whitfield* v. *The Merchants Bank*, S. C. Dig. 1103. It is the duty of the appellant to prosecute his appeal with all reasonable despatch and in strict conformity with the requirements of the statute and rules. If the respondent is in default the appeal is inscribed *ex parte*, and the Registrar is not at liberty to inscribe in any other way. The word "may" in rule 33, therefore, means "must," if the appellant inscribes the appeal. Rule 34 provides a mode of relief in a proper case against this inscription *ex parte*.

In certain circumstances the Court has dispensed with an oral argument of the appeal, and allowed the case to be submitted on the factums. See S. C. Dig. 1118, *Lawless* v. *Sullivan*, and other cases.

No factums are required in criminal appeals, nor in *habeas corpus* appeals—rule 64, but a memo. of points of argument must be filed. In election appeals a factum must

be printed as in ordinary appeals—rule 68. In a proper case an order may be obtained dispensing with the factum in these appeals—rule 71.

Rule 101 provides for the depositing of factums in a cross appeal, the time within which such factums must be deposited, and the interchange of such factums between the parties.

Rule 102 provides for the translation of a factum, if required by a judge. There has been no case in which this has been required.

REGISTRAR TO INSCRIBE APPEALS FOR HEARING.

RULE 37.—Appeals shall be set down or inscribed for hearing in a book to be kept for that purpose by the Registrar, at least fourteen days before the first day of the session of the Court fixed for the hearing of the appeal. But no appeal shall be so inscribed which shall not have been filed twenty clear days before said first day of said session, without the leave of the Court or a judge in chambers.

It is the duty of the appellant to inscribe the appeal. He cannot inscribe if the "case" has not been filed twenty clear days before the first day of the session, as provided by the latter part of this rule, nor unless his own factum has been deposited within the time fixed by rule 29 nor until the time allowed by that rule has passed, leaving the respondent in default.

By the Supreme Court Act, section 32, the regular sessions always begin on a Tuesday. The case, therefore, should be filed not later than the third Tuesday preceding the opening of the session (20 clear days). The factums, under rule 29, should be deposited not later than the third Saturday preceding the opening of the session, and the appeal should be inscribed on the third Monday preceding—that is the Monday following the last day for depositing the factum. If the respondent has failed to deposit his factum the appeal must be inscribed for hearing *ex parte*. This inscription *ex parte* can only be vacated on application supported by affidavit accounting for the delay. A mere consent on the part of the appellant or his solicitor would not be sufficient. See rules 33 and 34.

On the third Monday preceding the first day of the session, assuming the session to be a regular one beginning on a Tuesday, the agent for the appellant should attend the Regis-

trar's office, write out a *præcipe* for a search, to satisfy himself that the "case" has been filed twenty clear days before the first day of the session, and to ascertain whether the respondent's factum has been deposited or not. If the case has been regularly filed, the agent can then file with the Registrar a *præcipe* requesting him to inscribe the appeal..

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

The respondent cannot inscribe the appeal, even though the appellant make default in inscribing. His remedy is by motion to dismiss for want of prosecution. See section 82 of the Supreme Court Act, and notes thereon, and rule 32.

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

1. As to election appeals. See section 66 of the Dominion Controverted Elections Act and notes thereon, *ante*, p. 134. This section provides that an election appeal, after the transmission of the record by the clerk or other proper officer of the Court below, shall be set down by the Registrar of the Supreme Court for hearing at the nearest convenient time, and according to any rules of the Supreme Court of Canada in that behalf. By rule 68 all the Supreme Court rules apply to election appeals, except as otherwise provided by the Controverted Elections Act, and by rules 69, 70 and 71. Rule 69 provides for printing the record in such appeals; rule 70 for fixing a day for hearing and having the appeal set down; rule 71 for dispensing with printing and with the delivery of factums.

2. As to Exchequer appeals. By section 82 of The Exchequer Court Act, it is provided that after the deposit of

$50 by way of security for costs (or filing of notice of intention to appeal on behalf of the Crown, section 85), the Registrar shall set the appeal down for hearing before the Supreme Court at the nearest convenient time according to the rules in that behalf of the Supreme Court. By rule 63 all the preceding rules apply to appeals from the Exchequer Court except as otherwise provided by the Exchequer Court Act. See *ante*, Part II.

3. As to criminal appeals and appeals in matters of *habeas corpus*. These may be set down for hearing as soon as the certified written case, mentioned in rule 65, has been received by the Registrar.

Election appeals take precedence on the inscription list. On special application criminal and *habeas corpus* appeals have been given an early hearing during the session. Exchequer appeals are placed in the several lists according to the respective Provinces in which the cases were tried.

Appeals from the Board of Railway Commissioners are inscribed as provided in rule 37. See rule 81.

COUNSEL AT HEARING.

RULE 38.—Except by leave on special grounds no more than two counsel on each side shall be heard on any appeal, and but one counsel shall be heard in reply. Three hours on each side will be allowed for the argument, and no more, without special leave of the Court. The time thus allowed may be apportioned between the counsel on the same side at their discretion.

The time limit in this rule is new. The Supreme Court of the United States restricts counsel to two hours on each side. Apparently the reply is excluded from the time allowed.

In some cases the Court has relaxed this rule and heard more than two counsel:—*e.g.*, where intricate questions requiring a consideration of the law of both the Provinces of Ontario and Quebec have been raised: *Coleman* v. *Miller*, S. C. Dig. 1106: *Jones* v. *Fraser*, *Ib.* 1107.

And where in an appeal between private suitors, the validity of an Act of the Provincial Legislature has been questioned, the Attorney-General of the Province has been heard. *Citizens Ins. Co.* v. *Johnston*, *Ib.* 1106. The fact of there being a cross appeal is not in itself sufficient ground to cause the Court to depart from its rule. *Jones* v. *Fraser*, *supra*.

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

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

Any one attacking the validity of a statute should begin, as all statutes should *prima facie* be considered within the jurisdiction of the Legislature passing them. *Thrasher Case*, S. C. Dig. 1107. *In re Liquor License Act*, 1883, *Ib.* 1106.

When the question before the Court was whether the Canada Temperance Act, 1878, section 6, had been complied with, and whether a proclamation should issue under section 7, the Court directed the parties to begin who sought to sustain the affirmative. *In re Canada Temperance Act, 1878, County of Perth*, S. C. Dig. 1106.

The Court refused to hear counsel from the New York bar. *Halifax City Ry. Co.* v. *The Queen*, S. C. Dig. 1118. But in the case of *The Calvin Austin* v. *Lovitt*, 35 S. C. R. 616, a member of the Massachusetts bar was heard on behalf of the respondent.

POSTPONEMENT OF HEARING.

RULE 39.—The Court may in its discretion postpone the hearing until any future day during the same session, or at any following session.

The power of altering the order of hearing appeals is reserved to the Court by section 90 of the Supreme Court Act. This applies only to changing the order of the list for the session at the time being held. The above rule goes further and provides for the postponement of an appeal to any following session. If both parties consent to the postponement of the hearing of an appeal on the list, counsel can either notify the Court when the appeal is called, or inform the Registrar in writing of their wish to withdraw the appeal,

and the Registrar will inform the Court when the appeal is called. As a rule when an appeal is merely withdrawn it should be re-inscribed for hearing by the appellant on the usual *præcipe* filed with the registrar. When the Court directs an appeal to stand for hearing at a subsequent session, no re-inscription is required, as the Registrar will place the appeal on the list, in accordance with the direction of the Court.

If the case does not contain the formal judgment of the court below, or the reasons of the judges of the court below, or affidavit required by rule 6 that such reasons could not be procured, or a proper index, or is in any other respect imperfect, the Court may direct the postponement of the hearing. *Kearney* v. *Kean*, S. C. Dig. 1101: *Lewin* v. *Howe*, February session, 1888; or place it at the foot of the list to permit missing matter to be added. *Wallace* v. *Souther*, S. C. Dig. 1102.

If it appears that the respondent has taken an appeal to the Privy Council from the same judgment, the Court will postpone the hearing until such appeal is decided. *McGreevy* v. *McDougall*, Mar., 1888; *Bessy* v. *Eddy*, Oct., 1898.

In *Angers* v. *Mutual Reserve Fund Life Assoc.*, 35 S. C. R. 330, judgment was not pronounced until the Judicial Committee of the Privy Council had decided a similar case (*Mutual Reserve* v. *Foster*, 20 Times L. R. 715). After the latter was decided the Court ordered a re-hearing in *Anger's Case*.

And in *Can. Pac. Ry. Co.* v. *City of Ottawa*, where the hearing developed the existence of a question of constitutional law, the Court directed notice to be served on the Attorney-General of Canada, and of each Province, and the case to be re-argued in the following term, May, 1907.

DEFAULT BY PARTIES IN ATTENDING HEARING.

RULE 40.—Appeals shall be heard in the order in which they have been set down, and if either party neglect to appear at the proper day to support or resist the appeal, the Court may hear the other party, and may give judgment without the intervention of the party so neglecting to appear, or may postpone the hearing upon such terms as to payment of costs or otherwise as the court shall direct.

If neither party be represented when the appeal is called for hearing, it will be struck out of the list. If the appellant be not represented and counsel for respondent asks for the dismissal of the appeal, it will be dismissed with costs. *Burnham* v. *Watson; Scott* v. *The Queen; Western Assur. Co.* v. *Scanlan*, S. C. Dig. 1111. If respondent's counsel, instead of asking for dismissal of the appeal, asks for the postponement of the hearing to the following session, the request will usually be granted.

In *Titus* v. *Colville*, May term, 1890, the Court reinstated an appeal dismissed for non-appearance of counsel for appellant, but refused to do so in *Foran* v. *Handley*, 24 S. C. R. 706, and *Hall Mines* v. *Moore*, S. C. Dig. 1003.

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

JUDGMENTS—HOW TO BE SIGNED.

RULE 41.—All orders and judgments of the Court shall be settled and signed by the Registrar.

This rule refers to orders of the Court. An order made by a judge in chambers is signed by the judge. And orders made by the Registrar sitting as a judge in chambers are signed by the Registrar—rule 85.

ENTRY OF JUDGMENT.

RULE 42.—The solicitor for the successful party shall obtain an appointment from the Registrar for settling the judgment, and shall serve a copy of the draft minutes and a copy of the appointment upon the solicitor for the opposite party two clear days at least before the time fixed for settling the judgment. The Registrar shall satisfy himself in such manner as he may think fit that service of the minutes of judgment and of the notice of appointment has been duly effected.

RULE 43.—If any party fails to attend the Registrar's appointment for settling the draft of any judgment, the Registrar may proceed to settle the draft in his absence.

These rules are new, and are similar to Order 62, Rules 8, 10 and 12 of the English rules. An. Prac. 1907, pp. 865-6

The following form of appointment can be obtained at the office of the Registrar.

IN THE SUPREME COURT OF CANADA.

AND

I hereby appoint the day of A. D. 190 at the hour of o'clock in the noon, at my Chambers, in the City of Ottawa, for the taxation of the costs, and for settling the minutes of the Judgment herein.

Dated, this day of A. D. 190

Registrar.

The following forms may be used for the judgments to be settled.

8. JUDGMENT ALLOWING APPEAL.

In the Supreme Court of Canada.
the day of , A.D. 19 .

Present:

THE HONOURABLE SIR CHARLES FITZPATRICK, K. C. M. G., CHIEF JUSTICE.
" " MR. JUSTICE GIROUARD.
" " MR. JUSTICE DAVIES.
" " MR. JUSTICE IDINGTON.
" " MR. JUSTICE MACLENNAN.
" " MR. JUSTICE DUFF.

(*If any Judge has been absent when judgment was rendered add* THE HONOURABLE MR. JUSTICE being absent, his judgment was announced by THE HONOURABLE THE CHIEF JUSTICE, *or* MR. JUSTICE , pursuant to the statute in that behalf).

Between A. B. (plaintiff), Appellant;

AND

C. D. (defendant), Respondent.

The appeal of the above named appellant from the judgment of the Court of King's Bench, Quebec (appeal side) (*or* of the Court of Appeal for Ontario, *or as the case may be*) pronounced in the above cause on the day of in the year of our Lord , reversing the judgment of the Superior Court sitting in and for the District of , (*or* of the Queen's Bench Division of the High Court of Justice for Ontario, (*or as the case may be*) rendered in the said cause on the day of in the year of our Lord , having come on to be heard before this court on the day of in the year of our Lord , in the presence of counsel as well for the appellant as the respondent, whereupon and upon hearing what was alleged by counsel aforesaid, this court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment, this court did order and adjudge* that the said appeal should be and the same was allowed, that the said judgment of the Court of King's Bench, Quebec (appeal side) (*or* of the said Court of Appeal for Ontario, or *as the case may be*), should be and the same was reversed and set aside, and that the said judgment of the Superior Court sitting in and for the District of (*or* of the Queen's Bench Division of the High Court of Justice for Ontario, *or as the case may be*) should be and the same was restored.

And this court did further order and adjudge that the said respondent should and do pay to the said appellant the costs incurred by the said appellant as well in the said Court of King's Bench, Quebec (appeal side) (*or* in the said Court of Appeal for Ontario, *or as the case may be*) as in this court.

(*In appeals from the Province of Quebec add*: "the said costs *distraits* in favour of Messrs. A. & B., attorneys for the said appellant.

9. JUDGMENT DISMISSING APPEAL.

(Formal parts as in preceding down to * then proceed as follows :)
that the said judgment of the Court of King's Bench, Quebec (appeal side) (*or*, of the Court of Appeal for Ontario, *or as the case may be*) should be and the same was affirmed, and that the said appeal should be and the same was dismissed with costs to be paid by the said appellant to the said respondent.

(*Conclude with distraction of costs as in preceding form.*)

RULE 44.—Where the successful party neglects or refuses to obtain an appointment to settle the minutes of judgment, the Registrar may give the conduct of the proceedings to the opposite party.

Also a new rule. See Order 62, R. 12 in England, An. Prac. 1907, p. 866. By rule 46 the Registrar may, under direction of the Court or a judge settle a judgment or order without notice to either party.

RULE 45.—The Registrar may adjourn any appointment for settling the draft of any judgment or order to such time as he may think fit, and the parties who attended the appointment shall be bound to attend such adjournment without further notice.

A new rule, but the practice has always existed. An. Prac. p. 866, Order 62, R. 13.

RULE 46.—Notwithstanding the preceding rules, the Registrar shall in any case in which the Court or a judge may think it expedient, settle any judgment or order without making any appointment, and without notice to any party.

This new rule provides for a practice that has not heretofore been known in the Supreme Court. It is identical with Order 62, R. 14, An. Prac. p. 867.

RULE 47.—Any party dissatisfied with the minutes of judgment as settled by the Registrar may move the Court to vary the minutes as settled, upon serving the solicitor for the opposite party with two clear days' notice of his motion, and the said motion shall be brought on for hearing at the nearest convenient session of the Court, but the said motion shall not stay the entry of the judgment, if the Registrar is of the opinion that the motion is frivolous or would unreasonably prejudice the successful party, unless a judge of the Supreme Court shall otherwise order. Such a motion shall be based only on the ground that the minutes as settled do not in some one or more respects specified in the notice of motion accord with the judgment pronounced by the Court.

This practice has frequently been followed though it has not heretofore been authorized by rule.

See notes to sections 54, 55 and 56 of the Supreme Court Act, under the head of "Amendments."

RULE 48.—Every judgment shall be dated as of the day on which such judgment is pronounced, unless the Court shall otherwise order, and the judgment shall take effect from that date; provided that by special leave of the Court or a judge a judgment may be ante-dated or post-dated.

The former rule 35 did not authorize any other date for a judgment than that of the day on which it was pronounced, though the Court could in any case make an order for a different date. This rule authorizes a judge to do so on application.

When one of the parties has died between the hearing and pronouncing of judgment, the Court, on application, may direct its order to be dated and entered *nunc pro tunc*, as of the day of hearing. *Merchants Bank* v. *Smith, &c.*, S. C. Dig. 1131. *Smith* v. *Goldie*, S. C. Dig. 1123.

Even after the final judgment has been signed and entered and transmitted to the Court below, the Supreme Court has power to amend such judgment, and will do so if it is clear that by oversight or mistake an error has occurred. *Rattray* v. *Young*, S. C. Dig. 1123.

RULE 49.—Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done, and upon the copy of the judgment or order which shall be served upon the person required to obey the same, there shall be indorsed a memorandum in the words or to the effect following, viz: "If you, the within-named A. B., neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same."

This new rule is identical with Order 41 R. 5 of the English Rules, An. Prac. 1907, p. 536. The party refusing or neglecting to obey would be liable to attachment for contempt, and the judgment or order could be enforced by the proper process of execution.

ADDING PARTIES BY SUGGESTION.

RULE 50.—In any case not already provided for by the Act, in which it becomes essential to make an additional party to the appeal, either as appellant or respondent, and whether such proceeding be-

comes necessary in consequence of the death or insolvency of any original party, or from any other cause, such additional party may be added to the appeal by filing a suggestion, which may be in Form C in the Schedule to these Rules.

SUGGESTION MAY BE SET ASIDE.

RULE 51.—The suggestion referred to in the next preceding Rule may be set aside on motion, by the Court or a judge thereof.

SERVICE OF NOTICE.

RULE 52.—Notice of the filing of such suggestion shall be served upon the other party or parties to the appeal.

These rules supplement the provisions of sections 83 to 89 of the Supreme Court Act.

In *Guest* v. *Diack*, Oct. 1897, the executrix of a respondent who had died pending the appeal, was substituted for him, and a suggestion allowed to be filed by appellant.

And where the appellant had made an assignment in insolvency after the appeal had been taken, his assignee was added as an appellant, the sureties to the bond for security for costs filing a consent and an undertaking to be bound by the bond, notwithstanding the change of parties. *Ostrom* v. *Sills*, March, 1898.

Rule 52 is new.

DETERMINING QUESTIONS OF FACT ARISING ON MOTION.

RULE 53.—Upon any motion to set aside a suggestion, the Court or a Judge thereof may in their or his discretion, direct evidence to be taken before a proper officer for that purpose or may direct that the parties shall proceed in the proper Court for that purpose, to have any question tried and determined, and in such case all proceedings in appeal may be stayed until after the trial and determination of the said question.

MOTIONS.

RULE 54.—All interlocutory applications in appeals shall be made by motion, supported by affidavit to be filed in the office of the Registrar. The notice of motion shall be served at least four clear days before the time of hearing.

NOTICE OF MOTION, HOW SERVED.

RULE 55.—Such notice of motion may be served upon the solicitor or attorney of the opposite party by delivering a copy thereof to the booked agent, or at the elected domicile of such solicitor or attorney to whom it is addressed, at the City of Ottawa. If the solicitor, or attorney has no booked agent, or has elected no domicile at the City of Ottawa, or if a party to be served with notice of motion has not

elected a domicile at the City of Ottawa, such notice may be served by affixing a copy thereof in some conspicuous place in the office of the Registrar of this Court.

AFFIDAVITS IN SUPPORT OF MOTION.

RULE 56.—Service of a notice of motion shall be accompanied by copies of affidavits filed in support of the motion.

Although, under rule 64, these rules as to motions do not apply to criminal appeals, nor to appeals in matters of *habeas corpus*, yet the practice of the Court has been the same with respect to motions in all classes of appeals, so far at least as rules 54, 55 and 56, lay down the procedure.

Rule 55 shows the importance of appointing an agent or electing a domicile. See rule 20 and notes. *Ex abundanti cautela*, in addition to effecting service in the mode pointed out by rule 55, a copy of the papers should be mailed to, or otherwise served on the solicitor of the opposite party. This should invariably be done in election, criminal or *habeas corpus* appeals.

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

SETTING DOWN MOTIONS.

RULE 57.— Motions to be made before the Court are to be set down in a list or paper, and are to be called on each morning of the session before the hearing of appeals is proceeded with.

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

EXAMINATION ON AFFIDAVIT.

RULE 58.—Any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may, by leave of a judge in chambers, serve upon the party by whom such affidavit has been filed, or his solicitor, a notice in writing, requiring the production of the deponent for cross-examination before the Registrar or a commissioner for taking affidavits in the Court; such notice shall be served within such time as the Registrar 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 or a judge in chambers. 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 unless the Registrar so direct.

This rule is new. See An. Prac., 1907, p. 518, for the like rule, Order 38 R. 28.

Section 92 of The Supreme Court Act provides for appointment of Commissioners for taking affidavits in the Court.

APPEAL ABANDONED BY DELAY.

RULE 59.—Unless the appeal is brought on for hearing by the appellant within one year next after the security shall have been allowed, it shall be held to have been abandoned without any order to dismiss being required, unless the Court or a judge shall otherwise order.

INTERVENTION.

RULE 60.—Any person interested in an appeal between other parties may, by leave of the Court or a judge, intervene therein upon such terms and conditions and with such rights and privileges as the Court or judge may determine.

2. The costs of such intervention shall be paid by such party or parties as the Supreme Court shall order.

This rule establishes a new practice. Rule 50 provides for adding a party as appellant or respondent by filing a suggestion. Under this rule the intervenant would be in the position of a third party.

RE-HEARING.

RULE 61.—There shall be no re-hearing of an appeal except by the leave of the Court on a special application, or at the instance of the Court.

When an appeal has been argued is can never be argued anew except by leave of the Court.

Cases have been argued a second time when a judge who heard it on the first occasion died before judgment was pronounced, and the other judges were equally divided in opinion. And in *Can. Pac. Ry. Co.* v. *Ottawa Fire Ins. Co.*, where on the hearing it appeared that a constitutional question was involved it was argued anew, after notice to the Attorney-General of Canada and of each Province, in May, 1907.

DISCONTINUANCE.

RULE 62.—When a notice of discontinuance has been given by an appellant to a respondent, the latter shall be entitled to have his costs taxed by the Registrar without any order, unless the notice of discontinuance is served after the appeal has been inscribed for hearing in the Supreme Court. In the latter event, such order shall be made by the Court as to costs and otherwise as to the Court may seem meet.

This new rule provides for taxation of the costs mentioned in sec 80, Supreme Court Act, which is as follows:—

80. "An appellant may discontinue his proceedings by giving to the respondent a notice entitled in the Supreme Court and in the cause, and signed by the appellant, his attorney or solicitor, stating that he discontinues such proceedings.

2. "Upon such notice being given, the respondent shall be at once entitled to the costs of and occasioned by the proceedings in appeal; and may, in the court of original jurisdiction, either sign judgment for such costs or obtain an order from such court, or a judge thereof, for their payment, and may take all further proceedings in that court as if no appeal had been brought."

RULES APPLICABLE TO EXCHEQUER APPEALS

RULE 63.—The foregoing Rules shall be applicable to appeals from the Exchequer Court of Canada, except in so far as the Exchequer Court Act has otherwise provided.

The only provision of the Exchequer Court Act at variance with the preceding rules is that contained in sec. 82 requiring an appellant, within ten days after the appeal has been set down for hearing, to give to the parties affected notice thereof, instead of the 15 days notice called for by rules 15 and 18.

RULES NOT APPLICABLE TO CRIMINAL APPEALS, NOR HABEAS CORPUS.

RULE 64.—The foregoing Rules shall not, except as hereinbefore provided, apply to criminal appeals, nor to appeals in matters of *habeas corpus* under section 62 of the Act.

The reference to sec. 62 of the Act is no doubt an error in drafting. That section only applies to the appeal from the decision of a judge in chambers refusing a writ of *habeas corpus*. As these rules stand an appeal in a matter of *habeas corpus* provided for in sec. 39 (c) of the Act which, under the former rule was heard on a written case certified under the seal of the court appealed from, will involve filing a printed case and factums and complying with all other requirements for ordinary appeals. On the other hand, on appeal from a judge the case must be filed fifteen days before the day of hearing (rule 66) and five days' notice given (rule 67), neither of which formalities has been usual.

CASE IN CRIMINAL APPEALS AND HABEAS CORPUS.

RULE 65.—Criminal appeals may be heard on a written case certified under the seal of the Court appealed from and in which case shall be included all judgments and opinions pronounced in the Courts below. The appellant shall also file six type-written or printed copies of the case with a memorandum of the points for argument except in so far as dispensed with by the Registrar.

2. In appeals in *habeas corpus* cases under section 62 of the Act, a printed or typewritten case containing the material before the judge appealed from, and the judgment of the said judge, together with a memorandum of the points for argument, except in so far as dispensed with by the Registrar, shall be filed.

The provision for filing copies of the case with a memo. of the points for argument was not in this rule formerly.

Under the practice heretofore no case was required in *habeas corpus* appeals from a judge, but the parties came before the court on the material used on the application to the judge and his order refusing the writ.

WHEN CASE TO BE FILED.

RULE 66.—In criminal appeals and in appeals in cases of *habeas corpus*, under section 62 of the Act, unless the Court or a judge in chambers shall otherwise order, the case shall be filed fifteen clear days before the day of the session of the Court at which the appeal is proposed to be heard.

By the former rule 48 appeals from the Province of British Columbia had to be filed two months before the first day of the session and one month when coming from any other Province. But the appeals in *habeas corpus* matters were those now taken under sec. 39 (c), not sec. 62.

NOTICE OF HEARING IN CRIMINAL APPEALS AND IN APPEALS IN MATTERS OF HABEAS CORPUS.

RULE 67.—In cases of criminal appeals and appeals in matters of *habeas corpus*, under section 62 of the Act, notice of hearing shall be served at least five days before the day of the session at which the appeal is proposed to be heard.

Former rule 49 provided for notice of hearing in criminal appeals and appeals under sec. 24 (a), now sec. 39 (c). It varied from two weeks in appeals from Ontario and Quebec to six weeks in those from British Columbia.

The sections of the Supreme Court Act applicable to *habeas corpus* appeals are 39 (c) and 62 to 65. Criminal appeals are governed by sections 1013 and 1024 of The Criminal Code, ch. 146.

Both with regard to appeals in matters of *habeas corpus* and criminal appeals the intention of the Legislature appears to have been that these appeals should be heard promptly. Section 65 of the Supreme Court Act says: "An appeal to the Supreme Court in any *habeas corpus* matter shall be heard at an early day, whether in or out of the prescribed sessions of the Court."

And with respect to criminal appeals sub-section 3 of section 1024 of the Criminal Code provides: "Unless such appeal is brought on for hearing by the appellant at the session of the Supreme Court, during which such affirmance [of the conviction] takes place or the session next thereafter, if the said Court is not then in session, the appeal shall be held to have been abandoned, unless otherwise ordered by the Supreme Court or a judge thereof."

The Court has invariably shown itself ready to expedite such appeals, by shortening the delays to the utmost reasonable extent and giving such appeals precedence on the list for hearing, upon application made.

ELECTION APPEALS.

RULE 68.—Except as otherwise provided by the Dominion Controverted Elections Act, and by the three following Rules, the Supreme Court Rules shall, so far as applicable, apply to appeals in controverted election cases.

Under the former rules those relating to ordinary appeals did not apply to election cases.

Rules 15 and 18 respecting notice of hearing do not apply to election appeals. Section 67 of The Controverted Elections Act provides that the appellant shall, within three days after the appeal is set down for hearing, give to the other parties to the petition affected by such appeal, or the respective attorneys, solicitors, or agents who represented them in the proceedings below, notice in writing of its having been so set down.

By sec. 66 the record is to be transmitted by the clerk or other proper officer of the Election Court to the Registrar of the Supreme Court who shall set the case down for hearing at the nearest convenient time "and according to the rules of the Supreme Court of Canada in that behalf." Rule

37 as to inscribing does not apply in such case. The appellant must apply under rule 70 to have a day fixed for the hearing and to have the appeal set down.

Rule 11 providing for printing the case and the number of copies to be deposited with the Registrar does not apply to election appeals, a special provision for these matters being contained in rule 69. But rule 12 as to the form of the case does apply. See rule 69. By rule 71, however, a judge in chambers may dispense with the printing of the whole or any part of the record and with the delivery of factums.

RULE 69.—In controverted election appeals the party appellant shall obtain from the Registrar, upon payment of the usual charges therefor, a certified copy of the record or of so much thereof as a judge in chambers may direct to be printed, and shall have forty (40) copies of the said certified copy printed in the same form as herein provided for the Case in ordinary appeals, and immediately after the completion of the printing shall deliver to the Registrar thirty (30) of such printed copies, twenty-five (25) thereof for the use of the Court and its officers and (5) thereof for the use of the respondent, and to be handed by the Registrar to the respondent or his solicitor or booked agent upon application made therefor.

2. For printing in election appeals the same fees shall be allowed on taxation as for printing the *Case* in ordinary appeals.

The word "herein" in the fifth line should be "hereinbefore."

By rule 11 twenty-five copies of the case are deposited with the Registrar in ordinary appeals and three must be delivered to the respondent on demand.

For fees for printing see Tariff Form I in schedule.

FIXING TIME OF HEARING.

RULE 70.—As soon as the Registrar shall have received the record duly certified by the clerk of the election court, the appellant shall apply on notice to a judge in chambers to have a day fixed for the hearing and to have the appeal set down, and on one week's default the respondent may move to dismiss the appeal.

This rule is new. By sec. 67 of The Controverted Elections Act the Registrar is to set the appeal down for hearing on receipt of the record. By this rule it is so set down by direction of a judge on application of the appellant.

The rule does not provide for notice to the appellant of receipt of the record by the Registrar and he will have to follow the proceedings carefully to avoid dismissal of his appeal for delay.

ORDER DISPENSING WITH PRINTING OF RECORD OR FACTUM IN ELECTION APPEALS.

RULE 71.—In election appeals a judge in chambers may, upon the application of the appellant or respondent, make an order dispensing with the printing of the whole or any part of the record, and may also dispense with the delivery of any *factum* or points for argument in appeal.

Heretofore only the appellant could apply for an order dispensing with the record and delivery of factums and the application could be made *ex parte* though that was seldom or never done.

Four clear days' notice should be given of the intention to apply. The order is usually obtained when the appeal has been limited by the notice provided for by the statute, section 67, Dominion Controverted Elections Act, to any defined question or questions, of fact or of law. And it is the duty of the applicant to apply for such an order whenever it will save useless expense, otherwise he may have to pay the costs of printing the unnecessary matter in any event. See judgment of Taschereau J., in *Brassard* v. *Langevin*, 1 S. C. R. 201. See also judgment of Henry J., at page 231.

HABEAS CORPUS.

RULE 72.—Applications for writs of *habeas corpus ad subjiciendum* shall be made by motion for an order which, if the judge so direct, may be made absolute *ex parte* for the writ to issue in the first instance; or the judge may direct a summons for the writ to issue, and the judge in his discretion may refer the application to the Court. Such summons and order may be in the Forms D and E respectively set out in the Schedule to these Rules.

RULE 73.—If a summons for the writ to issue is granted, a copy thereof shall be served upon the Attorney-General of the Province in which the warrant of commitment was issued, and shall be returnable within such time as the summons shall direct.

RULE 74.—On the argument of the summons for a writ to issue, the judge may in his discretion, direct an order to be drawn up for the prisoner's discharge instead of waiting for the return of the writ, which order shall be a sufficient warrant to any gaoler or constable or other person for his discharge.

RULE 75.—The writ of *habeas corpus* shall be served personally, if possible, upon the party to whom it is directed; or if not possible, or if the writ be directed to a gaoler or other public official, by leaving it with a servant or agent of the person confining or restraining, at the place where the prisoner is confined or restrained, and if the writ be directed to more than one person, the original delivered to or left with such principal person, and copies served or left on each of the other persons in the same manner as the writ. Such writ of *habeas corpus* may be in the Form F set out in the Schedule to these Rules.

RULE 76.—If a writ of *habeas corpus* be disobeyed by the person to whom it is directed, application may be made to the judge or the Court on an affidavit of service and disobedience, for an attachment for contempt. The affidavit of service may be in the Form G set out in the Schedule to these Rules.

RULE 77.—The return to the writ of *habeas corpus* shall contain a copy of all the causes of the prisoner's detention indorsed on the writ, or on a separate Schedule annexed to it.

RULE 78.—The return may be amended or another substituted for it by leave of the Court or a judge.

RULE 79.—When a return to the writ of *habeas corpus* is made, the return shall first be read, and motion then made for discharging or remanding the prisoner, or amending or quashing the return.

These rules are taken from those of the Crown office in England where, however, the writ may be issued by the Court as well as a judge, and in civil or criminal matters. Except for the alterations caused by their different conditions, the rules are identical. See Short's Crown Office Rules, pp. 107 *et seq.*

The practice on an application for a writ of *habeas corpus* was not provided for in the former rules. It has been customary, heretofore, to follow in each case the practice of the Province in which the applicant was committed.

Section 62 of The Supreme Court Act authorizes a judge to issue the writ for the purpose of inquiring into the cause of commitment in any criminal case under any Act of the Parliament of Canada. The Registrar cannot exercise this jurisdiction.

The writ cannot be granted in a matter arising out of a claim for extradition under treaty.

The judge may bail, discharge or commit the prisoner, direct him to be detained in custody or otherwise deal with him as any court, judge or justice of the peace in any Province. Section 63.

If the writ is refused or the prisoner remanded an appeal lies to the Court. Sec. 62 (2).

REFERENCES.

RULE 80.—Whenever a reference is made to the Court by the Governor in Council or by the Board of Railway Commissioners for Canada, the case shall only be inscribed by the Registrar upon the direction and order of the Court or a judge thereof, and factums shall thereafter be fyled by all parties to the reference in the manner and form and within the time required in appeals to the Court.

Section 60 of The Supreme Court Act provides for a reference to the Court by the Governor General in Council

of important questions of law or fact touching matters set out in the section. Under sec. 55 of The Railway Act the Board of Railway Commissioners, of its own motion, on application of a party or at request of the Governor in Council may state a case for the opinion of the Supreme Court on any question which, in the opinion of the Board, is a question of law.

APPEALS FROM BOARD OF RAILWAY COMMISSIONERS.

RULE 81.—Whenever an appeal is taken from any decision of the Board of Railway Commissioners for Canada pursuant to the provisions of the Railway Act, the appeal shall be upon a case to be stated by the parties, or in the event of difference, to be settled by the said Board or the Chairman thereof, and the case shall set forth the decision objected to, and so much of the affidavits, evidence and documents as are necessary to raise the question for the decision of the Court.

2. All the Rules of the Supreme Court from 1 to 62, both inclusive, shall be applicable to appeals from the said Board of Railway Commissioners for Canada, except in so far as the Railway Act otherwise provides.

Sec. 56 (2) of the Railway Act gives an appeal on any question of jurisdiction by leave of a judge of the Supreme Court. And by sec. 56 (3) an appeal lies, by leave of the Board, upon any question which, in the opinion of the Board, is a question of law. Rule 81 only applies to the latter appeal.

THE REGISTRAR'S JURISDICTION.

RULE. 82.—The transaction of any business and the exercise of any authority and jurisdiction in respect of the same, which by virtue of any statute or custom, or by the practice of the Court, was, on the 23rd day of June, 1887, or might thereafter be done, transacted or exercised by a judge of the Court sitting in chambers, except the granting of writs of *habeas corpus* and adjudicating upon the return thereof, and the granting of writs of *certiorari*, may be transacted and exercised by the Registrar.

RULE 83.—In case any matter shall appear to the said Registrar to be proper for the decision of a judge, the Registrar may refer the same to a judge, and the judge may either dispose of the matter, or refer the same back to the Registrar, with such directions as he may think fit.

RULE 84.—Every order or decision made or given by the said Registrar sitting in chambers shall be as valid and binding on all parties concerned, as if the same had been made or given by a judge sitting in chambers.

RULE 85.—All orders made by the Registrar sitting in chambers shall be signed by the Registrar.

RULE 86.—Any person affected by any order or decision of the Registrar, except as otherwise in these Rules provided, may appeal therefrom to a judge of the Supreme Court.

RULE 87.—All appeals from the Registrar to a judge of the Court shall be by motion on notice setting forth the grounds of ob-

jection, and served within four days after the decision complained of, and two clear days before the day fixed for hearing the same, or served within such other time as may be allowed by a judge of the said Court or the Registrar.

RULE 88.—Appeals from the Registrar to a judge of the Court shall be brought on for hearing on the first Monday after the expiry of the delays provided for by the next preceding Rule, or so soon thereafter as the same can be heard, and shall be set down not later than the preceding Saturday in a book kept for that purpose in the Registrar's office.

RULE 89.—For the transaction of business under these Rules, the Registrar, unless absent from the city, or prevented by illness or other necessary cause, shall sit every juridical day, except during the vacations of the Court, at 11 a.m., or such other hour as he may specify from time to time by notice posted in his office.

These rules are made under authority of sec. 109, Supreme Court Act.

FEES TO BE PAID REGISTRAR.

RULE 90.—The fees mentioned in Form H set out in the Schedule to these Rules shall be paid to the Registrar by stamps to be prepared for that purpose.

As a rule fees are not payable in criminal and *habeas corpus* appeals.

The Supreme Court has no power to allow an appeal *in formâ pauperis*. The payment of the fees fixed by the schedule will not, therefore, be dispensed with any more than the giving of the security required by the Act. *Fraser* v. *Abbott*, S. C. Dig. 111. *Dominion Cartridge Co.* v. *Cairns*, per Sedgewick, J., in Chambers, May, 1898. In the latter case His Lordship refused to order a record to be given without payment of fees for the purpose of applying to the Privy Council for leave to appeal *in forma pauperis*. But in *Dominion Cartridge Co.* v. *McArthur*, S. C. Dig. 1165, where the Judicial Committee had granted leave *in formâ pauperis* the Supreme Court ordered the transmission of the record without payment of fees.

COSTS.

RULE 91.—Costs in appeal between party and party shall be taxed pursuant to the tariff of fees contained in Form I set out in Schedule to these Rules.

By Rule 92 the Court or a judge may direct that a fixed sum be paid for costs instead of directing taxation.

By section 109 of the Supreme Court Act it is provided, that the judges of the Supreme Court, or any five of them

may, from time to time, make general rules and orders, among other things, "for fixing the fees and costs to be taxed and allowed to, and received and taken by and the rights and duties of, the officers of the Court;" and (d) "for awarding and regulating costs in such Court in favour of and against the Crown as well as the subject."

By section 53 of the Act, "The Supreme Court may, in its discretion, order the payment of the costs of the Court appealed from, and also of the appeal, or any part thereof, as well when the judgment appealed from is varied or reversed, as where it is affirmed."

Section 80 provides for the costs of a respondent when the appellant discontinues his appeal and Rule 62 provides for taxation of such costs. By section 81 an appellant may consent to the judgment appealed from being reversed, but it will not be reversed with costs unless the consent includes them.

In controverted election appeals by sub-section 2 of section 67, of the Dominion Controverted Elections Act, the Supreme Court of Canada may make such order as to the money deposited as security for costs, and as to the costs of the appeal, as it thinks just. Section 75 of the said Act provides for the recovery of costs awarded by the court below against a petitioner out of the deposit made by the petitioner or if deposit insufficient, by execution.

And by section 76 of the Act it is provided that:

"In appeals under this Act, to the Supreme Court of Canada, the said Supreme Court may adjudge the whole or any part of the costs in the court below to be paid by either of the parties; and any order directing the payment of such costs shall be certified by the Registrar of the Supreme Court of Canada to the court in which the petition was filed, and the same proceedings for the recovery of such costs may thereupon be taken in the last mentioned court as if the order for payment of costs had been made by that court or by the judges before whom the petition was tried."

In appeals under the Winding-up Act, chapter 129, Revised Statutes of Canada, costs are regulated by the provisions of the Supreme Court Act.

With regard to criminal appeals, no special provision has been made by the Criminal Code as to costs, which in such appeals are therefore entirely regulated by the provisions of the Supreme Court Act and the practice of the court.

As a rule no costs are given in criminal appeals, or in *habeas corpus* appeals. *In Re Johnson*, S. C. Dig. 389. But where an appeal in a *habeas corpus* matter had been proceeded with after the discharge of the prisoner and for the mere purpose of deciding the question of costs, the appeal was dismissed with costs. *Fraser* v. *Tupper*, Ib. 104.

Where the judgment appealed from is affirmed by reason of the court being divided, the uniform practice was, up to 1903, to dismiss the appeal without costs. See *Curry* v. *Curry*, and other cases S. C. Dig. 387.

In 1903 the contrary rule as to costs was adopted: *Calgary & Edmonton Ry. Co.* v. *The King*, 33 S. C. R. 673; and has since been followed, but in the last case of equal division, *Coté* v. *James Richardson Co.*, 38 S. C. R. 41, no costs were given.

And see notes to section 50 as to the costs when an appeal is quashed.

Costs in Exchequer appeals also are regulated entirely by the provisions of the Supreme Court Act and the rules of the court.

SECURITY FOR COSTS.

Security for costs must be given in all appeals, except:

1. Appeals by or on behalf of the Crown. See sub-section 2 of section 75, Supreme Court Act.

When an appeal by or on behalf of the Crown comes from the Exchequer Court, section 85 of the Exchequer Court Act provides that no deposit by way of security shall be required, a notice of intention to appeal filed with the registrar of the Supreme Court taking its place.

2. Criminal appeals. Sub-section 2 of section 75 Supreme Court Act.

3. Proceedings for or upon a writ of *habeas corpus*. *Ibid.*

In election appeals the security for costs is regulated by section 65 of the Dominion Controverted Elections Act,

and by that section fixed at $100, by deposit, if the appeal is from a decision on preliminary objections, and $300 in other cases.

In Exchequer Court appeals by section 82 of the Exchequer Court Act, the security is fixed at $50, by deposit.

There would at first sight be some difficulty in finding good reasons for fixing the security at $100 and $50 respectively in election and Exchequer appeals, instead of $500, as in ordinary appeals. In practice, owing to the fact that the records in such cases have usually been very voluminous, the deposit has been altogether inadequate to serve as security for the costs. It may be that in these cases it was thought desirable not to place difficulties in the way of appealing, and of having them, if possible, inexpensively and promptly disposed of.

In Exchequer appeals, especially, it may be said the Crown should be willing to facilitate an appeal by a subject seeking redress from it. Where the appeal is by the subject he needs no security from the Crown, and therefore none is required by the statute.

By sec. 56 (4) of The Railway Act, on appeal from a decision of the Board of Railway Commissioners, the appellant shall deposit with the Registrar of the Supreme Court, two hundred and fifty dollars as security for costs. By sec. 56 (7) the Court has power on such appeal to fix the costs to be taxed.

In all other appeals the security, mode of giving and amount are regulated by sec. 75 of the Supreme Court Act (see said section and notes thereon).

And as to when costs will or will not be given, see notes to sec. 53 of the Act.

PRACTICE ON TAXATION.

It will be observed that rule 91 relates only to costs "between party and party." The Registrar is not authorized to tax costs between solicitor and client. *Boak* v. *Merchants Marine Ins. Co.*, S. C. Dig. 388.

Rule 93 provides for the case of a party having to pay as well as receive costs.

The agent of the successful party attends the Registrar's office for an appointment. It is usual to take one appointment for the settlement of the minutes of judgment and taxation of the costs. The agent has this appointment served with a copy of the minutes of judgment and of the bill. The bill is always prepared by the agent or solicitor, and never by the Registrar, and the agent or solicitor prepares also the minutes of judgment. At the time appointed the agents or solicitors for the respective parties attend before the Registrar, who settles the minutes and taxes the costs. If either party is dissatisfied with the taxation he should apply to the Registrar, under rule 96, for a review of the taxation, giving due notice to the other side, and setting out his objections in writing. If the Registrar refuses to alter his taxation, an appeal can be taken to a judge, under rule 98. It is not usual to interfere with the taxation of the Registrar on a mere question of amount. He must have exercised his discretion on a wrong principle.

An application for a fiat for an increased counsel fee should also be made to the Registrar in Chambers, after the taxation, and upon notice. An appeal must be one of exceptional importance and difficulty to justify such an application.

RULE 92.—The Court or a judge may direct a fixed sum for costs to be paid in lieu of directing the payment of costs to be taxed.

This rule is followed frequently in interlocutory applications. In these applications it has been the practice to specify in the orders the amount to be paid as costs, instead of directing such costs to be taxed. But an order or judgment dealing with the general costs of an appeal always leaves the amount to be taxed.

By the tariff of fees (schedule Form I) a sum of $25, subject to be increased by order of the Court or a judge, may be taxed on a motion to quash an appeal under sec. 50 of the Act.

RULE 93.—In any case in which by the order or direction of the Court, or judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the Registrar 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 shall think 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 such officer may allow

or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto, in the same manner as costs ordered to be paid may be recovered. This Rule shall not apply to appeals from the Province of Quebec.

This rule is new. It does not apply to Quebec appeals because in all cases in that Province where costs are given distraction to the attorney is allowed.

The succeeding rules up to 98 are also new.

Rule 93 is identical with the Ontario rule 1164 (Holmested & Langton, Jud. Act 1905, p. 1381), and with the English rule, Order 65 r. 27, reg. 21 (Annual Prac. 1907, p. 947). It applies only to costs on the appeal as the Registrar has no control over costs in the courts appealed from.

As to apportionment of costs where there is a cross-appeal see notes to Rule 100.

RULE 94.—The Registrar may, whenever he deems it advisable, reserve any question arising on the taxation of costs for the opinion of a judge.

RULE 95.—The Registrar shall for the purpose of any proceeding before him, have power and authority to administer oaths and examine witnesses, and shall in relation to the taxation of costs have authority to direct the production of such books, papers and documents as he shall deem necessary.

RULE 96.—Any person who may be dissatisfied with the allowance or disallowance by the Registrar, in any bill of costs taxed by him, of the whole or any part of any items, may, at any time before the certificate or allocatur is signed, or such earlier time as may in any case be fixed by the Registrar, deliver to the other party interested therein, and carry in before the Registrar, his objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items or parts thereof objected to, and the grounds and reasons for such objections, and may thereupon apply to the Registrar to review the taxation in respect of the same. The Registrar may, if he shall think fit, issue, pending the consideration of such objections, a certificate of taxation or allocatur for or on account of the remainder of the bill of costs, and such further certificate or allocatur as may be necessary shall be issued by the Registrar after his decision upon such objections.

Under rule 98 a dissatisfied party may appeal to a judge from the decision of the Registrar under this rule, but such appeal will not be open to him unless he has his objections to the taxation considered by the Registrar as above provided.

RULE 97.—Upon such application the Registrar shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof.

RULE 98.—Any party who may be dissatisfied with the certificate or allocatur of the Registrar as to any item which may have been objected to as aforesaid, may within two days from the date of the certificate or allocatur, or such other time as the Registrar at the time he signs his certificate or allocatur may allow, appeal to a judge of the Supreme Court from the taxation as to the said item, and the judge may thereupon make such order as to him may seem just; but the certificate or allocatur of the Registrar shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

RULE 99.—Such appeal shall be heard and determined by the judge upon the evidence which shall have been brought in before the Registrar and no further evidence shall be received upon the hearing thereof, unless the judge shall otherwise direct, and the costs of such appeal shall be in the discretion of the judge.

Under the former practice a party dissatisfied with the taxation could apply to the Registrar sitting as a judge in chambers to have it reviewed and an appeal lay from his decision to a judge. Rules 97 and 98 provide for the same practice.

CROSS-APPEALS.

RULE 100.—It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross-appeal, but if a respondent intends upon the hearing of an appeal to contend that the decision of the court below should be varied, he shall, within fifteen days after the security has been approved, or such further time as may be prescribed by the court or a judge in chambers, give notice of such intention to all parties who may be affected thereby. The omission to give such notice shall not in any way interfere with the power of the court on the hearing of an appeal to treat the whole case as open, but may, in the discretion of the court, be ground for an adjournment of the appeal, or for special order as to costs.

The wording of this rule is substantially the same as that of order 58, rule 6, in England. See Annual Practice, 1907, p. 814.

The giving "notice of motion by way of cross appeal," would not be a procedure applicable in the Supreme Court of Canada, where an appeal is not initiated by a notice of motion, as it is to the Court of Appeal in England. Order 58, rule 1, of the Supreme Court (English) says, "All appeals to the Court of Appeal shall be by way of rehearing and shall be brought by notice of motion in a summary way, and no petition, case or other formal proceeding other than such notice of motion shall be necessary."

Rule 813 of the Cons. Rules for Ontario, the procedure in which Court is substantially the same as in the Supreme

Court of Canada, says: "A cross-appeal shall not under any circumstances be necessary, but if a respondent intends upon the hearing to contend that the decision should be varied, he shall, in his reasons against the appeal, give notice of such contention to any party who may be affected thereby, and shall concisely state the grounds. The omission to give such notice shall not affect the power of the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal or for a special order as to costs."

The practice under rule 100 would seem, to some extent at least, to differ from the practice of the Judicial Committee as to cross-appeals, and resemble rather the practice of the Court of Appeal in England. But where the rule may not be applicable, reference will still have to be made to the procedure of the Judicial Committee (see sec. 39 of the Supreme and Exchequer Courts Act), which is concisely stated in Lattey's Handy Book on Privy Council Practice as follows, p. 58:

"Each party who feels aggrieved by a decree, should appeal from that portion he complains of. It often happens that both plaintiff and defendant in the Court below appeal from the same decree, in which case there are cross-appeals. When there are cross-appeals an order is usually made to consolidate them. The application for an order to consolidate two appeals can be made by either party at any time, and must be on petition to Her Majesty, and has to be moved by counsel. This order is only made when the same parties who are appellants in one case are respondents in the other, and *vice versa*." See also Macpherson's Privy Council Practice, pp. 91-93. See also *Hiddingh* v. *Denyssen*, 12 App. Cas. 107.

The Judicial Committee by the order of consolidation, will, if necessary, protect a cross-appellant against being prejudiced by the withdrawal of the appeal by the appellant, or by the dismissal of the appeal of the latter for want of prosecution, by giving liberty to prosecute the cross-appeal in such an event as a separate cause. See Macpherson, p. 93.

Under the English Court of Appeal Practice, where an appellant withdraws his appeal, a respondent who has given

notice under the rule is entitled to elect whether he will continue or withdraw from it. *The Beeswing*, 10 P. D. 18, and *Mason* v. *Cattley*, Law Notes, 1885, p. 15.

The rule does not apply to a respondent who seeks to have an order varied on a point in which the appellant has no interest, but he must give a notice of appeal. *In re Cavander's Trusts*, 16 Ch. D. 270.

In *McNichol* v. *Malcolm*, 39 S. C. R. 265, the action was against two defendants and plaintiff had a verdict at the trial against both. The Court of Appeal for Manitoba maintained the verdict against McNichol and set aside that against the other defendant. McNichol appealed to the Supreme Court, making his co-defendant a respondent to obtain relief over against him if his appeal failed, and the Court ruled that the plaintiff (respondent) could, by notice of cross-appeal, ask to have the verdict at the trial against the other respondent restored.

Where both an appeal and a cross-appeal were dismissed, the appellants were ordered to pay the costs after deducting such as had been occasioned by the notice given by the respondent: *The Lauretta*, 4 P. D. 25. And where one of the respondents gave a cross-notice, affecting his co-respondent, the costs were apportioned: *Harrison* v. *Cornwall Minerals Railway Co.*, 18 Ch. D. 346. But where the costs cannot have been materially increased by the notice, they ought not to be apportioned: *Robinson* v. *Drakes*, 23 Ch. D. 98.

In the Supreme Court of Canada it was held where a respondent who had given notice of cross-appeal moved for leave to proceed with the cross-appeal notwithstanding that the original case had not been filed in time to be proceeded with at the then session, that if the cross-appellant desired to proceed with his cross-appeal he should have himself filed the original case; *Mayor of Montreal* v. *Hall*, S. C. Dig. 1102. But if an appellant chooses to avail himself of his right to discontinue his appeal under sec. 80 of the Supreme Court Act, what would be the position of a respondent who, intending to rely on the mode of procedure provided by rule 100, has failed to take a substantive appeal? He may not have even given the notice, for that, by rule 62, may be only a fifteen days' notice. It would seem safer where the re-

spondent is greatly interested in having a variation of the judgment of the court below and not certain that the appellant will prosecute his appeal, to give notice of appeal and security, and then apply to consolidate the two appeals, following the practice of the Judicial Committee.

In *Pilon* v. *Brunet*, 5 S. C. R. 319, a motion to quash an appeal on the ground that it should not have been brought as a substantive appeal, but as a cross-appeal, was dismissed, But the respondent, although successful in getting the judgment varied, was allowed only the costs of a cross-appeal.

In the Court of Appeal for Ontario, where one of two defendants, both of whom had given notice of appeal and who joined in the appeal bond, gave notice of discontinuance, an objection on the part of the plaintiff who had given notice of cross-appeal to the prosecution of the appeal by the other defendant was overruled. See *Arscott* v. *Lilley*, 14 Ont. App. R. 283.

In *Stephens* v. *Chaussé*, 15 S. C. R. 379, in an action brought to recover damages for death caused by negligence, the Court of Queen's Bench for Lower Canada (appeal side) reduced the amount of the verdict. On the hearing in appeal before the Supreme Court counsel for respondent contended that the original verdict should be restored. But it was held that this could not be done, there being no cross-appeal.

In *City of Montreal* v. *Labelle*, 14 S. C. R. 741, also an action brought to recover damages for death caused by negligence, a sum was awarded by the court below to plaintiffs by way of *solatium*. Counsel for respondent urged upon the Supreme Court at the hearing, that even if this were illegal, as the court intimated it was, being contrary to law as laid down by the court in *C. P. R.* v. *Robinson*, 14 S. C. R. 105, yet it was competent to the court to give the judgment which the court below ought to have given, and to award substantial damages other than for a *solatium*. But *held*, that if the respondent wished to urge such a contention he should have given notice by way of cross-appeal.

But in *Toronto Junction* v. *Christie*, 25 S. C. R. 551, it was held that under the Ontario Judicature Act, R. S. O. [1887] c. 44, ss. 47 and 48, the Court of Appeal for Ontario

has power to increase damages awarded to a respondent without a cross-appeal, and the Supreme Court has the like power under its rule No. 61 (100).

RULE 101.—The respondent who gives a notice of cross-appeal shall deposit a printed factum or points for argument in appeal with the Registrar in the manner hereinbefore provided as regards the principal appeal, and the parties upon whom such notice has been served shall also deposit their printed factum in the manner hereinbefore provided as regards the principal appeal. Factums on the cross-appeal shall be interchanged between the parties as hereinbefore provided as to the principal appeal. The factum on the cross-appeal may be included in the factum on the main appeal.

See rules 29 to 36.

TRANSLATION OF FACTUM.

RULE 102.—Any judge may require that the factum or points for argument in appeal of any party shall be translated into the language with which such judge is most familiar, and in that case the judge shall direct the Registrar to cause the same to be translated and shall fix the number of copies of the translation to be printed, and the time within which the same shall be deposited with the Registrar, and the party depositing such factum shall thereupon cause the same forthwith to be printed at his own expense, and such party shall not be deemed to have deposited his factum until the required number of the printed copies of the translation shall have been deposited with the Registrar.

TRANSLATIONS OF JUDGMENTS AND OF OPINIONS OF JUDGES OF COURT BELOW.

RULE 103.—Any judge may also require the Registrar to cause the judgments and opinions of the judges in the court below to be translated, and in that case the judge shall fix the number of copies of the translation to be printed and the time within which they shall be deposited with the Registrar, and such translation shall thereupon be printed at the expense of the appellant.

PAYMENT OF MONEY INTO COURT.

RULE 104.—Money required to be paid into court shall be paid into the Bank of Montreal at its Ottawa agency, or such other bank as shall be approved of by the Minister of Finance.

2. The person paying money into Court shall obtain from the Registrar a direction to the bank to receive the money.

3. The bank receiving money to the credit of any cause or matter shall give a receipt therefor in duplicate; and one copy shall be delivered to the party making the deposit, and the other shall be posted or delivered the same day to the Registrar.

4. The stamps for the fees payable on money paid into court shall be affixed to the receipt directed by this Rule to be posted or delivered to the Registrar.

PAYMENT OF MONEY OUT OF COURT.

RULE 105.—If money is to be paid out of Court, an order of the court or a judge in chambers must be obtained for that purpose, upon notice to the opposite party.

HOW MADE.

RULE 106.—Money ordered to be paid out of court is to be so paid upon the cheque of the Registrar, countersigned by a judge.

FORMAL OBJECTIONS.

RULE 107.—No proceeding in the said Court shall be defeated by any formal objection.

Section 95 of the Supreme Court Act, provides that:

"No informality in the heading or other formal requisites of any affidavit, declaration or affirmation, made or taken before any person under any provision of this or any other Act, shall be an objection to its reception in evidence in the Supreme Court, if the court or judge before whom it is tendered thinks proper to receive it; and if the same is actually sworn to, declared or affirmed by the person making the same before any person duly authorized thereto, and is received in evidence, no such formality shall be set up to defeat an indictment for perjury."

EXTENDING OR ABRIDGING TIME.

RULE 108.—In any appeal or other proceeding the court or a judge in chambers may by order, enlarge or abridge the time for doing any act, or taking any proceeding upon such (if any) terms as the justice of the case may require, and such order may be granted, although the application for the same is not made until after the expiration of the time appointed or allowed.

In addition to this rule the former rules provide for an order extending the time to file the case, deposit the factums or inscribe the appeal, but it was, no doubt, considered unnecessary to include it in the new rules as the powers of enlargement under the above are sufficient for all purposes.

The provision for making an order after the expiration of the time provided was not in this rule formerly. It makes the whole rule identical with that in England. Order 64, rule 7, An. Prac. 1907, p. 874.

The time for doing certain acts cannot be extended or abridged by consent, such as the time within which the case must be filed (R. 9), or inscribed (R. 37), or the time within which the factums must be deposited (R. 29).

The rule only applies where a limited time is fixed for something to be done, and not where it is ordered that some one act must be done before another. *Pilcher* v. *Hinds*, 11 Ch. D. 905.

For cases showing grounds on which applications for enlargement of time may be granted or refused, see Annual Practice, 1907, pages 875-6, and Wilson's Judicature Acts, 6th ed., page 469. See also notes to similar rule in Holmested and Langston's Judicature Acts, 3 ed., pages 558 to 563; also *Langdon* v. *Robinson*, 12 Ont. P. R. 139; *Re Gabourie*, 12 Ont. P. R. 252; *Platt* v. *G. T. R.*, 12 Ont. P. R. 380; see also notes to section 71, Supreme Court Act, *ante*, pp. 93 *et seq.*

NON-COMPLIANCE WITH RULES.

RULE 109.—The court or a judge may, under special circumstances, excuse a party from complying with any of the provisions of the Rules.

This rule is new. The Court could always dispense with compliance with its own rules and a judge may now do so under special circumstances.

REGISTRAR TO KEEP NECESSARY BOOKS.

RULE 110.—The Registrar is to keep in his office all appropriate books for recording the proceedings in all suits and matters in the said Supreme Court.

ADJOURNMENT IF NO QUORUM.

RULE 111.—If it happens at any time that the number of judges necessary to constitute a quorum for the transaction of the business to be brought before the court is not present, the judge or judges then present may adjourn the sittings of the court to the next or some other day, and so on from day to day until a quorum shall be present.

See section 27 of the Act, *ante*, p. 7.

COMPUTATION OF TIME.

RULE 112.—In all cases in which any particular number of days not expressed to be clear days is prescribed by the foregoing Rules, the same shall be reckoned exclusively of the first day, and inclusively of the last day, unless such last day shall happen to fall on a Sunday, or a day appointed by the Governor-General for a public fast or thanksgiving, or any other legal holiday or non-juridical day, as provided by the statutes of the Dominion of Canada.

Days are clear days when expressed to be "at least" a certain number of days: *Reg.* v. *Shropshire Justices*, 8 A. & E. 173; *Webster* v. *Lees*, 3 C. L. T. 504; *Rumohr* v. *Marx*, 18 C. L. J. 444; 19 C. L. J. 10; 3 C. L. T. 31.

In all cases expressed to be clear days, or where the term "at least" is added, both days are to be excluded.

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

The word "month" when used in the rules, means a calendar month: rule 143.

A calendar month when not exactly coterminous with a given calendar month, is from the day of the commencement, reckoning that day, to and inclusive of the day in the succeeding month immediately preceding the day corresponding to the day of the commencement: *Migotti* v. *Colvill*, 4 C. P. D. 233; *Freeman* v. *Read*, 11 W. R. 802; *Wright* v. *Leys*, 10 Ont. P. R. 354.

By the Interpretation Act, section 34 par. 11, the expression "holiday" includes Sundays, New Year's Day, the Epiphany, Good Friday, the Ascension, All Saints' Day, Conception Day, Easter Monday, Ash Wednesday, Christmas Day, the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning sovereign, Victoria Day, Dominion Day, the first Monday in September designated Labour Day, and any day appointed by proclamation for a general fast or thanksgiving.

By rule 114, "Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open."

OTHER NON-JURIDICAL DAYS.

RULE 113.—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 proceedings, Sundays and other days on which the offices are closed shall not be reckoned in the computation of such limited time.

A new rule. The corresponding English rule, Order 64, r. 2 (Annual Prac. 1907, p. 873), only excludes Sunday, Christmas Day, and Good Friday from the computation of

time. The Ontario rule 343 of the Cons. Rules excludes holidays as defined by the Interpretation Act. See Holmested & Langton's Jud. Act, 3 ed., p. 551.

RULE 114.—Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken, if done or taken on the day on which the offices shall next be open.

This new rule is identical with Order 64, r. 3, of the English rules (Annual Prac. 1907, p. 873), and practically the same as rule 345 of the Con. Rules, Ont. (Holmested & Langton, 3 ed., p. 552).

See notes to rule 112 as to days on which the offices are closed.

RULE 115.—Services of notices, summonses, orders, and other proceedings, shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any week-day except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday.

Also a new rule. The English rule, Order 64, r. 11, is practically identical (Annual Prac. 1907, p. 877). Under rule 349 Cons. Rules, Ont., the hours fixed are two o'clock on Saturday and four o'clock on other days. (Holmested & Langton, 3 ed., p. 555).

SITTINGS AND VACATIONS.

RULE 116.—The office of the Supreme Court shall be open between the hours of ten o'clock in the forenoon and four o'clock in the afternoon (except on Saturdays, when it shall close at one o'clock), every day in the year except statutory holidays, and Long Vacation and Christmas Vacation.

2. During Vacation the office shall be open between the hours of ten o'clock in the forenoon and one o'clock in the afternoon.

The rules did not provide formerly for the hours at which the office should be open, but in practice they have been the same as in this rule except on Saturdays, which in this respect has been the same as other days.

For transaction of business as a judge in chambers the Registrar sits every day, except during vacations, at 11 a.m. See rule 89.

CHRISTMAS VACATION.

RULE 117.—There shall be a vacation at Christmas, commencing on the 15th of December and ending on the 10th of January.

LONG VACATION.

RULE 118.—The Long Vacation shall comprise the months of July and August.

Chambers are not held in vacation: see rule 89; and only applications of urgency should be made: *Bank of B. N. A.* v. *Walker*, S. C. Dig. 111. Where judgment was pronounced on the 30th June and security given on the 3rd July, and no steps taken to further prosecute the appeal till the 17th September following, the appellant's solicitor being under the impression that the time of vacation did not count, a motion to dismiss for want of prosecution was refused without costs, and further time given to appellant, up to the 10th October then next. *Herbert* v. *Donovan*, S. C. Dig. 1103

The delay of 60 days for bringing an appeal prescribed by section 69, is not suspended during the vacation. *News Printing Co.* v. *Macrae*, 26 S. C. R. 695. But in computing the time for doing any act under the rules vacation is not reckoned. Rule 119.

In vacation, the registrar's office is open from 10 o'clock in the forenoon to 1 o'clock in the afternoon every juridical day. Rule 116.

VACATION IN COMPUTATION OF TIME.

RULE 119.—The time of the Long Vacation or the Christmas Vacation shall not be reckoned in the computation of the times appointed or allowed by these Rules for the doing of any act.

This is a new rule. The time of a vacation would be reckoned in computing the time prescribed by statute for any proceeding. See *News Printing Co.* v. *Macrae*, 26 S. C. R. 695.

WRITS.

RULE 120.—A judgment or order for the payment of money against any party to an appeal other than the Crown, may be enforced by writs of *fieri facias* against goods, and *fieri facias* against land.

It is provided by the Supreme Court Act, as follows:

"105. The process of the Court shall run throughout Canada, and shall be tested in the name of the Chief Justice, or in the case of a vacancy in the office of chief justice, in the name of the senior puisné judge of the Court, and shall be directed to the sheriff of any county or other judicial division into which any province is divided.

2. The sheriffs of the said respective counties or divisions shall be deemed and taken to be *ex officio* officers of the Supreme Court, and shall perform the duties and functions of sheriffs in connection with the Court.

3. In any case where the sheriff is disqualified, such process shall be directed to any of the coroners of the county or district."

In *Black* v. *Huot*, Cout. Cas. 106, writs of *fi. fa.* were issued directed to the sheriff of the district of Iberville, ordering him to levy for costs of a motion in chambers to have security approved.

RULE 121.—A judgment or order 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.

By section 108 of the Supreme Court Act:

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

RULE 122.—Writs of *fieri facias* against goods and lands shall be executed according to the exigency thereof, and may be in the Form J set out in the Schedule to these Rules.

RULE 123.—Upon the return of the sheriff or other officer, as the case may be, of "lands or goods on hand for want of buyers," a writ of *venditioni exponas* may issue to compel the sale of the property seized. Such writ may be in the Form K set out in the Schedule to these Rules.

RULE 124.—In the mode of selling lands and goods and of advertising the same for sale, the sheriff or other officer is, except in so far as the exigency of the writ otherwise requires, or as is otherwise provided by these Rules, to follow the laws of his province applicable to the execution of similar writs issuing from the highest court or courts of original jurisdiction therein.

By sec. 105 of the Act "the sheriffs of the said respective counties or divisions shall be deemed and taken to be *ex officio* officers of the Supreme Court an shall perform the duties and functions of sheriffs in connection with the Court."

RULE 125.—A writ of attachment shall be executed according to the exigency thereof.

RULE 126.—No writ of attachment shall be issued without the order of the court or a judge. It may be in the Form L set out in the Schedule to these Rules.

RULE 127.—In these Rules the term "writ of execution" shall include writs of *fieri facias* against goods and against lands, attachment and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party," shall mean the issuing of any such process against his person or property as shall be applicable to the case.

RULE 128.—All writs shall be prepared in the office of the Attorney-General, or by the attorney or solicitor suing out the same, and the name and the address of the attorney or solicitor suing out the same, and if issued through an agent, the name and residence of the agent also, shall be indorsed on such writ, and every such writ shall before the issuing thereof be sealed at the office of the Registrar, and a *praecipe* therefor shall be left at the said office, and thereupon an entry of issuing such writ, together with the date of sealing and the name of the attorney or solicitor suing out the same, shall be made in a book to be kept in the Registrar's office for that purpose, and all writs shall be tested of the day, month and year when issued. A *praecipe* for a writ may be in the Form M set out in the Schedule to these Rules.

RULE 129.—No writ of execution shall be issued without the production to the officer by whom the same shall be issued of the judgment or order upon which the execution is to issue, or an office copy thereof showing the date of entry And the officer shall be satisfied that the proper time has elapsed to entitle the judgment creditor to execution.

RULE 130.—In every case of execution the party entitled to execution may levy the interest, poundage fees and expenses of execution over and above the sum recovered.

RULE 131.—Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon if sought to be recovered, at the rate of five per cent. per annum, from the time when the judgment or order was entered up.

RULE 132.—A writ of execution, if unexecuted, shall remain in force for one year only, from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the court or a judge, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked in the margin with a memorandum signed by the Registrar or acting Registrar of the court, stating the date of the day, month and year, of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and having the like memorandum; and a writ of execution so renewed shall have effect, and be entitled to priority according to the time of the original delivery thereof.

RULE 133.—The production of a writ of execution, or of the notice renewing the same, purporting to be marked with the memor-

andum in the last preceding Rule mentioned showing the same to have been renewed, shall be *prima facie* evidence of its having been so renewed.

RULE 134.—As between the original parties to a judgment or order, execution may issue at any time within six years from the recovery of the judgment or making of the order.

RULE 135.—Where six years have elapsed since the judgment or order, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to a court or a judge for leave to issue execution accordingly. And the court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect. And the court or judge may impose such terms as to costs or otherwise as shall seem just.

RULE 136.—Any party against whom judgment has been given or an order made, may apply to the Court or a Judge for a stay of execution or other relief against such a judgment or order, and the Court or Judge may give such relief and upon such terms as may be just.

RULE 137.—Any writ may at any time be amended by order of the Court or Judge, upon such conditions and terms as to costs and otherwise as may be thought just, and any amendment of a writ may be declared by the order authorizing the same to have relation back to the date of its issue, or to any other date or time.

RULE 138.—Sheriffs and coroners shall be entitled to the fees and poundage set out in Form N of the Schedule to these Rules.

RULE 139.—Every order of a judge in chambers may be enforced in the same manner as an order of the court to the same effect, and it shall in no case be necessary to make a judge's order a rule or order of the court before enforcing the same.

This rule is new. As every order of a Judge is made under authority of an Act of Parliament it could necessarily be enforced.

RULE 140.—No execution can issue on a judgment or order against the Crown for the payment of money. Where, in any appeal, there may be a judgment or order against the Crown directing the payment of money for costs, or otherwise, the Registrar may, on the application of the party entitled to the money, certify to the Minister of Finance, the tenor and purport of the judgment or order, and such certificate shall be by the Registrar sent to or left at the office of the Minister of Finance.

ACTING REGISTRAR.

RULE 141.—In the absence of the Registrar through illness or otherwise, the Chief Justice or acting Chief Justice may appoint an acting Registrar to perform the duties of the Registrar, and all powers and authorities vested in the Registrar may be exercised by the acting Registrar.

INTERPRETATION.

RULE 142.—In the preceding Rules, unless the context otherwise requires, "Judge" or "Judge of the Court" means any judge

of the Supreme Court, and the expression "Judge of the Supreme Court in Chambers" or "Judge in Chambers" shall also include the Registrar sitting in Chambers under the powers conferred upon him by Rules 82 to 89 inclusive.

RULE 143.—In the preceding Rules the following words have the several meanings hereby assigned to them over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction, that is to say:

(1) Words importing the singular number include the plural number, and words importing the plural number include the singular number.

(2) Words importing the masculine gender include females.

(3) The word "party" or "parties" includes a body politic or corporate, and also His Majesty The King, and His Majesty's Attorney-General.

(4) The word "affidavit" includes affirmation.

(5) The words "the Act" mean "The Supreme Court Act"

(6) The word "month" means calendar month where lunar months are not expressly mentioned.

The interpretation of "month" was not formerly in this rule.

GENERAL ORDER.

It is hereby ordered that all the Rules and Orders of the Supreme Court of Canada now in force, except as hereinafter provided, be and the same are hereby repealed from and after the first day of September, 1907.

2. It is further ordered that the Rules, including the Schedule of Forms therein referred to and hereunto annexed, and marked A. and initialed on each page thereof by the Registrar, be the Rules regulating the procedure of and in the Supreme Court of Canada and the bringing of cases before it from courts appealed from or otherwise.

3. It is further ordered that the said Rules shall not apply to any appeal in which the security shall have been allowed previous to the first day of September, 1907, but that to such appeals the present Rules and General Orders of the Supreme Court of Canada shall be applicable.

Dated at Ottawa this nineteenth day of June, A.D. 1907.

Signed. C. FITZPATRICK, C.J.
" D. GIROUARD, J.
" L. H. DAVIES, J.
" JOHN IDINGTON, J.
" JAMES MACLENNAN, J.
" LYMAN P. DUFF, J.

SCHEDULE TO THE SUPREME COURT RULES.

FORM A.

NOTICE CALLING SPECIAL SESSION.

DOMINION OF CANADA.

The Supreme Court will hold a special session at the city of Ottawa on the day of , 19 , for the purpose of hearing causes and disposing of such other business as may be brought before the court (or for the purpose of hearing

election appeals, criminal appeals, or appeals in cases of *habeas corpus*, or for the purpose of giving judgments only, (as the case may be).

By order of the Chief Justice, or by order of Mr. Justice

(Signed). E. R. C.
Registrar.

Dated this day of 19 .

FORM B.

FORM OF NOTICE OF HEARING APPEAL.

IN THE SUPREME COURT OF CANADA.

J. A., appellant, v. A. B., respondent. Take notice that this appeal will be heard at the next session of the Court, to be held at the city of Ottawa on the day of , 19 .

To , appellant's solicitor or attorney, or appellant in person.

Dated this day of , 19 .

FORM C.

SUGGESTION OF DEATH, INSOLVENCY, ETC.

A. v. B.

It is required owing (to the death, insolvency, or as the case may be) that be made a party (appellant or respondent) to this appeal.

(Signed), C.D.

FORM D.

SUMMONS FOR WRIT OF HABEAS CORPUS AD SUBJICIENDUM.

IN THE SUPREME COURT OF CANADA.

The Honourable Mr. Justice

(Style of Cause).

Upon reading the several affidavits of, &c., filed the day of , 19 , and upon hearing Mr. of counsel (or the solicitor for)

It is ordered that all parties concerned attend before me or before the Honourable Mr. Justice , or before the Court, as the case may be) at the Supreme Court Building, Ottawa, on the day of , 19 , at the hour of in the noon, to show cause why a writ of *habeas corpus* should not issue directed to to have the body of before a Judge of the Supreme Court at the Supreme Court Building in the City of Ottawa, forthwith to undergo, &c.

Dated, &c.

FORM E.

ORDER FOR WRIT OF HABEAS CORPUS AD SUBJICIENDUM.

IN THE SUPREME COURT. OF CANADA.

Upon reading the several affidavits, of, etc., filed the day of 19 , and upon hearing counsel (or the solicitors) on both sides (or as the case may be)—

It is ordered that a writ of Habeas Corpus issue directed to to have the body of A. B. before me (or the Honourable Mr. Justice) at the Supreme Court Building in the City of Ottawa, on the day of at the hour of to undergo and receive, etc.

Dated, &c.

FORM F.

Writ of Habeas Corpus ad Subjiciendum.

Edward, by the Grace of God, &c., to greeting:

We command that you have in the Supreme Court of Canada before the Honourable Mr. Justice at the Supreme Court Building in the City of Ottawa, on the day of the body of A. B. being taken and detained under your custody as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called therein, to undergo and receive all and singular such matters and things as Our Judge shall then and there consider of concerning him in this behalf; and have you there then this Our writ.

Witness, &c.

To be indorsed,

By order of Mr. Justice
This writ was issued by, &c.

FORM G.

Affidavit of Service of Writ of Habeas Corpus ad Subjiciendum.

In the Supreme Court of Canada.

I, A. B., of &c., make oath and say:

1. That I did on the day of 19 , personally serve C. D. with a writ of Habeas Corpus issued out of and under the seal of this Honourable Court, directed to the said C. D., commanding him to have the body of before ( ) immediately to undergo, &c., (describe the direction and mandatory part of the writ), by delivering such writ of Habeas Corpus to the said C. D., personally at in the Province of

Sworn, &c.

FORM H.

Tariff of Fees to be Paid to the Registrar of the Supreme Court of Canada.

On entering every appeal	$10 00
On entering every judgment, decree or order in the nature of a final judgment	10 00
On entering every other judgment, decree or order	2 00
On filing every document or paper	10
Every search	25
Every appointment	50
Every enlargement of any appointment, or on application in Chambers	50
The foregoing items are not to apply to criminal appeals or appeals in matters of *habeas corpus* arising out of a criminal charge.	
On sealing every writ (besides filing)	2 00
Amending every document, writ or other paper	50
Taxing every bill of costs (besides filing)	1 00
Every allocatur	1 00

Every fiat	50
Every reference, inquiry, examination or other special matter referred to the registrar, for every meeting not exceeding one hour	1 00
Every additional hour or less	1 00
For every report made by the registrar upon such reference, etc.	1 00
Upon payment of money into court, or deposited with the registrar, every sum under $200.00	1 00
A percentage on money over $200.00 paid in at the rate of one per cent.	
Receipt for money	25
Comparing, examining and certifying transcript record on appeal to the Privy Council	10 00
Comparing any other document, paper or proceeding with the original on file or deposit in the registrar's office, per folio	2½
Every other certificate required from registrar	1 00
Copy of any document, paper or proceeding or any extract therefrom, per folio	10
Every affidavit, affirmation or oath administered by registrar	25
Every commission or order for examination of witnesses	1 50

FORM I.

Tariff of Fees.

To be taxed between party and party in the Supreme Court of Canada:	
On stated case required by section 73 of the Act when prepared and agreed upon by the parties to the cause, including attendance on the judge to settle the same, if necessary, to each party	$25 00
Notice of appeal	4 00
On consent to appeal directly to the Supreme Court from the court of original jurisdiction	3 00
Notice of giving security	2 00
Attendance on giving security	3 00
On motion to quash proceedings under section 50 according to the discretion of the registrar to	25 00
Subject to be increased by order of the Court or of a Judge in Chambers	
On *factums* in the discretion of the registry to	50 00
Subject to be increased by order of the Court or a Judge in Chambers	
For engrossing for printer copy of case as settled when such engrossed copy is necessarily and properly required, per folio of 100 words	10
For correcting and superintending printing, per 100 words	5
On dismissal of appeal if case be not proceeded with, in the discretion of the registrar to	25 00
Subject to be increased by order of the Court or a Judge in Chambers	
Suggestions under sections 83, 84 & 85 including copy and service	2 50
Notice of intention to continue proceedings under section 87	4 00
On depositing money under section 66 of the Dominion Controverted Elections Act	2 50
Notice of appeal in election cases limiting the appeal to special and defined questions under section 67 of the Dominion Controverted Elections Act	6 00

Allowance to cover all fees to attorney and counsel for the hearing of the appeal, in the discretion of the registrar to 200 00

Subject to be increased by order of the Court or a Judge in in Chambers .....

On printing *factums*, the same fees as in printing the case.

Besides the registrar's fees, reasonable charges for postage and disbursements necessarily incurred in proceedings in appeal will be taxed by the taxing officer.

Allowance to the duly entered agent in any appeal, in the discretion of the registrar, to 20 00

FORM J.

Writ of Fieri Facias.

CANADA, }
Province of } In the Supreme Court of Canada.

Between

A.B., (Plaintiff, *or as the case may be*) Appellant.

AND

C.D., (Defendant, *or as the case may be*) Respondent.

Edward, by the Grace of God of the United Kingdom of Great Britain and Ireland, King,
Defender of the Faith:

To the Sheriff of , Greeting:

We command you that of the goods and chattels of C.D., in your bailiwick, you cause to be made the sum of and also interest thereon at the rate of six per centum per annum, from the day of [*day of judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be*] which said sum of money and interest were lately before us in our Supreme Court of Canada, in a certain action [or certain actions, *as the case may be*], wherein A. B. is plaintiff and appellant, and C. D. and others are defendants and respondents [or in a certain matter there depending, intituled, "In the matter of E. F.," *as the case may be*], by judgment [or order, *as the case may be*], of our said court, bearing date the day of , adjudged [or ordered, *as the case may be*], to be paid by the said C. D. to A. B., together with certain costs in the said judgment [or order, *as the case may be*] mentioned, and which costs have been taxed and allowed, by the taxing officer of our court, at the sum of , as appears by the certificate of the said taxing officer, dated the day of . And that of the goods and chattels of the said C.D. in your bailiwick, you further cause to be made the sum of [costs], together with interest thereon at the rate of per centum per annum, from the day of [*the date of the certificate of taxation. The writ must be so mouldel as to follow the substance of the judgment or order*], and that you have that money and interest before us in our said court immediately after the execution hereof, to be paid to the said A. B., in pursuance of the said judgment [or order, *as the case may be*], and in what manner you shall have executed this our writ, make appear to us in our said court immediately after the execution thereof, and have there then this writ.

Witness the Honourable Charles Fitzpatrick, Chief Justice of our Supreme Court of Canada, at Ottawa, this day of , in the year of our Lord, one thousand nine hundred and , and in the year of our reign.

FORM K.

WRIT OF VENDITIONI EXPONAS.

CANADA, Province of } In the Supreme Court of Canada.

Between—

A.B. (Plaintiff, *or as the case may be*), *Appellant.*

AND

C.D., (Defendant, *or as the case may be*), *Respondent.*

Edward, etc. (*as in the writ of fieri facias*).

To the Sheriff of , *Greeting*:

Whereas by our writ we lately commanded you that of the goods and chattels of C. D. [*here recite the fieri facias to the end*], and on the day of you returned to us, at our Supreme Court of Canada aforesaid, that by virtue of the said writ to you directed, you had taken goods and chattels of the said C. D., to the value of the money and interest aforesaid, which said goods and chattels remained on your hands unsold for the want of buyers. Therefore we being desirous that the said A. B. should be satisfied his money and interest aforesaid, command you that you expose for sale and sell, or cause to be sold, the goods and chattels of the said C. D., by you, in form aforesaid, taken, and every part thereof for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Supreme Court of Canada immediately after the execution hereof, to be paid to the said A. B. and have there then this writ.

Witness, etc. (conclude as in writ of *fieri facias*).

FORM L.

WRIT OF ATTACHMENT.

Edward, etc. (*as in the writ of fieri facias*).

To the Sheriff of , *Greeting*:

We command you to attach so as to have him before us in our Supreme Court of Canada, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, and bring this writ with you.

Witness, etc. (*as in the writ of fieri facias*).

FORM M.

PRÆCIPE FOR WRIT.

CANADA. Province of } In the Supreme Court of Canada.

Between—

A. B., (Plaintiff, *or as the case may be*) Appellant.

AND

C. D., (Defendant, *or as the case may be*) Respondent.

Seal a writ of *fieri facias* directed to the Sheriff of to levy of the goods and chattels of C. D. the sum of $ and interest thereon at the rate of per centum per annum, from the day of [and $ costs, *or as the case may be, according to* the writ required].

judgment [or order] dated day of

[Taxing Master's certificate, dated].

[X. Y., Solicitor for *party on whose behalf writ is to issue*].

FORM N.

SHERIFFS' AND CORONERS' FEES.

Every warrant to execute any process directed to the sheriff, when given to a bailiff	$ 75
Service of process, each defendant (no fee for affidavit of service recognized by the sheriff)	1 50
Serving other papers beside mileage	75
For each *additional* party served	50
Receiving, filing, entering and indorsing all writs, notices or other papers, each	25
Return of all process and writs (except subpœna) notices or other papers	50
Every search, not being a party to a cause or his attorney	30
Certificate of result of such search, when required (a search for a writ against lands of a party, shall include sales under writ against same party and for the then last six months)	1 00
Poundage on executions and on writs in the nature of executions where the sum made shall not exceed $1,000, six per cent.	
When the sum is over $1,000 and under $4,000, three per cent., when the sum is $4,000 and over, one and a half per cent., in addition to the poundage allowed up to $1,000, exclusive of mileage, for going to seize and sell; and except all disbursements necessarily incurred in the care and removal of the property.	
Schedule taken on execution or other process, including copy to defendant, not exceeding five folios	1 00
Each folio above five	10
Drawing advertisements when required by law to be published in the *Official Gazette* or other newspaper, or to be posted up in a court house or other place, and transmitting same in each suit	1 50
Every necessary notice of sale of goods, in each suit	75
Every notice of postponement of sale, in each suit	25
The sum actually disbursed for advertisements required by law to be inserted in the *Official Gazette* or other newspaper	
Bringing up prisoner on attachment or *habeas corpus*, besides travelling expenses actually disbursed, per diem	6 00
Actual and necessary mileage from the court house to the place where service of any process, paper or proceeding is made, per mile	13
Removing or retaining property, reasonable and necessary disbursements and allowances to be made by the registrar.	
Drawing bond to secure goods seized, if prepared by sheriff	1 50
Every letter written (including copy) required by party or his attorney respecting writs or process, when postage prepaid	50
Drawing every affidavit when necessary and prepared by sheriff	25
For services not hereinbefore provided for, the registrar may tax and allow such fees as in his discretion may be reasonable.	

CORONERS.

The same fees shall be taxed and allowed to coroners for services rendered by them in the service, execution and return of process, as allowed to sheriffs for the same services as above specified.

PART IV.

Appendix.

PART IV.

APPENDIX.

EXTRACTS FROM THE VARIOUS STATUTES RELATING TO THE JURISDICTION OF THE COUNTY COURTS OF NOVA SCOTIA, NEW BRUNSWICK, BRITISH COLUMBIA AND PRINCE EDWARD ISLAND.

NOVA SCOTIA.

The jurisdiction of the County Courts of Nova Scotia is regulated by chapter 156, sections 28, 29, 30, 31 and 87 of the Revised Statutes, 1900.

28. The Court shall not have cognizance of any action—

(*a*) where the title to land is brought in question;

(*b*) in which the validity of any devise, bequest or limitation is disputed, except as hereinafter provided;

(*c*) for criminal conversation or seduction;

(*d*) for breach of promise of marriage.

29. Subject to the exceptions in the next preceding section, and except in the case of a debt or a liquidated demand in money which is under twenty dollars, a County Court shall have original jurisdiction:—

(*a*) In all personal actions, in contract or tort, where the debt, demand or damages claimed, whether on balance of account or otherwise, do not exceed four hundred dollars.

(*b*) In all actions on bail bonds to the sheriff given in any case in a County Court, irrespective of the amount of the penalty or amount sought to be recovered.

(*c*) In all actions against a sheriff or officer of a County Court for any nonfeasance or malfeasance in connection with any matter in the court.

(*d*) In all actions of replevin where the value of the goods claimed does not exceed four hundred dollars. 1889, c. 9, s. 20 (part.)

30. Where in any action the debt or demand claimed consists of a balance not exceeding four hundred dollars, after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, the Court shall have jurisdiction to try such action.

31. The jurisdiction hereby conferred is concurrent with that of the Supreme Court.

87. In all causes, whether;

(*a*) originating in the County Court, or;

(*b*) brought into the County Court by consent of parties, or by way of appeal, or by certiorari;

an appeal shall lie to the Supreme Court sitting in banco from every judgment, order or decision of a County Court, or of a judge thereof, made in court or at chambers, except an order made in the exercise of such discretion as by law belongs to a judge.

NEW BRUNSWICK.

In New Brunswick the jurisdiction of the County Courts is now regulated by chapter 116 of the Consolidated Statutes, 1903.

9. The courts shall not have cognizance of any civil action—
1. Where the title to land is brought in question; or,
2. In which the validity of any devise, bequest, or limitation is disputed.

3. Subject to the exceptions in the last preceding section the county courts shall have jurisdiction and hold plea in all personal actions of debt, covenant, and assumpsit, when the debt or damages do not exceed the sum of four hundred dollars and in all actions of tort when the damages claimed do not exceed two hundred dollars and in actions on bonds given to the sheriffs or otherwise in any case in a county court, whatever may be the penalty or amount sought to be recovered; provided always, that the said court for the city and county of St. John shall not have or exercise any jurisdiction in any cause in which the city court of St. John has jurisdiction.

An appeal is given from the County Courts to the Supreme Court of New Brunswick, by section 80.

80. In case any party in a cause in any of the said courts is dissatisfied with the decision of the judge upon any point of law, or with the charge to the jury, or with the decision upon motion for a non-suit or new trial, or in arrest of judgment, or for judgment *non obstante veredicto*, he may appeal to the Supreme Court.

By section 57, the jurisdiction of the County Courts in replevin is limited to where the value of the goods or other property or effects distrained, taken or detained, does not exceed the sum of $200.

BRITISH COLUMBIA.

In British Columbia the jurisdiction of the County Courts is regulated by R. S. [1897] ch. 52.

23. Except as is otherwise hereinafter provided the county courts shall not have cognizance of any action—
1. For any malicious prosecution or any libel or slander.
2. For criminal conversation or seduction, or breach of promise of marriage; or,
3. Against a justice of the peace, or for anything done by him in the execution of his office.

24. Subject to the exceptions contained in the last preceding section, the county courts shall have jurisdiction and hold plea—

1. In all personal actions where the debt or damages claimed do not exceed $1,000.

2. In any action where the debt or demand claimed consists of a balance not exceeding $1,000 after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff.

3. In actions of ejectment where the yearly value of the premises or the rent payable in respect thereof does not exceed $300: Provided that such actions of ejectment shall be brought and proceeded with in the county court holden in the county where the lands, tenements or hereditaments are situate.

REPLEVIN.

27. Notwithstanding anything to the contrary contained in any statute or law in force in the Province, the county courts shall have jurisdiction in all actions of replevin where the value of the goods or other property or effects distrained, taken or detained does not exceed $1,000, and the title to land be not brought in question.

Section 120 provides for interpleader by the sheriff.

Sections 47 to 51 provide for the recovery of tenements by landlord when term has expired, or been determined by notice, or for non-payment of rent, when neither the value of the premises, nor the rent payable in respect thereof, shall have exceeded $500 by the year.

WHERE TITLE COMES IN QUESTION.

32. The county courts shall have jurisdiction to try any action in which the title to any corporeal or incorporeal hereditaments shall come in question where the value of the lands, tenements, or hereditaments in dispute does not exceed $1,000 or the rent payable in respect thereof shall not exceed the sum of $300 by the year.

EQUITABLE JURISDICTION.

40. The said county courts shall also respectively have and exercise, concurrently with the Supreme Court of British Columbia, all the power and authority of the Supreme Court of British Columbia in the actions or matters hereinafter mentioned, that is to say:—

1. In all suits by creditors, legatees (whether specific, pecuniary, or residuary) devisees (whether in trust or otherwise), heirs at law or next of kin, in which the personal, or real, or personal and real estate against, or for an account or administration of which the demand may be made shall not exceed in amount or value the sum of two thousand five hundred dollars:

2. In all suits for the execution of trusts, in which the trust estate or fund shall not exceed in amount or value the sum of two thousand five hundred dollars:

3. In all suits for foreclosure or redemption, or for enforcing any charge or lien, where the mortgage, charge or lien shall not exceed in amount the sum of two thousand five hundred dollars:

4. In all suits for specific performance of, or for the reforming, or delivering up, or cancelling of any agreement for the sale, purchase or lease of any property, where, in the case of a sale or purchase the purchase money, or in case of a lease the value of the property shall not exceed the sum of two thousand five hundred dollars:

5. In all proceedings under the "Trustees' and Executors' Act," or under the "Official Administrators' Act," in which the trust estate or fund to which the proceeding relates shall not exceed in amount or value the sum of two thousand five hundred dollars;

6. In all proceedings relating to the maintenance or advancement of infants, in which the property of the infant shall not exceed in amount or value the sum of two thousand five hundred dollars;

7. In all suits for the dissolution or winding up of any partnership, in which the whole property, stock and credits of such partnership shall not exceed in amount or value the sum of two thousand five hundred dollars;

8. In all suits relative to water rights claimed under any Act, Statute, or Ordinance of the Province, in which the value of the right in dispute shall not exceed two thousand five hundred dollars;

9. In all proceedings for orders in the nature of injunctions, where the same are requisite for granting relief in any matter in which jurisdiction is given by this Act to the county court;

10. In all applications for the sale of real estate under the "Intestate Estate Act," where the total value of the real estate of such intestate shall not exceed in amount two thousand five hundred dollars;

11. In applications under the "Intestate Estate Act," for an allowance to an administrator by way of remuneration, and in applications under the said Act for a provision for a concubine and illegitimate family of any person dying intestate.

JURISDICTION IN PROBATE.

42. Each county court shall have jurisdiction concurrently with the Supreme Court in all questions relating to testacy or intestacy, and to the validity of wills of persons dying within the territorial limits of its county where the personal estate of the deceased shall not exceed $2,500; and shall have power to grant probate of wills, orders to administer under the "Official Administrators' Act," and letters of administration of the personal estates and effects of persons dying within the territorial limits of its county, and to take order for the due passing of the accounts of the executors and administrators of such deceased persons, and for the proper custody of the personal estate and effects of such deceased persons, and for the delivery of the same to the person entitled thereto.

164. In any action of contract or tort, and in any action or suit brought under the mining jurisdiction of the county court under the mining laws of the Province, where the plaintiff shall claim a sum of, or a counter claim shall be set up of, one hundred dollars or over, and in any action or suit under section 40 hereof and in cases of interpleader, replevin, or garnishment proceedings where the subject matter shall equal or exceed one hundred dollars, an appeal shall lie to the Full Court of the Supreme Court from all judgments, orders, or decrees, whether final or interlocutory, of the county court or a county court judge, made in such action, suit or proceeding; and upon and in respect of any such appeal the said full court shall have and may exercise the same jurisdiction and powers as are vested in and conferred upon it by any Act and Rules of court for the time being in force relating to appeals from judgments, orders, or decrees of the Supreme Court or of a Judge thereof.

166. An appeal to the full court of the Supreme Court from the judgment, order, or decree of any county court or judge shall be allowed on any point of law and in respect of the admission or rejection of any evidence in all actions of ejectment, and in all actions for the recovery of tenements, and in all actions in which the title

to any coporeal or incorporeal hereditament shall have come in question; and in respect of any such appeal the said full court shall have and may exercise the jurisdiction and powers mentioned in section 164 hereof.

167. With the leave of the judge of the county court appealed form, or of the full court or the Supreme Court, an appeal to the full court shall lie in respect of any action, suit, or matter in which an appeal is not now allowed, if the judge or full court shall think it reasonable and proper that such appeal should be allowed; and in respect of any such appeal the said full court shall have and may exercise the jurisdiction and powers mentioned in section 164 hereof.

PRINCE EDWARD ISLAND.

In Prince Edward Island the jurisdiction of the County Courts is regulated by 41 V. c. 12. The court has jurisdiction in all actions *ex contractu* and *ex delicto* where the debt or damages claimed do not exceed $150 (being below the amount required to give jurisdiction to the Supreme Court) and in actions on bail bonds given to a sheriff in any case in a County Court, or on any other bond given under this Act, whatever may be the penalty or amount sought to be recovered. (Section 17.)

SPECIAL JURISDICTION.

EXCHEQUER COURT.

Chapter 140, sec. 32, R. S. 1906.

32. When the legislature of any province of Canada has passed an Act agreeing that the Exchequer Court shall have jurisdiction in cases of controversies:—

(*a*) between the Dominion of Canada and such province;

(*b*) between such province and any other provinces or provinces which have passed a like Act;

the Exchequer Court shall have jurisdiction to determine such controversies.

2. An appeal shall lie in such cases from the Exchequer Court to the Supreme Court. R. S. C. 135, s. 72.

ONTARIO.

AN ACT RESPECTING THE SUPREME COURT OF CANADA AND THE EXCHEQUER COURT OF CANADA.

R. S. O. 1897, cap. 49.

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

1. The Supreme Court of Canada and the Exchequer Court of Canada, or the Supreme Court of Canada alone, according to the pro-

visions of the Act of the Parliament of Canada, known as "The Supreme and Exchequer Courts Act," shall have jurisdiction in the following cases:—

1. Of controversies between the Dominion of Canada and this Province.

2. Of controversies between any other Province of the Dominion, which may have passed an Act similar to this present Act, and this Province.

3. Of actions or proceedings in which the parties thereto, by their pleadings, shall have raised the question of the validity of an Act of the Parliament of Canada, or of an Act of the Legislature of this Province, when in the opinion of a judge of the court in which the same are pending such question is material; and in such case the said judge shall, at the request of the parties, and may without such request, if he thinks fit, order the case to be removed to the Supreme Court in order to the decision of such question.

2. In any action respecting property or civil rights, whether for damages or for specific relief, the judgment of the Court of Appeal for Ontario shall be final except in the following cases:

(*a*) Where the title to real estate or some interest therein is in question.

(*b*) Where the validity of a patent is affected.

(*c*) Where the matter in controversy in the appeal exceeds the sum or value of $1,000 exclusive of costs.

(*d*) Where the matter in question relates to the taking of an annual or other rent, customary or other duty, or fee, or a like demand of a general or public nature affecting future rights.

(*e*) Where the special leave of the Court of Appeal or the Supreme Court of Canada to appeal to such last mentioned court is granted.

3. In case sittings of the court of Exchequer of Canada are appointed to be held in any city, town or place in which a court house is situated, the judge presiding at any such sittings shall have, in all respects, the same authority as a judge of the high court in regard to the use of the court house and other buildings or apartments set apart in the county for the administration of justice.

Provisions similar to these except those in sec. 2, have been enacted in Nova Scotia, R. S. [1900] c. 154; in New Brunswick, Cons. Stat. [1903] c. 110; in British Columbia, R. S. [1897] c. 53 and Manitoba R. S. [1902] c. 33 s. 7.

PRIVY COUNCILS APPEALS.

EXTRACTS FROM IMPERIAL STATUTES AND ORDERS IN COUNCIL RELATING TO PRACTICE IN APPEALS TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

7 & 8 V. c. 69.

11. And be it enacted, that it shall and may be lawful for the said judicial committee to make any general rule or regulation, to be binding upon all courts in the colonies and other foreign settlements of the Crown, requiring the judges' notes of the evidence taken before such court on any cause appealed, and of the reasons given by the judges of such court or by any of them, for or against the judgment

pronounced by such court; which notes of evidence and reasons shall by such court be transmitted to the clerk of the Privy Council within one calendar month next after the leave given by such court to prosecute any appeal to Her Majesty in Council, and such order of the said committee shall be binding upon all judges of such courts in the colonies or foreign settlements of the Crown.

Rule issued by the Judicial Committee, directing the judges of the court in the colonies and foreign settlements of the Crown to give their reasons in writing for the judgment appealed from, and to transmit the same with the record.

AT THE COUNCIL CHAMBER, WHITEHALL, THE 12TH FEB. 1845, BY THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

WHEREAS, by an Act passed in the eighth year of Her Majesty's reign, intituled, etc., (here follows a recital of 7 & 8 V. c. 69, s. 11).

Now, therefore, the lords of the said Judicial Committee of the Privy Council are pleased to order, and it is hereby ordered, that when any appeal shall be prosecuted from any judgment of any court in the colonies or foreign settlements of the Crown, the reasons given by the judges of such court, or by any of such judges, for or against such judgment shall be, by the judge or judges of such court communicated in writing to the registrar of such court, or other officer whose duty it is to prepare and certify the transcript record of the proceedings in the cause, and that the same be by him transmitted in original to the clerk of Her Majesty's Privy Council, at the same time when the documents and proceedings proper to be laid before Her Majesty in Council upon the hearing of the appeal are transmitted.

Whereof the judges of all such courts in the colonies or foreign settlements of the Crown are to take notice, and govern themselves accordingly.

C. C. GREVILLE.

AT THE COURT AT BUCKINGHAM PALACE.

THE 13TH DAY OF JUNE, 1853.

PRESENT:—THE QUEEN'S MOST EXCELLENT MAJESTY.
HIS ROYAL HIGHNESS PRINCE ALBERT.

Lord President, Lord Steward, Duke of Newcastle, Duke of Wellington, Lord Chamberlain, Earl of Aberdeen, Earl of Clarendon, Viscount Palmerston, Mr. Herbert, Sir James Graham, Bart.

Whereas there was this day read at the Board a Report from the Right Honourable the Lords of the Judicial Committee of the Privy Council, dated the 30th May last past, humbly setting forth that the Lords of the Judicial Committee have taken into consideration the practice of the Committee with a view to greater economy, despatch, and efficiency in the appellate jurisdiction of Her Majesty in Council, and that their Lordships have agreed humbly to report to Her Majesty that it is expedient that certain changes should be made in the existing practice in Appeals, and recommending that certain Rules and Regulations therein set forth should henceforth be observed, obeyed, and carried into execution, provided Her Majesty is pleased to approve the same:

Her Majesty, having taken the said Report into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof, and of the Rules and Regulations set forth therein, in the words following, videlicet:—

I. That, any former usage or practice of Her Majesty's Privy Council notwithstanding, an Appellant who shall succeed in obtaining a reversal or material alteration of any judgment, decree, or order appealed from, shall be entitled to recover the costs of the Appeal from the Respondent, except in cases in which the Lords of the Judicial Committee may think fit otherwise to direct.

II. That the Registrar or other proper officer having the custody of records in any Court or special jurisdiction from which an Appeal is brought to her Majesty in Council be directed to send by post, with all possible despatch,

One certified copy of the transcript record in each cause to the registrar of Her Majesty's Privy Council, Whitehall:

And that all such transcripts be registered in the Privy Council Office, with the date of their arrival, the names of the parties, and the date of the sentence appealed from;

And that such transcript be accompanied by a correct and complete index of all the papers, documents, and exhibits in the cause;

And that the registrar of the court appealed from, or other proper officer of such court, be directed to omit from such transcript all merely formal documents, provided such omission be stated and certified in the said index of papers;

And that especial care be taken not to allow any document to be set forth more than once in such transcript;

And that no other certified copies of the record be transmitted to agents in England by or on behalf of the parties in the suit;

And that the fees and expenses incurred and paid for the preparation of such transcript be stated and certified upon it by the registrar or other officer preparing the same.

III. That when the record of proceedings or evidence in the cause appealed has been printed or partly printed abroad, the registrar or other proper officer of the court from which the appeal is brought

Shall be bound to send home the same in a printed form, either wholly or so far as the same may have been printed,

And that he do certify the same to be correct, on two copies, by signing his name on every printed sheet,

And by affixing the seal, if any, of the court appealed from to these copies, with the sanction of the Court,

And that in all cases in which the parties in appeals shall think fit to have the proceedings printed abroad, they shall be at liberty to do so, provided they cause fifty copies of the same to be printed in folio,*

And transmitted, at their expense, to the registrar of the Privy Council,

Two of which printed copies shall be certified as above by the officers of the court appealed from;

And in this case no further expense for copying or printing the record will be incurred or allowed in England.

IV. That on the arrival of a written transcript of appeal at the Privy Council Office, Whitehall, the Appellant or the agent of the Appellant prosecuting the same shall be at liberty

To call on the registrar of the Privy Council to cause it, or such part thereof as may be necessary for the hearing of the case,

And likewise all such parts thereof as the respondent or his agent may require, to be printed by Her Majesty's printer,

Or by any other printer on the same terms,

The appellant or his agent engaging to pay the cost of preparing a copy for the printer at a rate not exceeding one shilling per brief sheet [now three half-pence per folio],

And likewise the cost of printing such record or appendix,

And that one hundred copies [now seventy-five] of the same be struck off, whereof thirty [now twenty] copies are to be delivered to the agents on each side, and forty [now thirty-five] kept for the use of the Judicial Committee;

And that no other fees for solicitors' copies of the transcript, or for drawing the joint appendix, be henceforth allowed.

The solicitors on both sides being allowed to have access to the original papers at the Council Office,

And to extract or cause to be extracted and copied such parts thereof as are necessary for the preparation of the petition of appeal, at the stationer's charge, not exceeding one shilling per brief sheet [now three half-pence per folio].

V. That a certain time be fixed within which it shall be the duty of the appellant or his agent to make such application for the printing of the transcript, and that such time be within the space of six calendar months from the arrival of the transcript and the registration thereof in all matters brought by appeal from Her Majesty's colonies and plantations east of the Cape of Good Hope, or from the territories of the East India Company,

And within the space of three months in all matters brought by appeal from any other part of Her Majesty's dominions abroad;

And that in default of the appellant or his agent taking effectual steps for the prosecution of the appeal within such time or times respectively, the appeal shall stand dismissed without further order,

And that a report of the same be made to the Judicial Committee by the registrar of the Privy Council at their Lordships' next sitting.

VI. That whenever it shall be found that the decision of a matter on appeal is likely to turn exclusively on a question of law, the agents of the parties, with the sanction of the registrar of the Privy Council, may submit such question of law to the Lords of the Judicial Committee in the form of a special case, and print such parts only of the transcript as may be necessary for the discussion of the same; provided that nothing herein contained shall in any way bar or prevent the Lords of the Judicial Committee from ordering the full discussion of the whole case, if they shall so think fit; and that in order to promote such arrangements and simplification of the matter in dispute, the registrar of the Privy Council may call the agents of the parties before him, and having heard them, and examined the transcript, may report to the Committee as to the nature of the proceedings.

And Her Majesty is further pleased to order, and it is hereby ordered, that the foregoing Rules and Regulations be punctually observed, obeyed, and carried into execution in all appeals or petitions and complaints in the nature of appeals brought to Her Majesty, or to Her Heirs and successors, in Council, from Her Majesty's colonies and plantations abroad, and from the Channel Islands or the Isle of Man, and from the territories of the East India Company, whether the same be from courts of justice or from special jurisdictions, other than appeals from Her Majesty's Courts of Vice-Admiralty, to which the said Rules are not to be applied.

Whereof the Judges and Officers of Her Majesty's Courts of Justice abroad, and the Judges and Officers of the Superior Courts of the East India Company, and all other persons whom it may concern, are to take notice, and govern themselves accordingly.

W. L. BATHURST.

By Order in Council of 24 March, 1871, the following rules as to jurisdiction were adopted:

I. All Cases, Records and other Proceedings in Appeals, or other matters pending before Committees of the Privy Council, are henceforth to be printed in the form known as Demy Quarto. * * *

II. The size of the paper used is to be such that the sheet, when folded, will be eleven inches in height and eight inches and a half in width.

III. The type to be used in the text is to be Pica type, but Long Primer is to be used in printing accounts, tabular matter, and notes.

IV. The number of lines in each page of Pica type is to be forty-seven, each line being five inches and three-quarters or 146 millimetres in length.

* * * * * *

VI. The price in England for printing 75 copies in the form herein established is to be thirty-eight shillings per sheet (eight pages) of pica with marginal notes, not including corrections, tabular matter and other extras.

ORDERS OF HER MAJESTY IN COUNCIL.

Establishing Certain Rules and Regulations in Appeals.

AT THE COURT OF WINDSOR.

THE 6TH DAY OF MARCH, 1896.

PRESENT: THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS there was this day read at the Board a Representation from the Lords of the Judicial Committee of the Privy Council, in the words following, viz.:—

"The Lords of the Judicial Committee of the Privy Council have the honour, with their humble duty to Your Majesty, to represent that it would be advisable that the Rules, established by Your Majesty's Order in Council of the 31st March, 1870, should be amended; and their Lordships beg leave to recommend that Your Majesty will be graciously pleased to approve the Rules set forth in the Schedule hereunto annexed, and to declare that the said Rules shall be observed by all Proctors, Solicitors, Attorneys, Agents, or other persons employed in the conduct of appeals, petitions, or other matters pending before Her Majesty in Council."

Her Majesty, having taken the said Representation and the Schedule of Rules annexed into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof, and to order, as it is hereby ordered, that the said Rules (copy of which is hereunto annexed) be punctually observed, obeyed, and carried into execution, in lieu of the Rules established by the Order of Her Majesty in Council of the 31st March, 1870.

C. L. PEEL.

SCHEDULE ANNEXED TO FOREGOING ORDER.

RULES.

I. Every Proctor, Solicitor, or Agent admitted to practise before Her Majesty's Most Honourable Privy Council, or any of the Committees thereof, shall subscribe a Declaration to be enrolled in the Privy Council Office, engaging to observe and obey the Rules, Regulations, Orders, and Practice of the Privy Council; and also to pay and discharge, from time to time, when the same shall be demanded, all fees or charges due and payable upon any matter pending before

Her Majesty in Council; and no person shall be admitted to practise, or allowed to continue to practise, before the Privy Council, without having subscribed such Declaration in the following terms:—

FORM OF DECLARATION.

WE, the Undersigned, do hereby declare, that we desire and intend to practise as Solicitors or Agents in Appeals and other matters pending before Her Majesty in Council; and we severally and respectively do hereby engage to observe, submit to, perform, and abide by all and every the Orders, Rules, Regulations, and Practice of Her Majesty's Most Honourable Privy Council and the Committees thereof now in force, or hereafter from time to time to be made; and also to pay and discharge, from time to time, when the same shall be demanded, all fees, charges, and sums of money due and payable in respect of any Appeal, Petition, or other matter in and upon which we shall severally and respectively appear as such Solicitors or Agents.

II. Every Proctor or Solicitor practising in London shall be allowed to subscribe the foregoing Declaration, and to practise in the Privy Council, upon the production of his Certificate for the current year: and no fee shall be payable by him on the enrolment of his signature to the foregoing Declaration.

III. Persons not being certified London Solicitors, but having been duly admitted to practice as Solicitors by the High Courts of Judicature in England and Ireland, or by the Court of Sessions in Scotland, or by the High Courts in any of Her Majesty's Dominions respectively, may apply, by petition to the Lords of the Committee of the Privy Council, for leave to be admitted to pratice before such committee; and, such person may, if the Lords of the Committee please, be admitted to practise by an Order of their Lordships, for such periods and under such conditions as their Lordships are pleased to direct.

IV. Any Proctor, Solicitor, Agent, or other person practising before the Privy Council, who shall wilfully act in violation of the Rules and Practice of the Privy Council, or of any rules prescribed by the authority of Her Majesty, or of the Lords of the Council, or who shall misconduct himself in prosecuting proceedings before the Privy Council, or any Committee thereof, or who shall refuse or omit to pay the Council Office fees or charges payable from him when demanded, shall be liable to an absolute or temporary prohibition to practice before the Privy Council, by the authority of the Lords of the Judicial Committee of the Privy Council, upon cause shown at their Lordships' Bar.

AT THE COURT OF BUCKINGHAM PALACE.

The 20th day of March, 1905.

PRESENT: THE KING'S MOST EXCELLENT MAJESTY.

Archbishop of Canterbury, Lord President, Lord Suffield, Sir William Walrond.

Whereas, there was this day read at the Board a representation from the Judicial Committee of the Privy Council, dated the 16th day of March, 1905, and in the words following, viz:—

"The Lords of the Judicial Committee having taken into consideration the practice under which an appeal to Your Majesty in Council cannot, in the absence of a special Order in that behalf made by their Lordships, be set down for hearing *ex parte*, as against a respondent to the appeal who has failed to enter an appearance thereto in the Registry of the Privy Council, unless the appellant shall have previously obtained from their Lordships two successive Orders, commonly known as 'Appearance Orders,' requiring the said respondent to enter an appearance to the appeal, within the periods by the said Orders respectively limited, and shall have duly published the said Orders by affixing the same on the Royal Exchange, and elsewhere, in the usual manner, and unless the said periods, so limited by the said Orders as aforesaid shall have expired. And being of opinion that the said practice is inconvenient and ought in certain cases and subject to certain conditions to be dispensed with, Their Lordships do this day agree, humbly, to recommend to Your Majesty to order as follows, that is to say:—

"1. That where a respondent to an appeal to Your Majesty in Council, whose name has been entered on the Record of the Appeal by the Court admitting the appeal, fails to enter an appearance to the appeal in the Registry of the Privy Council, and it appears from the Transcript Record in the appeal or from a certificate of the officer of the Court transmitting the said Transcript Record to the Registrar of the Privy Council, that the said respondent has received notice of the Order admitting the appeal to Your Majesty in Council, or of the order of Your Majesty in Council giving the appellant special leave to appeal to Your Majesty in Council (as the case may be), and has also received notice of the despatch of the said Transcript Record to the Registrar of the Privy Council, the appellant shall not, subject to any direction by their Lordships to the contrary, be required to take out appearance orders calling upon the said respondent to enter an appearance in the appeal, and the appeal may, subject as aforesaid, be set down for hearing *ex parte*, as against the said respondent, at any time after the expiration of three calendar months from the date of the lodging of the appellant's Petition of Appeal, in like manner as if the said appearance orders has been taken out by the appellant, and the times thereby respectively limited for the said respondent to enter an appearance had expired.

"2. That where a respondent to an appeal to Your Majesty in Council, whose name has been brought on the Record of the appeal by an order of Your Majesty in Council, fails to enter an appearance to the appeal in the Registry of the Privy Council, and it appears from the Transcript Record or from a supplementary Record in the appeal, or from a certificate of the officer of the Court transmitting the said Transcript Record or Supplementary Record to the Registrar of the Privy Council, that the said respondent has received due notice of any intended application to Your Majesty in Council to bring him on the Record as a respondent to the appeal, the appellant shall not, subject to any direction by their Lordships to the contrary, be required to take out appearance orders calling upon the said respondent to enter an appearance in the appeal, and the appeal may, subject as aforesaid, be set down for hearing *ex parte*, as against the said respondent, at any time after the expiration of three calendar months from the date on which the said respondent shall have been served with a copy of Your Majesty's Order in Council bringing him on the Record of the appeal, in like manner as if the said appearance orders had been taken out by the appellant, and the times thereby respectively limited for the said respondent to enter an appearance had expired.

"3. That nothing herein contained shall be deemed to affect the power of their Lordships to order the appellant in an appeal referred by Your Majesty to their Lordships, to take out appearance orders,

or to be excused from taking out appearance orders, in any case in which their Lordships shall think fit so to order, and generally to give such directions as to the time at which, and the conditions on which, an appeal so referred as aforesaid shall be set down, as in the opinion of their Lordships the circumstances of the case may require.

"4. That this order shall apply to all appeals in which the Petition of Appeal shall be lodged after the date hereof."

His Majesty having taken the said representation into consideration, was pleased, by and with the advice of His Privy Council, to approve thereof, and of what is therein recommended. Whereof all persons whom it may concern are to take notice, and govern themselves accordingly.

A. W. FITZROY.

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