

ORDER OF COURT—Continued.

sale of mortgaged premises, and a motion shall be made for an order that such bill be taken *pro confesso* for want of a plea, answer, or demurrer, the Court may, on making such order, also assess the amount due, or order a reference to determine the same, and decree a sale, provided at least fourteen days' notice of such motion be given to the opposite party, together with a copy of the affidavit upon which such motion is based, and upon which such assessment is to be made.

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PARTIES—Administrator — Foreclosure Suit — Disclaimer — 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 an administrator improperly made a party to a foreclosure suit did not disclaim and the cause proceeded to hearing he was equitably dealt with by being allowed costs, on the dismissal of the bill, up to and including his answer. 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

2. — Death of Plaintiff—Dismissal of Bill—Costs—Supreme Court in Equity Act, 1890 (53 Vict. c. 4), s. 98. [Where, on the death of a sole plaintiff, the Court, on the application of the defendant,

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orders that the legal representatives revive the suit, or, in default, that the bill stand dismissed, such dismissal will be without costs. *LEBLANC v. SMITH*57

3. — Widow — Breach of Trust by Husband—Following Proceeds of Trust Property — Proceeds Invested in Real Estate. [An executor *de son tort* sold property and invested the proceeds in land, and conveyed it to his daughter by a deed to which his wife was not a party. After his death a suit was brought against the widow and daughter to have the land charged with the trust affecting the original property. *Held*, that the widow was properly joined in the suit. *DUNLOP v. DUNLOP*72

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PARTITION — Suit — Defendant not Appearing at Hearing—Answer Unsupported by Evidence and Considered Unnecessary—Costs. [Where in a partition suit one of the defendants did not appear at the hearing, and his answer was unsupported by evidence, and was assumed by the Court to be unnecessary, he was held not entitled to any costs. *SHIELDS v. QUIGLEY*154

2. — Joinder of married woman. [The wife of a tenant in common in land sought to be sold in a partition suit should be a party to the suit. *HANNAGHAN et al. v. HANNAGHAN et al.*392

3. — Standing Grass—Sale by Court. [During the pendency of a partition suit the Court will not, in opposition to the tenant in possession, order the sale of standing grass and payment of the proceeds into Court, unless it is necessary in the interest of the co-tenants. *SMITH v. SMITH, et al.*320