

DEMURRER—Continued.

2. — *Bill—Res judicata.*] A bill is not demurrable on the ground of *res judicata*, unless it appears in the bill itself that the matters alleged in it were in controversy and were adjudicated upon in the former suit. *SMITH v. THE HALIFAX BANKING COMPANY*17

DENOMINATIONAL SCHOOLS.296
See SCHOOLS.

DISCLAIMER—Answer and Disclaimer to Whole Bill—Amendment of Bill—Costs.] A defence and disclaimer to whole bill cannot be put in, and where this is done defendant will not be allowed costs on bill being amended. *ROBERTS v. HOWE*139

2. — *Foreclosure Suit—Judgment Creditor—Dismissal of Bill—Costs.*] Where a judgment creditor having registered a memorial of his judgment is made a party to a suit for the foreclosure of a mortgage given previously by the judgment debtor, disclaims, he is not entitled to costs on the dismissal of the bill as against him. *NICHOLSON v. REID*697

3. — *Foreclosure Suit—Mortgage—Joiner of Administrator—Absence of Interest—Dismissal of Bill—Costs.*] As a general rule the administrator of a deceased mortgagor should not be made a party to a foreclosure suit. Where an administrator is improperly made a party to such a suit he should disclaim in order to entitle him to have the bill dismissed with costs. Disclaimer is as applicable where a defendant has no interest as where he has an interest which he is willing to abandon. Where the administrator of a mortgagor was improperly joined in a foreclosure suit, costs thereby incurred were not allowed to the plaintiff. *BARNABY v. MUNROE*.94

4. — *Inquiry Before Suit of Defendant's Interest—Equivocal Reply—Disclaimer to Bill—Cause Proceeding to Hearing—Dismissal of Bill as Against Disclaimant—Costs.*] Defendant being asked by the plaintiff if he claimed any interest in certain machinery upon premises mortgaged to the defendant made use of equivocal language not amounting to a disclaimer. Upon being made a party to a suit for the recovery of the machinery he disclaimed. The plaintiff did not accept the disclaimer, and the cause proceeded to hearing. *Held*, that the bill

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should be dismissed as against the defendant, but without costs. *LAME v. GUERETTE*199

DISCOVERY—Production of Documents—The Supreme Court in Equity Act, 1890 (53 Vic. c. 4), ss. 39 and 61.] Section 59 of the Supreme Court in Equity Act, 1890 (53 Vic. c. 4) does not empower the Court to order the production of documents discovered to be in the possession or power of one of the parties. The section is limited to discovering whether documents are in his possession or power. If admitted to be, their production may be ordered under section 61. The Court will not ordinarily compel a plaintiff to produce documents in his possession or power although the defendant swears that he cannot fully answer without their production. If the plaintiff on request refuses to produce them, he cannot complain of the insufficiency of the defendant's answer. *HEGAN v. MONTGOMERY*.....247

— *Interrogatories—Answer—Insufficiency—Exceptions.*159, 342, 395
See INTERROGATORIES, 1, 2, 3.

DISMISSAL OF BILL—Death of plaintiff—Costs57
See COSTS, 4.

— *Disclaimer.*

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— *Interlocutory injunction—Undertaking as to damages*393
See INJUNCTION, 3.

— *Pleading fraud—Failure of proof—Costs*466
See INSURANCE, 1.

— *Specific performance—Parol agreement—Conflict of evidence—Costs*529
See SPECIFIC PERFORMANCE, 1.

— *Trustee—Insolvency—Removal—Receiver—Costs*601
See TRUSTEE, 4.

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DOWER—Admeasurement—Report of Commissioners—Difficulty in Setting off Part of Premises as Dower—Failure to Report Value—Amendment—Supreme Court in Equity Act, 1890 (53 Vic. c. 4), ss. 259, 254.] Where commissioners to admeasure dower reported that it was difficult and not advisable to set off the