

The King's Bench Act

being

Chapter 39 of *The Revised Statutes of Saskatchewan, 1920*
(assented to November 10, 1920).

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 39

An Act respecting the Court of King's Bench

SHORT TITLE

Short title

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

1915, c.10, s.1; R.S.S. 1920, c.39, s.1.

INTERPRETATION

Interpretation

- 2 In this Act, unless the context otherwise requires, the expression:

“Action”

1. “**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”

2. “**Affidavit**” or “**oath**” includes affirmation where authorised by law;

“Cause”

3. “**Cause**” includes any action, suit or other original proceeding between a plaintiff and a defendant;

“Court”

4. “**Court**” means “His Majesty’s Court of King’s Bench for Saskatchewan”;

“Defendant”

5. “**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”

6. “**Execution creditor**” includes an assignee of the execution creditor;

“Judgment”

7. “**Judgment**” includes decree;

“Local master”

8. “**Local master**” means a local master of His Majesty’s Court of King’s Bench, and includes a judge of a district court lawfully performing the duties of a local master of His Majesty’s Court of King’s Bench;

“Local registrar”

9. “**Local registrar**” means the Local Registrar of His Majesty’s Court of King’s Bench for Saskatchewan, and includes his deputy and, where the context requires, a process issuer;

“Lunatic”

10. “**Lunatic**” includes an idiot or other person of unsound mind;

“Matter”

11. “**Matter**” includes every proceeding in the court not in a cause;

“Order”

12. “**Order**” includes rule;

“Originating summons”

13 **“Originating summons”** means a summons by which proceedings are commenced without writ;

“Party”

14 **“Party”** includes every person served with notice of, or attending, any proceedings, although not named in the record;

“Person”

15 **“Person”** includes a body corporate or politic;

“Petitioner”

16 **“Petitioner”** includes every person making any application to the court, either by petition, motion or summons, otherwise than as against any defendant;

“Plaintiff”

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

“Pleading”

18 **“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;

“Rules of court”

19 **“Rules of court”** means the rules provided for by this Act and includes forms;

“Sheriff”

20 **“Sheriff”** includes deputy sheriff, duly appointed bailiffs, and, when occasion requires, coroner or other person discharging the duties of sheriff in the particular case or for the time being.

1915, c.10, s.2; R.S.S. 1920, c.39, s.2.

ORGANISATION

Constitution

3 There is hereby established in and for the Province of Saskatchewan a superior court of record having civil and criminal jurisdiction, which court shall be called “His Majesty's Court of King's Bench for Saskatchewan.”

1915, c.10, s.4; R.S.S. 1920, c.39, s.3.

Title

4 The said Court of King's Bench shall during the reign of a king be called “His Majesty's Court of King's Bench for Saskatchewan,” and during the reign of a queen “Her Majesty's Court of Queen'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 King's Bench” or “In the Queen's Bench” as the case may be.

1915, c.10, s.5; R.S.S. 1920, c.39, s.4.

SEAL OF COURT

Seal

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

1915, c.10, s.6; R.S.S. 1920, c.39, s.5.

JUDGES

Judges

6 The court shall consist of a chief justice, who shall be styled "The Chief Justice of the King's Bench," and five 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.

1915, c.10, s.7; R.S.S. 1920, c.39, s.6.

Judges have equal power

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

1915, c.10, s.8; R.S.S. 1920, c.39, s.7.

Judges *ex officio* justices of the peace and coroners

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

1915, c.10, s.9; R.S.S. 1920, c.39, s.8.

Oath of office

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

I, _____ of _____ in the Province of _____ do swear that I will well and truly serve Our Sovereign Lord the King in the office of a judge of His Majesty's Court of King's Bench for Saskatchewan, and that I will duly and faithfully, and according to the best of my ability and knowledge, execute the several duties and powers imposed on me as one of the judges of the said court.

Sworn at _____ this _____ day of _____ 19____, before me.

1915, c.10, s.10; R.S.S. 1920, c.39, s.9.

By whom oath administered

10 The oath shall be administered to the chief justice and other judges by the Lieutenant Governor, or by such other person as may be appointed by him to administer the same, or by any person appointed by the Governor General to administer such oaths of office.

1915, c.10, s.11; R.S.S. 1920, c.39, s.10.

JURISDICTION

Jurisdiction of the court

11(1) The court shall be a court of original jurisdiction, and shall in addition to any other jurisdiction, rights, powers, incidents, privileges and authorities which have hitherto been vested in or capable of being exercised within the province by the Supreme Court of Saskatchewan, possess the jurisdiction which 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 gaol delivery, or any of such commissions.
- (2) The jurisdiction aforesaid shall include:
- (a) the jurisdiction which 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 which 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 otherwise, the court shall, upon the direction of the Lieutenant Governor, have and exercise the jurisdiction and powers which 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.

1915, c.10, s.12; 1919-20, c.16, s.2; R.S.S. 1920, c.39, s.11.

Jurisdiction, how exercised

12 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 the manner provided by rules of court made from time to time under the authority of this Act; and, where no special provision is contained in this Act or the said rules, it shall be exercised as nearly as may be as it was exercised in the supreme court of judicature in England as it existed on the first day of January, 1898.

1915, c.10, s.13; R.S.S. 1920, c.39, s.12.

Judges succeed to powers of late Supreme Court judges

13 Whenever 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.

1915, c.10, s.14; R.S.S. 1920, c.39, s.13.

Judges have jurisdiction throughout province

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

1915, c.10, s.15; R.S.S. 1920, c.39, s.14.

Powers of a single judge in court or chambers

15(1) Any judge of the court may, subject to any 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 11 and whose jurisdiction was thereby transferred to the high court, or as may be directed or authorised to be so heard by any 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 police magistrates and in addition thereto shall have the power of revising, amending, modifying or otherwise dealing with the same.

1915, c.10, s.16; R.S.S. 1920, c.39, s.15.

Court may make vesting order

16 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.

1915, c.10, s.17; R.S.S. 1920, c.39, s.16.

Relieving against forfeiture

17(1) The court shall have power to relieve against forfeiture for breach of a covenant or condition in any 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 such relief having been granted to be made by indorsement on the lease or otherwise.

1915, c.10, s.18; R.S.S. 1920, c.39, s.17.

Application of preceding section

18 Section 17 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.

1915, c.10, s.19; R.S.S. 1920, c.39, s.18.

Lunatics/Jurisdiction of court

19 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.

1915, c.10, s.20; R.S.S. 1920, c.39, s.19.

Service on official administrator

20 Subject to the provisions of *The Administrator of Lunatics' Estates 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 district in 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 said 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 said official administrator, or any other guardian appointed by the court for the person of unsound mind, shall take all proceedings which 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.

1918-19, c.27, s.2; R.S.S. 1920, c.39, s.20.

Service on Administrator of Lunatics' Estates

21(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 which may be from time to time in force in the province, 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 Lunatics' Estates, and from the time of such service the said Administrator of Lunatics' 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 20 are hereby repealed in so far as they are so inconsistent.

1918-19, c.27, s.2; R.S.S. 1920, c.39, s.21.

Jurisdiction as to alimony

22(1) The court shall have jurisdiction to grant alimony to any wife who would be entitled to alimony by the law of England, or to any wife who would be entitled by the law of England to a divorce and to alimony as incident thereto, or to any wife whose husband lives separate from her without any sufficient cause and under circumstances which would entitle her by the law of England to a decree for restitution of conjugal rights; and alimony when granted shall continue until the further order of the court.

(2) The court may, after action brought, issue an order restraining the defendant in any action for alimony from transferring or otherwise disposing of or encumbering his land pending the final disposition of such action save subject to any interest which the wife may subsequently acquire in said land under any judgment of the court.

1915, c.10, s.21; 1918-19, c.27, s.3; R.S.S. 1920, c.39, s.22.

Criminal conversation

23 The court shall have jurisdiction to entertain an action for criminal conversation. The law applicable to such actions shall be as the same 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.

1915, c.10, s.22; R.S.S. 1920, c.39, s.23.

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

24(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, always, 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.

1915, c.10, s.23; R.S.S. 1920, c.39, s.24.

RULES OF LAW

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

Equitable estate, right or relief claimed by plaintiff

1. If any plaintiff or petitioner claims to be entitled to any equitable estate or right or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, the court and every judge thereof shall give to such 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 any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract or against any right, title or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any 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 such 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 like purpose;

Counterclaim and third parties

3. The court and every judge thereof shall also have power to grant to any defendant in respect to 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 any 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 any 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 any 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 such 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 such defendant;

Equitable rights appearing incidentally

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

Relief against penalties and forfeitures

5. Subject to appeal as in other cases, the court shall have power to relieve against all 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 in such cause or matter, 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 of 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 in such cause or matter, so that as far as possible all matters so in controversy between the said parties respectively may be completely and finally determined and all multiplicity of legal proceedings concerning any such matters avoided;

Mortgagor may be relieved in case of default under mortgage

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;

Purchaser may be relieved in case of default under agreement for sale of land

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. The provisions of paragraphs 8 and 9 shall apply to all mortgages and agreements for sale whether made prior or subsequent to the enactment of the same.

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

Express trusts

1. Subject to the provisions of section 71 of *The Trustee 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;

5. In case of the assignment of a debt or other chose in action, if the debtor, trustee or other person liable in respect to 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 think fit to call upon the several persons making claim thereto to interplead concerning the same, or he may if he think 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 a 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 any 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;

Slander of females, special damage

15. In any action of slander, founded on words spoken of the plaintiff imputing unchastity, adultery or profligacy to a female whether married or unmarried, it shall not be necessary to allege or prove any special damage but such words shall be actionable *per se*;

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

16. 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 such copy, with an affidavit verifying 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, determined and superseded by virtue of this Act;

Evidence in such action

17. 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

18. 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

19. 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 or 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 in so far only as it shall be shown that the surety has thereby been prejudiced;

Court may order sale of real estate

20. 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.

1915, c.10, s.25; 1918-19, c.27, s.5; R.S.S. 1920, c.39, s.26.

CONSTITUTIONAL QUESTIONS

Notice to be given to Attorneys General of Canada and Saskatchewan before Act declared invalid

27(1) Where in any action or other proceeding, the constitutional validity of any Act or enactment of the Parliament of Canada or of this Legislature is brought in question, the same shall not be adjudged to be invalid until after notice has been given to the Attorney General of Canada, or the Attorney General of Saskatchewan, as the case may be.

Form of notice

(2) The notice shall state what Act or part of an Act is in question, and the day on which the question is to be argued, and shall give such other particulars as are necessary to show the constitutional point proposed to be argued.

Six days' notice necessary

(3) Subject to the rules, the notice shall be served six days before the day named for the argument.

Right of Attorneys General to be heard

(4) The Attorney General of Canada and the Attorney General of Saskatchewan shall be entitled, as of right, to be heard, either in person or by counsel, notwithstanding that the Crown is not a party to the action or proceeding.

1915, c.10, s.26; 1918-19, c.27, s.6; R.S.S. 1920, c.39, s.27.

INTEREST

Interest may be allowed as heretofore

28 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.

1915, c.10, s.27; R.S.S. 1920, c.39, s.28.

When allowable on debts certain and overdue

29(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.

1915, c.10, s.28; R.S.S. 1920, c.39, s.29.

CERTIFICATE OF LIS PENDENS

Action, etc., not notice unless certificate registered

30(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 His Majesty's Court of King'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 (1) shall not apply to an action or proceeding for foreclosure or sale upon a registered mortgage.

1915, c.10, s.29; R.S.S. 1920, c.39, s.30.

Order vacating certificate on failure to prosecute action

31(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, which 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 forbidden.

(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.

1915, c.10, s.30; R.S.S. 1920, c.39, s.31.

PHYSICAL EXAMINATION OF PARTIES**Physical examination of party by medical practitioner**

32(1) In any action or proceeding for the recovery of damages or other compensation for or in respect of bodily injury sustained by any person, the court which, or the judge, or the person who by consent of parties, or otherwise, has power to fix the amount of such damages or compensation, may order that the person in respect of whose injury damages or compensation are sought shall submit himself to a physical examination by a duly qualified medical practitioner who is not a witness on either side and may make such order respecting the examination and the costs of it as may be deemed proper.

(2) The medical practitioner shall be selected by the court, judge, or person making the order, and may afterwards be a witness on the trial unless the court, judge or person before whom the action or proceeding is tried otherwise directs.

1915, c.10, s.31; R.S.S. 1920, c.39, s.32.

TENDER OF AMENDS IN CASE OF TORTS

Tender of amends in case of torts

33 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.

1915, c.10, s.32; R.S.S. 1920, c.39, s.33.

JUDICIAL DISTRICTS

Judicial districts in province

34(1) The province shall, for the purposes of this Act, be divided into judicial districts, and the judicial districts into which the province is or may from time to time be divided under the provisions of *The District Courts Act* shall be judicial districts for the purposes of this Act.

Lieutenant Governor may alter districts

(2) The Lieutenant Governor in Council may by proclamation from time to time alter the limits of any of the said judicial districts and may establish new districts.

1915, c.10, s.33 (redrawn); R.S.S. 1920, c.39, s.34.

Entry and trial of actions

35(1) Actions shall be entered and unless otherwise ordered tried in the judicial district where the cause of action arose or in which the defendant or one of several defendants resides or carries on business at the time the action is brought:

Provided, however, that where the venue has been settled by agreement in writing between the parties the plaintiff may at his option exercise the rights given by such agreement.

(2) Noncompliance with the provisions of subsection (1) shall not render the entry of an action void unless the court or a judge shall so direct but the proceeding shall be deemed an irregularity and may be dealt with as in case of noncompliance with a rule of court or of practice.

(3) Where an action has been entered in the wrong judicial district the court or a judge may at any stage of the proceedings order the record to be transferred to the proper office of the district in which the action should have been entered upon such terms as to costs or otherwise as may seem just.

1915, c.10, s.34; R.S.S. 1920, c.39, s.35.

OFFICERS

Sheriff and local registrar

36 For each judicial district the Lieutenant Governor in Council may appoint a sheriff and also a clerk or officer of the court to be styled "The Local Registrar of the Court of King's Bench for the Judicial District of _____," and may name the place at which such sheriff and local registrar shall reside and keep an office.

1915, c.10, s.35; R.S.S. 1920, c.39, s.36.

Seal of local registrar

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

1915, c.10, s.36; R.S.S. 1920, c.39, s.37.

Sheriff and local registrars officers of the court generally

38 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 in his judicial district and shall obey the lawful orders of the said court and of the judges thereof in whatever judicial district such orders are made.

1915, c.10, s.37; R.S.S. 1920, c.39, s.38.

Process issuers

39 In any place in any judicial district 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, 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.

1915, c.10, s.38; R.S.S. 1920, c.39, s.39.

SHORTHAND REPORTERS

Appointment and duties of shorthand writers

40(1) The Lieutenant Governor in Council may appoint one or more official shorthand writers or court reporters 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 and shall hold office during the pleasure of the Lieutenant Governor in Council.

(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) Any 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.

1915, c.10, s.39; R.S.S. 1920, c.39, s.40.

MASTER IN CHAMBERS, REFEREE AND LOCAL MASTERS

Appointment of master in chambers

41 The Lieutenant Governor in Council may from time to time appoint a master in chambers who shall reside at the seat of Government in the province.

1915, c.10, s.40; R.S.S. 1920, c.39, s.41.

Appointment of official referee

42 The Lieutenant Governor in Council may from time to time appoint an official referee for the trial of such causes as may be directed to be tried by a referee.

1915, c.10, s.41; R.S.S. 1920, c.39, s.42.

Officers of the court

43 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.

1915, c.10, s.42; R.S.S. 1920, c.39, s.43.

Judges of the district courts *ex officio* local masters

44 The judges of the district courts, except the judge of the district of court of the judicial district of Regina when sitting at the seat of Government, shall be *ex officio* local masters of the King's Bench.

1915, c.10, s.43; R.S.S. 1920, c.39, s.44.

Jurisdiction of local masters and official referee

45(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.

(2) Subject to rules of court an appeal shall lie 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 in the judicial district for which he is, or is acting for, the judge of the district court.

1915, c.10, s.44; R.S.S. 1920, c.39, s.45.

Masters as official referees

46 Notwithstanding anything contained in section 42 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.

1915, c.10, s.45; R.S.S. 1920, c.39, s.46.

TRIAL AND PROCEDURE

Demand for a jury

47(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 \$500; and in actions for a debt or on a contract in which the amount claimed exceeds \$1,000, if either party to the action demands a jury and files with the local registrar and leaves with the other party or his solicitor at least fifteen days before the day fixed for trial a notice to that effect, the issues of fact and the assessment or inquiry of damages shall be tried, heard and determined by a judge with a jury unless otherwise ordered by the judge.

(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.

1915, c.10, s.46; R.S.S. 1920, c.39, s.47.

Discretion of trial judge

48 Notwithstanding anything in section 47 contained a judge presiding at a trial may in his discretion direct that the action or issues shall be tried or the damages assessed by a jury.

1915, c.10, s.47; R.S.S. 1920, c.39, s.48.

Special verdict, when directed

49 Upon any 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.

1915, c.10, s.48; R.S.S. 1920, c.39, s.49.

Jury answer questions when directed

50(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.

1915, c.10, s.49; 1918-19, c.27, s.7; R.S.S. 1920, c.39, s.50.

Judge in chambers may announce himself sitting in court

51 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 court 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.

1915, c.10, s.50; R.S.S. 1920, c.39, s.51.

CHAMBERS**Chamber sittings, when held**

52 A judge of Appeal or a judge of the King'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.

1915, c.9, s.5 (3); R.S.S. 1920, c.39, s.52.

Chamber sittings at Moose Jaw and Saskatoon

53 Sittings in chambers shall be held at Moose Jaw and Saskatoon on at least one day in each fortnight, except during vacation; and all applications in any action or matter which may be heard before a judge in chambers may be heard and determined at such sittings:

- (a) where the motion is *ex parte*;
- (b) where the action or other proceedings are being carried on in the office of the registrar of the judicial district in which the sittings are to be held;
- (c) where the solicitors for all parties reside in the said judicial district;
- (d) where the solicitors who do not so reside consent to the application being heard at such sittings by registering their names in the book to be kept as hereinafter provided;
- (e) where the judge may direct any application to be heard at such sittings.

1918-19, c.26, s.2; R.S.S. 1920, c.39, s.53.

Duties of local registrar

54 The local registrars of the Court of King's Bench at Moose Jaw and Saskatoon respectively shall act as chamber clerks.

1918-19, c.26, s.2; R.S.S. 1920, c.39, s.54.

Notice of matters heard at sittings

55 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.

1918-19, c.26, s.2; R.S.S. 1920, c.39, s.55.

Form of declaration by solicitors desiring to be so registered

56(1) A solicitor may file with the local registrar at the place of such sittings a request to the effect following:

I, _____ desire to be registered as consenting to the hearing and disposal at the sittings in chambers at Moose Jaw (*or* Saskatoon, as the case may be), of all matters in which I may be acting as solicitor.

(2) A book to be called "The Consent Register" which shall be open to inspection by any solicitor or his clerk without fee, shall be kept by the local registrars at Moose Jaw and Saskatoon respectively, wherein shall be recorded such requests and the names of the local agents (if any) of the solicitors filing the request.

(3) A solicitor who files such request may at any time withdraw the same by giving to the same officer notice in writing to that effect, and the local registrar upon receiving such notice shall forthwith make an entry thereof in the said book.

1918-19, c.26, s.2; R.S.S. 1920, c.39, s.56.

RULES OF COURT

Rules of Court: scope and amendment

57(1) All rules of court in force in the Supreme Court of Saskatchewan immediately prior to the coming into force of this Act, and which are not inconsistent herewith, are hereby declared to be and always to have been valid and effectual, and shall remain and be in force in the Court of King's Bench until altered or annulled by rules made under this Act.

(2) The court may at any time with the concurrence of a majority of the judges thereof alter, amend and repeal any rules of court for the time being in force; and may make any further or additional rules of court for carrying this Act into effect and in particular for all or any of the following matters, 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 in their respective judicial districts 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;

(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, of fees and charges by sheriffs, local registrars and all other officers of the court and of witnesses, jurors and 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 in so far as they are inconsistent therewith;

(f) for the hearing of appeals from a judge of a 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 or of any money or property or to the dealing thereof 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.

(3) The judges of the court shall have the same authority to make rules with respect to district courts and surrogate courts as they possess with respect to the court, except that such rules shall not regulate the sittings of the said district or surrogate courts.

(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 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*.

1915, c.10, s.51; 1918-19, c.27, s.8; R.S.S. 1920, c.39, s.57.

SITTINGS OF COURT AND DISTRIBUTION OF BUSINESS

Time and place of sitting

58(1) Subject to the rules of the 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 which 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.

1915, c.10, s.52; R.S.S. 1920, c.39, s.58.

Adjournments of court

59 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.

1915, c.10, s.53; R.S.S. 1920, c.39, s.59.

Commissions of assize and other commissions

60(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 depending in the said court; or the exercise of any civil or criminal jurisdiction capable of being exercised by the said 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.

1915, c.10, s.54; R.S.S. 1920, c.39, s.60.

Certain practice unaffected

61 Nothing in this Act shall affect the practice or procedure in criminal matters, or matters connected with Dominion controverted elections or proceedings on the Crown or revenue side of the court.

1915, c.10, s.55; R.S.S. 1920, c.39, s.61.

APPEALS

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

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

1918-19, c.27, s.9; R.S.S. 1920, c.39, s.62.