

DISCOVERY AND INSPECTION.

Discovery by  
interrogatories.  
R.S.C.  
O.31, r.1.

1. In any cause or matter the plaintiff or defendant by leave of the Court or a Judge may deliver interrogatories in writing for the examination of the opposite parties, or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that interrogatories which do not relate to any matters in questions in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

Applications  
for leave  
to deliver  
interrogatories.  
R.S.C.  
O.31, r.2.

2. A copy of the interrogatories proposed to be delivered shall be delivered with the summons or notice of application for leave to deliver them at least two clear days before the hearing thereof (unless in any case the Court or Judge shall think fit to dispense with this requirement) and the particular interrogatories sought to be delivered shall be submitted to and considered by the Court or Judge. In deciding upon such application, the Court or Judge shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to any matter in question, and leave shall be given as to such only of the interrogatories as shall be considered necessary either for disposing fairly of the cause or matter or for saving costs.

Costs of  
interrogatories.  
R.S.C.  
O.31, r.3.

3. In adjusting the costs of the cause or matter inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is in the opinion of the taxing officer or of the Court or Judge, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

Form of  
R.S.C.  
O.31, r.4.

4. Interrogatories shall be in the Form No. 9 in Appendix B, with such variations as circumstances may require.

Corporation  
companies.  
R.S.C.  
O.31, r.5.

5. If any party to a cause or matter be a body corporate or a joint-stock company, whether incorporated or not, or any other body or persons, empowered by law to sue or be

sued whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

6. Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not bona fide for the purpose of the cause or matter or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

Objections to interrogatories by answer.  
R.S.C.  
O.31, r.6.

7. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Judge may allow.

Affidavit in answer, filing  
R.S.C.  
O.31, r.8.

8. An affidavit in answer to interrogatories shall be printed or typewritten, and shall be in the Form No. 10 in Appendix B, with such variations as circumstances may require.

Printing affidavit in answer.  
R.S.C.  
O.31, r.9.

9. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *visa-voce* examination, as the Judge may direct.

Order to answer or answer further.  
R.S.C.  
O.31, r.11.

10. Any party may, without filing an affidavit, apply to the Court or a Judge for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On hearing of such application the Court or Judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at the stage of the cause or matter, or make such order, either generally or limited to certain classes of documents as may, in their or his discretion, be thought fit. Provided that discovery shall not be ordered when and so far as the Court or Judge shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

Application for discovery of documents.  
R.S.C.  
O.31, r.12.

Action on  
Marine  
Insurance  
Policy. Dis-  
covery of  
Documents.  
R.S.C.  
O.31, r.12A.

11. Where in any action arising on a Marine Insurance Policy an application for discovery of documents is made by the insurer, the following provisions shall apply:—

- (a) On the hearing of the application, the Court or Judge may, subject as provided in the next paragraph, make an order in accordance with Rule 10 or Rule 14 of this Order.
- (b) Where in any case the Court or Judge is satisfied, either on the original application or on a subsequent application, that it is necessary or expedient, having regard to the circumstances of the case, to make an order for the production of ship's papers, the Court or Judge may make such an order.
- (c) In making an order under this Rule the Court or Judge may impose such terms and conditions as to staying proceedings or otherwise as the Court or Judge in its or his absolute discretion shall think fit.
- (d) Rule 13 of this Order shall not apply to any application made under this Rule.

Affidavit of  
documents.  
R.S.C.  
O.31, r.13.

12. The affidavit to be made by any person against whom an order for discovery of documents has been made under Rule 10 or under paragraph (a) or paragraph (b) of Rule 11 of this Order, shall specify which, if any, of the documents therein mentioned he objects to produce, and it shall, except in the case of an order made under paragraph (b) of Rule 11, be in the Form No. 11 in Appendix B, with such variations as circumstances may require.

Power to  
order list  
of docu-  
ments in  
lieu of  
affidavit.  
R.S.C.  
O.31, r.13A.

13. On the hearing of any application for discovery of documents the Court or Judge in lieu of ordering an affidavit or documents to be filed may order that the party from whom discovery is sought shall deliver to the opposite party a list of the documents which are or have been in his possession, custody or power relating to the matters in question. Such list shall as nearly as may be, follow the form of the affidavit in the Form No. 11 in Appendix B. Provided that the ordering of such list shall not preclude the Court or Judge from afterwards ordering the party to make and file an affidavit of documents.

Production  
of  
documents.  
R.S.C.  
O.31, r.14.

14. It shall be lawful for the Court or a Judge, at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to



any matter in question in such cause or matter, as the Court or Judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

15. Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter, unless he shall satisfy the Court or a Judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or Judge shall deem sufficient for not complying with such notice, in which case the Court or Judge may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or Judge shall think fit.

Inspection of documents referred to in pleadings or affidavits.  
R.S.C.  
O.31, r.15.

16. Notice to any party to produce any documents referred to in his pleading or affidavit shall be in the Form No. 12 in Appendix B, with such variations as circumstances may require.

Notice to produce.  
R.S.C.  
O.31, r.16.

17. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 12, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in the Form No. 13 in Appendix B, with such variations as circumstances may require.

Time for inspection when notice given under Rule 15.  
R.S.C.  
O.31, r.17.

Bank and trade books.

18. (1) If the party served with notice under Rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the

Order for inspection.  
R.S.C.  
O.31, r.18.

office of his solicitor, the Court or Judge may, on the application of the party desiring it, make an order for inspection in such place and in such manner as he may think fit: Provided that the order shall not be made when and so far as the Court or a Judge shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars, or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court or Judge shall not make such order for inspection of such documents when and so far as the Court or Judge shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

Verified  
copies,  
R.S.C.  
O.31, r.19A.

19. (1) Where inspection of any business books is applied for the Court or a Judge may, if they or he shall think fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of someone who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations. Provided that notwithstanding that such copy has been supplied, the Court or a Judge may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court or a Judge to inspect the document for the purpose of deciding as to the validity of the claim of privilege

(3) The Court or a Judge may, on the application of any party to a cause or matter at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit, whether any particular document or documents or any class or classes of documents specified or indicated in the application is, or are, or has or have at any time been in his possession, custody or power; and, if not then in his possession, custody, or power, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the

Power to  
order dis-  
covery of  
particular  
document  
or class of  
documents,  
R.S.C.  
O.31, r.19A  
(3).

belief of the deponent the party against whom the application is made has, or has at some time had in his possession, custody or power the particular document or documents or the class or classes of documents specified or indicated in the application, and that they relate to the matters in question in the cause or matter, or to some or one of them.

20. If the party from whom discovery of any kind or production or inspection is sought objects to the same, or any part thereof, the Court or a Judge may, if satisfied that the right to the discovery or production or inspection sought depends on the determination of any issue or question in dispute in the cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Premature  
discovery.  
R.S.C.  
O.31, r.20.

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

Non-compliance  
with order  
for  
discovery.  
R.S.C.  
O.31, r.21.

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

Service on  
solicitor of  
order for  
discovery.  
R.S.C.  
O.31, r.22.

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

Attachment  
of  
solicitor.  
R.S.C.  
O.31, r.23.

24. Any party may, at the trial of a cause, matter, or issue, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always, that in such case the Judge may look at

Using  
answer to  
interrogatories  
at  
trial.  
R.S.C.  
O.13, r.24.



the whole of the answers, and if he shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them he may direct them to be put in.

Discovery  
against  
sheriff.  
R.S.C.  
O.31, r.28.

25. In any action against or by a sheriff in respect of any matters connected with the execution of his office, the Court or a Judge may, on the application of either party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery shall be made by the officer actually concerned.

Affidavit on  
Discovery  
Order  
against  
Crown.  
R.S.C.  
O.31, r.28A.

26. In proceedings to which the Crown is a party any affidavit to be made in answer to an order for discovery against the Crown shall be made by such officer of the Crown as the Court shall direct:

Order to  
apply to  
infants.  
R.S.C.  
O.31, r.29.

27. This order shall apply to infant plaintiffs and defendants, and to their next friends and guardians *ad litem*.

## ORDER 32.

### ADMISSIONS.

Notice of  
admission  
of facts.  
R.S.C.  
O.32, r.1.

1. Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Notice to  
admit  
documents.  
R.S.C.  
O.32, r.2.

2. (1) Either party may by notice in writing at any time not later than nine days before the day for which the notice of trial has been given, or, if no notice of trial is required, not later than nine days after the action has been set down for trial, call upon any other party to admit any document, saving all just exceptions, and if the other party desires to challenge the authenticity of the document, he shall within six days after service of such notice, give notice that he does not admit the document and requires it to be proved at the trial.

(2) If such other party refuses or neglects to give notice of non-admission within the time prescribed in the last preceding paragraph, he shall be deemed to have admitted the document, unless the Court or a Judge otherwise orders.

(3) Where a party gives notice of non-admission within the time prescribed by the first paragraph of this Rule and the document is proved at the trial, the costs of proving the

document shall be paid by the party who has challenged the document whatever the result of the cause or matter may be, unless at the trial or hearing the Court or a Judge shall certify that there were reasonable grounds for not admitting the authenticity of the document.

(4) Where a party proves a document without having given notice to admit under paragraph (1) of this Rule no costs of proving the document shall be allowed on taxation, except where the omission to give notice to admit is, in the opinion of the taxing officer, a saving expense.

Costs of refusal or neglect to admit.

3. A notice to admit documents shall be in the Form No. 15 in Appendix B with such variations as circumstances may require.

Form of notice - R.S.C. O.32, r.3.

4. Any party may, by notice in writing, at any time not later than nine days before the day for which notice of trial has been given, or, if no notice of trial is required, not later than nine days after the action is set down for trial, call on any other party to admit, for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court or a Judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the Court or a Judge certify that the refusal to admit was reasonable, or unless the Court or a Judge shall at any time otherwise order or direct. Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice; Provided also, that the Court or a Judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

Notice to admit facts. R.S.C. O.32, r.4.

Costs of refusal or neglect to admit.

5. A notice to admit facts shall be in the Form No. 16 in Appendix B, and admissions of facts shall be in the Form No. 17 in Appendix B, with such variations as circumstances may require.

Form of notice of admissions. R.S.C. O.32, r.5.

6. Any party may at any stage of a cause or matter, where admissions of facts have been made, either on the pleadings, or otherwise, apply to the Court or a Judge for such judgment or order as upon such admissions he may be entitled

Judgment or order upon admissions. R.S.C. O.32, r.4.



ORDER 49.

TRANSFERS AND CONSOLIDATION.

Transfer of Causes.

1. Causes or matters may be transferred from one Judicial Division to another by an order of the Chief Justice made in accordance with section 34 of the Ordinance.

Consolidation of cases. Sch. 3. O.3. r.9.

2. Causes or matters pending in the same Court may by order of the Court be consolidated, and the Court shall give any directions that may be necessary as to the conduct of the consolidated actions.

ORDER 50.

DIVISION 1.—INTERLOCUTORY ORDERS AS TO MANDAMUS, INJUNCTIONS OR INTERIM PRESERVATION OF PROPERTY, ETC.

Preservation or interim custody of subject-matter of disputed contract. R.S.C. O.50, r.1.

1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

Interim attachment of property in certain cases. Sch. 3. O.13, r.1.

2. (a) If the defendant in any action for an amount or value of ten pounds or upwards, with the intent to obstruct or delay the execution of any judgment that may be passed against him, is about to dispose of his property, or any part thereof, or to remove any such property from the Judicial Division in which the action is brought or from the jurisdiction of the Court, the plaintiff may apply to the Court, either at the time of the institution of the action, or at any time thereafter until final judgment, to call upon the defendant to furnish sufficient security to fulfil any judgment that may be made against him in the action, and on his failing to give such security, to direct that any property, movable or immovable, belonging to the defendant shall be attached until the further order of the Court.

Application for attachment. Sch. 3. O.13, r.2.

(b) The application shall contain a specification of the property required to be attached, and the estimated value thereof, so far as the plaintiff can reasonably ascertain the same; and the plaintiff shall, at the time of making the application, declare that to the best of his information and the belief the defendant is about to dispose of or remove his property with such intent as aforesaid.

(c) If the Court, after making such investigation as it may consider necessary, shall be satisfied that the defendant is about to dispose of or remove his property with intent to obstruct or delay the execution of the judgment, it shall be lawful for the Court to order the defendant, within the time to be fixed by the Court either to furnish security in such sum as may be specified in the order, to produce and place at the disposal of the Court when required the said property, or the value of the same or such portion thereof as may be sufficient to fulfil the judgment, or to appear and show cause why he should not furnish security. The Court may also, in the warrant, direct the attachment until further order of the whole, or any portion, of the property specified in the application.

Form of Order.  
O.13, r.3.

(d) If the defendant fail to show such cause, or to furnish the required security within the time fixed by the Court, the Court may direct that the property specified in the application, if not already attached, or such portion thereof as shall be sufficient to fulfil the judgment, shall be attached until further order. If the defendant show such cause, or furnish the required security, and the property specified in the application, or any portion of it, shall have been attached, the Court shall order the attachment to be withdrawn.

Where defendant fails to show cause or give security.  
Appendix B.  
Form 53.  
Sch. 3.  
O.13, r.4.

(e) In all cases of attachment before judgment, the Court shall at any time remove the same, on the defendant furnishing security as above required together with security for the costs of the attachment.

Removal of attachment.  
Sch. 3.  
O.13, r.6.

3. Whenever an application shall be made before trial for an injunction or other order, and on the opening of such application, or at any time during the hearing thereof, it shall appear to the Judge that the matter in controversy in the cause or matter is one which can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purpose of the application, it shall be lawful for the Judge to make an order for such trial accordingly, and to direct such trial to be held at such time as he may deem fit, and in the meantime to make such order as the justice of the case may require

Early trial of cause.  
R.S.C.  
O.50, r.1A.

4. It shall be lawful for the Court or a Judge, on the application of any party, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as the Court or Judge may think desirable, of any goods, wares, or merchandise which

Order for sale of perishable goods, etc.  
R.S.C.  
O.50, r.2.

may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

Detention  
preservation  
or inspection  
of property,  
the subject  
of an action.  
R.S.C.  
O.50, r.3.

5. It shall be lawful for the Court or a Judge, upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid, to authorise any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorise any sample to be taken, or any observation to be made or experiments to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

Inspection  
by Judge.  
R.S.C.  
O.50, r.4.

6. It shall be lawful for any Court or Judge, by whom any cause or matter may be heard or tried or before whom any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein.

Power  
of Court  
to grant  
injunction,  
etc.  
S.45.  
J.A. 1925.

7. (1) The Court may grant a mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the Court to be just or convenient so to do.

(2) Any such order may be made either conditionally or on such terms or conditions as the Court thinks just.

Application  
of rules 4,  
5 and 7.  
*supra*.  
R.S.C.  
O.50, r.6.

8. An application for an order under Rules 4, 5, or 7 of this Order may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order of mandamus or for an injunction or the appointment of a receiver, it may be made either *ex parte* or with notice, and if for an order under Rules 4, 5 or 7 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party then on a notice to the plaintiff and at any time after appearance by the party making the application.

Time for  
application  
under  
Rule 1.  
R.S.C.  
O.50, r.7.

9. An application for an order under Rule 1 of this Order may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court.



10. Where an action is brought to recover, or a defendant in his defence seeks by way of counterclaim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or Judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or Judge may direct, and that, upon such payment into Court being made, the property claimed be given up to the party claiming it, but subject in relation to certificates of title and coupons and other documents as defined by the Exchange Control Ordinance, to the provisions of that Ordinance.

Order for recovery of specific property, other than land, subject to lien, etc.  
R.S.C.  
O.50, r.8.

Cap. 206

11. Where any real or personal estate forms the subject of any proceedings in the Supreme Court, and the Judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Judge may at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the real estate or a part of the personal estate, or the whole or part of the income thereof, up to such time as the Judge shall direct.

Allowance of income of property pendente lite.  
R.S.C.  
O.50, r.9.

12. Whenever in an action for the administration of the estate of a deceased person or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court or a Judge shall otherwise direct.

Conduct of sale of trust estates.  
R.S.C.  
O.50, r.10.

13. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order, shall have the effect which a writ of injunction previously had.

Injunction to be by judgment or order.  
R.S.C.  
O.50, r.11.

14. In any cause or matter in which an injunction has been, or might have been claimed, the plaintiff may, before

Injunction against repetition

of wrongful  
act or  
breach of  
contract.  
R.S.C.  
O.50, r.12.

or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a Judge may grant the injunction, either upon or without terms, as may be just.

Leave to  
compound  
penal action.  
R.S.C.  
O.50, r.13.

15. Leave to compound a penal action shall not be given in cases where part or the whole of the penalty goes to the Crown, unless notice shall first have been given to the proper officer or a Government department or the Attorney General or an officer of the Crown as such is a party to the action; but in other cases it may be given without notice to any officer.

Under-  
taking by  
defendant.  
R.S.C.  
O.50, r.14.

16. The order to compound a penal action shall expressly state that the defendant undertakes to pay the sum for which the Court has given him leave to compound the action.

Queen's half  
composition.  
R.S.C.  
O.50, r.15.

17. When leave is given to compound a penal action, where part or the whole of the penalty goes to the Crown, it shall be paid into the hands of the Registrar of the Court for the use of the Crown.

## DIVISION 2.—RECEIVERS.

Appoint-  
ment of  
receiver by  
way of  
equitable  
execution.  
R.S.C.  
O.50, r.15A.

18. In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Court or a Judge in determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment, and may, if they or he shall so think fit, direct any inquiries on these or other matters before making the appointment.

Receivers-  
security  
remunera-  
tion.  
R.S.C.  
O.50, r.16.

19. Except as provided in the next following rule, where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed, shall first give security to be allowed by the Court or a Judge, duly

to account for what he shall receive as such receiver, and to pay the same as the Court or Judge shall direct, and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such security shall be by guarantee in the Form No. 54 in Appendix B, unless the Court or a Judge shall otherwise order.

20. Where the amount for which security is to be given does not exceed £500 such security may be given by an undertaking in the form specified in the appendix to these Rules, which may be cited as Form No. 55 of Appendix B of the Rules. Such undertaking shall be signed by the receiver and his surety or sureties, or, in the case of a guarantee or other company, shall be sealed with the seal of such company or otherwise duly executed. The undertaking shall be filed in the Registry, and kept as of record until the same shall have been duly vacated.

Security where not exceeding £500.  
R.S.C.  
O.50, r.16A.

21. Where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver, the Court or a Judge may adjourn to Chambers the cause or matter then pending in order that the person named receiver may give security as in the last preceding rule mentioned, and may thereupon direct such judgment or order to be drawn up.

Where receiver appointed in Court, adjournment into Chambers to give security.  
R.S.C.  
O.50, r.17.

21A. Where it appears to the Court or a Judge that the judgment creditor is resident outside the scheduled territories, as defined by the Exchange Control Ordinance Cap 206 or is acting by order or on behalf of a person so resident and that the permission of the Financial Secretary under the said Ordinance has not been given unconditionally or upon conditions that have been complied with, any order for the appointment of a receiver by way of equitable execution shall direct that the receiver shall pay into court to the credit of the cause or matter in which he is appointed any balance due from him after deduction of his proper salary or allowance.

Payment into court by a receiver pursuant to Exchange Control Ordinance, 1950.  
R.S.C.  
O.50, r.17A.

22. When a receiver is appointed with a direction that he shall pass accounts, the Court or Judge shall fix the days upon which he shall (annually, or at longer or shorter periods) leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part thereof as shall be certified as proper to be paid by him. And with respect to any such receiver as shall neglect to leave and pass his accounts

Fixing days for receivers to leave and pass their accounts and pay in balances.  
R.S.C.  
O.40, r.18.



may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

Detention  
preservation  
or inspection  
of property,  
the subject  
of an action.  
R.S.C.  
O.50, r.3.

5. It shall be lawful for the Court or a Judge, upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid, to authorise any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorise any sample to be taken, or any observation to be made or experiments to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

Inspection  
by Judge.  
R.S.C.  
O.50, r.4.

6. It shall be lawful for any Court or Judge, by whom any cause or matter may be heard or tried or before whom any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein.

Power  
of Court  
to grant  
injunction,  
etc.  
S.45.  
J.A. 1925.

7. (1) The Court may grant a mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the Court to be just or convenient so to do.

(2) Any such order may be made either conditionally or on such terms or conditions as the Court thinks just.

Application  
of rules 4,  
5 and 7,  
*supra*.  
R.S.C.  
O.50, r.6.

8. An application for an order under Rules 4, 5, or 7 of this Order may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order of mandamus or for an injunction or the appointment of a receiver, it may be made either *ex parte* or with notice, and if for an order under Rules 4, 5 or 7 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party then on a notice to the plaintiff and at any time after appearance by the party making the application.

Time for  
application  
under  
Rule 1.  
R.S.C.  
O.50, r.7.

9. An application for an order under Rule 1 of this Order may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court.

10. Where an action is brought to recover, or a defendant in his defence seeks by way of counterclaim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or Judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or Judge may direct, and that, upon such payment into Court being made, the property claimed be given up to the party claiming it, but subject in relation to certificates of title and coupons and other documents as defined by the Exchange Control Ordinance, to the provisions of that Ordinance.

Order for recovery of specific property, other than land, subject to lien, etc.  
R.S.C.  
O.50, r.8.

Cap. 206

11. Where any real or personal estate forms the subject of any proceedings in the Supreme Court, and the Judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Judge may at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the real estate or a part of the personal estate, or the whole or part of the income thereof, up to such time as the Judge shall direct.

Allowance of income of property pendente lite.  
R.S.C.  
O.50, r.9.

12. Whenever in an action for the administration of the estate of a deceased person or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court or a Judge shall otherwise direct.

Conduct of sale of trust estates.  
R.S.C.  
O.50, r.10.

13. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order, shall have the effect which a writ of injunction previously had.

Injunction to be by judgment or order.  
R.S.C.  
O.50, r.11.

14. In any cause or matter in which an injunction has been, or might have been claimed, the plaintiff may, before

Injunction against repetition

and pay the balances thereof at the times so to be fixed for that purpose as aforesaid, the Judge before whom any such receiver is to account may from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary therein claimed by such receiver and may also, if he shall think fit, charge him with interest at the rate of  $\frac{1}{2}$  per cent. per annum upon the balances so neglected to be paid by him during the time same shall appear to have remained in the hands of any such receiver.

Form of receivers' accounts.  
R.S.C.  
O.50, r.19.

23. Receivers' accounts shall be in Form No. 56 in Appendix B, with such variations as circumstances may require.

Filing account.  
R.S.C.  
O.50, r.20.

24. Every receiver shall file his account in the Registry together with an affidavit verifying the same in the Form No. 57 in Appendix B, with such variations as circumstances may require. An appointment shall thereupon be obtained by the plaintiff or person having the conduct of the cause for the purpose of passing such account.

Consequences of default by receiver.  
R.S.C.  
O.50, r.21.

25. In case of any receiver failing to file any account or affidavit, or to pass such account, or to make any payment, or otherwise, the receiver or the parties, or any of them, may be required to attend at Chambers to show cause why such account or affidavit has not been filed, or such account passed, or such payment made, or any other proper proceeding taken, and thereupon such directions as shall be proper may be given at Chambers or by adjournment into Court, including the discharge of any receiver and appointment of another, and payment of costs.

Certificate of receiver's account.  
R.S.C.  
O.50, r.22.

26. A certificate of the Registrar stating the result of a receiver's account shall from time to time be taken.

### DIVISION 3.—LIQUIDATORS.

Passing of liquidators' accounts.  
R.S.C.  
O.50, r.23.

27. The accounts of liquidators shall be passed and verified in the same manner as is by this order directed as to receivers' accounts.

Passing of guardians' accounts.  
R.S.C.  
O.50, r.24.

28. The accounts of guardians shall be passed and verified in the same manner as is by this Order directed as to receivers' accounts.



## ORDER 51.

## SALES BY THE COURT.

*Division 1.—Sales other than in Execution of Judgment.*

1. If in any cause or matter relating to any immovable property, it shall appear necessary or expedient that the immovable property 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 property, 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.

Power of Court to order sale of immovable property.  
R.S.C.  
O 51, r 1.

2. In all cases where a sale, mortgage, partition or exchange is ordered, the Court or a Judge shall have power, in addition to the powers already existing, with a view to avoiding expense or delay, or for other good reason, to authorise the same to be carried out, either—

Mode of carrying out sale, mortgage, partition or exchange, when ordered by Court.  
R.S.C.  
O.51, r.1A.

(a) by laying proposals before the Judge in chambers for his sanction; or

(b) by proceedings altogether out of Court, any moneys produced thereby being paid into Court or to trustees, or otherwise dealt with as the Judge in chambers may order.

Provided always that the Judge shall not authorise the said proceedings altogether out of Court, unless and until he is satisfied, by such evidence as he shall deem sufficient, that all persons interested in the estate to be sold, mortgaged, partitioned, or exchanged are before the Court or are bound by the order for sale, mortgage, partition, or exchange, and every order authorising the said proceedings altogether out of Court shall be prefaced by a declaration that the Judge is so satisfied as aforesaid, and a statement of the evidence upon which such declaration is made.

3. In debenture-holders' actions, where the debenture-holders are entitled to a charge by virtue of the debentures, or of a trust deed, or otherwise, and the plaintiff is suing on behalf of himself and other debenture-holders, and where the Judge in person is of opinion that there must eventually be a sale, he may in his discretion direct a sale before judgment, and also after judgment, before all the persons interested are ascertained, whether served or not.

Power to make order for sale in debenture-holders' action at any time.  
R.S.C.  
O.51, r.1B.