

at the hearing, with leave to add parties and to exhibit an interrogatory to prove the will of the testator, and the plaintiffs afterwards amended by making the devisees of the testator co-plaintiffs, and in addition to the interrogatory to prove the will exhibited interrogatories to prove the fact of the persons so added as co-plaintiffs being the parties named in the will; a motion made to expunge those interrogatories, as being unwarranted by the order to amend, was refused with costs.—*Chisholm v. Sheldon*, 425.

## AFFIDAVITS.

4. Where affidavits used upon a motion against a solicitor personally calling upon him to pay in certain moneys received in the course of a cause, were entitled in that cause—omitting any mention of the solicitor: *Held*, that the entitling was sufficient.—*Crooks v. Crooks*, 57.

5. Exceptions to an answer cannot be shewn as cause against dissolving a special injunction; for if the answer be insufficient it may still be used as an affidavit.—*Harrison v. Baby*, 247.

6. *Per ESTEN, V. C.*—Affidavits cannot be used on a motion, where no intention to read affidavits thereon is mentioned in the notice of motion.—*Farish v. Martyn*, 300.

## AGENT.

7. W. C. having filed a bill to administer the estate of his father, obtained from the court an injunction enjoining several judgment creditors who had placed executions against the lands of the deceased in the hands of the sheriff from proceeding thereon until a decree for administering the estate could be obtained; after the injunction had been obtained, W. C., by the advice of his solicitor,

sold part of the estate, and the greater portion of the purchase money was retained by the solicitor, upon which he claimed to have a lien for his costs.

A decree was afterwards obtained in the cause, making the injunction perpetual, after which the solicitor advised the conveyance of a large portion of the estate to his (the solicitor's) partner, upon certain trusts, whereby the eldest judgment creditor was entirely excluded from all benefit.

The agent of the solicitor advised a conveyance of another portion of the estate to one of the creditors, and obtained from this creditor a power of attorney to sell, under which he contracted to sell several portions of the lands so conveyed, and received several sums of money on account thereof, which he also applied to his own use, with the exception of certain parts paid to his client.

One of the defendants, upon these facts, filed a petition under the 163rd order praying that it might be referred to the master to enquire and report if the sales have been beneficial to the estate; and if the master should be of that opinion, then that the proper parties might be ordered to pay the amounts received into court.

*Held, per Cur.*—That the proper order to make would be for a reference to enquire and report; and if the sales adopted, then that the money remaining in the hands of the solicitors should be forthwith paid in, without prejudice to the creditors' rights to get rid of the contracts.

*BLAKE, CHANCELLOR, dissentiente.*—Who considered that the proper order to make was for the immediate payment of the money, whatever might be the ultimate disposition thereof.