

UNEDITED

# *The Queen's Bench Act*

*being*

Chapter Q-1 of *The Revised Statutes of Saskatchewan, 1978*  
(effective February 26, 1979).

**NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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## CHAPTER Q-1

### An Act respecting the Court of Queen's Bench

#### SHORT TITLE

##### Short title

1 This Act may be cited as *The Queen's Bench Act*.

R.S.S. 1978, c.Q-1, s.1.

#### INTERPRETATION

##### Interpretation

2 In this Act:

##### “action”

(a) “**action**” includes suit and means a civil proceeding commenced by writ, or in such other manner as is or may be prescribed by this Act or by rules of court;

##### “affidavit” “oath”

(b) “**affidavit**” or “**oath**” includes affirmation where authorized by law;

##### “cause”

(c) “**cause**” includes any action, suit or other original proceeding between a plaintiff and a defendant;

##### “court”

(d) “**court**” means Her Majesty's Court of Queen's Bench for Saskatchewan;

##### “defendant”

(e) “**defendant**” includes every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings;

##### “execution creditor”

(f) “**execution creditor**” includes an assignee of the execution creditor;

##### “judgment”

(g) “**judgment**” includes decree;

##### “local master”

(h) “**local master**” means a local master of Her Majesty's Court of Queen's Bench, and includes a judge of the District Court lawfully performing the duties of a local master of Her Majesty's Court of Queen's Bench;

##### “local registrar”

(i) “**local registrar**” means a local registrar of Her Majesty's Court of Queen's Bench for Saskatchewan, and includes his deputy and where the context requires, a process issuer;

##### “lunatic”

(j) “**lunatic**” includes an idiot or other person of unsound mind;

##### “matter”

(k) “**matter**” includes every proceeding in the court not in a cause;

##### “order”

(l) “**order**” includes rule;

**“originating summons”**

(m) **“originating summons”** means a summons by which proceedings are commenced without writ;

**“party”**

(n) **“party”** includes every person served with notice of, or attending, any proceedings, although not named in the record;

**“person”**

(o) **“person”** includes a body corporate or politic;

**“petitioner”**

(p) **“petitioner”** includes every person making application to the court, either by petition, motion or summons, otherwise than as against a defendant;

**“plaintiff”**

(q) **“plaintiff”** includes any person asking relief, otherwise than by way of counterclaim as a defendant, against any other person by any form of proceedings, whether the same is taken by action, suit, petition, motion, summons or other wise;

**“pleading”**

(r) **“pleading”** includes a petition or summons, other than a writ of summons, and also the statement in writing of the claim or demand of a plaintiff, and of the defence or the counterclaim of a defendant thereto, and of the reply of the plaintiff to a defence or counterclaim of a defendant , and of the defendant's rejoinder to such reply;

**“registrar”**

(s) **“registrar”** means the Registrar of Her Majesty 's Court of Queen's Bench for Saskatchewan, and includes his deputy;

**“rules of court”**

(t) **“rules of court”** means the rules provided for by this Act and includes forms;

**“sheriff”**

(u) **“sheriff”** includes deputy sheriff, duly appointed bailiffs, and, when occasion requires, coroner or other person dis charging the duties of sheriff in the particular case or for the time being.

R.S.S. 1965, c.73, s.2; R.S.S. 1978, c.Q-1, s.2.

## ORGANIZATION

**Continuation**

**3** The superior court of record in and for the province of Saskatchewan having civil and criminal jurisdiction and called Her Majesty's Court of Queen's Bench for Saskatchewan is hereby continued.

R.S.S. 1965, c.73, s.3; R.S.S. 1978, c.Q-1, s.3.

## QUEEN'S BENCH

c. Q-1

**Title**

4 The said Court of Queen's Bench shall during the reign of a queen be called Her Majesty's Court of Queen's Bench for Saskatchewan, and during the reign of a king His Majesty's Court of King's Bench for Saskatchewan; and in all writs, pleadings, petitions, notices, documents and proceedings in the court, the court shall be sufficiently designated by the words "In the Queen's Bench" or "In the King's Bench", as the case may be.

R.S.S. 1965, c.73, s.4; R.S.S. 1978, c.Q-1, s.4.

**Demise of Crown**

5 No action or other proceeding in any other court shall be discontinued or stayed by reason of the demise of the Crown, but the same shall be proceeded with as if such demise had not happened.

R.S.S. 1965, c.73, s.5; R.S.S. 1978, c.Q-1, s.5.

## SEAL OF COURT

**Seal**

6 The Lieutenant Governor in Council may from time to time determine the seal to be used in the court, by which its proceedings shall be certified and authenticated.

R.S.S. 1965, c.73, s.6; R.S.S. 1978, c.Q-1, s.6.

## JUDGES

**Judges**

7(1) The court shall consist of a chief justice, who shall be styled the Chief Justice of the Queen's Bench, and six other judges; and, subject to this Act and to any rules of court for the time being in force, the court may be held before the chief justice or before any one or more of the judges of the court.

(2) The Lieutenant Governor may at any time by proclamation increase or decrease the number of judges of the court and in the case of a decrease may provide for the decrease taking effect upon the occurrence of a vacancy in the court.

(3) For each office of judge of the court provided for by subsection (1) or by proclamation under subsection (2), there shall be the additional office of supernumerary judge of the court and each supernumerary judge shall hold himself available to perform such judicial duties as may be assigned to him from time to time by the Chief Justice of the Queen's Bench.

(4) Notwithstanding anything in The Court of Appeal Act, the judges of appeal shall not be required to preside over trials of criminal cases, but they may so preside when requested to do so by the Chief Justice of the Queen's Bench.

R.S.S. 1965, c.73, s.7; 1972, c.99, s.1; R.S.S. 1978, c.Q-1, s.7.

**Judges have equal power**

8 Save as in this Act otherwise expressly provided, all the judges and their successors shall have in all respects equal power, authority and jurisdiction.

R.S.S. 1965, c.73, s.8; R.S.S. 1978, c.Q-1, s.8.

## c. Q-1

## QUEEN'S BENCH

**Judges *ex officio* justices of the peace and coroners**

**9** The judges of the court shall be *ex officio* justices of the peace and coroners for the province.

R.S.S. 1965, c.73, s.9; R.S.S. 1978, c.Q-1, s.9.

**Oath of office**

**10** The oath to be taken by the chief justice and judges to be hereafter appointed shall be the following :

I, \_\_\_\_\_, do swear that I will well and truly serve our Sovereign Lady the Queen in the office of Chief Justice (*or* a Judge) of Her Majesty's Court of Queen's Bench for Saskatchewan, and that I will duly and faithfully, and according to the best of my skill and knowledge, exercise the powers and trusts reposed in me as Chief Justice (*or* a Judge) of the said court. So help me God.

R.S.S. 1965, c.73, s.10; R.S.S. 1978, c.Q-1, s.10.

**Same**

**11** Every judge of the court shall, before entering upon the duties of his office, take the oath in the form set forth in section 10, which oath shall be administered by the Lieutenant Governor, the chief justice of the court or any puisne judge of the court.

R.S.S. 1965, c.73, s.11; R.S.S. 1978, c.Q-1, s.11.

## JURISDICTION

**Jurisdiction of the court**

**12(1)** The court shall be a court of original jurisdiction, and shall in addition to any other jurisdiction, rights, powers, incidents, privileges and authorities that have hitherto been vested in or capable of being exercised within the province by the Supreme Court of Saskatchewan, possess the jurisdiction that in England, prior to *The Supreme Court of Judicature Act 1873*, was vested in and capable of being exercised by:

- (a) the High Court of Chancery as a common law court as well as a court of equity, including the jurisdiction of the Master of the Rolls as a judge or master of the Court of Chancery and any jurisdiction exercised by him in relation to the Court of Chancery as a common law court;
  - (b) the Court of Queen 's Bench;
  - (c) the Court of Common Pleas at Westminster;
  - (d) the Court of Exchequer as a court of revenue as well as a common law court;
  - (e) the Court of Probate;
  - (f) the courts created by commissions of assize, of Oyer and Terminer and of jail delivery, or any of such commissions.
- (2) The jurisdiction aforesaid shall include:
- (a) the jurisdiction that has hitherto been vested in or capable of being exercised by all or any one or more of the judges of the Supreme Court of Saskatchewan;

(b) the jurisdiction that in England, prior to the passing of *The Supreme Court of Judicature Act 1873*, was vested in, or capable of being exercised by, all or any one or more of the judges of the courts above mentioned sitting in court or chambers or elsewhere, when acting as judge in pursuance of any statute, law or custom; and all powers given to any such court or to any such judges or judge by any statute; and also all ministerial power, duties and authorities incident to any and every part of the jurisdiction so conferred.

(3) In respect of the jurisdiction and powers of the Lieutenant Governor as visitor of corporations, conferred by statute or other wise, the court shall, upon the direction of the Lieutenant Governor, have and exercise the jurisdiction and powers that in England, prior to the passing of *The Supreme Court of Judicature Act 1873*, were vested in, or capable of being exercised by, the Lord Chancellor representing the Crown as visitor of corporations.

R.S.S. 1965, c.73, s.12; R.S.S. 1978, c.Q-1, s.12.

**Jurisdiction, how exercised**

**13** The jurisdiction of the court shall be exercised, so far as regards the procedure and practice therein, in the manner provided by this Act and the rules of court in force in Saskatchewan, or in a manner provided by rules of court made from time to time under the authority of this Act; and as to all matters not expressly provided for by this Act or the said rules, the procedure and practice shall be regulated by analogy, or in such manner as the court upon application, either *ex parte* or upon notice, shall direct.

R.S.S. 1965, c.73, s.13; R.S.S. 1978, c.Q-1, s.13.

**Judges have powers of late Supreme Court judges**

**14** When by any law, statute or custom, hitherto in force in Saskatchewan, any jurisdiction, duty, power or authority, whether incident to the administration of justice or not, was conferred or imposed upon the judges of the Supreme Court of Saskatchewan, or upon any one of them, such jurisdiction, duty, power and authority shall, unless special provision be made to the contrary, be deemed to be conferred and imposed upon the judges of the court, and the same shall be exercised by them in as full and ample a manner as they were heretofore exercised within Saskatchewan by the said judges of the Supreme Court of Saskatchewan.

R.S.S. 1965, c.73, s.14; R.S.S. 1978, c.Q-1, s.14.

**Judges have jurisdiction throughout province**

**15** Every judge of the court shall have jurisdiction throughout Saskatchewan; and in all causes, matters and proceedings, other than such as are usually cognizable by a court sitting en bane, shall have and exercise all the powers, authorities and jurisdiction of the court.

R.S.S. 1965, c.73, s.15; R.S.S. 1978, c.Q-1, s.15.

**Powers of a single judge in court or chambers**

**16(1)** Any judge of the court may, subject to the rules of the court, exercise in court or in chambers all or any part of the jurisdiction by this Act vested in the court in all such causes and matters and in all such proceedings in any causes or matters as in England, before the passing of The Supreme Court of Judicature Act 1873, might have been heard in court or in chambers respectively by a single judge of any of the courts specified in section 12 and whose jurisdiction was thereby transferred to the high court, or as may be directed or authorized to be so heard by rules of court; in all such cases any judge sitting in court shall be deemed to constitute a court.

**Powers of a single judge in certiorari proceedings**

(2) Subject to any statute prohibiting or restricting proceedings by way of certiorari, a single judge shall in addition to his other powers have all the powers of the court as to proceedings by way of *certiorari* over the proceedings, orders, convictions and adjudications had, taken and made by justices of the peace and provincial magistrates and in addition thereto shall have the power of revising, amending, modifying or otherwise dealing with the same.

R.S.S. 1965, c.73, s.16; R.S.S. 1978, c.Q-1, s.16.

**Power to make vesting order**

**17** In every case in which the court has authority to order the execution of a deed, conveyance, transfer or assignment of any property, real or personal, the court may by order vest such real or personal estate in such person or persons and in such manner and for such estates as would be done by any such deed, conveyance, assignment or transfer if executed; and, thereupon, the order shall have the same effect as if the legal or other estate or interest in the property had been actually conveyed by deed or otherwise for the same estate or interest to the person in whom the same is so ordered to be vested, or, in the case of a chose in action, as if such chose in action had been actually assigned to such last mentioned person.

R.S.S. 1965, c.73, s.17; R.S.S. 1978, c.Q-1, s.17.

**Power to relieve against forfeiture**

**18(1)** The court shall have power to relieve against forfeiture for breach of a covenant or condition in a lease to insure against loss or damage by fire, where no loss or damage by fire has happened and the breach has in the opinion of the court been committed through accident or mistake or otherwise without fraud or gross negligence, and there is an insurance on foot at the time of the application to the court in conformity with the covenant to insure, upon such terms as to the court may seem fit.

(2) The court, where relief is granted, shall direct a record of the relief granted to be made by endorsement on the lease or otherwise.

R.S.S. 1965, c.73, s.18; R.S.S. 1978, c.Q-1, s.18.

**Application of section 18**

**19** Section 18 shall be applicable in the case of leases for a term of years absolute or determinable on a life or lives or otherwise, and also in the case of a lease for the life of the lessee or the life or lives of any other person or persons.

R.S.S. 1965, c.73, s.19; R.S.S. 1978, c.Q-1, s.19.

**Jurisdiction over lunatics**

**20** In the case of lunatics and their property and estates, the jurisdiction of the court shall, subject to the rules of court, include that which in England is conferred upon the Lord Chancellor by a commission from the Crown under the sign manual.

R.S.S. 1965, c.73, s.20; R.S.S. 1978, c.Q-1, s.20.

**Service on official administrator**

**21** Subject to *The Administration of Estate of Mentally Disordered Persons Act*, persons of unsound mind, not so found, for whom there is no committee or guardian, may, when required to be served with notice of any proceeding in or application to the court, be served by delivering to the official administrator for the judicial centre at which the proceeding or application is pending, a copy of the petition or other process required to be served, and from the time of such service the official administrator shall be the guardian or committee *ad litem* of the person of unsound mind, unless and until the court or judge otherwise orders, and the official administrator, or any other guardian appointed by the court for the person of unsound mind, shall take all proceedings that he may think necessary for the protection of the interests of the person of unsound mind, on whose behalf he is served in the said proceedings, and shall attend actively to the interests of such insane person.

R.S.S. 1965, c.73, s.21; R.S.S. 1978, c.Q-1, s.21.

**Service on Administrator of Estates**

**22(1)** In the case of a person of unsound mind detained in a public hospital for the insane in the province under any Act or law that may be from time to time in force, who has no other guardian and whom it is desired to serve with notice of any such proceeding or application, such person may be served by delivering a copy of the petition or other process to the Administrator of Estates, and from the time of such service the Administrator of Estates shall be the guardian *ad litem* of the person of unsound mind, unless and until the court or judge otherwise orders.

(2) All rules of court inconsistent with this and section 21 are hereby repealed insofar as they are so inconsistent.

R.S.S. 1965, c.73, s.22; R.S.S. 1978, c.Q-1, s.22.

**Appointment of representative in proceedings**

**23(1)** Where it appears that a deceased person who was interested in the matters in question has no personal representative, the court or a judge may either proceed in the absence of any person representing his estate or may appoint some person to represent the estate for all the purposes of the action or other proceeding, on such notice as may seem proper, notwithstanding that the estate in question may have a substantial interest in the matters, or that there may be active duties to be performed by the person so appointed, or that he may represent interests adverse to the plaintiff, or that administration of the estate whereof representation is sought is claimed, and the order so made and any orders consequent thereon shall bind the estate of such deceased person in the same manner as if a duly appointed personal representative of such person had been a party to the action or proceeding.

(2) Without restricting the generality of the foregoing, the court or a judge may exercise the powers given by subsection (1) in all proceedings to enforce payment of moneys secured by mortgage of land, or to enforce the observance of the covenants, agreements, stipulations or conditions contained in any such mortgage, or for the sale of the lands mortgaged or to foreclose any estate, interest or claim in or upon the lands mortgaged, or to redeem or discharge land from a mortgage, and in all proceedings by a vendor to enforce the covenants, agreements, stipulations or conditions contained in any contract or agreement for the sale of land, or to put an end to or rescind or cancel the same.

R.S.S. 1965, c.73, s.23; R.S.S. 1978, c.Q-1, s.23.

## RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

### **Judgment for restitution of conjugal rights**

**24(1)** If one party to a marriage refuses to cohabit with the other party, the court may in its discretion give a judgment for restitution of conjugal rights.

(2) No such judgment shall be enforced by attachment.

R.S.S. 1965, c.73, s.24; R.S.S. 1978, c.Q-1, s.24.

### **Grounds for judgment of judicial separation**

**25(1)** A judgment of judicial separation may be obtained from the court either by a husband or by a wife, if his wife or her husband, as the case may be, has since the celebration of marriage been guilty of:

- (a) adultery; or
- (b) cruelty; or
- (c) desertion without reasonable cause, for two years or upwards, or desertion constituted by the fact of the wife or husband, as the case may be, having failed to comply with a judgment for restitution of conjugal rights; or
- (d) sodomy or bestiality, or an attempt to commit either of these offences.

(2) If the defendant fails to comply with a judgment of the court for restitution of conjugal rights, the defendant shall thereupon be deemed to have been guilty of desertion without reasonable cause, and an action for judicial separation may be forthwith instituted and a judgment of judicial separation may be pronounced although a period of two years may not have elapsed since the failure to comply with the judgment for restitution of conjugal rights.

(3) In subsection (1) "cruelty" means conduct creating a danger to life, limb or health, or any course of conduct that in the opinion of the court is grossly insulting and intolerable or is of such character that the person seeking judicial separation could not reasonably be expected to be willing to live with the other after he or she has been guilty of the same.

R.S.S. 1965, c.73, s.25; R.S.S. 1978, c.Q-1, s.25.

**Jurisdiction of court to hear actions for judicial separation, etc.**

**26** The court shall have jurisdiction to hear an action for judicial separation or restitution of conjugal rights, or an application for alimony, when both the parties thereto:

- (a) are domiciled in Saskatchewan at the time of the commencement of the action; or
- (b) had a matrimonial home in Saskatchewan when their cohabitation ceased or when the events occurred on which the claim for separation is based; or
- (c) are resident in Saskatchewan at the time of the commencement of the action.

R.S.S. 1965, c.73, s.26; R.S.S. 1978, c.Q-1, s.26.

**Where judgment of judicial separation shall not be granted**

**27** No judgment of judicial separation shall be granted when it is made to appear to the court that the plaintiff has:

- (a) in any case where judicial separation is sought on the ground of adultery, been accessory to or connived at the adultery of the other party; or
- (b) condoned the matrimonial offence complained of; or
- (c) presented or prosecuted the claim in collusion with the respondent; or
- (d) during the existence of the marriage committed adultery which has not been condoned.

R.S.S. 1965, c.73, s.27; R.S.S. 1978, c.Q-1, s.27.

**Conduct conducing to adultery**

**28** A judgment of judicial separation may be refused when the claim has been presented on the grounds of adultery, and it is made to appeal to the court that the plaintiff has been guilty of conduct conducing to the adultery.

R.S.S. 1965, c.73, s.28; R.S.S. 1978, c.Q-1, s.28.

## ALIMONY, MAINTENANCE, ETC.

**Jurisdiction of court to grant alimony**

**29** The court shall have jurisdiction to grant alimony to a wife in an action limited to that object only, in any case where the wife would be entitled to a judgment of judicial separation or a judgment for restitution of conjugal rights.

R.S.S. 1965, c.73, s.29; R.S.S. 1978, c.Q-1, s.29.

**Interim order for payment of alimony to wife**

**30(1)** Upon application in an action for alimony or for dissolution of marriage, a decree of nullity of marriage, judicial separation or restitution of conjugal rights, an interim order for the payment of alimony to the wife *pendente lite* may be made, and in the event of an appeal the alimony may be continued by a further order until the determination of the appeal.

(2) No interim order shall be made where the wife has from any source whatsoever sufficient means of support independent of her husband.

(3) An interim order may direct the payment of periodical sums of money, and the amount of the alimony directed shall be in the discretion of the court.

R.S.S. 1965, c.73, s.30; R.S.S. 1978, c.Q-1, s.30.

**Interim order for disbursements**

**31** Upon application in an action for alimony or for dissolution of marriage, a decree of nullity of marriage, judicial separation or restitution of conjugal rights, the court may order from time to time the payment by the husband of such sums as the court may deem reasonable and proper on account of the necessary disbursements of the wife of and incidental to the action at such times, in such manner and to such persons as the court deems proper.

R.S.S. 1965, c.73, s.31; R.S.S. 1978, c.Q-1, s.31.

**Order for payment of alimony after judicial separation**

**32** Where a judgment of judicial separation has been or is given, and in an action for alimony, the court may order that the husband shall pay to the wife until further order, or during their joint lives or any shorter period, a periodical sum as alimony, and when a decree for restitution of conjugal rights is granted the court may make a similar order, to take effect in the event of non-compliance with the decree.

R.S.S. 1965, c.73, s.32; R.S.S. 1978, c.Q-1, s.32.

**Payments to wife after divorce or nullity of marriage**

**33(1)** Where a decree nisi for dissolution of marriage or a decree of nullity of marriage has been or is obtained, the court may order that the husband shall, to the satisfaction of the court, secure to the wife such annual sum of money for any term not exceeding her life as, having regard to her fortune, if any, to the ability of the husband and to the conduct of the parties, the court deems proper.

(2) In addition or in the alternative the court may if it thinks fit order that the husband shall pay to the wife during their joint lives such monthly or weekly sum for her maintenance and support as the court deems proper.

(3) In case of a decree nisi for dissolution of marriage an order may be made in favour of the wife notwithstanding that she may have been guilty of adultery.

R.S.S. 1965, c.73, s.33; R.S.S. 1978, c.Q-1, s.33.

**Disposition of property of marriage settlement by court**

**34** Where a decree absolute for dissolution of marriage or a decree of nullity of marriage has been or is obtained, the court may make such order as it deems proper with regard to the application, either for the benefit of the children of the marriage or of the parties to the marriage or both, of property comprised in any ante-nuptial or post-nuptial settlement made on the parties to the marriage.

R.S.S. 1965, c.73, s.34; R.S.S. 1978, c.Q-1, s.34.

**Settlement of property of wife upon judgment being granted**

**35** Where a husband obtains a judgment of judicial separation or a decree nisi for dissolution of marriage the court may order such settlement as it deems proper of any property to which the wife may be entitled in possession or reversion for the benefit of the innocent party and of the children of the marriage, or either or any of them.

R.S.S. 1965, c.73, s.35; R.S.S. 1978, c.Q-1, s.35.

**Settlement of property, etc., of wife upon judgment of restitution of conjugal rights given to husband**

**36** Where a husband obtains a judgment for restitution of conjugal rights and the wife is entitled to property, or is in receipt of any profits of trade or earnings, the court may order a settlement to be made of such property for the benefit of the husband and the children of the marriage, or either or any of them, or may order part of such profits of trade or earnings to be paid periodically to the husband for his own benefit, or to the husband or any other person for the benefit of the children of the marriage, or either or any of them.

R.S.S. 1965, c.73, s.36; R.S.S. 1978, c.Q-1, s.36.

**Variation of order for alimony or maintenance**

**37(1)** Where an order has been heretofore or is hereafter made for the payment of alimony, or for the payment of maintenance in any action for alimony or in any action for dissolution of marriage, judicial separation, a decree of nullity of marriage or restitution of conjugal rights, and it is made to appear to the court that the means of either the husband or the wife have increased or diminished respectively or that the wife has been guilty of misconduct or, being divorced, has married again, the court may from time to time vary or modify such order either by altering the times of payment or by increasing or diminishing the amount or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid whether in arrears or not and again revive the same wholly or in part, as the court deems proper.

(2) Subsection (1) shall apply *mutatis mutandis* where an order for the payment of maintenance for a child has been heretofore or is hereafter made in any action for alimony or in any action for dissolution of marriage, judicial separation, a decree of nullity of marriage or restitution of conjugal rights, and where such an order does not expressly prescribe the period during which the maintenance shall be paid the order shall apply only until the child attains the age of eighteen years unless the trial judge has expressly ordered that the maintenance shall continue beyond that age or unless the court is satisfied that exceptional circumstances warrant the continuance of maintenance beyond that age or beyond the age fixed by the trial judge.

R.S.S. 1965,c.73, s.37; R.S.S. 1978, c.Q-1, s.37.

**Injunction re disposal of property**

**38** The court may, after action brought, issue an order restraining the defendant in any action for alimony or upon the covenant for payment contained in a separation agreement from disposing of or encumbering his property, whether real or personal, pending the final disposition of such action save subject to any interest that the wife may subsequently acquire in the property under any judgment of the court.

R.S.S. 1965, c.73, s.38; R.S.S. 1978, c.Q-1, s.38.

**Disposal of property with intent to avoid compliance with order**

**39(1)** Where a person against whom an order for payment of alimony or maintenance has been heretofore or is hereafter made fails to comply with the order, the person to whom the alimony or maintenance is payable may procure, from the local registrar for the judicial centre nearest to which the debtor resides or carries on business, a summons requiring the debtor to appear before a judge in chambers at a time and place named in the summons, for the purpose of being examined on oath as to any disposal made by him of his property since the order was made; and if it appears to the judge, as a result of the examination of the debtor or the creditor or any witness produced by either of them, that the debtor has made or caused to be made any gift, delivery, sale, transfer or other disposal of property or has removed or concealed property, with intent to avoid compliance with the order, the judge may order the debtor to be committed to a common jail for any term not exceeding one year with or without hard labour.

(2) Any person imprisoned under subsection (1) shall, by leave of a judge given upon such conditions as to compliance with the order for payment of alimony or maintenance and such other conditions, including conditions as to payment of costs, as the judge deems fit, be discharged out of custody.

R.S.S. 1965, c.73, s.39; R.S.S. 1978, c.Q-1, s.39.

**Criminal conversation**

**40** The court shall have jurisdiction to entertain an action for criminal conversation. The law applicable to such actions shall be as it was in England prior to the abolition of such action in England; and the practice shall be the same as in other actions in the court, so far as it is applicable.

R.S.S. 1965, c.73, s.40; R.S.S. 1978, c.Q-1, s.40.

**Power to allow intervention on terms**

**41** In every case in which a person is charged with adultery with any party to a suit or in which the court may consider, in the interest of any person not already a party to the suit, that that person should be made a party to the suit, the court may, if it thinks fit, allow that person to intervene upon such terms, if any, as the court thinks just.

R.S.S. 1965, c.73, s.41; R.S.S. 1978, c.Q-1, s.41.

**Actions restraining obscene publications**

**42(1)** An action may be brought in the Court of Queen's Bench by or on behalf of the Attorney General for an injunction or *mandamus* restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter what soever that publishes, continuously or repeatedly, writings or articles that are obscene, immoral, or otherwise injurious to public morals.

(2) Such action may be brought against anyone printing, publishing or distributing any publication of the kind mentioned in subsection (1).

(3) In any such action the judge may, on such material as he sees fit, grant an interlocutory injunction or *mandamus*.

R.S.S. 1965, c.73, s.42; R.S.S. 1978, c.Q-1, s.42.

SITTINGS *EN BANC***When court sits *en banc***

43(1) The court shall sit *en banc* for the purpose of hearing any applications and disposing of any matters that may properly come or be brought before it, at any time when called together by the chief justice, or, in case of his absence from the province or illness, by the senior puisne justice of said court.

(2) The court for the purpose of sitting *en banc* shall be constituted by three or more of the judges thereof:

Provided that any two judges of the court sitting *en banc* may enlarge the hearing of any matter before the court.

(3) The sittings of the court *en banc* shall be held at the city of Regina or at the city of Saskatoon.

R.S.S. 1965, c.73, s.43; R.S.S. 1978, c.Q-1, s.43.

## RULES OF LAW

**Rules**

44 In every civil cause or matter commenced in the court law and equity shall be administered according to the following rules:

**Equitable estate, right or relief claimed by plaintiff**

1. If a plaintiff or petitioner claims to be entitled to any equitable estate or right or to relief upon any equitable ground against a deed, instrument or contract, or against any right, title or claim whatsoever asserted by a defendant or respondent in such cause or matter, or to relief founded upon a legal right, the court and every judge thereof shall give to the plaintiff or petitioner such relief as might have been given by the High Court of Justice in England on the first day of January, 1898, in a suit or proceeding for the same or a like purpose;

**Equitable estate, right or relief claimed by defendant**

2. If a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against a deed, instrument or contract or against any right, title or claim asserted by a plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to a claim of the plaintiff or petitioner in such cause or matter, the court and every judge thereof shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect by way of defence against the claim of the plaintiff or petitioner as the High Court of Justice in England might have given on the first day of January, 1898, if the same or like matters had been relied on by way of defence in any suit or proceeding instituted in that court for the same or a like purpose;

**Counterclaim and third parties**

3. The court and every judge thereof shall also have power to grant to a defendant in respect of any equitable estate or right or other matter of equity, and also in respect of any legal estate, right or title claimed or asserted by him, all such relief against a plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the court or any judge thereof might have granted in a suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief, relating to or connected with the original subject of the cause or matter and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of court or order of the court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to the cause or matter with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by the defendant;

**Equitable rights appearing incidentally**

4. The court and every judge thereof shall recognize and take notice of all equitable estates, titles and rights and all equitable duties and liabilities appearing incidentally in the course of a cause or matter in the same manner as the High Court of Justice in England on the first day January, 1898, would have recognized and taken notice of the same in any suit or proceeding duly instituted therein;

**Relief against penalties, forfeitures**

5. Subject to appeal as in other cases, the court shall have power to relieve against penalties and forfeitures, and in granting such relief to impose such terms as to costs, expenses, damages, compensation and all other matters as the court sees fit;

**No cause or proceeding restrained by prohibition or injunction**

6. No cause or proceeding at any time pending in the court shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained in England prior to the passing of The Supreme Court of Judicature Act 1873, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto:

Provided that nothing in this Act contained shall disable the court from directing a stay of proceedings in any cause or matter pending before it if it shall see fit; and any person, whether a party or not to any such cause or matter, who would have been entitled in England, prior to the passing of *The Supreme Court of Judicature Act 1873*, to apply to the court to restrain the prosecution thereof, or who may be entitled to enforce by attachment or otherwise any judgment, decree, rule or order contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the court by motion in a summary way for a stay of proceedings, either generally or so far as may be necessary for the purpose of justice; and the court shall thereupon make such order as shall be just;

**Multiplicity of proceedings avoided**

7. The court, in the exercise of its jurisdiction in every cause or matter pending before it, shall have power to grant and shall grant, either absolutely or on such reasonable terms and conditions as to it shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any such matters avoided;

**Relief of mortgagor in default**

8. In case default is made in the payment of money due under a mortgage or in the observance of a covenant contained therein, and under the terms of the mortgage by reason of such default the payment of other portions of the principal money is accelerated and such portions become presently due and payable, the mortgagor may, notwithstanding any provisions to the contrary and at any time before sale or before the grant of a final order of foreclosure, perform such covenant or pay such arrears as are in default, with costs to be taxed, and the mortgagor shall thereupon be relieved from immediate payment of so much of the money secured by the mortgage as may not have become payable by lapse of time;

**Relief of purchaser in default**

9. In case default has occurred in making any payment due under an agreement for sale of land or in the observance of any covenant therein contained, and under the terms of the agreement by reason of such default, the payment of other portions of the money is accelerated and such portions become presently due and payable, the purchaser may, notwithstanding any provision to the contrary, and at any time prior to final judgment in an action brought to enforce the rights of the vendor, perform such covenant or pay such arrears as are in default, with costs to be taxed, and the purchaser shall thereupon be relieved from immediate payment of so much of the purchase money as may not have become payable by lapse of time;

**Paragraphs 8 and 9 retroactive**

10. Paragraphs 8 and 9 shall apply to all mortgages and agreements for sale whether made prior or subsequent to the enactment of the same;

**Amendment of pleading in certain cases**

11. Where an action is brought to enforce any right, legal or equitable, the court may permit the amendment of any pleading or other proceeding therein upon such terms as to costs or otherwise as it deems just notwithstanding that, between the time of the issue of the writ and the application for amendment, the right of action would, but by reason of action brought, have been barred by the provisions of any statute; provided that such amendment does not involve a change of parties other than a change caused by the death of one of the parties.

R.S.S. 1965, c.73, s.44; R.S.S. 1978, c.Q-1, s.44.

**Rules**

**45** The law to be administered in this province as to the matters next hereinafter mentioned shall be as follows:

**Express trusts**

1. Subject to section 43 of *The Limitation of Actions Act*, no claim of a *cestui que trust* against his trustees for any property held on an express trust or in respect of any breach of such trust shall be held to be barred by any statute of limitations;

**Equitable waste**

2. An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste unless an intention to confer such right shall expressly appear by the instrument creating such estate;

**Merger**

3. There shall not be any merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity;

**Mortgagors of land, rights of action of**

4. A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of his intention to take possession of or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession or sue or distrain for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only unless the cause of action arises upon a lease or other contract made by him jointly with any other person and in that case he may sue or distrain jointly with such other person;

**Disputed assignment of a debt or other chose in action**

5. In case of the assignment of a debt or other chose in action, if the debtor, trustee or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or anyone claiming under him or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he thinks fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he thinks fit, pay the same into court under and in conformity with the provisions of any Act for the relief of trustees;

**Stipulations in contracts, as to time, etc.**

6. Stipulations in contracts as to time or otherwise which would not in England, prior to the passing of *The Supreme Court of Judicature Act 1873*, have been deemed to be or to have become of the essence of such contracts in a court of equity shall receive in the court the same construction and effect as they would have received in equity;

**Part performance, when satisfaction**

7. Part performance of an obligation, either before or after breach thereof, when expressly accepted by the creditor in satisfaction or rendered in pursuance of an agreement for that purpose, though without any new consideration, shall be held to extinguish the obligation;

**Interlocutory *mandamus***

8. A *mandamus* or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it shall appear to the court to be just or convenient that such order should be made; and such order may be made either unconditionally or upon such terms and conditions as the court shall think just; and if an injunction is asked, either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the court shall think fit whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or, if out of possession, does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable;

**Damages in addition to or instead of injunction or specific performance**

9. In all cases in which the court has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract or agreement or against the commission or continuance of any wrongful act or for the specific performance of any covenant, contract or agreement, the court may if it thinks fit award damages to the party injured either in addition to or in substitution for such injunction or specific performance, and such damages may be ascertained in such a manner as the court may direct, or the court may grant such other relief as it may deem just;

**Orders of court as against purchasers**

10. An order of the court under any statutory or other authority shall not as against a purchaser, whether with or without notice, be invalidated on the ground of want of jurisdiction or of want of any concurrence, consent, notice or service;

**Infants**

11. In all questions relating to the custody and education of infants the rules of equity shall prevail;

**Rules of equity prevail**

12. Generally, in all matters not hereinbefore particularly mentioned in which there is any conflict or variance between the rules of equity and common law with reference to the same matter, the rules of equity shall prevail;

**Minors**

13. Minors may sue for wages in the same way as if of full age;

**Negligence of fellow workmen no defence in action against employer**

14. It shall not be a good defence in law to any action against an employer, or the successor or legal representative of an employer, for damages for the injury or death of an employee of such employer, that such injury or death resulted from the negligence of an employee engaged in a common employment with the injured employee, any contract or agreement to the contrary notwithstanding;

**In action for publication of copy of report of Assembly defendant protected**

15. In case of any civil proceedings or prosecution against any person for or on account of or in respect of the publication of any copy of any report, papers, votes or proceedings of the Legislative Assembly, the defendant may at any stage of the proceedings lay before the court or judge such report, papers, votes or proceedings and the correctness of such copy; and the court or judge shall immediately stay such civil proceedings, and the same and every writ or process issued thereon shall be finally put an end to, deter mined and superseded by virtue of this Act;

**Evidence in such action**

16. It shall be lawful in any civil proceedings against any person for printing an extract from or abstract of any such report, papers, votes or proceedings to give in evidence under the general issue or denial such report, papers, votes or proceedings, and to show that such extract or abstract was published *bona fide* and without malice, and if such shall be the opinion of the court or sitting jury, as the case may be, judgment shall be rendered or a verdict shall be entered for the defendant;

**Declaratory judgments and orders**

17. No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is or can be claimed or not;

**Effect of giving time to a principal debtor**

18. Giving time to a principal debtor, or dealing with or altering the security held by the principal creditor, shall not of itself discharge a surety of guarantor; in such cases a surety or guarantor shall be entitled to set up such giving of time or dealing with or alteration of the security as a defence, but the same shall be allowed insofar only as it shall be shown that the surety has thereby been prejudiced;

**Power of court to order sale of real estate**

19. If in any cause or matter relating to any real estate, it shall appear necessary or expedient that the real estate or any part thereof should be sold, the court or a judge may order the same to be sold, and any party bound by the order and in possession of the estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as may be thereby directed;

**Injunction in labour dispute**

20.(1) No injunction to restrain any person from doing any act in connection with any labour dispute shall be made *ex parte*.

(2) A copy of every affidavit intended to be used in support of an application for an interim injunction to restrain any person from doing any act in connection with any labour dispute shall be served with the notice of motion, and every such affidavit shall be confined to such facts as the deponent is able of his own knowledge to prove.

(3) Where members of a trade union within the meaning of The Trade Union Act are the defendants or intended defendants, any such notice of motion may be served on the president, vice-president, secretary, treasurer, secretary treasurer or any other officer, or the financial secretary or business agent, of the trade union, resident in Saskatchewan or, if no such person is resident in Saskatchewan, on any employee of the plaintiff or intended plaintiff who is a shop steward, agent or other representative, by whatever name or title he may be known, of such trade union.

(4) If upon *ex parte* application to a judge it is made to appear that from any cause prompt service of the notice of motion cannot be effected on any of the persons mentioned in subparagraph (3) the judge may make an order for substituted service, or for the substitution in lieu of service of such notice by advertisement or otherwise as will in all reasonable probability ensure that notice of the motion will be brought to the defendants or intended defendants.

(5) Nothing in this paragraph shall be deemed to authorize an action or proceedings against a trade union or to permit a trade union to be made a party to an action in any court.

(6) In this paragraph "labour dispute" means any dispute or difference between an employer and one or more employees or a trade union within the meaning of *The Trade Union Act*, as to matters or things affecting or relating to work done or to be done by such employee or employees or trade union, or as to the privileges, rights, duties or conditions of employment of such employee or employees or trade union;

**Appointments of beneficiaries under employee benefit plans**

21.(1) In this subparagraph and subparagraphs (2) and (3) :

(a) "employee" means an employee or former employee who is participating in a plan;

(b) "employer" includes the trustee under a plan;

(c) "plan" means an employee pension, retirement, welfare or profit-sharing fund or plan.

(2) Where in accordance with the terms of a plan an employee has designated a person or persons to receive a benefit payable under the plan in the event of the employee's death:

(a) the employer is discharged upon paying to such person or persons the amount of the benefit;

(b) such person or persons may upon the death of the employee enforce payment of the benefit, but the employer is entitled to set up any defence that he could have set up against the employee or his personal representatives.

(3) An employee may from time to time alter or revoke a designation made under a plan but any such alteration or revocation may be made only in the manner set forth in the plan.

(4) This paragraph does not apply to a designation of a beneficiary to which *The Saskatchewan Insurance Act*, applies;

**Rules as to perpetuities and accumulations not applicable to employee benefit trusts**

22. The rules of law and statutory enactments relating to perpetuities and to accumulations do not apply and shall be deemed never to have applied to the trusts of a plan, trust or fund established for the purpose of providing pensions, retirement allowances, annuities, or sickness, death or other benefits to employees or to their widows, dependants or other beneficiaries.

**Appointments of beneficiaries under retirement savings plan under the *Income Tax Act (Canada)***

23.(1) In this subparagraph and subparagraphs (2) and (3):

(a) “investment corporation” means a corporation that is approved by the Governor in Council for the purposes of section 146 of the *Income Tax Act (Canada)* and that issues investment contracts as described in that section;

(b) “planholder” means a person, not being a corporation, who has entered into a retirement savings plan with a trustee or with an investment corporation;

(c) “retirement savings plan” means an arrangement that is defined to be a retirement savings plan by the *Income Tax Act (Canada)* for the purposes of that Act;

(d) “trustee” means a corporation that is a trustee under a retirement savings plan.

(2) Where, in accordance with the terms of a retirement savings plan, a planholder has designated a person or persons to receive a benefit payable under the retirement savings plan in the event of the planholder's death:

(a) the trustee or the investment corporation that is a party to the retirement savings plan is discharged upon paying to such person or persons the amount of the benefit;

(b) such person or persons may, upon the death of the planholder, enforce payment of the benefit, but the trustee or investment corporation that is a party to the retirement savings plan is entitled to set up any defence that the trustee or investment corporation could have set up against the planholder or his personal representatives.

(3) A planholder may from time to time make a designation or alter or revoke a designation made under a retirement savings plan, but any such making, alteration or revocation of a designation may be made only in the manner set forth in the retirement savings plan.

(4) This paragraph does not apply to a designation of a beneficiary to which *The Saskatchewan Insurance Act* applies.

R.S.S. 1965, c.73, s.45; 1974-75, c.37, s.1; R.S.S. 1978, c.Q-1, s.45.

## INTEREST

**Interest payable as heretofore**

46 Interest shall be payable in all cases in which it is now payable by law, or in which it has been usual for a jury to allow it.

R.S.S. 1965, c.73, s.46; R.S.S. 1978, c.Q-1, s.46.

**When allowable on debts certain and overdue**

47(1) On the trial of an issue, or on an assessment of damages, upon a debt or sum certain, payable by virtue of a written instrument at a time certain, interest may be allowed from the time when the debt or sum became payable.

**When allowable after demand of payment**

(2) If such debt or sum is payable otherwise than by virtue of a written instrument at a time certain, interest may be allowed from the time when a demand of payment was made in writing, informing the debtor that interest would be claimed from the date of the demand.

**Interest by way of damages in certain actions**

(3) In actions for the conversions of goods or for trespass *de bonis asportatis*, the jury may give interest in the nature of damages over and above the value of the goods at the time of the conversion or seizure, and in actions on policies of insurance may give interest over and above the money recoverable thereon.

**Interest on judgments**

(4) Unless otherwise ordered by the court, a verdict or judgment shall bear interest from the time of the rendering of the verdict, or of giving the judgment, as the case may be, notwithstanding that the entry of judgment shall have been suspended by any proceeding in the action including an appeal.

R.S.S. 1965, c.73, s.47; R.S.S. 1978, c.Q-1, s.47.

### CERTIFICATE OF *LIS PENDENS*

**Actions, etc., not notice unless certificate registered**

48(1) The institution of an action or the taking of a proceeding, in which any title to or interest in land is brought in question, shall not be deemed notice of the action or proceeding to any person not a party to it, until a certificate signed by the proper officer of the court has been registered in the land titles office of the land registration district in which the land is situate.

(2) The certificate may be in the following form:

(I) certify that in an action or proceeding in Her Majesty's Court of Queen's Bench for Saskatchewan, between *A.B.*, of \_\_\_\_\_, and *C.D.* of \_\_\_\_\_, some title or interest is called in question in the following land (*describing it*).

Dated at (*stating date and place*).

(3) Subsection (I) does not apply to an action or proceedings for foreclosure or sale upon a registered mortgage or to an action or proceeding for cancellation or sale upon an agreement for the sale of land of which the plaintiff is the registered owner.

R.S.S. 1965, c.73, s.48; R.S.S. 1978, c.Q-1, s.48.

**Order vacating certificate on failure to prosecute action**

49(1) Where a certificate is registered, and the plaintiff or other party at whose instance it was issued, does not in good faith prosecute the action or proceeding, a judge of the court may at any time make an order vacating the certificate.

(2) Where a certificate is registered, and the plaintiff's claim is not solely to recover land, or an estate or interest in land, but to recover money or money's worth, chargeable on or payable out of land, or some estate or interest in it, or for the payment of which he claims that the land or such estate or interest ought to be subjected, or where the plaintiff claims land or some estate or interest in land, and in the alternative, damages or compensation in money or money's worth, a judge of the court may at any time make an order vacating the certificate upon such terms as to giving security or otherwise as may be deemed just.

(3) A judge of the court may at any time vacate the registration upon any other ground which may be deemed just.

(4) On an application under this section the judge may order any of the parties to the application to pay the costs of any of the other parties to it, or may make any other order with respect to costs, that under all the circumstances may be deemed just.

(5) The order vacating a certificate shall be subject to appeal according to the practice in like cases and may be registered, in the same manner as an order of the court or a judge affecting land, on or after the fourteenth day from the date of the order, unless the order is meanwhile reversed or its registration is postponed or for bidden.

(6) Where a certificate is vacated, any person may deal with the land as fully as if the certificate had not been registered, and it shall not be incumbent on any purchaser or mortgagee to inquire as to the allegations in the action or proceeding, and his rights shall not be affected by his being aware of such allegations.

R.S.S. 1965, c.73, s.49; R.S.S. 1978, c.Q-1, s.49.

## PHYSICAL EXAMINATION OF PARTIES

### **Examination of party by medical practitioner**

**50(1)** In any action brought to recover damages or other compensation for or in respect of bodily injuries sustained by any person, the court may order that the person, in respect of whose injury the damages or compensation is sought, shall submit to be examined by one or more duly qualified medical practitioners, whom neither party proposes to call as a witness or witnesses at the trial of the action.

(2) Such examination shall be as full and complete by X-ray or otherwise, as the medical practitioner or practitioners deem necessary to ascertain the extent of the injuries alleged to have been sustained by such person, the cause or causes of the injuries and their probable duration; and such person shall answer all proper questions submitted to him by the medical practitioner or practitioners.

(3) A full report of the examination shall be made by the medical practitioner or practitioners and copies thereof shall be filed in court and delivered to the parties interested or their respective solicitors.

(4) One medical adviser for each of the parties may be present on such examination.

(5) No examination shall be made until due notice thereof has been given to the parties or their respective solicitors.

(6) The costs of such examination or examinations shall in the first instance be borne by the party asking the same insofar as the costs of the medical practitioner or practitioners are concerned, but may be treated as costs in the cause by the trial judge.

(7) Any medical practitioner who makes an examination under this section may by *ex parte* order of the court be called as a witness at the trial, in which case he shall not be deemed to be a witness called by either party.

(8) Failure without excuse to submit to examination at such times and places as such medical practitioner or practitioners shall appoint shall be a ground for a stay of all proceedings in the action or for a dismissal thereof, in the discretion of the court.

R.S.S. 1965, c.73, s.50; R.S.S. 1978, c.Q-1, s.50.

### TENDER OF AMENDS IN CASE OF TORTS

#### Effect of tender

**51** A person who has committed a wrong, giving a cause of action for the recovery of damages to the person wronged, may at any time before action tender amends; and the tender shall have the same effect as a tender in an action for the recovery of a debt.

R.S.S. 1965, c.73, s.51; R.S.S. 1978, c.Q-1, s.51.

### JUDICIAL CENTRES

#### Judicial centres

**52** For the purposes of this Act there shall be such judicial centres as are or may be from time to time provided for by or under *The District Court Act*.

R.S.S. 1965, c.73, s.52; R.S.S. 1978, c.Q-1, s.52.

### ENTRY AND TRIAL OF ACTIONS

#### Where action to be brought and tried, where appearance may be entered, transfer of action and endorsement of writ of summons

**53(1)** Subject to the following subsections, all actions shall be commenced and unless otherwise ordered tried at:

- (a) the judicial centre nearest to the place where the cause of action arose;
- (b) the judicial centre nearest to the place where the defendant or one of several defendants resides at the time the action is commenced; or
- (c) the judicial centre nearest to the place where the defendant or one of several defendants carries on business at the time the action is commenced:

Provided that where the venue has been settled by agreement in writing between the parties, the plaintiff may at his option exercise the rights given under such agreement, and for the purpose of this proviso where the place designated in any such agreement as the place where an action may be commenced is a place that was heretofore a judicial district it shall be deemed that the designated place is the judicial centre bearing the same name as the judicial district.

- (2) Except where the venue has been settled by agreement in writing between the parties, an action may be commenced at any judicial centre but, notwithstanding any rule of court, unless it is commenced at one of the judicial centres mentioned in subsection
- (a) the defendant may, if there is only one defendant, enter an appearance at any one of the judicial centres mentioned in subsection (1) and at the same time, or at any time before notice of trial of the action is given, file with the local registrar at such judicial centre a notice requesting that the action be transferred to that judicial centre;
  - (b) any defendant may, if there are two or more defendants, enter an appearance at the judicial centre where the action was commenced or at the judicial centre nearest to the place where the cause of action arose and at the same time, or at any time before notice of trial of the action is given, file with the local registrar at the judicial centre where the appearance is entered a notice requesting that the action be transferred to the judicial centre nearest to the place where the cause of action arose, or he may with the concurrence of the other defendant or defendants enter an appearance at any one of the judicial centres mentioned in subsection (1) and at the same time, or at any time before notice of trial of the action is given, file with the local registrar at such judicial centre a notice requesting that the action be transferred to the judicial centre specified in the notice, being one of the judicial centres mentioned in subsection (1).
- (3) Where an appearance is entered at a judicial centre other than that at which the action was commenced the local registrar shall forthwith forward the memorandum of appearance to the local registrar at the judicial centre at which the action was commenced.
- (4) Upon receipt by a local registrar of a notice under subsection (2) requesting that an action be transferred he shall forthwith request the local registrar at the judicial centre at which the action was commenced to transmit to the local registrar at the judicial centre specified in the notice all papers and proceedings in the action, and upon receipt of the request the local registrar shall forthwith comply therewith. Upon such transmission the action shall be continued at the judicial centre to which the papers are transmitted as if it had originally been commenced there.
- (5) Notwithstanding any agreement to the contrary or any provision in a mortgage of land or in an agreement for the sale of land, all actions for foreclosure or sale under a mortgage, or for enforcement of the vendor's lien, specific performance, termination, cancellation or rescission of a contract, shall be entered and, unless otherwise ordered by a judge or the local master under subsection (6), continued and tried at the judicial centre nearest to which the land or any part thereof lies.
- (6) A judge or the local master may make an order for the transfer of any action mentioned in subsection (5) to any other judicial centre.
- (7) Every writ of summons shall have on the face thereof a notice in the following form and in type not smaller than that used in the body of the writ with the heading in capital letters and under lined:

#### NOTICE TO DEFENDANT

In many cases a defendant may enter an appearance, file his defence and have the trial of the action held at a judicial centre other than the one at which the writ is issued. Every defendant should consult his solicitor as to his rights.

**Tort committed outside province**

**54** Notwithstanding anything in section 53, no action shall be brought in Saskatchewan for damages in respect of a tort committed outside the province, except by special leave of the court or a judge.

R.S.S. 1965, c.73, s.54; R.S.S. 1978, c.Q-1, s.54.

**OFFICERS****Registrar**

**55** There may be an officer of the court to be known as The Registrar of the Court of Queen's Bench, who shall have his office in the city of Regina and shall perform such duties as, by statute or the rules of court, he may be required to perform.

R.S.S. 1965, c.73, s.55; R.S.S. 1978, c.Q-1, s.55.

**Sheriff and local registrar**

**56** There may be a sheriff for the province at each judicial centre and also a clerk or officer of the court to be known as The Local Registrar of the Court of Queen's Bench for the Judicial Centre of (*naming the centre*), and each sheriff and local registrar shall keep an office at the judicial centre for which he is appointed.

R.S.S. 1965, c.73, s.56; R.S.S. 1978, c.Q-1, s.56.

**Seal of local registrar**

**57** Each local registrar of the court shall use such a seal for sealing process issued out of court at the judicial centre for which he is appointed as the Lieutenant Governor in Council approves.

R.S.S. 1965, c.73, s.57; R.S.S. 1978, c.Q-1, s.57.

**Sheriff and local registrars officers of court**

**58** Every sheriff and local registrar of the court shall be an officer of the court generally and not merely of the judge sitting or acting at his judicial centre and shall obey the lawful orders of the said court and of the judges thereof wherever such orders are made.

R.S.S. 1965, c.73, s.58; R.S.S. 1978, c.Q-1, s.58.

**Process issuers**

**59** In any place in the province where the convenience of the public may be better served thereby the Lieutenant Governor in Council may appoint a process issuer who shall be supplied with blank forms of original and mesne process signed by the local registrar for the judicial centre nearest to such place, and such process issuer may issue the same under directions of the local registrar, countersigning each one so issued and making returns of all process so issued when and as required by the local registrar or as directed by the Lieutenant Governor in Council.

R.S.S. 1965, c.73, s.59; R.S.S. 1978, c.Q-1, s.59.

**The Lieutenant Governor in Council to prescribe fees**

**60** The Lieutenant Governor in Council may from time to time prescribe the fees and charges payable to the surrogate registrar, sheriffs, local registrars and other officers of the court.

R.S.S. 1965, c.73, s.60; R.S.S. 1978, c.Q-1, s.60.

## SHORTHAND REPORTERS

**Appointment and duties**

**61(1)** One or more official shorthand writers or court reporters may be appointed for the purpose of taking and reporting the evidence at trials and the opinions, decisions and judgments which may from time to time be given, made and pronounced by a judge or the court, and each reporter so appointed shall perform such other duties as may be assigned by order of the Lieutenant Governor in Council or be fixed under any rule of court.

(2) Every such reporter shall be an officer of the court.

(3) Every such reporter shall take the following oath before a judge of the court and the same shall be filed by the local registrar of the court:

I, \_\_\_\_\_, do solemnly and sincerely promise and swear that I will faithfully take and report the evidence and proceedings at the trial in each case in which it may be my duty to act as official shorthand writer or court reporter. So help me God.

(4) A copy of the evidence or any portion thereof certified by the reporter taking the same or by the local registrar of the court with whom the same has been filed shall for all purposes have the same effect as the original evidence.

R.S.S. 1965, c.73, s.61; R.S.S. 1978, c.Q-1, s.61.

## MASTER IN CHAMBERS, REFEREE AND LOCAL MASTERS

**Appointment of master in chambers**

**62(1)** There may be from time to time appointed a master in chambers who shall reside at the seat of Government in the province.

(2) Without prejudice to the foregoing general power the Lieutenant Governor in Council may appoint a judge of the District Court at the judicial centre of Regina to be master in chambers.

R.S.S. 1965, c.73, s.62; R.S.S. 1978, c.Q-1, s.62.

**Appointment of official referee**

**63** There may be from time to time appointed an official referee for the trial of such causes as may be directed to be tried by a referee.

R.S.S. 1965, c.73, s.63; R.S.S. 1978, c.Q-1, s.63.

**Officers of the court**

**64** Subject to the orders of the Lieutenant Governor in Council the master in chambers and the official referee shall be respectively officers of the court and attached thereto.

R.S.S. 1965, c.73, s.64; R.S.S. 1978, c.Q-1, s.64.

**Judges of District Court *ex officio* local masters**

**65(1)** The judges of the District Court shall be *ex officio* local masters of the Queen's Bench.

(2) If a judge of the District Court at the judicial centre of Regina is appointed master in chambers, all the jurisdiction, powers and authority of a local master may, upon the request of the Attorney General from time to time, be exercised at the judicial centre of Regina by any other judge of the District Court.

(3) If any other person is appointed master in chambers the judge of the District Court at the judicial centre of Regina, when sitting at the seat of Government, shall not act as local master unless in the absence of the master in chambers.

R.S.S. 1965, c.73, s.65; R.S.S. 1978, c.Q-1, s.65.

#### **Jurisdiction of local masters and official referee**

**66(1)** The jurisdiction, powers and authority to be exercised by the master in chambers, the official referee, and the judges of the District Court acting as local masters, shall be such as may be assigned to them respectively by rules of court:

Provided that the master in chambers shall have no jurisdiction, power or authority in any action referred to in subsection (5) of section 53 except as to actions that pursuant to the said subsection are required to be entered at the judicial centre of Regina.

(2) Subject to rules of court an appeal lies from a decision of the master in chambers, of an official referee or of a local master, to a judge in chambers.

(3) The master in chambers, and official referee or a local master may refer any matter pending before him to a judge for decision, and the judge may dispose of or refer the same back in whole or in part

(4) No local master shall exercise the jurisdiction hereby conferred except in causes, actions or matters brought or pending at the judicial centre at which he is designated to act as judge or at which he is acting for another judge of the District Court.

R.S.S. 1965, c.73, s.66; R.S.S. 1978, c.Q-1, s.66.

#### **Masters as official referees**

**67** Notwithstanding anything in section 63 and subject to the rules of court, the master in chambers and local masters may be required to act as official referees for the trial of such questions as may be directed to be tried by the official referee.

R.S.S. 1965, c.73, s.67; R.S.S. 1978, c.Q-1, s.67.

## TRIAL AND PROCEDURE

#### **Demand for a jury**

**68(1)** In actions for libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution or false imprisonment no matter what may be the amount claimed, and in actions where the claim, dispute or demand arises out of a tort, wrong or grievance in which the amount claimed exceeds \$1,200, and in actions for a debt or on a contract in which the amount claimed exceeds \$1,200, any party to the action may demand a jury in accordance with the provisions of the rules of court.

(2) Subject to the provisions of this section, in civil trials issues of fact and the assessment or inquiry of damages shall be heard and determined and judgment given by a judge without a jury.

R.S.S. 1965, c.73, s.68; R.S.S. 1978, c.Q-1, s.68.

**Application to court or judge**

**69** Notwithstanding anything in section 68, a judge in chambers or a judge presiding at a trial may in his discretion, on the application of a party to the action, direct that the action or issues shall be tried or the damages assessed by a jury.

R.S.S. 1965, c.73, s.69; R.S.S. 1978, c.Q-1, s.69.

**Special verdict, when directed**

**70** Upon the trial with a jury of any action except an action for libel, the jury shall, if so directed by the judge, give a special verdict and if not so directed may give either a general or special verdict.

R.S.S. 1965, c.73, s.70; R.S.S. 1978, c.Q-1, s.70.

**Jury answer questions when directed**

**71(1)** Upon a trial with a jury of any action except an action for libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution or false imprisonment, the judge, instead of directing the jury to give either a general or a special verdict, may direct the jury to answer any questions of fact stated to them by the judge for the purpose, and on the finding of the jury upon the questions which they answer the judge may direct judgment to be entered.

(2) An answer given by ten jurors shall have the same effect as one given by twelve.

(3) Where more questions than one are submitted it shall not be necessary that the same ten jurors shall agree to every answer.

R.S.S. 1965, c.73, s.71; R.S.S. 1978, c.Q-1, s.71.

**Powers of judge in chambers sitting in court**

**72** A judge sitting in chambers, if he shall announce that he is sitting in court, shall have, possess, exercise and enjoy all the powers and authorities, rights, privileges, immunities and incidents of the said court, and any judgment given or decision or determination or rule, order or decree made by him while sitting as aforesaid in respect of any matter lawfully brought before him, shall be subject to appeal to the Court of Appeal.

R.S.S. 1965, c.73, s.72; R.S.S. 1978, c.Q-1, s.72.

**New trials**

**73** Where, on an appeal against a judgment, order or decision of a judge of the court, a new trial is ordered, the judge by whom the judgment, order or decision was rendered or pronounced shall not preside at the new trial.

R.S.S. 1965, c.73, s.73; R.S.S. 1978, c.Q-1, s.73.

**Trial with assessors**

**74(1)** In any cause or matter before it, the court may, if it thinks it expedient to do so, call in the aid of one or more assessors specially qualified, and try and hear the cause or matter wholly or partially with their assistance.

(2) The remuneration, if any, to be paid to an assessor shall be determined by the court and the court may direct payment thereof by any of the parties.

R.S.S. 1965, c.73, s.74; R.S.S. 1978, c.Q-1, s.74.

DIRECTIONS FOR PAYMENT OF MONEYS RECOVERABLE UNDER  
JUDGMENT

**Interpretation**

**75** In sections 76 to 85:

**“judge**

(a) **“judge”** includes a local master;

**“judgment”**

(b) **“judgment”** means a judgment in an action for the recovery of money, whether recoverable as a debt or damages or otherwise, except a judgment for the recovery of any moneys payable under a mortgage of land or an agreement for sale of land, a judgment awarding alimony or for the payment of maintenance by a husband to his wife or his former wife, as the case may be, or for the payment of maintenance for any child of the debtor and a judgment for the recovery of moneys payable under separation agreement.

R.S.S. 1965, c.73, s.75; R.S.S. 1978, c.Q-1, s.75.

**Powers of judge after judgment pronounced at trial**

**76(1)** Where judgment is pronounced at the trial the judge may, if the judgment debtor immediately after judgment is pronounced requests him to do so, make an order giving directions for payment by the judgment debtor of the amount recoverable under the judgment at such times and in such amounts as the judge deems fit and, subject to subsection (2), giving such further directions as he deems necessary as to what proceedings, if any, may be taken by way of execution on or otherwise to the enforcement of the judgment and as to when any proceedings allowed by him may be taken.

(2) Execution may issue against the judgment debtor and the writ may be delivered to the sheriff and a copy of the writ may be filed in the proper land titles office, but otherwise, where proceedings under execution are affected by directions given pursuant to subsection (1) or pursuant to section 82, no proceedings shall be taken except in accordance with such directions.

R.S.S. 1965, c.73, s.76; R.S.S. 1978, c.Q-1, s.76.

**Powers of judge where judgment reserved or where no trial**

**77(1)** Where a judgment is entered after this section comes into force, the judgment debtor may, within thirty-five days after the date of entry of the judgment or, where an appeal is taken, within thirty days after the appeal is disposed of, apply *ex parte* to the trial judge or, if he is not available or if there was no trial or if the judgment was first given by an appellate court, to any judge for an appointment to hear an application for an order giving directions for payment of the amount recoverable under the judgment at such times and in such amounts as the judge deems fit, or may request the local registrar to fix a time and place for a hearing by such judge. This subsection does not apply where the judgment debtor has made a request under subsection (1) of section 76.

(2) Upon an application or request under subsection (1) the judge or the local registrar, as the case may require, shall fix a time and place for a hearing and in such case shall direct notice of the hearing to be given to the judgment creditor. Service of notice on the judgment creditor may be effected by service on his solicitor named on the record.

(3) Upon such hearing the judge may make an order giving directions for payment by the judgment debtor of the amount recoverable under the judgment at such times and in such amounts as the judge deems fit and, subject to subsection (4) , giving such further directions as he deems necessary as to what proceedings, if any, may be taken by way of execution on or otherwise to the enforcement of the judgment and as to when any proceedings allowed by him may be taken. Where goods have been seized under any writ of execution issued on a judgment and the judge gives directions respecting payment of the amount recoverable under the judgment, he may also direct that the goods seized or any of them be released from seizure subject to such conditions as he deems just.

(4) Execution may issue against the judgment debtor at any time and the writ may be delivered to the sheriff and a copy of the writ may be filed in the proper land titles office, and goods may be seized under any writ of execution issued on the judgment but no proceeding shall be taken to sell goods seized until the expiration of the period mentioned in subsection (1) and, where an application under that subsection is made within the said period and notice is given as required under subsection (2), until after the application for an order giving directions is disposed of by the judge; and where proceedings to sell goods or lands are affected by directions given pursuant to subsection (3) or pursuant to section 82, no proceeding to sell goods or lands shall be taken except in accordance with such directions:

Provided that the judge may at any time, upon application *ex parte* by the judgment debtor or judgment creditor or upon request by the sheriff, give directions to the sheriff as to the sale of any perishable goods seized or which may be seized by him and as to disposal of the proceeds of sale.

(5) If notice of a hearing, as required under subsection (2) is not served within forty days after the date on which the judgment was entered, the judgment creditor may proceed by way of execution as if this section had not been enacted.

(6) In case of a judgment by default the local registrar shall immediately give notice, by registered mail, to the judgment debtor that judgment has been entered against him, stating the date of entry of the judgment.

R.S.S. 1965, c.73, s.77; R.S.S. 1978, c.Q-1, s.77.

**Application not a bar to appeal from judgment**

**78** An application under section 76 or 77 for an order giving directions for payment of the amount recoverable under a judgment shall not be deemed to preclude an appeal from the judgment.

R.S.S. 1965, c.73, s.78; R.S.S. 1978, c.Q-1, s.78.

**Copy of directions to be delivered to sheriff**

**79** Where proceedings under execution are affected by directions given by a judge under section 76 or 77, the judgment debtor shall deliver or forward a copy of such directions to the sheriff.

R.S.S. 1965, c.73, s.79; R.S.S. 1978, c.Q-1, s.79.

**Proceedings on default in payment**

**80** If the judgment debtor fails to make any payment directed by the judge and the judgment creditor has not, before such failure or within five days thereafter, received notice from the judgment debtor of intention to make an application to the judge under subsection (1) of section 82, the judgment creditor may proceed as if the judge had not given any directions.

R.S.S. 1965, c.73, s.80; R.S.S. 1978, c.Q-1, s.80.

**Costs**

**81** Upon a hearing under section 76 or 77 the judge may order taxation of the judgment creditor's cost relating to the hearing or fix a lump sum to cover such costs, and the costs as taxed or fixed may be added to the judgment.

R.S.S. 1965, c.73, s.81; R.S.S. 1978, c.Q-1, s.81.

**Powers to vary or rescind orders**

**82(1)** Any order giving directions made under section 76 or 77 may be varied from time to time or rescinded by the judge who made it or by any other judge, upon application by the judgment debtor or judgment creditor.

(2) No application shall be made under subsection (1) unless fifteen days' notice of intention to make the same has been given.

R.S.S. 1965, c.73, s.82; R.S.S. 1978, c.Q-1, s.82.

**Service of notices**

**83(1)** Subject to subsection (6) of section 77, any notice required under the foregoing sections may be served by personal service or by registered mail with postage prepaid; and the rules of the Court of Queen's Bench respecting substitutional service shall apply *mutatis mutandis*. Where service is made by registered mail, the service shall be deemed sufficient if a receipt from the postmaster for the envelope containing such notice and a post office receipt form therefor purporting to be signed by the person to be served are produced as exhibits to the affidavit of service. A notice served by registered mail shall be deemed to have been served on the day of the date of the receipt which purports to be signed by the person to be served.

(2) Where service of any notice on the judgment creditor or judgment debtor is required and he has died, the notice shall be served on his executor or administrator and in case of bankruptcy the notice shall be served on the trustee. If there is no executor or administrator, subsection (1) of section 23 shall apply.

R.S.S. 1965, c.73, s.83; R.S.S. 1978, c.Q-1, s.83.

**Discretionary powers of judge**

**84** In disposing of any request or application for directions made under section 76 or 77, or of any application made under section 82, the judge shall have and exercise discretion in each case and shall act upon his own view of the proper order to be made having regard to all the facts.

R.S.S. 1965, c.73, s.84; R.S.S. 1978, c.Q-1, s.84.

**Procedure on appeals**

**85(1)** Where an appeal is taken from an order made under section 76, 77 or 82, the judge whose order is appealed from shall certify to the court or judge appealed to what, if any, inquiry he has made and all the information obtained upon which he has purported to act, and the information so certified shall be part of the record before the appellate court or judge.

(2) Where an appeal is so taken each court or judge appealed to shall have and exercise a discretion similar to that of the judge appealed from, notwithstanding that the order appealed from was made in the discretion of the judge, and may draw inferences of fact and make the order which, in the judgment of the court or judge appealed to, the judge whose order is appealed from ought to have made.

R.S.S. 1965, c.73, s.85; R.S.S. 1978, c.Q-1, s.85.

**CHAMBERS****Chamber sittings, when held**

**86** A judge of Appeal or a judge of the Queen's Bench shall sit in chambers upon such days and at such times as shall be agreed upon by the chief justices of the said courts and as may be appointed for the purpose.

R.S.S. 1965, c.73, s.86; R.S.S. 1978, c.Q-1, s.86.

**Chamber clerk**

**87** The local registrar at each judicial centre or his deputy shall act as chamber clerk at any sittings in chambers at his judicial centre.

R.S.S. 1965, c.73, s.88; R.S.S. 1978, c.Q-1, s.87.

**Notice of matters heard at sittings**

**88** All applications to be made at any such sittings shall be entered for that purpose with the local registrar on or previously to the day next but one before the day appointed for the sittings; and it shall be the duty of the local registrar on the evening of that day to telegraph the registrar at Regina, advising him what business has been so entered, and the registrar shall forthwith inform the judge appointed to attend at such sittings; and if no business has been so entered it shall not be necessary for any judge to attend.

R.S.S. 1965, c.73, s.89; R.S.S. 1978, c.Q-1, s.88.

**RULES OF COURT****Powers of judge**

**89(1)** The judges of the court or a majority of them present at any meeting held for that purpose shall have power to make rules for any or all of the following purposes, that is to say:

- (a) for regulating the sittings of the court including the sittings of the judges thereof for the trial of actions and in chambers and for sittings of court en banc;
- (b) for regulating the pleading, practice and procedure in the court;
- (c) fixing the vacations;

(d) for empowering the master in chambers or official referee or the local masters, in respect of actions brought or proposed to be brought at their respective judicial centres, to do any such thing and to transact any such business and to exercise any such authority and jurisdiction in respect of the same as by virtue of any statute or custom or by the rules or practice of the court are now or may be hereafter done, transacted or exercised by a judge of the court sitting in chambers and as shall be specified in any such rule, except in respect of the following proceedings and matters:

- (i) the liberty of the subject;
- (ii) the quashing or reviewing of any proceedings by means of a writ of *certiorari*;
- (iii) appeals and applications in the nature of appeals and applications concerning the hearing of appeals, other than applications to review a taxation of costs or a taking of accounts by a local registrar;
- (iv) applications by executors, administrators or trustees for advice;
- (v) proceedings in lunacy and with respect to the estates of lunatics;
- (vi) applications with respect to the sale or other disposition of infants' estates or matters affecting the custody of infants;

(e) for providing a table or tariff of fees and allowances for services by barristers, solicitors, and counsel in all causes, actions and matters in the court and for preliminary services by solicitors relating to proceedings subsequently taken in the court, of fees and charges to be allowed to witnesses and jurors, and, subject to section 60, of all fees, charges and allowances proper to be fixed or provided for under this Act and rules of court:

Provided that, notwithstanding anything contained in this Act, the Lieutenant Governor in Council shall have and be deemed to have had the power to make rules providing a tariff of fees and charges for witnesses and jurors attending criminal trials, and such rules, when made, shall to the extent thereof, supersede and be deemed to have superseded, any rules in force at the time of the making thereof insofar as they are inconsistent therewith;

- (f) for the hearing of appeals from a judge of the District Court in chambers and for regulating all matters relating to the practice on such appeal;
- (g) any provisions relating to the payment, transfer or deposit into or in or out of any court of any money or property or to the dealing therewith shall for the purposes of this section be deemed to be provisions relating to practice and procedure;
- (h) generally for regulating any matters relating to the practice and procedure of the court or to the duties of the officers thereof or to the cost of proceedings therein and every other matter deemed expedient for the better attaining the ends of justice, advancing the remedies of suitors and carrying into effect the provisions of this Act and of all other Acts now or hereafter in force respecting the court.

(2) The said judges or a majority of them may alter or annul any rules of court for the time being in force and make from time to time any further or additional rules for the purpose of carrying this Act into effect or for the purpose of providing for any matters not fully or sufficiently provided for in this Act or in rules already in force.

(3) The judges of the court shall have the same authority to make rules with respect to the District Court as they possess with respect to the court, except that such rules shall not regulate the sittings of the District Court.

(4) Where any provision in respect to the practice or procedure of any court the jurisdiction of which is vested by the Act in the court is contained in any Act, rules of the court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the said court unless in the case of any Act hereafter passed the power shall be expressly excluded.

(5) All rules made by the judges under this Act shall, with as little delay as possible, be published in *The Saskatchewan Gazette*. This subsection does not apply to a general consolidation and revision of the rules, but a notice of the promulgation of the consolidated and revised rules shall be published in the *Gazette* and shall state a date, subsequent to such publication, on which the rules shall come into force.

(6) Notwithstanding any rule of court made pursuant to this section, a writ of summons in an action for income tax, succession duty or any other tax or fee payable to the Crown in right of the Province of Saskatchewan, or for any penalties recoverable under the provisions of any taxing enactment of the province, may be served on a defendant out of the jurisdiction without it being necessary to obtain an order of the court or a judge allowing such service to be made.

(7) Where a writ of summons is served out of the jurisdiction pursuant to subsection (6), the time after such service within which the defendant is to enter an appearance shall be as follows:

- (a) where the defendant resides in any part of Canada or in the United States of America, within twenty days after service; and
- (b) where the defendant resides elsewhere, within forty days after service.

R.S.S. 1965, c.73, s.90; R.S.S. 1978, c.Q-1, s.89.

## SITTINGS OF COURT AND DISTRIBUTION OF BUSINESS

### **Time and place of sittings**

**90(1)** Subject to the rules of court, the court and the judges thereof respectively shall have power to sit and act at any time and at any place within the province for the transaction of any part of the business of the court or of such judges or for the discharge of any duty that by any statute or otherwise is required to be discharged.

(2) Every action and proceeding in the court and all business arising out of the court shall, so far as practicable and convenient, be heard, determined and disposed of before a single judge; and all proceedings in an action subsequent to the hearing or trial and down to and including final judgment or order, shall, so far as it is practicable and convenient, be had and taken before the judge before whom the trial or hearing of the cause took place.

R.S.S. 1965, c.73, s.91; R.S.S. 1978, c.Q-1, s.90.

**Adjournments**

**91** Whenever, by reason of unavoidable absence or inability of a judge to be present, a sitting of the court cannot be held on the day appointed for holding the same, the local registrar or his deputy shall adjourn the court to an hour on the following day to be by him named and so on from day to day until the judge is present to open the court or until he receives other directions from the judge in that behalf; and an entry of the adjournment and the cause thereof shall be made by the local registrar or his deputy.

R.S.S. 1965, c.73, s.92; R.S.S. 1978, c.Q-1, s.91.

**Commissions of assize and other commissions**

**92(1)** Commissions of assize or any other commissions, either general or special, may be issued by the proper authority assigning to the persons or person to be therein named, the duty of trying and determining within any place or district specially fixed for that purpose by such commission any causes or matters or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter pending in the court; or the exercise of any civil or criminal jurisdiction capable of being exercised by the court.

(2) Any commission so issued shall be of the same validity as if it were enacted by the body of this Act; and any commissioner or commissioners shall when engaged in the exercise of any jurisdiction so assigned to him or them be deemed to constitute a court.

R.S.S. 1965, c.73, s.93; R.S.S. 1978, c.Q-1, s.92.

**Certain practice unaffected**

**93** Nothing in this Act shall affect the practice or procedure in criminal matters, or matters connected with Canada controverted elections.

R.S.S. 1965, c.73, s.94; R.S.S. 1978, c.Q-1, s.93.

## APPEALS

**Judgment by consent or as to costs, no appeal without leave**

**94** No judgment given or order made by the court or a judge by the consent of parties, and, subject to the rules of court, no judgment given or order made by the court or a judge as to costs only which by law are left to the discretion of the court or judge, shall be subject to appeal except by leave of the court or judge giving the judgment or making the order.

R.S.S. 1965, c.73, s.95; R.S.S. 1978, c.Q-1, s.94.

## MISCELLANEOUS

**Transfer of action, etc., commenced at wrong judicial centre**

**95(1)** Where an action has been commenced, or a proceeding has been instituted, at the wrong judicial centre, or where an application has been made to the wrong judge, the court or a judge in the case of an action or proceeding or, in the case of an application, the judge to whom the application has been made may order the record to be transferred to the proper judicial centre upon such terms as to costs or otherwise as may seem just.

(2) If an order is so made, the local registrar at the judicial centre first mentioned in subsection (1), or the judge to whom the application has been made, shall forthwith transmit to the local registrar at the proper judicial centre or to the proper judge, as the case may require, all papers in the action or proceeding or relating to the application, as the case may be, and the action, proceeding or application shall be continued or dealt with as if it had originally been commenced at the proper judicial centre or made to the proper judge.

R.S.S. 1965, c.73, s.96; R.S.S. 1978, c.Q-1, s.95.

**Judge deemed to have had jurisdiction in certain cases**

**96** Notwithstanding anything contained in this or any other Act or in any regulation or rule of court, where an action has been commenced or a proceeding has been instituted at the wrong judicial centre or an application has been made to the wrong judge as *persona designata* or otherwise, and no objection has been taken by anyone upon that ground or the judge has found against such an objection, the judge before whom the action comes for trial or before whom the matter of the proceedings comes for disposition or to whom the application has been made as *persona designata* or otherwise, shall, if he proceeds to try the action, dispose of the matter of the proceedings or hear the application, be deemed to have had jurisdiction and his judgment or findings shall have the same force and effect as if the action or proceeding had been commenced or instituted at the proper judicial centre or the application had been made to the proper judge.

R.S.S. 1965, c.73, s.97; R.S.S. 1978, c.Q-1, s.96.

