

will warrant and defend the same to the grantee, his heirs and assigns, against the demands of all persons claiming by or through the grantor, and the grantee under such a deed if registered, will not be postponed under the Registry Act, 57 Vict., c. 20, to the equities of a prior purchaser, of which he had no notice.

*Chandler*, Q.C., for plaintiff. *Powell*, Q.C., for defendant.

In Equity, Barker, J.] EX PARTE WELCH. [Dec. 18, 1900.  
CHAPMAN v. GILFILLAN.

*Power of attorney—Authority to receive surplus proceeds of mortgage sale—Death of grantor before sale—Revocation—Equitable assignment.*

Pending a suit for the foreclosure of a mortgage and sale of the mortgaged premises the mortgagor executed and delivered a writing in favour of a creditor authorizing him to collect, recover and receive, and apply on account of his debt, any surplus from the sale, and declaring that the power might be exercised in the name of the grantor's heirs, executors and administrators, and should not be revoked by his death.

*Held*, that the writing was not an equitable assignment, but a power of attorney revocable by the grantor's death.

*Wilson*, Q.C., for applicant. *Chandler*, Q.C., contra.

In Equity, Barker, J.] ABELL v. ANDERSON. [Dec. 18, 1900.

*Pleading—Demurrer and answer to whole bill—Amendment—Costs—Act 53 Vict., c. 4, s. 47—Setting demurrer down for argument—Waiver of objection to demurrer—53 Vict., c. 4, s. 41—Demurrer ore tenus.*

A defendant may not answer and demur respectively to the whole bill, for thereby the demurrer is overruled, notwithstanding 53 Vict., c. 4, s. 47. Consequently where a demurrer professed to be to a part, and the answer professed to be to the residue, of a bill, but the demurrer was extended to the whole prayer of the bill, it was held that unless the answer were withdrawn, for which purpose leave of court was given, the demurrer should be overruled with costs, but that if the answer were withdrawn, the demurrer being successful on the merits should be allowed with costs.

In an answer and demurrer the defendant ought to specify distinctly what part of the bill it is intended to cover by the demurrer.

The objection that an answer and demurrer are respectively to the whole bill, is not waived by the plaintiff setting the demurrer down for argument under s. 41 of Act 53 Vict., c. 4.

A defendant cannot demur ore tenus where there is no demurrer on the record, as where the demurrer on the record is overruled by the answer.

*W. B. Wallace*, Q.C., for plaintiff. *W. Pugsley*, A.G., and *A. P. Barnhill*, for defendants.