

convey the said estate in equal proportions to the children, with a devise over to his brothers and sisters in the event of the death of all his children under the age of twenty-one and unmarried; a petition presented by the widow and infant children of the testator, praying for a sale of a portion of the corpus of the personal estate, for the purpose of maintaining the family and keeping the houses in repair, was refused with costs.—*McIntosh v. Elliot*, 440.

PRO CONFESSO.

67. Where a plaintiff had obtained an order to take the bill *pro confesso* against one of the defendants, and afterwards applied to amend by adding parties without prejudice to the order which had been so obtained: motion refused.—*Herchmer v. Benson*, 92.

RECEIVER.

68. The court will entertain a motion to discharge an order for a receiver, though such order was made upon notice.—*Sanders v. Christie*, 137.

See also 56, 58.

RE-HEARING.

69. A party is entitled to have a cause re-heard before this court, which has already been heard and re-heard by the Vice-Chancellor alone.—*Cook v. Walsh*, 209.

70. Only one re-hearing before this court will be permitted as of course.—*Ib.*

REPLICATION, *nunc pro tunc*.

71. Where the plaintiff had proceeded in the cause as if a replication had been filed, and no motion was made by the defendant to have the mistake rectified—the court, after service of the rule to produce and notice of examination of witnesses, allowed a replication to be filed *nunc pro tunc*, on pay-

ment of costs.—*Beckett v. Rees*, 434.

RE-SALE.

72. Where an estate was sold under the decree of this court, and in the conditions of sale it was stated erroneously that the property was subject to dower, when in reality the dower attached to the equity of redemption only; in consequence of which the property brought a much less sum than it otherwise would: a re-sale was ordered on the petition of the executors of a party who had been surety to the creditor at whose instance the sale was had; and under the circumstances the costs of the petitioners were ordered to be charged upon the estate.—*Jones v. Clarke*, 368.

73. Where a bill was filed against the heir-at-law for specific performance of a contract entered into by the ancestor, stating that all the purchase money had been paid, but this was not altogether proved at the hearing: the court directed a reference to the master to receive proof of payment of the purchase money, reserving leave to the personal representative to apply in case any part of the purchase money remained unpaid at the decease of the ancestor.—*Farquharson v. Williamson*, 93.

SUBSTITUTIONAL SERVICE.

74. Where a plaintiff desires to effect service of the subpœna, by serving the agent of an absent defendant, he must shew that the party to be served is the agent of the defendant in relation to the subject matter of the suit, to such an extent as to satisfy the court that the acceptance of a subpœna by such agent will fall within the authority conferred upon him by his principal: where, therefore, a motion for such an order was