

ment which the opposite party against whom judgment has been given could have executed in his own favour, or for his own benefit; and all other persons who might have been required by such opposite party on a sale by himself to join in the conveyance, transfer, or assignment, or in the execution of such power, shall be bound to join with such officer in the same manner, and if they neglect or refuse so to do, or cannot be found, such officer may execute any conveyance, transfer, or assignment on their behalf.

382. For the purpose of issuing any notice under Rule 368, the party in whose favour any judgment has been given may at the trial of the action, after judgment has been given, or at any time thereafter upon summons in chambers, examine the party against whom judgment has been given—

- (1.) As to what debts are owing to him.
- (2.) Whether he is entitled to any property in the hands of any attorney, agent, or factor.
- (3.) Whether he is entitled to any estate, right, title, or interest, whether in possession, remainder, or reversion, or expectancy, and whether vested or contingent under any express or implied trust.
- (4.) Whether he has been or is engaged in carrying on business in partnership with any person.
- (5.) Whether he holds shares in any company incorporated or carrying on business in New Zealand.

PART V.—INCIDENTAL PROCEEDINGS IN AN ACTION.

MOTIONS.

383. Any application to the Court or to a Judge in Court not required to be made by petition may be made by motion.

384. A notice in writing of any intended motion must be served on the parties affected thereby, and a copy thereof filed in Court at least three clear days before the day named in the notice for hearing the motion.

385. The Court or a Judge may, however, on a motion *ex parte* make an order for such time and upon such terms as to costs or otherwise, and subject to such undertaking (if any) as the Court or such Judge may think just.

- (1.) When the Court or Judge is satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable injury
- (2.) When a motion *ex parte* is authorized by these rules or by statute.
- (3.) When the motion appears to affect the party moving only, or is in respect of a matter of routine, or of so unimportant a nature that the interests of any other party to the action cannot be affected thereby.

386. Any party or person against whom an order has been made *ex parte* under the last preceding rule, may at any time move to rescind such order.

387. When, by these rules or any statute, time is limited for making any motion, as, for example, in the case of motions for new trials, the motion shall be deemed to have been made in time if notice of motion has been served and filed within the time so limited.

388. Motions made on notice shall be set down and called upon in the order in which the respective notices of motion have been filed, and, if any party or person serving a notice of motion fail to appear in support of his motion, any party on whom such notice of motion has been served may apply to have the motion struck out, and the Court may make such order with reference thereto and to the payment of costs of such party as may appear just.

389. If, on the hearing of a motion, the Court or a Judge be of opinion that any person on whom notice has not been served ought to have or have had such notice, the Court or Judge may either dismiss the motion or adjourn the hearing thereof, in order that such notice may be served, upon such terms (if any) as the Court or Judge may think fit to impose.

390. Notices of motion shall state precisely the grounds on which it is intended to move; but the Court or a Judge may, except on motions for new trials, make an order on any other grounds if it shall seem expedient so to do.

391. The hearing of any motion may from time to time be adjourned, upon such terms (if any) as the Court or a Judge shall think fit.

392. The plaintiff may without special leave serve any notice of motion upon any defendant who, having been duly served with the writ of summons, has not filed his statement of defence within the time limited for that purpose.

393. The plaintiff may, by leave of the Court or a Judge, to be obtained *ex parte*, serve any notice of motion on any defendant along with the writ of summons, or, at any time after the service of the writ of summons, before the time limited for the defendant filing his statement of defence has expired.

394. No affidavit shall be heard in support of any motion unless such affidavit has been filed in the office of the Court at least two clear days before the day named in the notice for the hearing of the motion, nor can an affidavit be read in answer to any affidavit in support of the motion, unless it shall have been filed in the office of the Court before noon on the day preceding.

395. Affidavits made previously in the same cause and filed in the Court may be used on the argument of the motion, provided that the notice of the intention to use them has been given.

396. Upon any motion founded on affidavits it shall be lawful for either party, by leave of the Court or Judge, to read affidavits in answer to the affidavits of the other party upon any new matter arising out of such affidavits.

397. On hearing motions made on notice, the party giving notice is heard first in support of the motion, and then the parties opposing the motion are heard, and then the party moving is heard in reply.