

GENERAL RULES. EASTER TERM, 1892.

AFFIDAVITS.

1. Upon Motions founded upon Affidavits, copies of which have been served on the opposite party, with notice of the intended Motion, copies of any Affidavits intended to be used in answer thereto shall be served at least four days before the Motion is made, unless the Court shall otherwise allow.

SECURITY FOR COSTS.

2. *Ordered*, That the Rule of Michaelmas Term, 1844 (Earl's Rules, 108), be rescinded, and that in future when Security for Costs is ordered, such Security shall be given in the sum of Two hundred dollars.

COMMISSIONS TO EXAMINE WITNESSES.

3. Commissions to examine witnesses, issued under the authority of the Consolidated Statutes, Chapter 37, Sec. 188, together with the instructions accompanying the same, may be written or printed on paper, and shall be in the following form, as near as may be, with such variations as the circumstances of the case may render necessary, viz:—

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 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 , and that you examine them upon their corporal oaths [or affirmation, in cases where affirmation is allowed by law] 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. 189 .

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."

4. 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 THE SUPREME COURT.
(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].

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.

2. 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 at-

tend, 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. 189 .

(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. 189 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 questions as well as the answers shall be written down and form part of the proceedings. 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 may 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 put any questions, except such as are contained in the interrogatories, or asked *viva voce* by or on behalf of the parties, or either of them.

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 as Clerk, and he having taken the oath prescribed for him, we proceeded to take the following depositions, namely:—

"G. H., who being first duly sworn in due form of law, did depose and say as follows to the first interrogatory on the part of the [setting out the answer to each interrogatory or *viva voce* question to the witness]. After stating the depositions of each of the witnesses, the Commissioners may conclude their return as follows:—

"In witness whereof we have hereunto set our hands and seals this day of , 189 ."

Expenses of Commission—		
Plaintiff, \$—	}	A. B. [L.S.]
Defendant, \$—		C. D. [L.S.]
		E. F. [L.S.]

11. The Commissioners will then annex the depositions and exhibits, or other documents to the commission, and carefully seal up the whole in an envelope, write their names across the seals, as near as may be, and address the same to "The Supreme Court of New Brunswick," stating the title of the cause thus:—

A. B. }
v. } Commission."
C. D. }

12. If there is more than one plaintiff and one defendant in the suit, it will be sufficient to state the name of the first plaintiff and defendant, as the case may be, with the addition of the words "and another," or "others."

13. The commission and depositions being so sealed up and addressed, may be enclosed in an envelope, and sent by mail,