

GENERAL RULES.

Hilary Term, 1885.

WHEREAS, by the Consolidated Statutes, Cap. 49, the Supreme Court in Equity is authorized to make such general rules and orders as may be necessary for carrying the purposes and provisions of that Chapter into effect, and for regulating the forms and mode of procedure and practice of the said Court; it is therefore ordered as follows:—

1. That commissions for the examination of witnesses out of the Province, in any matter pending in the said Court, may be written or printed on paper, in the form (A) hereunder, or to the like effect; and may be executed according to the instructions (B) hereunder, with such modifications as may be applicable to the case.

2. Such commissions may authorize the witnesses to be examined on written interrogatories sent therewith, or *viva voce*, or partly one way and partly the other—as may be determined by the order of the Judge by whom such commission is directed to issue. Such commission shall be sufficient authority to execute the same in accordance with the instructions accompanying the same.

3. Such commissions may issue on the order of the Court, or a Judge, to be made on summons or special motion; which order may be in the following form, or to the like effect:—

“IN EQUITY.

(Title of Cause.)

Upon hearing, &c., it is ordered that a commission issue to examine at all witnesses produced before the Commissioners, [or, witnesses on the part of the plff. or deft.; or, naming the witnesses]. Such examination to be taken on interrogatories sent with the commission, [or, *viva voce*, or either way—as the case may be].

4. Whenever the examination is to be taken on interrogatories, the opposite party shall, within such time after service upon his solicitor of the order for the commission and the names of the Commissioners, as the Judge may direct, furnish to the party obtaining such order, the names of two Commissioners to act for the party on whom such order has been served; and in case he omits to do so, the commission may issue to the Commissioners named by the other party only.

5. When the examination is to be taken by written interrogatories, the party requiring witnesses to be examined on his behalf, shall within five days after service of the order for commission, or such further time as the Judge may direct, serve the opposite party with a copy of such interrogatories; and if such opposite party intend to exhibit cross interrogatories, he shall serve a copy of the same within five days after service of the interrogatories in chief, or within such further time as the Judge may direct; and in case he neglects to do so, the commission may be sent to be executed without any cross interrogatories.

(A)

VICTORIA, by the grace of God, &c.

To Commissioners named on behalf of the plaintiff, and Commissioners named on behalf of the defendant.

You are hereby appointed Commissioners to examine witnesses in a cause depending in the Equity side of the Supreme Court of New Brunswick, in which is plaintiff and is defendant. You are therefore directed that after having taken the oath indorsed hereon, and also after having administered the oath indorsed, to the person (if any), whom you shall appoint as Clerk to attend the execution of this commission, you do cause to come before you at such time and place as you shall think convenient, all such witnesses as shall be named or produced to you by the plaintiff, [or, by the defendant, or by either the plaintiff or defendant, as the case may be], and that you examine them upon their corporal oaths [or affirmations, as the case may be] to be by you administered on the Holy Evangelists, upon the interrogatories hereunto annexed [or *viva voce*; or, upon the interrogatories hereunto annexed and *viva voce*, as may be directed by the order] touching their knowledge or remembrance relating to the matters in question in the said cause. And that after having reduced such examinations into writing in the manner directed by the instructions herewith, you send the same together with this commission, with all convenient speed, closed up under your hands and seals, addressed to “The Supreme Court of New Brunswick.”

Witness, the Honorable Chief Justice, at Fredericton, the day of A. D. 188

ALLEN, Clerk.

COMMISSIONERS' OATH.

“You shall, according to the best of your skill and knowledge, truly and faithfully and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness or witnesses produced and examined by virtue of this commission. So help you God.”

CLERK'S OATH.

“You shall truly, faithfully, and without partiality to any or either of the parties in this cause, write down and transcribe the depositions of all and every witness and witnesses produced before and examined by the Commissioners or any of them, named in the within commission, so far as you are directed by

the said Commissioners or any of them to take, write down, and transcribe the said depositions. So help you God.”

(B)

Instructions for the execution of the commission, to accompany it.

1. This commission may be executed by one or more of the plaintiff's Commissioners, and by one or more of the defendant's Commissioners where both parties have named Commissioners; or, by any one of such Commissioners, if he, before proceeding to take the examination of any witness, gives forty eight hours notice in writing to one of the Commissioners of the opposite party, stating the time and place of such intended examination, and requesting his attendance thereat, and the Commissioner so notified, or his co-commissioner, (if any) fails to attend, or declines to act.

1. Where a commission is so executed by the Commissioners or Commissioner of one party only, they or he shall certify as follows:—

“We, the Commissioners, [or, I, one of the Commissioners] named in the annexed commission, served the notice hereto annexed upon another of the said Commissioners, by delivering a true copy thereof to him on the day of at and he did not attend, nor did any Commissioner attend, on behalf of the [defendant, or plaintiff, as the case may be] or join in the execution of the said commission.

Dated the day of A. D., 188 .”

(Signature of Acting Commissioners.)

3. Before proceeding to act, the Commissioners will take the oath prescribed for them, before a Notary Public, or a Commissioner appointed by the Lieutenant Governor in Council to take affidavits out of this Province, or before a Justice of the Peace, which Notary Public or other officer shall certify as follows, signed with his name, and stating his official character:—

“The above oath was administered by me this day of A. D., 188 to the Commissioners within named,” (as the case may be.)

4. If the Commissioners appoint a Clerk to attend the execution of the commission, one of them shall administer to him the Clerk's oath indorsed on this commission; in which case the acting Commissioners will certify underneath the same as follows, and will sign the same:—

“The above oath was administered by us to , appointed Clerk, before we proceeded to the execution of the commission.”

5. The acting Commissioners will then administer to the witnesses they are about to examine, an oath or affirmation according to the established form of the place where the commission is to be executed, according to the form of their several religions, requiring them to make true answers to all such questions as shall be asked of them, without favor to either party, and therein to speak the truth, the whole truth, and nothing but the truth.

6. The acting Commissioners will then propound to the witness, in its order, each interrogatory and cross-interrogatory accompanying the commission, in case it authorizes the examination on written interrogatories only; and in case the examination is directed to be *viva voce*, the parties so examining, or their counsel, shall furnish the questions in writing, which shall be propounded to the witness by the Commissioner, and the answer to each and every such question shall be recorded. In case the commission directs the examination to be by written interrogatories and *viva voce*, the same course is to be pursued, until the whole of the questions are answered.

7. Each witness must subscribe his examination with his name, or by his mark in case of his inability to write; and the acting Commissioners should write their names opposite the witness's signature, for the purpose of identifying it. If, during his examination, a witness shall produce or refer to any paper, exhibit, or document, the same may be marked by some letter or figure, and be further identified by the acting Commissioners in the following manner:—“This is the paper, [exhibit or document] referred to by in his examination, and marked .” To which such Commissioners shall sign their names.

8. The Commissioners will take care that every question put to each witness is answered by him, and his answer recorded, although it be merely to declare that he has no knowledge of the matter enquired of. An omission to answer any question may, if the Judge on the hearing of the cause so direct, be a ground for rejecting the whole of the examination or evidence of such witness.

9. The Commissioners are directed not to ask any questions but such as are furnished in writing, and transcribed and returned with the commission.

10. When the examinations are completed, the acting Commissioners shall certify as follows, or to the like effect:—

“At the execution of the commission hereto annexed, we [two] of the Commissioners therein named having met this day of A. D., at

[if executed without the attendance of a Commissioner for each party, say]—and having given notice of the time and place of executing the same to a Commissioner on the part

of the (plaintiff or defendant,) and he not attending, or “declining to act,” [as the case may be], and having taken the oath prescribed by the said commission, and having appointed