

162. Any decision of a Judge at chambers on the settlement of issues shall be subject to appeal to the Court.

SPECIAL CASES.

163. The parties may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs, numbered consecutively, and shall concisely state such facts and documents as may be necessary to decide the questions raised thereby. Upon the argument of such case, the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or of law, which might have been drawn therefrom, if proved at the trial.

164. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and if a defendant, to have his defence (if any) struck out, and to be placed in the same position as if he had not defended, and the party obtaining the order may apply to the Court or a Judge for a further order to that effect, and an order may be made accordingly.

165. Service of an order for discovery or inspection made against any party on his solicitor at his address for service, shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show, in answer to the application, that he had no notice or knowledge of the order.

166. A solicitor upon whom an order against any party for discovery or inspection is served under the last rule, who neglects, without reasonable excuse, to give notice thereof to his client, shall be liable to attachment.

ADMISSION OF DOCUMENTS.

167. Either party may call upon the other by notice to admit any document, saving all just exceptions, and in case of refusal or neglect to admit after such notice, the cost of proving any such document shall be paid by the party neglecting or refusing, whatever the result of the trial may be, unless at the hearing or trial the Judge presiding at the trial certify that the refusal to admit was reasonable, and no costs of proving a document shall be allowed, unless such notice be given, except when the omission to give the notice is in the opinion of the taxing officer a saving of expense.

168. Notice to admit under the preceding rule need not be given in respect of any document referred to in a statement of claim, or of defence, or in a counter claim which the opposite party might have admitted in his statement of defence, or by notice under rule.

169. A notice to admit documents may be in the Form No. in the Schedule hereto.

170. An affidavit of the solicitor or his clerk of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to an affidavit, shall be sufficient evidence of such admissions.

EVIDENCE GENERALLY.

171. Evidence at the trial of any action, or any assessment of damages, shall be given by means of witnesses, who shall be examined *viva voce* in open Court, but the parties may agree that the evidence at the trial of any action, or any part of such evidence, may be given by affidavit, but the Court or a Judge may, even though no such agreement has been made, at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, or on any motion for judgment, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a Commissioner or Examiner. Provided, that where it appears to the Court or Judge that the other party desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit. Provided, further, that if a witness reside more than two hundred miles from the place of trial, he shall not be compellable to attend personally at the trial, but he may be examined as above mentioned, unless the Court or a Judge shall otherwise order.

WITNESSES.

172. Subpœnas to require the attendance of witnesses at the trial may be issued at any time after the time of filing the statement of defence has elapsed, or if the defendant be not required by these rules to file a statement of defence, at any time after issue of the writ of summons.

173. The writ of subpœna must be served on the witness personally, by leaving a copy thereof with the witness, but it shall not be necessary to show the original writ.

174. If any person whose attendance is required for examination at the trial of the action, or in any proceedings in the action, is in custody, the party requiring his attendance may apply to the Judge on affidavit, stating that he is a material witness and is in custody, whereupon it shall be lawful for the Judge to order that the officer in whose custody the witness is to bring the witness into Court at the trial, or to any place where proceedings in the action may be conducted or held, to be there examined as a witness.

175. On serving the order upon the officer there shall be paid or tendered to him his reasonable charges for bringing the witness, and consequent thereon.

176. The Court or a Judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination, upon oath, before any officer of the Court or any other person or persons, and at any place, either within or beyond the limits of the colony, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms (if any) as the Court or a Judge may direct.