1888

MINUTES OF MEETING

OF

COUNTY COURT

CLERKS' ASSOCIATION,

HELD AT

OSGOODE HALL, TORONTO,

AUGUST 17TH AND 18TH, 1881.

Toronto:
PRINTED BY C. BLACKETT ROBINSON, 5 JORDAN STREET.
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Coun

M. B. J

Present:
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MINUTES

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FIFTH ANNUAL MEETING

OF

County Court Clerks' Association,

HELD AT OSGOODE HALL, CITY OF TORONTO,

On the 17th and 18th days of August, 1881.

M. B. Jackson, Esq., President, in the Chair.

Present:—Messrs. Austin, Barclay, Canfield, Campbell, Clench, Eagar, Grace, Gunn, Inglis, Marcon, Mitchell, McDonald, McDougall, McFadden, McGuin, McLaren, Northrup, Rice, Stevenson, Thompson, Willson.

Minutes of last meeting having been printed and distributed, they were approved, on motion of Mr. Northrup, seconded by Mr. Eagar.

Treasurer reported that some of the clerks had not responded to the call for annual fee last year, but, through the efforts of the President, the Government paid for printing, which enabled him to report four dollars on hand. Had the printing been paid for by the Association, as in former years, there would have been a deficit.

Moved by Mr. McGuin, seconded by Mr. Gunn, That M. B. Jackson, Esq., be President of this Association for this year.—*Carried.*

Moved by Mr. McGuin, seconded by Mr. Eagar, That Mr. Northrup be Secretary-Treasurer for this year.—*Carried.*

The President read the following paper, *Re* Practice and Taxations, arising out of questions submitted to him by different clerks during

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the past year, and the necessary changes under the Judicature Act, all of which was fully discussed and explained by the President:

TORONTO, *August 17th, 1881.*

GENTLEMEN,—We meet together on this occasion under very different circumstances from those under which we have met on former occasions. Formerly we met to discuss questions on an old and well-settled law of practice and procedure; now we meet to discuss a totally new system not yet in force, but which will come into operation in a few days, and which will revolutionize almost your whole duties as officers of the Courts. This, of course, I need hardly say, is under the Judicature Act; but before coming to it I would first draw your attention to some points that I have been called upon to advise various deputies since we last met together, the directions as to which will generally be applicable as well under the new as the old practice. Where the Judicature Act interferes to alter or render nugatory will appear on reading the portion of the address applying to that Act.

As to questions of taxation of costs, I dealt very fully with them when I last addressed you. Since then I have thought that, in the face of the certainty of the Judicature Act coming so shortly into force, I would not trouble you any more on these points, particularly as a new practice and tariff will at the same time come into operation, and new duties will devolve upon you. I thought it would be better that we all should commence *de novo*, and I hope the future will prove that we have not been without profit in the past.

Order on payment of costs.

Where an order is made on payment of costs, and the act is done without payment of costs, the remedy for the costs under the order is gone, and cannot be enforced without further order.

Affidavit for costs.

When an attorney makes an affidavit under R. S. O., cap. 50, sec. 153, as to an amount unliquidated, etc., so as to get full costs, the officer should not be satisfied with it unless it fully explains how he acquired the knowledge that it was unliquidated and unascertained, and that such explanation shewed that he had actual knowledge of the fact sworn to, and that it was not on the client's information only. Such affidavits, I regret to say, are made by attorneys and acted on by clerks, though containing no explanation as to how the knowledge was obtained. I cannot myself see how an attorney could be justified in making such an affidavit in one case out of a thousand.

Under R. S. O., cap. 66, secs. 48, 49, 50, 51, and 52, where there are several executions in different Courts and different plaintiffs, proceedings should be taken in each case separately to ascertain sheriff's fees, poundages and incidental expenses. *Fixing Sheriff's fees on execution.*

A lump sum of five dollars has always been allowed for *fi. fa.'s*, attendances, indorsements, etc., in Superior Courts, and three dollars in County Courts. *Allowance for execution.*

A witness being the father of a suitor is no reason why his witness fees should not be allowed when otherwise taxable, and no greater number of copies of subpœnas should be allowed than the number of witnesses allowed to a party and shewn to be served. *Witness father of suitor.*

When the time has not elapsed after the signing of a judgment within which an execution could be issued, the clerk should not issue an execution on such judgment, even by consent, without proper authority from the Court. *Issuing execution before time.*

When a Common Law Record is entered for trial at a Chancery sittings, only the same fees can be charged as if it was entered for trial without a jury at the Assizes. *Charges entering Record at Chancery sittings.*

Where, in a case of malicious prosecution in the Superior Courts, A brought an action against B and C, he recovered a verdict against B for $100 and was non-suited as to C, B and C defending jointly by the same attorney, A would be liable to C for a half of Superior Court bill of costs of defence, and would recover against B a County Court bill, and B would be entitled to set-off against this bill the difference between half of a Superior Court costs of defence and one half County Court costs of defence; also, if it is B's desire, he can set-off the costs he is entitled to against A's verdict and costs. *Costs when plaintiff succeeds against only one of several defendants.*

Where a verdict is rendered by consent for $300, subject to arbitration, and the arbitrator awards $100 and does not certify for costs, defendant would not be entitled to set-off his excess of costs of defence, because under the circumstances it is considered as a case in which a judgment has been obtained without a trial, and the Statute as to setting-off costs does not apply. *Set-off of costs where arbitration.*

Where a declaration was on the money counts, pleas never indebted except as to $196—as to $196 payment into Court—set-off. Replication accepting $196 in full, abandoning claim as to residue. I think under Rule 12 plaintiff is entitled to full costs up to taking money out of Court. *Costs on taking money out of Court.*

R. S. O., cap. 50, sec. 121, and sub-sections thereof, have no application whatever to County Courts. *Application of c. 50, s. 121, R.S.O.*

Ejectment where one defendant served and wife of other served.

In an ejectment against McAlister and Smith, McAlister was served and Smith's wife was served. Judgment could only be signed against defendant McAlister, because the service on Smith's wife was of no avail until it was allowed by Judge's order; and in signing judgment against McAlister no costs should be allowed which were incurred owing to Smith being a party, as McAlister cannot be made liable for abortive proceedings against Smith.

Term's notice.

After the lapse of two years without any steps being taken in a suit, a defendant should give a Term's notice of his intention to give a twenty days' notice to proceed; but if a defendant gave the twenty days' notice to proceed without the Term's notice, and plaintiff thereupon gave a notice of trial, I would think this act of the plaintiff's would be a waiver of the Term's notice, and defendant might sign judgment against him if he failed to proceed to the trial.

Advertising lands by Sheriff.

When a sheriff is furnished with a list of lands to advertise, he should use his own discretion as to whether, under the circumstances, the sale should be advertised in the *Gazette* and in a County paper, or in the *Gazette*, and by putting up notice, as directed by the Statute. In doing so, I think the sheriff should be guided solely by the consideration as to what course would tend to the most advantageous sale of the property, and that it does not depend on the direction given by the plaintiff's attorney, whose interest might tend in the opposite direction if his client desired to buy in the property. It will all turn on a question of *bona fides*. If the sheriff advertised the sale in the local paper with the *bona fide* object of increasing the chances of a good sale, I don't think his right to do so can be questioned.

Mileage to witnesses.

If a witness resides over one and a half miles from the Court House, his mileage should be allowed in addition to his other fees; for instance, if he lives six miles from the Court House he should be allowed twelve miles' travel, being distance travelled in going to and returning from the Court House.

Mileage to Sheriffs.

If a sheriff travels twenty miles in effecting a service he can only be allowed the twenty miles, though he may have travelled the distance three times.

Copies of deeds, Allowance of.

Copies of deeds cannot be allowed for as evidence unless notice to admit the originals had been given, and admission not made. In this case the allowance of the copies will be regulated by the same considerations as the allowance of a foreign witness, of which I have before fully treated. The point to consider is, was it cheaper to get the certified copy

or subpœna the Registrar? It should be remembered that to do the latter it would be necessary to get an order in Chambers for a subpœna to issue. If the difference in cost was not material, it would be better to allow whichever course was adopted, as parties should not be held to too great a nicety, but the notice to admit is a pre-requisite to considering the matter at all.

Partition costs.

Partition costs under R. S. O., cap. 101: I think that the costs in such matters should be allowed on the scale or tariff of the Court in which the action is brought, according to the terms of any order made under sec. 52. (L. B. 549.)

Division Courts.

The Division Court has now jurisdiction up to $200 in unliquidated claims, and in any action brought of debt, covenant, or contract, when the verdict rendered is under $200, no more than Division Court costs can be taxed without a certificate. This is just the same rule as always has been in force in such matters under the former jurisdictions of the various Courts.

Affidavits, Costs of, etc.

I was asked the following questions and gave the accompanying answers:—

1. Is affidavit of disbursements a special affidavit? Yes.

2. Should it be taxed at twenty cents a folio? Yes.

3. If taxed at twenty cents a folio, should attending to swear be allowed? Yes.

4. When a client makes an affidavit is it a taxable item, "Attorney attending with client to get sworn?" As to this charge I may say, that in no case when an affidavit has been allowed by the folio has the question ever been raised as to the attorney being entitled to attending to swear; it has always been allowed as a matter of course. I would not myself ever raise the question, nor would I advise you to do so; but if it was raised I would not allow the attendance, if it was clearly unnecessary for the attorney to go with his client to the Commissioner, as where it was shown that the Commissioner was well known to the client, or that the client needed no direction; neither would I allow it when the client went by himself to the Commissioner and swore to the affidavit. The fact is, the attendance to be allowed must be for the attendance of the attorney; the client's attendance cannot be allowed for, either to the attorney or himself. I would avoid rather than encourage such questions, and in case of doubt decide in favour of the attorney; but if the question is raised on the taxation, it should be squarely met and decided as above.

Attendance for writ. Is attending sheriff for writ (after being served by him) a taxable item? The attorney is entitled to attendance with or for writ, not both, and he can charge either of them he chooses.

Abortive proceedings. When any proceeding taken in a cause is abortive, no costs of it should be allowed.

Notice to parties entitled to costs. When a party to a suit is entitled to any costs on entry of judgment, judgment should not be entered without giving him an opportunity of bringing in his bill and taxing same.

Affidavit of mileage by sheriff. When a sheriff swears to service and mileage it is always taken *prima facie* to be correct, except in a case of extraordinary error, apparent on the face of the affidavit. Then the sheriff might be called upon to explain, as if mileage was charged that the limits of his county would not admit of being travelled within. The officer must use his discretion in such matters. If it was not attacked by affidavit, and was not clearly wrong, I would tax it.

Claim within jurisdiction of Division Court. An action brought on a claim on a promissory note and interest $95, and on an unsettled account for $66, is clearly within the Division Court. Both amounts being separately within the Division Court in their respective classes, and not exceeding in the aggregate the jurisdiction of the Court—that is, $200—both claims can be sued for together in the Division Court.

Notice of action. Where a Statute requires a notice of action to be given, the notice should be taxed as part of costs of the cause.

Attorney's lien. Under an order to ascertain an attorney's lien on a judgment for costs: The lien would only be for costs in or connected with the suit in which the judgment was obtained, and would include the costs taxed on entering the judgment, as well as all costs between attorney and client in the suit.

Commission to examine witnesses. A commission to examine witnesses used on the trial of a cause is costs in the cause, when the evidence was material to the issues in the cause.

Allowance to Clerk on entering Record. Under cap. 8, sec. 1, of last Statutes of Ontario, the three dollars allowed on the entry of a record goes to the clerk with whom the record is entered. It is immaterial who passed the record; the question is, with whom was the record entered? He gets the whole fee, and is entitled to it to his own use. This of course does not apply when record entered in Toronto. As to Chancery records, see hereafter.

Right to enter judgment and issue execution. When a party to a suit has got a verdict, and the time has elapsed that entitles him to enter his judgment, he can bring his record and bill and require you to enter the judgment and issue execution at once, and this irrespective of

whether he has given notice to the opposite party or not. But this would not be so if the other side was entitled to set-off costs, etc.; then you should only enter the judgment upon notice being given to the opposite party, giving him an opportunity to bring in his bill.

Cross rules—costs allowed.

When a plaintiff and defendant each obtain a rule in Term and argue same: Plaintiff's rule is discharged with costs, and defendant's without costs. In taxing the costs of plaintiff's rule to defendant, you would allow him all the costs attending on the rule, irrespective of the other rule, including fee on argument; except that in fixing amount of the fee you would be influenced by the fact that both rules were argued at the same time, and allow a smaller fee than you otherwise might do

Instructions for brief.

When a case is argued in Term, both parties are entitled to instructions for brief, two dollars; and brief, two dollars; and this without the production of any brief.

Poundage on advertising lands.

When a sheriff advertises lands for sale, and the debt is paid to plaintiff by defendant, irrespective of the sheriff, and no sale is made, the sheriff is not entitled to poundage. (*See* Gates *vs.* Crooks, 3 O.S., Q.B. 286; Leeming *et al. vs.* Hagerson, 5 O.S., Q.B. 38; Morris *et al. vs.* Boulton, 2 C.L. Chamber R. 60.)

***Quo Warranto* proceedings.**

Proceedings in *Quo Warranto* matters before a Judge of a County Court are proceedings in Chambers, and the clerk is entitled to them to his own use. When the proceedings are returned into Court they are all attached together, and then each must be filed and stamped in Court.

Return to expired writ.

If a writ is allowed to expire in a sheriff's hands without anything being done under it, or any return made, I do not think a sheriff can properly afterwards make a return to it, or charge for such return. I have known cases where, after expiration of a writ, a sheriff has been asked to return it N. B., so that an *alias* might issue on it, and has done so. He would be entitled to the return in such a case, although I don't feel clear as to its legality; but he runs the risk of an action for doing so if it is false.

Division Court, Jurisdiction of.

Action on promissory note for $137 interest and $1.30 notarials was held by four County Court Judges as not within the jurisdiction of the Division Court, because the notarials were unliquidated, etc. This holding is in direct conflict with the holding of the Superior Court Judges, and with the principle I have above mentioned in a similar case of liquidated and unliquidated damages—that is, that both sums separately being within the jurisdiction of the Division

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Court, and jointly not exceeding the jurisdiction of the Division Court ($200), the claim is clearly within the jurisdiction of the Division Court; and I feel quite certain that in such a case a *procedendo* would be granted to the Court below to proceed with the claim and adjudicate upon it.

Witnesses, Costs of.

Where plaintiff brought two actions against the same defendant: Plaintiff succeeded in one action, defendant in the other. The same witnesses were used in both cases, though subpœnaed in the cases each lost respectively. Each would be entitled to half witness fees, and neither entitled to the costs of subpœnas or services, because they were issued in the actions in which they did not succeed. Of course the allowance would only be made on the proper affidavits being filed.

Premature proceedings, Costs of.

In a County Court case subpœnas were issued and copies made on 23rd March, an order to examine defendant and appointment under same was returnable on 19th March, which was adjourned at defendant's request till 26th March, consent being given to plaintiff's signing judgment by default on defendant's failing to appear on return of enlargement to examine on 25th March. Notices of trial and to admit and produce given for next County Court, on 5th April; also record passed and brief prepared on 26th March. Defendant failed to appear to be examined on 30th March. Summons to strike out pleas and sign judgment was granted on 1st of April. Order absolute granted with costs. I was asked what costs plaintiff was entitled to. I instructed clerk to disallow subpœnas and copies issued on 23rd March, as being, under the circumstances, issued unnecessarily early; to allow notices of trial to admit and produce, because plaintiff could not know that defendant would make default on examination, or if examined shew such a case as would entitle plaintiff to judgment. Were I directing again, I would disallow the notices to admit and produce as premature; they could be given any time before trial. I allowed record and fee on passing, because Statute allows it not only to be passed, but entered for trial when issue joined. I disallowed brief, instructions for, and counsel fee.

Commission fees to Clerk on executing.

When a commission to examine witnesses was issued to a deputy as "James Cantield," without other designation, under cap. 62, sec. 21, R. S. O., I considered it a special commission, and that in acting under it he was not acting in his ordinary capacity as a Deputy Clerk of the Crown, and that therefore he was entitled to the fees for executing it to his own use.

Deputy Clerks should not send records to the head office for the purpose of increased fees being allowed. After the proper time has elapsed the records should be given to the parties entitled to them, who should themselves apply for the fees.

Sending Records to Toronto improper.

Instructions are never allowed on an affidavit of disbursements.

Affidavit of disbursements. Instructions for.

Two dollars is always allowed for brief at trial, or on argument before Court. To do so it is not necessary that the brief should be produced, or, indeed, that it should exist. Brief to second counsel is the length of the original, at ten cents a folio, and can only be allowed when second counsel is necessary, and when an original brief existed and copy made for second counsel. Of course there cannot be any length to a brief that does not exist. Instructions for brief is always allowed when brief is allowed.

Brief and instructions.

When an order is made to change an attorney in a suit, "upon payment to the attorney of what may, on taxation by the Master, be found due to him by plaintiff," it applies only to the suit as between attorney and client; and no costs outside the suit can be taken into consideration.

Costs on changing attorney.

When a subpœna issues out of a superior Court to compel a party to give evidence or produce documents in a Division Court, he is not entitled to any larger fees than an ordinary witness in a Division Court.

Witness in Division Court, Allowance to.

An action brought on a bond, with a penalty for $500, damages assessed on breaches for $77.45, entitles plaintiff to full costs, without a certificate. The verdict being for $500, could not have been recovered in an inferior Court.

Action on bond, costs in.

Where proceedings were carried on in Perth, case tried in Brant, and a subpœna issued in Middlesex, I was asked was it correct? I instructed that it was illegal to do so, and that subpœna was illegal, and if objection taken, could not be allowed; but that it was a pity objection should be taken, as it put the parties to no more costs—indeed it might perhaps have lessened the costs.

Subpœna should issue from same office as writ of summons.

Case commenced in Chancery transferred to Common Law; verdict for plaintiff for $800, subject to arbitration, with full powers as to certifying for costs; award made for plaintiff for $158. Certificate only granted to prevent costs being set-off; the costs of reference and award were to abide the event. I was asked what costs plaintiff was entitled to? I answered, to costs of Chancery proceedings on inferior scale, and Common Law proceedings on County Court scale.

Costs, Chancery and Common Law.

C. C.—Change of venue, transmission of papers, charges.

When a County Court record has been entered, and afterwards an order is made changing the venue, the clerk must transmit all the papers to the Court to which the venue is changed. I don't see what fees he can charge beyond a search and filing. On the order being filed, the clerk is obliged to transmit the papers on payment of postage; I don't see that he can even require a *præcipe* to do so.

Chattel mortgages, charges, etc.

Under R. S. O., cap. 119, sec. 22, sub-sec. 2, I was asked whether clerk was entitled to charge for filing an assignment of a chattel mortgage which was sent him with a renewal, the attorney stating that it was not necessary to register the assignment. The sub-section is: "For filing assignment of each instrument, and for making all proper endorsements in connection therewith, twenty-five cents." This fee is, I believe, now increased to fifty cents. The fee the clerk is entitled to is the fee for filing, and I would not file the assignment without the fee being paid. Of course, when filed, you must perform all the duties in connection therewith devolving on you under the Statute. Section 16 requires certain things to be done on filing assignments, and when filed these things must be done, irrespective of whether the party filing them desires to have them done or not. I think, therefore, the clerk should receive fees both on the renewal and assignment. If the attorney desires not to file assignment let him take it away; the clerk cannot receive it without filing it.

Examinations, Briefs on.

Brief is not allowed on examinations under the Administration of Justice Act; neither are counsel fees, except in very exceptional and extraordinary cases. These examinations are mere references, and should, with few exceptions, be attended on by solicitors.

Proceedings in Toronto, Evidence as to.

I have been asked on what evidence the clerks should tax proceedings in Term and Chambers. Of course the best evidence is the production of the papers themselves, but as this is not practicable, I think when the matter is contested that a certificate could be got from the proper officer setting out affidavits filed, their length, and such proceedings as would not be necessarily incidental to the application itself. If both parties agree as to what was done on an application as to filings, enlargements, etc., I think the officer, under the circumstances, would be justified in acting on such representations as they would agree on.

Admissions of service.

When an admission of service, either separate or on the back of a paper, is filed with an officer, he must charge a stamp filing for it, irrespective of what use may be made of

the admission. If it is desired not to pay for it, it should be struck out; but while it remains it is chargeable, the same as a notice to plead, or of taxation.

I have now gone through the most important matters upon which I was called on to advise Deputies since I last met you. There are many others of less importance, and a large portion of which I had advised on before, and were referred to and explained in former addresses or in the Regulations, and which I did not think advisable to trouble you with again, except a few that, I believe, are repeated above. It has been a matter of some surprise to me that I should have been written to in some instances repeatedly about matters very fully explained in the Regulations, or in some one of the addresses. I had intended to write a kind of Canadian Practice, especially for the guidance of deputies, and which might have been useful also to the profession; but the Judicature Act has done away with that idea, and I do not think that such a work could now be written, with advantage to either clerks or profession, until we have had time to shake down into something like fixed rules and practice. In the meantime we are likely to be flooded with works more numerous than useful.

Introductory to the Judicature Act.

Now, gentlemen, we must imagine ourselves somewhat in the position of emigrants or explorers. We are, as it were, leaving a region familiar to us, whose lakes and rivers and bays and creeks, plains and mountains, valleys, gorges, etc., have been more or less known, sounded, and explored. We are now just about entering into a new and unexplored region, where everything has been done to banish from your memories all recollection of the past; even where similar proceedings are taken their names are changed. We have no longer suit, cause, case, declaration, plea, venue, record, set-off, verdict, terms, ejectment; we have now instead, action, statement of claim, statement of defence, suggestion of county where action is proposed to be tried, certified copy of proceedings, counter-claim, judgment to be certified on certified copy of pleadings by Judge or Clerk, and sittings of the Court, actions for recovery of lands. Attorneys are all struck off of the rolls—solicitors come to the front and fill their vacant places. The names of the Courts are all changed, and we have now Chief Justices and Presidents of Courts in the same persons, and so on *ad infinitum*. Gentlemen, perhaps you come here with the hope that I am more familiar with those regions than yourselves, and will be able to pilot you through its mazes. Alas! for you and

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me. I am afraid, for a considerable period, it will be a case of the blind leading the blind. Let us venture to endeavour to explore them together. I feel very much at a loss as to how much of the Act we should go into on the present occasion, and how much to leave alone. Indeed, so much has my time been occupied during the whole vacation in connection with what is necessary to launch us on this unknown sea, that I have had very little time to devote to matters to which I would desire to draw your attention on the present occasion. But I have no doubt, when once we have settled down to the working of the Act, its difficulties will be more apparent than real, and, after a little experience, we will find it work satisfactorily. First, as to Courts, they are composed and named as follows:—

Courts.

"The Supreme Court of Judicature for Ontario" consists of all the Judges of the Courts of Queen's Bench, Common Pleas, Chancery, and Appeal.

"The High Court of Justice for Ontario" consists of all the Judges of the Supreme Court, except the Judges of the Court of Appeal.

"The Court of Appeal for Ontario" consists of the present Judges of the Court of Appeal.

"The Queen's Bench Division of the High Court of Justice," represented by the present Court of Queen's Bench.

"The Common Pleas Division of the High Court of Justice," represented by the present Court of Common Pleas.

"The Chancery Division of the High Court of Justice," represented by the present Court of Chancery.

The President of each Court will be the present Chief Justices and the Chancellor respectively; the Senior President of Divisions is to be President of the High Court; the President of the Queen's Bench Division, the Hon Mr. Hagarty, happens to be the Senior President, so he will be President of the High Court of Justice, and in his name all writs must be tested in the High Court Divisions. Remember, when the High Court of Justice is mentioned it includes all its Divisions.

I will now refer to the sections of the Act, and to Rules of Court made thereunder, which will more immediately affect you in the discharge of your duties. Time will only permit a very cursory reference to them, except where it is absolutely necessary to make more extended remarks.

Old finished business.

Sec. 11—As to provisions for business in the old Courts fully heard, but judgment not given.

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Subsequent proceedings on. Sub-secs. 2 and 3—As to proceedings when judgment perfected before Act. (*See* also Rule 493 as to proceedings in the earlier stages of the action.)

Terms abolished. Sec. 18—Abolishes terms. The time appointed formerly for holding terms in force for certain purposes.

Court sittings. Sec. 19—As to sittings of Courts.

Vacations. Sec. 20—As to vacations.

Sittings in vacation. Sec. 21—As to sittings of Court in vacations.

Distribution. Sec. 23—As to distribution of business.

Pending business. Sec. 24—Pending business in the Courts assigned to corresponding Divisions.

Trial. Secs. 45 and 46—Prescribe mode of trial. Common Law and Chancery cases.

Clerk's seal. Sec. 51—Prescribes seal. This section, as it reads, requires the seal of the Court to be impressed on every writ and other document issued out of, or filed in, such office. I suppose this must apply to any paper filed in the office, such as pleadings, *præcipes*, affidavits, papers, etc., and to everything going out, including, I suppose, appointments, allocaturs, etc. Whenever the seal is used, the necessary stamp for seal must follow. This, you will see, applies only to proceedings in the outer offices. And the charge of fifty cents for such seal is not payable now on documents which, before the passing of said Act, did not require to be sealed—by Rule 503, with which you are now furnished, and also by a circular which I forwarded you some considerable time ago.

Old forms and methods. Sec. 52—As to use of old forms and methods of procedure, when not inconsistent with present provisions of the Act.

Officers. Secs. 58, 59, 60, 61, and 63—As to officers of Court, their status and duties.

Local registrars. Sec. 64—Deputy Clerks of the Crown. When a Judge of the County Court is local Master, and also as Deputy Registrars die, or resign, or otherwise vacate their offices, **Sub-secs. 3 and 4.** the Deputy Clerks of the Crown assume their duties and become "Local Registrars," which, I understand, will then be their official designation, unless the office of deputy registrar is otherwise filled up.

Examination fees. Sub-sec. 5—Gives fees to clerks on references or examinations taken before them to their own use; this includes fees incident to the examination, such as appointment, return copy, and copy and certificate of any copy certified by him under the Act.

Commutation of fees. Sub-secs. 6, 7, and 8—As to commutation of fees.

Sub-sec. 10—I cannot say what the effect of this subsection is as to the fees of local registrars. I did hope that when he assumed the duties of the deputy registrar, whose fees were his own emoluments, they would continue to be the same when the local registrar assumed the duties; but I do not think it is so. He becomes local registrar of the High Court, he is paid by salary, and, under this sub-section, cannot take the fees to his own use—this might be a reasonable ground for increase of salary. This I find to be so, and the fees cannot be taken by the officer. I understand it is proposed to increase the salaries of local registrars, instead of giving them the fees heretofore taken by deputy-registrars.

Obliteration of stamps.

Sub-sec. 13—As to obliteration of stamps. This has been followed up by an Order in Council requiring stamps to be obliterated by simply punching.

Returns.

Sub-sec. 14—As to returns to be made by officers paid by fees.

Preparing papers, etc.

Sec. 65—As to registrar of Surrogate Court preparing papers, or clerk of County Court advising upon or drawing mortgages. This leaves Surrogate registrars as they were previously in this respect.

Local Judges.

Sec. 76—Makes County Court Judges "Local Judges of the High Court," for the purpose of exercising the jurisdiction in High Court matters conferred upon them by the Act.

C. C. Courts, Law in.

Sec. 77—County and Division Courts. To apply same remedies as High Court.

Counter-claim —C. C. Courts.

Sec. 78—As to cases of counter-claim beyond jurisdiction of County or Division Court. Duty of clerks when order to transfer made.

Rules of law.

Sec. 80—The several Rules of Law enacted and declared by Act shall be in force and receive effect in all Courts whatsoever in Ontario, so far as the matters to which such rules relate shall be respectively cognizable by such Courts.

RULES.

For convenience, in citing rules they should be cited by their number, without respect to the number of the Order to which they belong—that is, what is called their marginal number.

Action.

1—Makes all causes to be commenced by proceeding called an action.

Interpleader.

2—As to interpleader.

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3—As to Chancery orders applying to High Court. — Chan. orders.

4—As to other proceedings in applications to High Court. Absconding debtor. — Other proceedings—absconding debtor.

6—Prolix matter in summonses not to be allowed in taxation of costs. — Prolix matter.

7—Form of summons. — Summons.

8—Form of summons for service out of Ontario. — Summons out of Ontario.

9—Test and return of summons. — Test & return.

10—Amendment of summons. — Amendment of

11, 12, 13, and 14—Indorsement of summons. — Indorsement.

15—When defendant pays amount demanded by writ and costs, he still may have the costs taxed, and, if one-sixth is disallowed, the solicitor shall pay costs of taxation. — Liquidated demands—payment of claim—taxation of costs.

16, 17, 18, 19, and 20—As to various indorsements, and when writ can issue. — Various indorsements—when writ can issue.

21—Writs of summons in Queen's Bench and Common Pleas are to be issued as heretofore, alternately. Writs for Chancery Division are not to be so issued. Writs of summons issued by outer officers need not be signed by Clerk of Process. — Summons, how issued, and by whom.

22—Statement as to appearance. — Statement as to appearance.

23—Party wanting writ to prepare it. — Who to prepare writ.

24—Summons to be signed and sealed by officer issuing them. — Who signed and sealed by.

25—As to leaving copy of writ with clerk, it is optional with party issuing it. I cannot see that either copy or *præcipe* for summons can be insisted on if party refuse to give either. — Copy or *præcipe* cannot be insisted on.

26—Process book. You will be supplied with new process books. Enter all the summonses in the High Court in the book as they issue, distinguishing in proper column, for that purpose, what Division of the High Court it issued out of—as, for instance, C.P., Q.B., or Chy. The book may be kept as heretofore. If a rule is passed by the Supreme Court compelling the leaving of a copy of the writ of summons with the officer—if it is not passed, then the full style of cause should be entered in each case. — Process book.

27 and 28—As to concurrent writs, and mode of issuing. — Concurrent summonses.

31—As to renewal of writs of summons, and how. — Currency of summonses.

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Evidence of renewal. 32—Evidence of renewal. These provisions apply to summonses issued before Judicature Act.

Service of summonses on married women, infants, official guardian, lunatic, guardian *ad litem*, partners, ejectment, indorsements necessary. 33 to 44—Both inclusive—As to service of summons. The only marked change I see is the making service unnecessary where defendant's solicitor accepts service, and undertakes to enter an appearance. Under this a question may arise: when signing judgment by default, for want of an appearance on an acceptance, by a solicitor—whether the solicitor was the defendant's solicitor? But this may be got over by requiring the deponent to swear to the acceptance of service by John Doe, a solicitor, and that said John Doe was the solicitor in the action of the defendant at the time of his giving such acceptance. You will see also a departure in case of partnerships; service can be made on one, or at head place of business.

Service out of Ontario. 45—Service out of Ontario.

Time for appearance. 46—As to time defendant has to appear when served out of Ontario.

47, 48, and 49—Follows up the same subject.

Where proceedings carried on. 50—As to where proceedings carried on is the same as the Statute previously existing.

Appearance, how entered. 51—As to how appearance shall be entered.

Address of solicitor. 52—As to solicitor stating therein his place of business.

Address of defendant in person. 53—Defendant appearing in person to state address for service.

Wrong address. 54—If appearance does not contain required particulars, it is not to be received by officer.

Appearance—procedure books. 56—On receipt of appearance, officer to enter it in procedure book. You will be supplied with new procedure books. You will find them larger and more roomy in every respect than the other books, and also you will find a column to mark the Division of the High Court in which the action is brought. All actions in the High Court shall be entered in this book, distinguishing in this column the Division to which it belongs. The entries will be of the proceedings in the action as they arise—the names of proceedings, as I have before intimated, will be somewhat different from what they have previously been. As far as I can judge now, they would, in an ordinary action, run: Appearance; statement of claim; statement of defence, or statement of defence and counter-claim, if it is so; statement of reply, and so on. All the proceedings in the suit should be succinctly stated as

they occur, so as to show any party looking at the entries exactly what had occurred under the new procedure. There will likely be a number of entries in some suits such as you never have had before, such as: Substituted plaintiffs and defendants; added plaintiffs and defendants; proceedings to make third parties contribute; injunctions, etc.; orders to produce for security for costs; to change solicitor; to amend the affidavits filed; various applications, etc.

Appearance where partners.

57 and 58—As to proceedings against partners. How appearance entered.

59—Appearance entered for two or more defendants at same time by same solicitor must be entered in same memorandum.

Appearance by party not named in writ.

62—Appearance by party not named in writ, on filing affidavit.

Judgment, default of appearance.

71 and 72—As to proceedings in default of appearance. This provides for signing judgment on an acceptance of service by an attorney when affidavit verifies undertaking. This affidavit should be to the effect I have before stated.

Judgment by default of appearance against one of several defendants and issuing execution.

73—Judgment for non-appearance of one of several defendants, and issuing execution.

Judgment, default, writ not specially indorsed but order served.

74—Judgment by default, writ not specially indorsed, but particulars of claim filed and served.

Judgment, default, for land.

76—Judgment for non-appearance in actions to recover land. Costs cannot be given under this rule, without the affidavit of adverse possession, as before the Act. Rule 209 does not affect this.

Judgment where other claims joined.

77—Judgment where other claims are brought together with the claim for land.

Judgment in mortgage cases

78 and 79—As to judgment in actions in respect of mortgages.

Prolixity in statements.

126*c*—Where statements prolix, costs of prolixity to be borne by party charged with same.

Officer to act without order.

126*d*—Taxing officer shall take cognizance of prolixity, and apply rule, without order of Court requiring him to do so. (*See* also Rule 435.)

Unnecessary statements not allowed.

158*e*—Taxing officer not to allow statement of claim if not required, and its delivery improper.

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Discontinuance. 170—As to discontinuance.

Withdrawing record—discontinuance. 170*b* and 171—Record not to be withdrawn, or case discontinued, save as in order provided, without leave of Court or Judge, or consent in writing being produced to officer signed by parties.

Judgment for costs. 172—Signing judgment for costs.

Close of pleadings. 176—Close cf pleadings—when ?

Amendment, plaintiff. 179—Amendment by plaintiff without leave confined to statement of claim.

Amendment, defendant. 180—Amendment by defendant without leave confined to set off or counter-claim.

Amendment of former pleading. 182—Amendment of former pleading where amondment made under last two rules without leave.

Amendment by consent. 183—Amendment may be made at any time by consent.

Time within which amendment can be made. 185—If order to amend granted, it becomes void if amendment not made within certain time, unless time extended.

How amendments are to be made. 186—How amendments are to be made.

Marking amendments. 187—Marking amended pleadings by officer.

Colour of ink. 187*a*—Amendments to be made in different coloured ink from that in which the original pleadings are written.

Entry of demurrer. 195—Demurrer may be entered for argument by either party immediately.

Consequence of not doing so within certain time. 195*a*—Consequence of not entering demurrer for argument within time limited.

Pending demurrer to, not to be amended. 196—While demurrer pending to any pleading, it is not to be amended without an order to amend.

Demurrer, Costs of. 197—Costs of demurrer.

Costs of demurrer to whole statement. 198—Costs of action when demurrer to whole statement of claim is allowed, to be paid by plaintiff unless otherwise ordered.

Costs of demurrer. 200—When demurrer overruled, costs to be paid by party demurring, unless otherwise ordered.

Mode of entry of demurrer. 202—Mode of entering demurrer for argument.

Judgment in default of pleading. 204—Judgment and costs in default of delivery of defence, where claim is for debt or liquidated demand.

Same as to one of several defendants.

205—Same against one of several parties. Judgment can be signed and execution issued, and proceedings continued against defendants pleading.

Interlocutory judgment.

206 and 207—As to signing interlocutory judgment for detention of goods or for damages, and proceeding to assess damages on it against all defendants.

Judgment when claim for detention and liquidated damages.

208—When claim for detention of goods and liquidated damages and interlocutory judgment signed on claim for detention, final judgment may be signed for liquidated claim.

Judgment in action to recover lands.

209—In action for recovery of lands—judgment by default of pleading, with costs—this is different from the judgment in same action at Rule 76, which is on default of appearance, and when costs cannot be given without the usual affidavit of adverse possession.

Judgment when claim for land and damages.

210—Where claim for land and damages, provision as to judgment by default.

Default of defence or demurrer in other actions.

211 and 212—In default of defence or demurrer in other actions, plaintiff to be at liberty to set down action for judgment.

215 and 216—Payment into Court. (See notes to Rule.)

Payments into Court in satisfaction.

Money paid into Court under Rules 215-16 and 217, and under sec. 109, cap. 50, R.S.O., must be paid in to the registrar or clerk of the office where the writ of summons issued out of, and the fees mentioned in sec. 109 should be required. These payments are by way of satisfaction, and are made as a matter of right—after issuing writ, or with statement of defence—and regulations 56 and 57 apply to them in full force.

Payments otherwise than in satisfaction.

All payments into Court, other than the above, such as by Sheriff, under orders of Court, or Judges, or the Master in Chambers, etc., etc., must be made with the accountant of the Supreme Court at Toronto, under Rule 475 *et seq.*, and cannot be paid into the local registrar or clerk.

Payment out.

217—It would be better to always require this authority to be verified by affidavit; by doing so it would prevent any charge of invidiousness being brought against an officer. If he was to require verification from one and not from another it would give offence to the party from whom it was required. Require it from all and none can be offended.

Acceptance of money.

218—On acceptance of money, plaintiff to be at liberty to tax costs, and in case of non-payment enter judgment.

Discovery and production. 222—Order for discovery and production. Rule 176 explains what is a closing of proceedings mentioned in this rule; the order is granted on *præcipe* by clerk.

Third parties. 223—Position of third party under this rule.

Beneficial party. 224—Party for whose immediate benefit action brought, is to be regarded as a party for purposes of examination or production of documents.

Costs of discovery and production. 230—No allowance is to be made for any order for production or any notice or inspection, under any of preceding rules, unless it is shewn to satisfaction of taxing officer that there were good and sufficient reasons for taking such order, giving such notice or making such inspection.

Special case. 252—As to entry of special case for argument.

Notice of trial. 259—Ten days' notice of trial.

Notice of trial before entry for trial. 260—Notice of trial shall be given before the entry of the action for trial. I do not think the clerk need take upon himself to see that the notice has been given before the entry; the party enters action for trial at his own risk.

Entry of action for trial. 261—After notice of trial is given, either party may enter the action for trial If both parties enter it, it shall be tried in the order of the plaintiff's entry. Same remarks apply to this as to last rule.

Delivery of copy of pleadings to officer. 262—On the day before the holding of the Court at which the action is to be tried, party entering action shall deliver to proper officer one copy of pleadings in action for use of Judge at trial, such copy to be certified as true by officer having charge of the pleadings filed.

Time for entry of actions for trial. 264—Actions in all Divisions shall be entered not later than the third day next before the first day of the assizes or sittings, except on affidavit or consent to be allowed by Judge. This rule to apply to County Courts. This would appear to me to be really two clear days before commission day of assizes.

Who to be entered with. 265—As to whom actions are to be entered with.

Fees on entering cases for trial with deputy clerk. Where under this Rule the deputy clerk and deputy registrar are not the same person, and actions brought in the Chancery Division are entered for trial with the deputy clerk, I do not think that the deputy clerk would be entitled to the three dollars under sec. 1, cap. 8, 44 Vic. on the Chancery cases entered with him. I do not think that the section applies at all to such cases; the section stating that such fee shall be in lieu of the fees now paid in stamps on passing and entering a record *with the Deputy Clerk of the Crown, etc.* The Chancery cases are not passed with him—

besides, the Rule provides that the deputy registrar shall perform all services at the trial pertaining to such cases, and says that he shall be entitled to same as if the cause had been set down for hearing. What this fee is I am not prepared to say, but it is quite certain it was not intended that both the deputy clerk and registrar should be paid. . . . But if the Chancery certified copy of proceedings were so certified by a local registrar, and were entered with a local registrar, then I would think he would be entitled to the three dollar fee.

With local registrars.

Where under this Rule a Chancery Record is entered with a deputy clerk, and a notice of jury is given, of course he will not enter it unless the jury fees are paid him, and he need not pay such fees out of his own pocket, as one clerk seemed to think he should. Cap. 48, sec. 145, R.S.O., expressly provides that the record is not to be entered unless the jury fees are paid. . . . At the trial of such cases the deputy registrar is to take charge of them as if they were tried at a Chancery sitting, and the deputy clerk has no call or concern about them.

Jury fees in Chancery cases.

Deputy registrar to take charge at trial.

266—When provision made for separate trial of Chancery cases, Chancery cases are then to be entered with Chancery Registrar.

Separate Chancery trials.

267—As to separate lists.

Separate lists.

274—Entry of findings at trial to be entered in a book by clerk; also directions as to judgment, and also any certificates granted by Judge.

Entry of findings at trial

275—Indorsements or certificate of officer or certificate of Judge proper authority for officer to enter judgment.

Authority to enter judgment.

Of course both certificates are not necessary, as I see some gentlemen seem to think. If the findings are indorsed and signed by Judge on back of certified copy of pleadings, that is all that is necessary. When the clerk gives a certificate, it would be well, if convenient, to give it on the back of certified copy of pleadings. This certificate must be under seal, and must have stamps as such.

308 and 309—As to time for moving for new trial.

Time for moving against findings.

315—Except when by Act or Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment.

Motion for judgment.

325—Every judgment shall be entered in the book to be kept for that purpose, forms given, etc. Under this rule

Entry of judgment.

there is no longer to be a judgment roll. The judgment is the entry in the book. Each of you will be furnished with a judgment book. The forms supply forms in some cases; in many others it will be as the Judge directs. It should be styled in Court and Division, and names of parties, plaintiffs and defendants, in full; the date; and signed by the clerk. They should each be numbered consecutively from one downwards each year, commencing from say now to 1st January next, and then a new number for next year to 31st December inclusive. It would be well also in the margin to put the number of the case in the procedure book, which would correspond with the number of the pleadings. You will see now that the pleadings do not as heretofore go with the roll, there being no roll. Hereafter I would keep the pleadings in envelopes, numbered according to the number of the entry in the procedure book, which should also correspond with the above-mentioned second numbering in the judgment book, and the envelopes of each year's pleadings should be kept separately and marked of the year it is entered in the procedure book; so that when you get the number of the procedure book you get the number of the envelope, and the number in the judgment book will shew you the other two. When judgment is entered, it should be mentioned as entered in the procedure, stating the consecutive number it bears in the judgment book. To illustrate the mode of signing judgment, let us take a judgment on a summons specially endorsed for a promissory note; it is as follows: Plaintiff would come with his writ, affidavit of service, affidavit of no appearance, bill, etc.; he would then give you a form of judgment, which might be called a *præcipe* for judgment, as per No. 147. This form you would copy into your judgment books, sign it, and in due time issue execution upon it if desired. The stamps should be put on the *præcipe* for judgment for convenience, because if put on the judgment book and punched it would destroy the book.

Date of judgment when pronounced in Court.

326—When judgment is pronounced by the Court or a Judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, and the judgment shall take effect from that date. The effect of this clause is that if a decision against a party is given by Judge say at the assizes or single Court, or by the Divisional Court at any of its sittings, on which judgment is to be entered for either party, the judgment entered with the clerk is to be dated as of the date of the order or decision of

the Judge or Court, not of the day on which it is entered with the clerk. The memorandum signed by the Clerk in the judgment book and on the back of the *præcipe* for judgment, should bear date as of the time of the actual entry of the judgment.

Date in other cases.

327—In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

Judgment on production of affidavit.

328—As to judgment on affidavit, the order explains itself.

Judgment on certificate or order.

329—As to signing judgment pursuant to order, certificate or return, it says the production of the order or certificate sealed with the seal of the Court, or of such return, shall be sufficient authority to the officer to enter judgment accordingly. I would have thought that an order of Court did not need a seal—a rule of Court heretofore has never needed a seal—and I cannot at present see the utility of this rule, because if the order or certificate or return under the statute was an authority to sign a judgment, of course it would be signed without this rule. Does it mean that the certificate of the Judge or order of the Court is to require a seal? At present I do not know. I rather think it does. I think the certificate of the clerk of assize does not, owing to Rule 275, which makes it effective without a seal of Court. Until further development of this Rule, I would always act on an order of Court without a seal.

Executions.

339 to 346 (both inclusive)—Refer to executions, and explain themselves.

***Præcipe* for executions.**

347—Requiring *præcipes* for writs of execution, and stating what it shall contain.

Date of execution.

349—Executions to bear date of the day they are issued.

When can issue.

352—As to time when *fi. fa.'s* may issue on judgments. This order would not permit a *fi. fa.* to issue on a judgment for want of an appearance before the expiration of the eight days after the time, under Rule 72, for appearance. In other respects the rule speaks for itself.

Currency and renewal of writ

353—Currency of execution and renewal of same.

When execution may issue.

355—Shewing that, as between the original parties, execution may issue within six years from the recovery of judgment.

Enforcing orders, etc.

357—Every order of Court or Judge may be enforced in same manner as a judgment to same effect.

Enforcing orders of parties not parties to suit.

358—Party, not party to an action, in whose favour order is made, may enforce it by same process as party to an action.

Former rights of enforcing reserved.

360—All former rights heretofore existing to enforce a judgment are reserved.

Order of issuing writs.

361—Nothing in orders to affect the order in which writs of execution may be issued. I suppose this preserves the old rule as to goods and lands.

Writs of attachment.

364 and 365—Writs of attachment may issue against the person as heretofore, according to practice of Chancery, but not without leave of Court or Judge.

Examination of judgment debtors.

369—As to granting appointment to examine, and how long to be served.

Debt attachment book.

377—Officer to keep debt attachment book.

Judgments for land, how enforced.

379—Judgments to recover possession of land can be enforced by writs of possession, as heretofore used in ejectment.

Order to deliver up land how enforced.

380—Right to enforce order to deliver up possession where it is disobeyed.

Writs for delivery of chattels other than land.

382—Writ for delivery of property other than land may be enforced in same way as heretofore in use in *detenue*.

Officers and their duties.

417—As to deputies, clerks, deputy registrars, and local registrars. It explains itself.

418—This order does not in any way apply to any entry of a judgment in the judgment book; it applies to such orders as previously required entering under the Chancery orders. At present I do not clearly see how this order will operate.

Docketing—forwarding rolls.

419—Provides for docketing and forwarding judgments. While this remains in force judgments must be docketed; though it seems to me that the entry in the judgment book contains all that is entered in a docket, and more; therefore it is a double entry. As to forwarding rolls every three months, this, of course, cannot be done, there being no rolls, as I have before explained; therefore, hereafter each office will keep its own judgments and papers, and carry on pro-

ceedings to the end, and then keep them where they can always be found, in the office from which the writ issued.

427—As to transmitting papers on appeal, referred to in this rule, in all the Divisions the papers should be transmitted to the Clerk in Chambers, who is the proper officer in that behalf.

Chamber appeal—transmitting papers

428—Subject to the provisions of this Act, costs of all proceedings are in discretion of High Court, except where payable out of a particular estate or fund, which parties would be entitled to according to rules hitherto acted on in equity: provided where issues tried by jury costs shall abide event, unless a Judge before whom action is tried sees fit to order otherwise. This is a very sweeping provision, and we must leave it to time to develop its results or consequences, but it would seem as if it cut us clear adrift from all the old standbys, except in cases tried by jury which I suppose will be governed by the old rules, except a Judge or the Court order otherwise. It really leaves the question of costs of all proceedings entirely in the discretion of the Judge or Court.

Costs generally.

The opinion seems to prevail now that where a party to a suit becomes entitled to costs, say on the verdict of a jury or otherwise, he is entitled to the full rate of costs of the Court in which the action is brought, irrespective of the amount recovered, and that all the former Acts depriving of costs or limiting their amount, or requiring certificates, are done away with; and unless the Judge or the Court interferes to limit amount or rate of allowance, full costs must be allowed—this is the principle acted on in Toronto now. I personally entirely disagree with it, and hope, when it comes to be more maturely considered by the Courts, that it will be found that all the former Acts are still in force and will govern, unless where the Judge or Court orders otherwise. *See* hereafter as to principles governing officers' discretion in allowance of costs.

430—Bond for security for costs is to be given to the party, and not to the officer of the Court—that is, the bond is to be made to the party.

Bond for security for costs.

431—Each clerk is authorised to give the order for security for costs under this rule on *præcipe*.

Order for security.

432—Prescribes the amount of stamps to be paid until another tariff of disbursements is made.

Stamps.

The disbursements on Chancery proceedings are, under this rule, to be charged at the same rate and on the same

Chancery disbursements.

scale as the disbursements charged on Common Law proceedings of an analagous character. Chancery disbursements are not now to be charged, unless there are no analagous proceedings at Common Law. This will be so until a new tariff of disbursements is made by the Lieut.-Governor in Council, when the disbursements in all the Divisions of the High Court will then be regulated by the same tariff.

Copy of documents. 433—As to copies of documents under circumstances stated in Rule, and costs of same.

Costs of petition when objected to. 434—As to costs of party to petition, when notified that his costs will be objected to, and tender of five dollars made.

Costs of unnecessary proceedings. 435—As to disallowance of unnecessary and improper proceedings. It fully explains itself.

Set-off of costs 436—As to set-off of costs. Rule explains itself.

Costs of unnecessary appearance in Chambers. 437—When party unnecessarily appears in Court or Chambers, he is to be allowed no costs of such attendance.

Revisions. 439—As to revisions of taxation at Toronto. (*See* Chancery orders under rule as to course Chancery officer is to pursue.)

Transmission of papers for revision. 439*c*—Bill to be transmitted to taxing officer, not registrar of the Court.

Pending proceedings, etc. 439*d*—Pending revision, judgment may be entered and execution issued.

Proceedingson revision. 440 and 441—As to proceedings before taxing officer. Parties neglecting to bring in or tax costs.

Costs to be paid by third party. 442—Taxation of costs to be paid by another party.

Solicitor and client. 443—Taxation, solicitor and client.

Order for taxation. 444—The order, when grantable, of course shall be issued on *præcipe* by registrar, deputy registrar, local registrar, or deputy. This order is grantable when the application for it is made within one month from the time of the service of the bill. (*See* form 136.)

Old rules of taxation. 445—Old rules and practice of all the Courts as to taxation of costs, not inconsistent with these rules, shall remain in force and be applicable to the same or analogous proceedings.

447—Course of party dissatisfied with allowance.

Course of party dissatisfied with taxation.

454 to 458 (both inclusive)—Are as to time, computation of, etc.; they explain themselves.

Computation of time.

459—As to time of service of pleadings, notices, summonses, orders and proceedings; it explains itself.

Service of proceedings.

460—Long vacation, no pleadings to be amended or delivered unless by consent or by direction of Court or Judge.

Long vacation.

461—Long vacation excluded in computation of time for filing, amending or delivering pleadings, or in time allowed for other purposes for which the same is not reckoned by the practice of the Courts consolidated by the Act, or any or either of them, or for like proceedings substituted by the Act or these rules unless otherwise directed by Court or Judge.

Long vacation.

463—The costs of an application to extend the time for taking any proceedings shall, in the absence of an order by the Court or Judge directing by whom they are to be paid, be in the discretion of the taxing master.

Cost of application to extend time.

486—Abolishes County Court terms, and establishing sittings of the Court for same period as the terms.

Abolishing C. C. terms. Establishing sittings.

487—Altering sittings of County Court from Monday to Tuesday.

Alteration of C. C. sittings.

488—Power to County Court Judges to sit at any time.

Power of Court to sit.

489—Costs of action where no jurisdiction.

Costs, where no jurisdiction

490—Subject to provisions of the Act and to Rules, the pleadings, practice and procedure, for the time being, of the High Court of Justice shall apply and extend to County Courts whenever the present pleadings, practice and procedure of the County Courts correspond with those of the Superior Courts of Law.

Practice and Procedure of High Court to apply to County Court.

493—As to how pending business is to be proceeded with, this rule explains itself.

Pending business.

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As I have before said, everything laid down or directed or suggested about the Act must, in the nature of things, be provisional, and I have no doubt that it may in the future be held that many of the above statements or suggestions made under the Act or its rules are incorrect. I at present have been unable to get satisfactory light on most of the points arising; indeed I have had little time to search, as my whole vacation has been occupied one way or another in working the Courts—making preparations under the Act, preparing tariffs, precepts, rules, etc.

I do not know what arrangements may be made for the future. It will depend on the action taken under this Act as to whether the relations heretofore existing between you and myself will continue; if they do not, I will now take my leave of you, hoping that our relations in the past have been of a mutually friendly character, and of some benefit to both. If in the discharge of the duties devolving on me in connection with you anything unpleasant may have occurred, let it be forgotten by both. I, at any rate, shall continue to remember with pleasure your general kindness towards myself. That my successor may discharge his duties towards you with much more ability than I have, is very probable, but do what he will he can never have a more hearty desire to instruct you in your duties, to do it pleasantly and efficiently, and to forward your general welfare, than has actuated me since I first entered upon the duties I have now for years, however inefficiently, fulfilled.

Adjourned at six p.m. To meet to-morrow morning at ten o'clock.

18th August, 1881.

President in the Chair.

Discussion on the Judicature Act resumed. The answers and explanations appear in the paper read by the President.

Moved by Mr. McGuin, seconded by Mr. Northrup, That the next annual meeting of this Association be held in Osgoode Hall, City of Toronto, on the eighteenth day of August, 1882.—*Carried.*

On motion of Mr. Northrup, seconded by Mr. Grace, Messrs. Willson, Campbell, McDonald, and the mover and seconder, were appointed a Committee on Legislation—Mr. Willson, Chairman.

Moved by William Gunn, seconded by William Grace, That the members of the Association of County Court Clerks present at this the last annual meeting under the present constitution and procedure of the Courts of Law, and on the eve of the introduction of the new order of things under the Judicature Act passed at the late Session of the Legislature of Ontario, cannot separate without recording their profound sense and appreciation of the valuable services rendered to the Association by M. B. Jackson, Esq., as President of this Association, in presiding over our meetings, and in so freely and fully communicating to the members so much necessary and useful information in relation to the duties of their offices; the kindness and consideration by which his intercourse with them has been characterized, as well also in his position of Inspector of Offices, the success which has resulted from his efforts in that capacity in establishing uniformity in the practice of the offices, and in the mode of conducting the business of the Courts, together with his readiness at all times to answer all questions, and impart information on the many points submitted to him. The members also beg to record their recognition of the manner in which Mr. Jackson has combined zeal, firmness, and fidelity in the interests of the public, with great consideration and kindness towards the members of this Association; and they trust that in the public interests his present relations to this Association may be continued under the new order of things.—*Carried.*

Moved by Mr. Grace, seconded by Mr. McGuin, That the thanks of this meeting be tendered to Messrs. McDougall and Austin for the action taken by them, in connection with the mover, in procuring recent

legislation to the advantage of the members of this Association.—*Carried.*

On motion of Mr. Rice, seconded by Mr. Inglis, minutes of this meeting and paper read by the President were ordered to be printed and forwarded to members who pay the annual fee of one dollar.

A. G. NORTHRUP,
Secretary.

The foregoing is the address I read to you on the seventeenth of August, except that it is corrected in some particulars, and more fully explained in others, in accordance with Rules passed by the Court, directions of the Government, decisions, etc. I now would like to draw your attention to some matters as to which I have advised clerks since I met you, and which are not referred to heretofore.

Stamps on summons. One dollar stamp on a writ of summons is all that can be charged—it includes charge for seal.

Certified copy of proceedings. The certified copy of pleadings, under Rule 262, should be made up in same manner as former *Nisi Prius* Record. The certificate on back would be very nearly as formerly, except that, instead of "examined and passed," as formerly, it would be, "I certify the within to be a true copy of the whole of the pleadings in the within action." I would charge for, and treat the certified copy of proceedings as the old record—that is, one dollar for examining and certifying, etc.

Commissioners to take affidavits. Any commissioner for taking affidavits can now take or administer affidavits in the High Court.

Ejectment. In an action to recover land, where writ issued under old practice, the subsequent proceedings must be under the new.

Stamps when process seal affixed. Any writ or document, such as *fi. fa.*, etc., which has the seal of the Clerk of Process on, and which, before issuing, the clerk must stamp with his local seal, does not need any stamp for the local seal—the stamp for the process seal covers both.

Entry of cases commenced under old practice. Any action which previously to the Judicature Act was entered in the old procedure book, I would continue the entries in same book. But if a writ issued under the old practice, and an appearance comes in since the Judicature Act, I would enter it in new procedure book, and continue entries in it.

Use of old C. C. books.

It would appear to me that in the County Court you might continue to use such books as would apply to the new practice, if there is much of them left unused. Leave a blank sheet between the old and new practice, and make it a kind of title page to the new.

Entry as to infants, administration suits, etc., in procedure book.

All entries which would heretofore have been made by a deputy registrar in Chancery in his registrar's book, should now be entered in procedure book—such as, examination of infants, administration suits, etc. Remember the registrar's book is a very distinct book from the Master's book, with which the registrar has nothing to do.

Issuing writs in Chancery Division.

When a deputy clerk is not a local registrar he cannot issue any writ of summons in a case in the Chancery Division.

Filing memorandum of judgment and certificate as to costs.

The memorandum of judgment, and any certificate as to costs, each is a filing, and should be stamped as such.

Disbursements in cases in Chancery Division.

Under Rule 432, Orders, disbursements in Chancery Division are to be on Common Law scale until altered, therefore such a summons issued from office of local registrar should have a one dollar stamp. If issued by a deputy registrar a fifty cent stamp, because the other fifty cents is the registrar's perquisite.

Examinations of course in C. L. Divisions.

In the Common Law Divisions examinations of the parties as a matter of course by appointment of clerk cannot be had until after issue joined.

Return of examinations.

It would be well if examiners would remember the directions of the Statute, and return all examinations taken by them to the office out of which the writ in the case issued, and that examination and papers attached must be filed, and stamps should be affixed sufficient to pay for filings. A proper observance of these directions would save a great deal of trouble.

Searches and certificates.

As to searches and certificates, it will depend on circumstances whether one or more is required. Supposing you were required to certify as to what judgments were against John Brown—you would charge a search for each judgment, but the result of the searches could be embodied in one certificate. But if there were distinct facts and circumstances peculiar to each judgment, and were required to be certified, it would then, it seems to me, be necessary to have a certificate in each case, particularly if the certificate was to be used in evidence. But where a number of judgments are between different parties, having nothing to do with

each other, and it is not a John Brown case, separate certificates must be given.

Plain, legible writing. Any paper presented to an officer as a filing, or for signature, should be written in a plain, legible hand, and should not be a mere draft, full of erasures and interlineations; and I think the officer would be justified in refusing to sign any paper substantially violating this rule.

Docketing. As the law now stands each judgment must be entered in the judgment book, under Rule 325, and also docketed, under Rule 419. Do not confound the two books, as they are totally different in every particular. I will do all I can to get the docketing done away with, but until a rule is made to that effect judgments must be docketed as usual.

Remanets. I think remanets remain as before Judicature Act, and need not be re-entered.

***Præcipe* to enter cause.** The *præcipe* requiring a cause to be entered for trial is an ordinary filing.

Charge on certified copies—allowance to clerks. The certified copy of pleadings are instead of the record, and should be charged for as for passing record; and this charge will be subject, as it previously was, to the Act allowing clerks three dollars on records entered for trial.

High Court criminal subpœnas. Criminal subpœnas are supplied you from the process office, and should be in the High Court.

Costs on judgments by default in actions to recover lands. In judgments by default of appearance in actions to recover lands, under Rule 76 costs are only to be allowed under same conditions as they were allowed before the Judicature Act. But if judgment is after an appearance, and in default of defence or demurrer, costs are allowed as a matter of course.

Form of renewal. A writ may be renewed by a simple entry—"Renewed for one year from the day of , 188 ."

Copy of summons, Allowance for. I would tax fifty cents for a copy of summons left with clerk on issuing a writ of summons, or ten cents per folio.

Costs of Chamber proceedings. I have been asked whether the Judicature Act has made any alteration as to clerk's right to the costs of proceedings in Chambers before his County Judge. I do not think that there was any intention to make any alteration in this respect, but I would rather not say whether it does or not. I have not yet looked into the matter sufficiently to say that you are not to take the fees, and I think you will be quite justified in following the former course in this respect until it is held otherwise.

Judgment entry of costs. When you enter a judgment on one day and tax the costs on another, the entry of the taxation should be as in form

153; but when the judgment is entered and costs taxed at the same time, the entry should be in this respect as in form 147.

Returns by clerks.

I am not aware of anything dispensing with the usual returns heretofore required by the Government from clerks. I understand from the Clerk of Process that the writ books were furnished clerks by the Provincial Secretary.

Books under rules.

The book to be used under Rule 274 is the assize book; the book to be used under Rule 325 is the judgment book.

Date of judgment.

Rule 326 applies to date of judgment, requiring it to be dated the day it was pronounced, though judgment may not be entered up until some time afterwards.

Preparing Surrogate papers.

Section 65 of the Judicature Act does not interfere in any way with the right clerks heretofore had to prepare Surrogate papers, for which the fee of one dollar is allowed by the tariff.

Fees in contentious Surrogate cases.

The tariff of fees in the Surrogate rules apply only to non-contentious business, therefore it stands as though no tariff had been made in contentious business under cap. 46, secs. 70 and 71, R. S. O.; therefore contentious business is business in the County Court, and comes under the clause of the tariff of County Courts, providing for proceedings before County Court Judges not relating to suits. This will, therefore, entitle you to the same fees as you would be entitled to in County Court for analogous proceedings. This has been held to be so by the Court of Chancery; and I am informed that an unpublished rule was made, contemporaneously with the other Surrogate rules, ordering County Court costs to be allowed for contentious proceedings in the County Court. This rule has gone astray, and cannot be found.

Fees on examinations.

Under the Judicature Act, sec. 64, sub-sec. 5, I think the clerk is entitled to all the costs incident to the examinations, such as appointment return, etc., copy of same, and any copy of it given under the Act, making copy of examination given by the examiner, evidence, being C.L.P. Act, sec. 165, R.S.O. page 643.

Issuing executions after office hours.

Our Rule is not to issue or renew executions after office hours, but if a party was just finishing the entry of a judgment, and desired to issue execution upon it immediately after signing it, we would allow him to do so, although it might be after the hour for closing the office, it being merely a continuance of the transaction he had been engaged in. I may say, that in case of a *capias*, this rule might very properly be waived; as, for instance, when an

order for a *capias* was granted, and there was fear of justice being defeated by the defendant leaving the country at once. I would, in such a case, issue a *capias* at midnight, if necessary. I am not prepared to say that in no case would I issue execution after office hours: it may be to a certain extent optional with the officer, but if it is so, the option should be exercised with great care. Suppose, for instance, that it was shewn that the defendant was making a fraudulent disposition of his property, and that if execution was not issued a great wrong might be done, I think I would issue execution though it was after office hours.

Fees to local registrar on entering records.

Under 44 Vic., cap. 8, I would think a local registrar would be entitled to three dollars on each action entered for trial at the Assizes, which it seems to me would include actions brought in the Chancery Division, entered at the Assizes. I do not see how he can claim the eight dollars formerly paid on such cases; all the fees now payable on entering a case at the Chancery sittings will be two dollars in stamps, being the fee payable for entering a Record at the Assizes for trial without a jury.

Penalty of a bond.

The amount of the penalty of a bond cannot be made the subject of a special indorsement. So as to enable a plaintiff to sign a final judgment by default for want of an appearance, the damages must be assessed under the statute of William.

Certificate of taxing officer.

We consider the certificate of the taxing officer of the costs taxed merely as an allocatur, and requires no stamp on it except the ordinary filing stamp. I would think, in the county offices, where the costs are taxed and judgment entered by the same officer, that where costs are taxed and judgment entered at the same time, there need be no other certificate of costs than the usual entry by the officer, at the foot of the bill, of the costs having been taxed.

Division Court costs.

When by verdict, statute, or Rule of Court, a plaintiff is only entitled to Division Court costs, he can only get costs on that scale for all and every costs of all proceedings in the cause on entering judgment.

Witness' fees.

In a case tried in a county town in which the plaintiff was a manufacturer, a number of his employees were witnesses for him; the case was tried on the fifth day of the Assizes; it resulted in favour of plaintiff, who, on entering judgment, made the usual affidavit of disbursements, charging for each of his witnesses five days. I was asked should this be allowed, and if not, what should be allowed? I instructed to only allow for one day, being the day of the

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trial, the other days' attendance being unnecessary and unreasonable.

Writ books.

I have been written to by a number of clerks for Writ Book. I have nothing to do with these books, and have none of them. They must be obtained either from the Clerk of the Process or the Provincial Secretary.

Indexing.

It would save clerks some trouble if they would make one index do for the Process and Procedure Books, simply by having two columns opposite the names, one for number of Process Books, the other for number in Procedure Book.

To mark records as when entered.

I notice that at the last Assizes the clerks have mostly omitted to mark the certified copy of pleadings as of the day when entered for trial. This omission occasions a good deal of unnecessary trouble, besides being irregular and contrary to directions. The certified copy of pleadings should be treated as nearly as possible as the old record was treated formerly, and the certificate had better be, as usual, on the back. A good form would be: "I certify the within to be true copies of the whole of the pleadings in the within cause on file in my office."

Entry of cases in books.

When a clerk is a local registrar, he should enter all cases in all divisions in the Process and Procedure Books respectively, in rotation in the order in which they require to be entered; marking them as of their proper divisions, such as C.P., Q.B., or Chy.—being careful, of course, that in the Common Law suits the writs are issued alternately.

Transcripts from Division Courts.

Transcripts of judgment from the Division Courts to the County Courts, under secs. 165-166 R.S.O., cap. 47, need not be entered in the County Court judgment books; they need only be entered in the book prescribed by sec. 166.

Papers for revision.

When papers are required to be forwarded to Toronto for the purpose of having costs taxed or revised, they should be addressed to "The Taxing Officers, Supreme Court, Toronto," and sufficient postage should be sent with them to pay postage back to the officer sending same.

Papers for Chambers.

When papers are required to be forwarded to Toronto for use in Chambers, they should be directed to "The Clerk in Chambers, Toronto."

The Registrars of the Courts are not the proper parties to forward the papers to in the above two instances, and should not be inconvenienced by having them sent to their address.

Judgments in County Court.

Judgments in the County Court must be entered in a judgment book, the same as in the High Court.

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Stamping with seal in County Court.

Papers and proceedings in the County Court must be stamped with the seal of the local officer, the same as in the High Court.

Allowance for memorandum of judgment.

Item 134 of the tariff—$1.00 is allowed for every memorandum of judgment. The wording of the item is peculiar, but it was intended for all memoranda of judgments, and not only for those by default of appearance, and should be so allowed.

Commissioners—nature of interrogatories.

A commission to examine witnesses must be on written interrogatories in chief and cross. The power may also be added to administer oral interrogatories on matters arising out of the answers to the written ones. But a commission cannot be granted for examination on oral interrogatories only, except by consent of parties.

Costs of bill and service—attorney and client; Of taxation.

In taxing costs between attorney and client, nothing can be allowed for bill of costs, or attending to serve same, but if the result of the taxation entitles the attorney to costs, he would be entitled to the attendance on the taxation of the bill.

Foreclosure before and since Judicature Act—judgment, costs, etc.

In a case commenced by Bill in Chancery, before the Judicature Act, for foreclosure, no appearance, order *pro confesso* for foreclosure made—judgment should be entered under the Judicature Act. The form 176 would, of course, have to be modified to suit the facts, such as Bill must be substituted for Summons, etc., etc. No minutes of decree are required on such a judgment. The same fees are payable on entering such a judgment as if the judgment was entered in a Common Law decision. If a certified copy of the judgment is required by plaintiff, give it. I understand it has been usual in Chancery to allow for it in the costs. The costs on proceedings before the Judicature Act should be on the old Chancery scale. Costs of subsequent proceedings should be on the present scale.

Office hours, etc.—as to taking proceedings out of.

With regard to office hours, as I understand it, there is nothing illegal in a clerk discharging the duties of his office outside of office hours. It is really more a question of expediency than legality. I, personally, had a strong view that the proper course was to transact all business within office hours only. This course avoided all questions as to an officer giving preference to anyone. I originally had a regulation to this effect, but the Attorney-General thought differently, and struck it out. The principles on which I conduct my own office are as follows:—My extra duties generally keep me from one to two hours later in my office

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than any other officer. If I, after office hours, am asked to do anything, the doing of which is only a matter of accommodation, I always do it; but if the doing of it would work a prejudice to others, I decline. I do not issue or renew executions, or sign judgments out of office hours. This I qualify as follows: If a party is in the act of signing a judgment on which he desires to issue execution, and while it is being done the office hours lapse, I allow him to sign the judgment and issue execution on it. Then, again, if my doing the act out of office hours will prevent a fraud, I would do it; such as, if a defendant was running away, I would issue a *capias* at any time; so, if a defendant was making a fraudulent disposition of his goods, by sale or removal, etc., I would issue execution at any time. In acting on above rules, I am more influenced by the effect the act would have on parties not connected with the immediate suit or proceedings; such as if there were two suits against Jones—one by Brown, the other by Robinson. Suppose they both got a finding or direction at the Assizes, after office hours, entitling them to enter judgment at once; if I were to go to my office out of office hours, and sign judgment and issue execution for Brown, it would be invidiously distinguishing against Robinson, who, knowing that the office should be shut, rests satisfied, and goes to enter his judgment on the opening of the office next morning, and on doing so finds that Brown the day before had signed judgment and issued execution by the favour of the officer, and had thereby lost to Robinson the benefit of his judgment and execution. I think, under such circumstances, an officer would not like to be subject to the reflections Robinson might very justly cast upon him, owing to his having gone out of his way to sign judgment and issue execution for Brown the day before. It was not illegal for the officer to sign Brown's judgment and issue his execution as above, but I would consider it highly inexpedient. A very similar case to the above occurred once in Osgoode Hall, and I considered it a scandal on the administration of the office. My office has been governed by the above principles in all matters connected with it since it has been in my charge. It is very easy to apply them to transactions in the outer offices which cannot arise in the centre office.

Is case out of Court?

In a case where a writ of summons, specially indorsed, was served say 18 months ago, and no appearance entered, and nothing further done in the case by either party, I would allow plaintiff to sign judgment at his own risk.

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This I would do whether defendant was a sole defendant or one out of several. I did so in one case, after giving the matter the best consideration I could, and my doing so was approved of by a judge. It is hard to say what the law is in such a case, and whether the case is out of Court or not, and it being doubtful, the doubt was given in favour of the plaintiff leaving it to defendant to move if he thought it was wrong.

Issuing summons.

The usual way of issuing a writ of summons is for plaintiff to file a copy of the proposed writ—a *præcipe* is not now used. This copy should be allowed for on taxation at fifty cents, or ten cents per folio.

Costs—principle of allowance.

There is nothing whatever altering the principles which govern the exercise of the taxing officer's discretion in the allowance of costs at Common Law, except the new tariff, where it alters allowances, and equity has simply nothing to do with them. There is, in some quarters, an idea that the heretofore Chancery profusion is to govern, instead of the liberal moderation of Common Law. The reverse is the case—the liberal moderation of Common Law should prevail in all cases. Allowance of letters are regulated precisely as they were before, and the attendance to serve writs of summons, subpœna, etc., are simply prohibited by statute, and the affidavit of service of writ of summons by the Sheriff's tariff. A fee should be allowed on *præcipe* orders, such as orders to produce, for security for costs, to tax attorney's bill, etc. The only guide as to the length of a brief is the nature and importance of the case, the evidence of witnesses examined and briefed before the trial, and the documents required to be used. It is very hard to give definite instructions. The distinction to be drawn is between necessary and unnecessary matter, and to avoid prolixity, the entries of all matters must be concise—as short as the nature of the pleadings, documents and evidence will allow, consistently with an intelligent understanding of them. For instance: conveyances should be stated so as to shew only their effect; the same as to legal authorities, policies of insurance, agreements, bonds, etc.

Letters. Service of writs. Affidavits of service. *Præcipe* orders. Briefs.

Reporters' notes.

The allowance for reporters' notes, when they are for the purpose of a motion in Court after a trial, is, for the three copies furnished the judges, three cents a folio for each, or nine cents a folio for the three. The charge for a copy for Counsel, or for any other use than the Judges', is four cents a folio, and no more should be allowed to solicitors for any

copy of the evidence, although it was made out by himself, either by type-writing or ordinary hand-writing, and no matter for what purpose he might want to use it.

Solicitor's bill.

When a solicitor's bill has been delivered to a client, the client may, within 30 days thereafter, obtain a *præcipe* order for its taxation from the registrar or clerk of the office out of which the writ of summons issued.

***Præcipe* for judgment.**

We do not sign the *præcipe* for judgment; we merely indorse on the back of it: Judgment signed the day of , 188 , but do not sign it; we only file it, charge stamp for the filing, and sign the judgment in the judgment book.

Sec. 17, sub-sec. 10.

This applies to rules of law, not mere rules of practice. As to rules of practice as between Common Law and Chancery Divisions, that which is most convenient and best will be followed; up to the present time we have followed our own rules as being the most convenient and best, except in proceedings which in their nature proceed from Chancery.

Page 33, third line.

Form 147, mentioned in this line, should be 148.

Rule 428.—Old Acts as to costs done away with.

There is no doubt at all that it is held all the old Statutes as to costs are done away with. As I before mentioned in commenting on this rule, I did hope it was otherwise, and that rule 445 would have had the effect of keeping them in force, but the Courts in England have held otherwise.

Transfer of cases.

Under section 26, Judicature Act, and rule 392, actions can be transferred from one Division to another at any stage of the proceedings. When an action is so transferred from one Division to another—say from Chancery to Common Pleas—enter case as having been so transferred, and treat the case afterwards in every respect as a case in the Common Pleas Division, as to style of Court and in every other way.

Rules 275 and 329.

There seems to be somewhat of a conflict between these rules. Under the first it would seem that the certificate would not require the seal of the Court, while under the last it would appear that the same certificate does require the seal. I would, until it was held otherwise, act on the certificate under rule 275, without the seal.

Countermand Notice of trial, Costs on.

Where a notice of trial has been duly countermanded under the old practice, no costs of the day of defendant at the assizes for which notice was given could be allowed defendant; the very object of countermanding was to pre-

vent such costs. The only two items, even in costs of the cause, to which such proceedings could give rise that I can think of now are, having received notice of trial advising client, and having received notice of countermand advising client. It is a question now whether a notice of countermand can be given at all or not; the Judicature Act is silent on the subject, while the English Act only allows it to be given by consent. This will be a question for the Courts to decide.

Costs to abide event.

Where a finding or verdict is set aside, costs to abide event. If the party whose verdict was set aside succeeds on the second trial he will get the costs of the first trial, but if the other side succeeds on the second trial he will get no costs of the first trial. This applies under the new as well as the old practice.

Rule 428.—Costs.

Where a trial takes place before a jury, and a verdict is rendered for one cent, if no direction is given by the Judge the costs of the Court in which the action is brought will follow the event to the plaintiff. If the Judge has exercised his discretion by granting, refusing, or limiting costs, the Court will not interfere with, or review it; but if, at the trial, no direction is given as to costs, and even if no direction is asked or moved for, application can be made to the Divisional Court to pass on the question, and give such direction as to costs as to it shall seem meet, though the Judge himself would be powerless to interfere, no application having been made to him *at the trial*. The above does not apply to a trial before the Judge alone, in which case, as far as I can at present see, the question of costs is in the sole discretion of the Judge who tried the cause; and in case no order as to costs is given by him, neither party get any costs. In the County Court, it appears to me that the sittings of the Court, corresponding to its former term, would be analogous to and correspond with the sittings of the Divisional Court, and directions as to costs could be given the same as in the Divisional Court, when omitted to be given at the trial.

Rule 270.—Directions as to judgment.

This rule directs that the Judge may, at or after the trial, direct that judgment be entered for any or either party, etc. This rule applies to a trial before the Judge himself, and it may be a question whether it applies to a trial by a Judge and Jury, but until it is held otherwise I would enter judgment on the verdict of a jury without direction of a Judge, always stating to the party desiring to enter it, that it was so entered at his own risk.

On an ordinary application for Probate the following appears to me to be the fees the Surrogate Clerk is entitled to:—

Surrogate fees.

Item	Fee
Receiving and entering application for Probate and transmitting notice to Surrogate	$0 50
Postage	
Receiving and entering certificate of Surrogate Clerk	0 20
Preparing all necessary affidavits, though they may have been prepared by Solicitor	1 00
Fee on grant, according to amount	
Probate under seal	0 50
Recording Will, 10 cents per folio	
Transcript of Will, do	
Certified copy of Will, do	
Notice of grant to Surrogate Court	0 25
Postage	

For Administration the same as above, except that Clerk is entitled to $1 for Administration Bond, whether prepared by him or not, and, of course, less the copying of the will, which is not done, there being no will, except in cases of Administration with the will annexed, when he gets also the copying of the will at ten cents per folio.

Orders or judgments by local Judges, Rules 325 and 418.

Orders or Judgments made for Foreclosure or Sale by local Judges, are, as far as I can at present determine, Judgments which should be entered in the Judgment Book under Rule 325, and come within the exception mentioned in Rule 418, and do not require to be entered at Toronto; but should be treated the same as any other Judgment. (*See* Rules 78 and 79, and Forms 168 and 169, where they are spoken of as Orders or Judgments.)

Security for costs.—Præcipe Orders, Rule 431.

Præcipe Orders for security for costs, under Rule 431, are granted on production of the copy of the summons served. If there should be any doubt about the matter, the copy of the writ filed on issuing the original could be referred to, or at most an affidavit could be required that the copy produced is the copy served. The defendant cannot possibly produce the original writ without plaintiff's consent, which is not likely to be given, we grant the Orders on production of copy. If it should be improperly obtained, plaintiff could set it aside with costs.

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You will see that some portion of this has been written after a former portion had been written, and when it was too late to make the alterations in the proper places, such as under the proper section or rule of the Judicature Act. I have endeavoured to give you the benefit of the holdings and practice under the Act up to the latest date. I regret much the delay that has occurred, but it has been unavoidable in your own interest; and hoping that you may find the foregoing of some benefit in working out the new practice,

I am, Gentlemen,

Yours very truly.

M. B. JACKSON.