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ORDERS

OF

THE COURT OF CHANCERY,

UPPER CANADA.

1ST JULY, 1853.

TORONTO:
HENRY ROWSELL,
KING STREET.

1853.

H. Rowsell, Printer, Toronto

ORDERS OF COURT.

3RD JUNE, 1853.

THE JUDGES of the Court of Chancery do hereby, in pursuance of an Act of Parliament passed in the twelfth year of the reign of Her present Majesty, intituled "An Act to provide for the more effectual administration of Justice in the Court of Chancery, in the late province of Upper Canada," and of an act passed in the 13th & 14th years of the reign of Her present Majesty, intituled "An Act to amend the Registry Law of Upper Canada," and in pursuance and execution of all other powers enabling them in that behalf, order and direct that all and every the rules, orders and directions hereinafter set forth, shall henceforth be, and for all purposes be deemed and taken to be, general orders and rules of the Court of Chancery, viz.—

INTRODUCTORY.

Orders to take effect on 1st July 1853.

I. These orders are not to affect suits already commenced, except as hereinafter provided; and as to all suits hereafter to be commenced, they are to take effect on the 1st day of July 1853.

All former orders repealed.

II. All the orders of this court which were in force on the 1st day of May 1850, numbered from I. to CXCII.; and all orders promulgated on the 7th day of May 1850, numbered from I. to LXXXIV.; and all the orders promulgated on the 7th day of January 1851,

numbered from I. to XXV., are hereby abrogated and discharged, except as to suits already commenced.

Interpretation.

INTERPRETATION.

III. In these orders the following words have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there is something in the subject or context repugnant to such construction, viz. —

1. Words importing the singular number include the plural number; and words importing the plural number include the singular number.

2. Words importing the masculine gender include females.

3. The word "person" or "party" includes a body politic or corporate.

4. The word "bill" includes information.

5. The word "plaintiff" includes informant.

6. The word "affidavit" includes affirmation.

7. The word "legacy" includes an annuity and a specific as well as a pecuniary legacy.

8. The word "legatee" includes a person interested in a legacy.

9. The expression "residuary legatee" includes a person interested in the residue.

10. The word "order" includes decree and decretal order.

Long vacation.

IV. The long vacation is to commence on the 1st day of July, and to terminate on the 21st day of August in every year.

COMPUTATION OF TIME.

V. When any time limited from or after any date or event is appointed or allowed for doing any act or taking any proceeding, the computation of such limited time is not to include the day of such date, or of the happening of such event, but is to commence at the beginning of the next following day; and the act or proceeding is to be done or taken at the latest on the last day of such limited time, according to such computation.

One day to be inclusive, and one exclusive.

Sec. 2.—When the time for doing any act, or taking any proceeding is limited by months, not expressed to be calendar months, such time is to be computed by lunar months of twenty-eight days each.

"Month" means lunar month.

Sec. 3rd.—When the time for doing any act, or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day—such act or proceeding is, so far as regards the time of doing or taking the same, to be held to be duly done or taken, if done or taken on the day on which the offices shall next open.

Where the time of doing any act falls on Sunday, &c.

Sec. 4.—The time for vacation is not to be reckoned in the computation of the times appointed or allowed for the following purposes, viz.—

The time of vacation not to count for certain purposes.

1. Amending or obtaining orders for leave to amend bills.

2. Setting down demurrers.

3. Filing replications, or setting down causes under the directions of rule XVIII.

Sec. 5—The day on which an order that the plaintiff do give security for costs is served, and

the time thenceforward until and including the day on which such security is given, is not to be reckoned in the computation of time allowed a defendant to answer or demur.

PARTIES TO SUITS.

VI. The practice of setting down a cause on an objection for want of parties merely, is abolished.

Sec. 2.—It shall not be competent to any defendant in any suit to take any objection for want of parties to such suit, in any case to which the rules next hereinafter set forth extend.

Defendant not to take objection for want of parties in any of the following cases:

Rule 1.—Any residuary legatee, or next of kin, may have a decree for the administration of the personal estate of a deceased person, without serving the remaining residuary legatees or next of kin.

Rule 2.—Any legatee interested in a legacy charged upon real estate; or any person interested in the proceeds of real estate directed to be sold, may have a decree for the administration of the estate of a deceased person, without serving any other legatee or person interested in the proceeds of the estate.

Rule 3.—Any residuary devisee or heir, may have the like decree, without serving any co-residuary devisee, or co-heir.

Rule 4.—Any one of several *cestuis que trust*, under any deed or instrument, may have a decree for the execution of the trusts of the deed or instrument, without serving any other of such *cestuis que trust*.

Rule 5.—In all cases of suits for the protection of property pending litigation, and in all cases in the nature of *waste*, one person may move on behalf of himself, and of all persons having the same interest.

Rule 6.—Any executor, administrator, or trustee, may obtain a decree against any one legatee, next of kin, or *cestui que trust*, for the administration of the estate, or the execution of the trusts.

In all the above cases the court, if it shall see fit, may require any other persons to be made a party or parties to the suit, and may if it shall see fit, give the conduct of the suit to such person as it may deem proper; and may make such order in any particular case as it may deem just for placing the defendant on record on the same footing in regard to costs as other parties having a common interest with him in the matter in question.

but court may order other persons to be made parties;

may give the conduct of the case to any party,

and regulate the costs.

In all the above cases the persons who, according to the present practice of the court, would be necessary parties to the suit, are to be served with an office copy of the decree, and after such service they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit; and upon service of notice upon the plaintiff they may attend the proceedings under the decree; any party so served may apply to the court to vary, or add to the decree, within fourteen days from the date of such service.

All necessary parties to be served with an office copy of the decree.

Rule 7.—In all suits concerning real or personal estate which is vested in trustees under a will, settlement or otherwise, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate, represent the persons beneficially interested in such personal estate; and in such case it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit; but, on the hearing the court, if it shall think fit, may order such person or persons, or any of them, to be made parties.

Rule 8.—In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court, as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

SUBPŒNA TO APPEAR AND ANSWER.

Subpœna to appear and answer abolished.

VII. The writ of subpœna to appear and answer a bill of complaint is hereby abolished.

APPEARANCE.

Appearances abolished.

VIII. In future no appearance is to be entered in any suit, either by the defendant or by the plaintiff on his behalf.

BILL OF COMPLAINT.

Bill of complaint; its form.

IX. A bill of complaint is to be in the form of a petition, addressed to the Chancellor. It must contain:

1. The name and description of each party complainant.

2. The name of each party defendant.

3. A statement of the plaintiff's case in clear and concise language.

4. A prayer for the specific relief to which the plaintiff supposes himself entitled; but the prayer for general relief may be added.

In the several cases enumerated in schedule A., hereunder written, the bill of complaint may be in the form, or to the effect, set forth in that schedule as applicable to the particular case; and, in cases not enumerated in that schedule, forms of pleading similar in principle may be adopted, whenever a more detailed statement is not necessary for the full development of the case.

A bill of complaint is not to contain any interrogatories; all merely formal parts, except the address and conclusion, are to be omitted; and the signature of counsel may be dispensed with.

Bill may be filed with a deputy registrar; and the service of a bill has the same effect as the service of a subpœna to appear and answer.

Sec. 2.—A bill of complaint may be filed either with the registrar or with a deputy registrar, at the option of the plaintiff; and the filing of a bill of complaint shall have the same effect as the filing of a bill and the issuing of a subpœna to appear and answer now have; and the service upon a defendant of a bill of complaint, with such endorsement thereon as is hereinafter provided, shall have the same effect as the service upon him of a writ of subpœna to appear and answer now has.

An office copy of the bill to be served, with the endorsement in schedule B.

Sec. 3.—In lieu of serving a defendant with a subpœna to appear and answer, an office copy of the bill of complaint is to be served upon him, with an endorsement thereon in the form, or to the effect set forth in schedule B., hereunder written.

Mode of serving an office copy of a bill of complaint.

Sec. 4.—Service of an office copy of a bill of complaint upon any defendant is to be effected in the same manner that service of a subpœna to appear and answer is now effected; but it shall not be necessary to produce the original bill. Affidavits of the service of an office copy of a bill of complaint are to be in the form or to the effect set forth in schedule C., hereunder written; they are to state where, when, and how such service was effected; but no copy of the bill is to be annexed.

Service of an office copy of a bill when the defendant is out of the jurisdiction.

Sec. 5.—Where a defendant in any suit is out of the jurisdiction of the court, then, upon application supported by such evidence as may satisfy the court, in what place or country such defendant is or may probably be found, the court may order that an office copy of the bill may be served on such

defendant in such place or country, or within such limits as the court may think fit to direct.

Form of the order:

Such order is to limit a time (depending on the place of service) within which such defendant is to answer or demur to the bill, or obtain from the court further time to make his defence to the bill.

Where orders for substituted service of an office copy of a bill of complaint may be obtained.

Sec. 6.—Orders for substitutional service of an office copy of a bill of complaint may be obtained in the same manner, and in such cases, as orders for substitutional service of a subpœna to appear and answer may be obtained under the present practice.

Proceedings against an absconding defendant.

Sec. 7.—In case it appears to the court by sufficient evidence that any defendant against whom a bill has been filed has been within the jurisdiction of the court at some time not more than two years before the filing of the bill, and that such defendant after due diligence cannot be found to be served with an office copy of the bill, and that there is good reason to believe that he has absconded—in such case the court may order the defendant to answer within a time to be named in the order and may direct a copy of such order, with a notice to the effect set forth in schedule D., hereunder written, to be published in such manner as the court may think fit; and in case the defendant does not answer or demur within the time limited by such order, the court, if it shall think fit, may order the bill to be taken *pro confesso* against such defendant, in the manner hereinafter provided.

Proceedings against an absent defendant who cannot be discovered

Sec. 8.—In case it appears to the court by sufficient evidence that any defendant, against whom a bill of complaint has been filed for the foreclosure of a mortgage, or respecting the specific performance of any agreement, cannot be found after due diligence, to be served with an office copy of the bill of

complaint, in such case the court may order the defendant to answer or demur within a time to be named in the order, and may direct a copy of such order, together with a notice to the effect set forth in schedule D., hereunder written, to be published in such manner as the court may think fit; and in case the defendant does not answer or demur within the time limited by such order, the court, if it shall think fit, may order the bill to be taken *pro confesso* in the manner hereinafter provided.

Order of course to amend the bill before answer.

Sec. 9.—Orders of course to amend a bill of complaint may be obtained at any time before answer, upon prœcipe.

Service of an order to amend dispensed with in certain cases;

Sec. 10. — Service upon any defendant of an order of course to amend, before answer may be dispensed with, upon an application *ex parte*, when the court is satisfied that such an order may be made without prejudice to the defendant's rights; and when service upon any defendant of an order to amend has been dispensed with, the cause as to such defendant is to proceed as if the bill had been originally filed in the amended form.

to correct error in names, dates, or sums.

Sec. 11.—An order to amend the bill only for the purpose of rectifying a clerical error in names, dates or sums, may be obtained at any time upon prœcipe.

One order of course after answer.

Sec. 12.—One order of course to amend the bill as the plaintiff may be advised may be obtained by the plaintiff upon a prœcipe, at any time before filing the replication, and within four weeks after the answer, or the last of several answers has been filed: but no further order of course for leave to amend the bill is to be granted after an answer has been filed, except in the case provided for by the 10th section of this order.

The bill must be amended within fourteen days.

Sec. 13. — A plaintiff having obtained an order to amend his bill is to amend within fourteen days from the date of such order; otherwise the order to amend becomes void, and the case as to dismissal stands in the same situation as if such order had not been made.

Amendment substituted for a supplimental bill.

Sec. 14. — Supplemental bills are abolished. When a suit is defective by means of some imperfection in the bill, and not in consequence of any event arising subsequent to its institution, the court may at any time permit an amendment of the bill in furtherance of justice, and on such terms as it may think proper, for the purpose of altering the allegations in the bill, or of putting new matter in issue, as well as for the purpose of adding or striking out the names of parties, or of varying the relief prayed, or praying further relief.

Such order is to be applied for by motion, the notice of which is to state the required amendment; and must be served upon the parties, or their solicitors, unless dispensed with.

Upon the motion the court must be satisfied, by affidavit, or otherwise, of the truth of the proposed amendment, and of the propriety of permitting it to be made at the particular stage of the cause, under all the circumstances.

Upon pronouncing such order for amendment, the court is to give such direction as to the future conduct of the suit, in relation to answering such amendments, as also with regard to the evidence taken, or to be taken, and in all other respects, as the circumstances of the case may require.

Amendment substituted for bills of revivor; bills of revivor and supplement, original bills in the

Sec. 15. — Bills of revivor, bills of revivor and supplement, original bills in the nature of bills of revivor, and original bills in the nature of supplemental bills, are abolished. When a suit becomes

defective, or abates by any event subsequent to its institution, and before final decree, the court may direct an amendment of the record, in order that such defect may be remedied, and the suit continued, and the benefit thereof obtained.

nature of bills of revivor, or original bills in the nature of supplemental bills.

The order for such an amendment is to be applied for by motion; the notice of motion is to specify the nature of the amendment, and the applicant's title to the same.

Notice of motion is to be served on the parties to the suit, or their solicitors, unless dispensed with; and it may be made by any person who could have heretofore obtained the desired object by supplemental bill, or by any form of bill by this order abolished.

Upon the motion the court must be satisfied, by affidavit or otherwise, of the applicant's title to relief, and of the propriety of permitting the amendment to be made at the particular stage of the cause, under all the circumstances.

Sec. 16.—When a suit becomes abated after decree, any party entitled to revive the same may do so by a petition in the cause, which is to state the petitioner's title to the relief sought. This petition must be verified by affidavit; it is to be served upon the solicitors of all parties, or in case any party has no solicitor, then upon such party.

Revivor where suit abates after decree.

Sec. 17.—Bills of review are abolished. When the reversal of a decree is sought upon the ground of error apparent upon the face of the decree, that object may be attained by re-hearing the cause, whether the decree has or has not been enrolled. One re-hearing may be had upon petition, signed by counsel, as in the case of an ordinary re-hearing, as well before as after the enrolment; but no petition for a second re-hearing is to be filed without leave

Bills of review abolished.

of the court first had, upon special motion for the purpose; provided that this order is not to be construed to authorise the re-hearing of a cause in the ordinary acceptation of the term after enrolment.

Sec. 18.—Bills in the nature of bills of review; bills to impeach decrees on the ground of fraud; bills to suspend the operation of decrees; bills to carry decrees into operation, are abolished. Any party heretofore entitled to file a bill of review, praying the variation or reversal of a decree, upon the ground of matter arising subsequent to the decree, or subsequently discovered, or any description of bill by this order abolished, is to proceed by petition in the cause: this petition must pray the relief which is sought, and must state the ground upon which it is claimed. The petition is to be verified by affidavit, and must be served upon the solicitors of all parties interested; and in case any such party has no solicitor, then upon such party; and where the reversal or variation of a decree is sought upon new matter, such proof as would have been requisite upon a motion to file a bill of review must be supplied. Upon the hearing of the petition, the court, in its discretion, may either make a final order, or direct the petition to stand over, with liberty to the parties interested in sustaining the decree to file a special answer to the same; and may make such order as to the production of further proof, and the manner thereof, and the further hearing of the petition, as the court may deem meet.

Bills in the nature of bills of review; bills to impeach decrees for fraud; bills to suspend the operation of decrees; bills to carry decrees into execution, abolished.

Sec. 19.—No bill is to be filed for discovery merely, except in aid of the prosecution or defence of an action at law.

Bills for discovery abolished in certain cases.

PLEAS.

X. Pleas are abolished. All defences are to be presented to the court by demurrer or answer, or both, according to circumstances.

Pleas abolished.

DEMURRER.

XI. A defendant may demur to a bill of complaint at any time within one month after service upon him of an office copy of the bill. Upon filing of a demurrer by a defendant, either party is at liberty to set the same down for argument immediately.

Demurrers, when to be filed, and how argued.

ANSWER.

XII. Answers may be in a form similar to the form set out in schedule E. to these orders. The signature of counsel is unnecessary; but the name of the party or solicitor who files the same is to be endorsed thereon, in conformity with the 2nd and 3rd section of order XLIII. The answer is to be verified by the oath of the defendant, and the jurat is to be in the form set forth in schedule E.

Form of the answer

The answer is to consist of a clear and concise statement of such defence or defences as the defendant may desire to make.

to state the defence concise.

The silence of the answer as to any statement of the bill is not to be construed into an implied admission of its truth; and any allegation introduced into an answer for the purpose of preventing such implied admission, is to be considered impertinent.

The silence of the answer is not to be construed into an implied admission of the truth of the bill.

Sec. 2.—A defendant who has been served with an office copy of a bill of complaint within the jurisdiction of the court, is to answer or demur to any original bill, or bill amended before answer, within one month after the service of the office copy of the bill, or of the notice of the amendment of the bill, as the case may be; and a defendant who has been served with an office copy of a bill of complaint without the jurisdiction, is to answer or demur within the time limited by the order which authorises such service. Whenever a plaintiff amends his bill after answer, a defendant desiring to answer the same is to put in his answer thereto within seven days after notice of the amendment.

Time within which a defendant must answer.

Answer may be filed without oath or signature, by consent, without order.

Sec. 3.—An answer may be filed without oath or signature, by consent, without order.

Sec. 4.—When, in order to do complete justice, relief ought to be given to the defendant as well as to the plaintiff, or to the defendant alone, or to one of several defendants, the court, if it see fit, may frame its decree so as to attain that object, when the right of the defendant to relief grows out of the same transactions which form the subject matter of the bill; the facts necessary to make out the defendant's right to relief are to be stated in the answer as part of the defendant's case, and he is to pray such relief as he may think himself entitled to. This order is not to be considered as authorising a defendant to state in his answer any distinct or independent matters, not connected with, and growing out of the case made by the bill, as the foundation for relief; and the court, in all such cases, may either grant such relief upon the answer, or it may direct or permit a separate suit to be instituted.

Relief may be granted to a defendant, upon a case made in the answer in certain cases.

Sec. 5.—The court may permit a supplemental answer to be filed at any period of the suit, for the purpose of putting new matter in issue, in furtherance of justice, and upon such terms as may seem proper.

A supplemental answer may be filed in proper cases.

Leave to file a supplemental answer is to be applied for by motion. The notice of motion is to set forth the proposed answer, and state the grounds upon which the indulgence is asked. It is to be served upon the solicitors of all parties, unless dispensed with; and it must be supported by such evidence as shall satisfy the court of the propriety of permitting such supplemental answer to be filed, under all the circumstances, having reference to the subject matter of the answer, and to the stage of the cause in which the application is made.

PRO CONFESSO—PRELIMINARY PROCEEDINGS.

XIII. Where any defendant, not appearing to be an infant, or a person of weak or unsound mind, unable of himself to defend the suit, *has been personally served within the jurisdiction of the court*, with an office copy of a bill of complaint, and has neglected to answer thereto within one month from the time of such service, the plaintiff, after the expiration of one month, and within two months from the date of such service, may apply to the registrar for an order to take the bill *pro confesso* against such defendant, and, no answer having been filed, the registrar is to draw up such order, upon præcipe, on being satisfied by affidavit that an office copy of the bill of complaint *was served personally within the jurisdiction;* and after the expiration of such two months the plaintiff may apply to the court *ex parte* for an order to take the bill *pro confesso*, and the court being satisfied by affidavit that an office copy of the bill was served personally within the jurisdiction, and that no answer has been filed, may, if it think fit, order the same accordingly.

Order to take the bill *pro confesso* upon *personal* service within the jurisdiction.

Sec. 2.—Where any defendant, not appearing to be an infant or a person of weak or unsound mind, unable of himself to defend the suit, *has been personally served with an office copy of a bill of complaint out of the jurisdiction*, and such defendant has neglected to answer or demur thereto within the time limited by the order authorising such service, the plaintiff may apply to the court, *ex parte*, for an order to take the bill *pro confesso* against such defendant; and the court, being satisfied by affidavit that an office copy of the bill of complaint was served personally, and that no answer has been filed for such defendant, may, if it think fit, order the same accordingly.

Order to take the bill *pro confesso* upon *personal* service out of the jurisdiction.

Sec. 3.—Where an office copy of a bill of complaint has been duly served, *but such service has not*

Order to take the bill *pro confesso upon motion,*

where *service has not been personal.*

been personal, and the defendant has neglected to answer or demur thereto within the time limited in that behalf, the plaintiff may cause such defendant to be served personally, or by his solicitor, if he have one, with a notice of motion to be made on some day, not less than three weeks after the date of such service, that the bill may be taken *pro confesso* against such defendant; and thereupon, unless such defendant has in the meantime put in his answer to the same, the court, if it think fit, may order the bill to be taken *pro confesso*, either immediately, or at such time and upon such terms, and subject to such conditions, as the court, under the circumstances of the case, may think proper.

Sec. 4.—Where an office copy of a bill of complaint has been duly served, *but such service has not been personal*, and the defendant has neglected to answer or demur thereto within the time limited in that behalf, then in case the office copy of the bill has been served upon such defendant out of the jurisdiction, or the plaintiff has been unable with due diligence to serve him personally with such notice of motion as is provided by the next preceding section of this order, in either case the court, upon the *ex parte* application of the plaintiff, may direct a notice of motion in the form or to the effect set forth in schedule G. to these orders appended, to be published in such manner as the court may think fit; and upon the hearing of such motion the court, being satisfied of the due publication of the notice, and that no answer has been filed, may order the bill to be taken *pro confesso*, either immediately, or at such time, and upon such conditions, as the court, under the circumstances of the case, may think proper.

Order to take the bill *pro confesso* upon publication of notice, when the defendant has been served with an office copy of the bill out of the jurisdiction, or cannot be found to be served with notice of motion.

Sec. 5.—An order to take a bill *pro confesso* against a defendant who at the time of the making of such order is an infant, or person of weak or unsound mind, unable of himself to defend the suit, is irregular and of no validity.

An order to take the bill *pro confesso* against an infant defendant, void.

In case it shall appear to the court that any defendant upon whom an office copy of a bill has been duly served is an infant, or a person of weak or unsound mind, not so found by inquisition, unable of himself to defend the suit, the court, upon the application of the plaintiff, at any time after bill filed, may order that one of the solicitors of the court be assigned guardian of such defendant by whom he may answer the bill and defend the suit.

One of the solicitors of the court may be appointed guardian in such case.

Notice of the application must be served upon, or left at the dwelling-house of the person with whom, or under whose care such defendant may be residing at the time of the motion, at least one week before the hearing of the application; and where such defendant is an infant, not residing with or under the care of his father or guardian, in that case notice of the application must also be served upon or left at the dwelling-house of the father or guardian, unless the court at the time of hearing such application think fit to dispense with such service.

Notice of the motion, how served.

Sec. 6.—Where the plaintiff has proceeded under either section 7 or 8 of order IX, and the defendant has neglected to answer or demur to the bill within the time limited in that behalf, in either case the plaintiff may apply to the court, *ex parte*, for an order to take the bill *pro confesso* against such defendant; and the court being satisfied of the due publication of the order and notice in that behalf prescribed, may direct the bill to be taken *pro confesso* against such defendant, if it think fit, either immediately, or at such time, and upon such terms, and subject to such conditions, as the court, under the circumstances of the case, may think proper.

Order to take the bill *pro confesso* against an absconding or an absent defendant

Sec. 7.—An order to take a bill *pro confesso* against a defendant does not require to be served; and all further proceedings in the cause may be *ex parte*, as to such defendant, unless the court order otherwise.

Order to take the bill *pro confesso* need not be served

Bill may be amended without prejudice to an order to take the bill *pro confesso* in certain cases.

Sec. 8.—A plaintiff may move *ex parte* for leave to amend the bill, without prejudice to an order to take the bill *pro confesso;* and where the court is satisfied that the rights of the defendant will not be prejudiced by such an order, it may direct the same accordingly.

PRO CONFESSO,—HEARING DECREE.

Cause may be set down to be heard after the expiration of three weeks from the date of the order to take the bill *pro confesso.*

XIV.—Where a bill has been ordered to be taken *pro confesso* against all parties defendant, the cause may be set down to be heard at any time after the expiration of three weeks from the date of such order, unless the court thinks fit to appoint a special day for the hearing thereof.

Sec. 2.—A defendant against whom an order to take a bill *pro confesso* has been made, is at liberty to appear at the hearing of the cause; and if he waives all objection to the order, but not otherwise, he may be heard to argue the case upon the merits as stated in the bill.

A decree founded on a bill taken *pro confesso*, is to be absolute in certain cases.

Sec. 3.—Upon the hearsing of a cause, in which a bill has been ordered to be taken *pro confesso*, such a decree is to be made as the court may think just; and the decree so made is to be absolute in the following cases, viz. :—

1st. When an office copy of the bill has been served personally.

2nd. When notice of a motion to take the bill *pro confesso* has been served under the third section of the next preceding order.

3rd. When the defendant has appeared at the hearing, and waived all objection to the order to take the bill *pro confesso.*

A decree founded on a bill taken *pro confesso* to be passed and entered.

Sec. 4.—A decree founded on a bill taken *pro confesso* is to be passed and entered as other decrees.

Sec. 5.—After a decree founded on a bill taken *pro confesso* has been passed and entered, if the decree be not absolute under section 3 of this order, an office copy thereof may be served on the defendant against whom the order to take the bill *pro confesso* has been made, or his solicitor, together with a notice to the effect that if such defendant desires permission to answer the plaintiff's bill and set aside the decree, application for that purpose must be made to the court within the time specified in such notice, or that such defendant will be absolutely excluded for making such application. If such notice as aforesaid is to be served within the jurisdiction of the court, the time therein specified for such application to be made by the defendant, is to be three weeks after service of such notice; but if such notice is to be served out of the jurisdiction, the time is to be specially appointed by the court upon the *ex parte* application of the plaintiff.

Where a decree founded on a bill taken *pro confesso*, is not absolute under section 3, it may be made absolute upon motion, with notice.

Sec. 5.—When a deree is not absolute under sec. 2 of this order, the court may order the same to be made absolute, on the motion of the plaintiff—

1. After the expiration of three weeks from the service of a copy of the decree on a defendant, where the decree has been served within the jurisdiction.

2. After the expiration of the time limited by the notice provided by section 4 of this order.

3. After the expiration of three years from the date of the decree, where a defendant has not been served with a copy thereof; and such order may be made either on the first hearing of such motion, or on the expiration of any further time which the court may allow to the defendant for presenting a petition for leave to answer the bill.

Sec. 6.—Where the decree is not absolute under section 3 of this order, and has not been made absolute under section 5, and a defendant has a case upon the merits not appearing in the bill, he may apply to the court by petition, stating such case, and submitting to such terms with respect to costs and otherwise as the court may think reasonable, for leave to answer the bill; and the court being satisfied that such case is proper to be submitted to the judgment of the court, may, if it think fit, and upon such terms as may seem just, vacate the enrolment (if any) of the decree, and permit such defendant to answer the bill; and if permission be given to such defendant to answer the bill, leave may be given to file a separate replication to such answer, and issue may be joined, and witnesses examined, and such proceedings had as if the decree had not been made, and no proceedings against such defendant had been had in the cause.

A defendant against whom a decree has been made founded upon a bill taken *pro confesso*, may apply to put in an answer under certain circumstances.

Sec. 7.—A defendant waiving all objection to the order to take the bill *pro confesso*, and submitting to pay such costs as the court may direct, may have the case reheard upon the merits stated in the bill; the petition for rehearing being signed by counsel as other petitions for rehearing.

Cause may be reheard after a decree found upon a bill taken *pro confesso*.

Sec. 8.—In pronouncing the decree the court, either upon the case stated in the bill, or upon that case and a petition presented by the plaintiff for the purpose, as the case may require, may order a receiver of the real and personal estate of the defendant against whom the bill has been ordered to be taken *pro confesso* to be appointed, with the usual directions, or direct a sequestration of such real and personal estate to be issued; and may, if it appears to be just, direct payment to be made out of such real and personal estate of such sum or sums of money as at the hearing or any subsequent step in the cause

Upon a decree found on a bill taken *pro confesso*, the court may order a receiver, or sequestration or payment of monies.

the plaintiff may seem to be entitled to; provided that, unless the decree be absolute, such payment is not to be directed without security being given by the plaintiff for restitution, if the court afterward think fit to order restitution to be made.

Sec. 9.—The rights and liabilities of any plaintiff or defendant under a decree made upon a bill taken *pro confesso* extend to the representatives of any deceased plaintiff or defendant at the time when the decree was pronounced; and with reference to the altered state of parties and any new interests acquired, the court may, upon motion, served in such manner, and supported by such evidence as under the circumstances of the case the court deems sufficient, permit any party, or the representative of any party, to adopt such proceedings as the nature and circumstances of the case may require, for the purpose of having the decree (if absolute) duly executed, or for the purpose of having the matter of the decree and the rights of the parties duly ascertained and determined.

MOTION FOR A DECREE TO ADMINISTER THE ESTATE OF A DECEASED PERSON, WITHOUT BILL FILED.

XV.—Any person claiming to be a creditor, or a specific, pecuniary, or residuary legatee, or the next of kin, or some one of the next of kin, or the heir, or a devisee interested under the will of any deceased person, may apply to the court upon motion, without bill filed or any other preliminary proceeding, for an order for the administration of the estate real and personal of such deceased person.

Creditor, &c., of any deceased person may move for an order for the administration of his estate.

The notice of motion in such case is to be in the form or to the effect set forth in schedule H, hereunder written, and must be served upon the executor or administrator, as the case may be, of such deceased person at least fourteen days before the day fixed for hearing the application.

Notice of motion to be in the form set forth in schedule H, and served upon the executor or administrator 14 days before the hearing of the application.

Upon proof by affidavit of the due service of such notice of motion, or on the appearance in person, or by his solicitor or counsel, of such executor or administrator, and upon proof by affidavit of such other matter, if any, as the court may require; the court, if it think fit so to do, may make the usual order for the administration of the estate of the deceased, with such variations, if any, as the circumstances of the case may require; and the order so made shall have the force and effect of a decree to the like effect, made on the hearing of a cause between the same parties.

Court may order the administration of the estate.

Such order to have the force and effect of a decree.

The court is to give any special directions touching the carriage or execution of any such order as, in its discretion, it may deem expedient; and in case of applications for any such order by two or more persons, or classes of persons, the court may grant the same to such one or more of the claimants, or of the classes of the claimants, as it may think fit; and the carriage of the order may be subsequently given to such party interested, and upon such terms as the court may direct.

Carriage of the order may be committed to any party interested, at the discretion of the court.

Sec. 2. An order for the administration of the estate of a deceased person may be obtained by his executor or administrator, as the case may be, and all the provisions of the first section of this order are to extend to applications by an executor or administrator under the present section.

Sec. 3.—The costs attending the administration of the estate of a deceased person under the preceding sections of this order, are to be borne by such estate, unless the court shall direct otherwise.

MOTION FOR A DECREE AFTER TIME FOR ANSWERING HAS EXPIRED.

The plaintiff is at liberty to move

XVI. The plaintiff in any suit, at any time after the period allowed to the defendant for answering has

expired, but before replication, may move the court for such decree or decretal order as he may think himself entitled to; and the plaintiff and defendant respectively may file affidavits in support of and in opposition to such motion, and may use the same at the hearing thereof; and when such motion is made after an answer filed in the cause, the answer, for the purpose of the motion, is to be treated as an affidavit.

for a decree in all cases *after* the time for answering has expired.

Notice of the motion is to be served upon the defendant or defendants at least three weeks before the day fixed for the application.

Notice of the motion to be served three weeks before the day of hearing.

Within ten days from the service of the notice the defendant must file his affidavits in answer.

Affidavits in answer, ten days after notice.

Within six days after the expiration of such ten days the plaintiff is to file his affidavits in reply; and except so far as these affidavits are in reply, they are not to be regarded by the court, unless upon the hearing of the motion the court shall give the defendant leave to answer them; and in that case the costs of such affidavits, and of the further affidavits consequent upon them, are to be paid by the plaintiff, unless the court order otherwise.

Affidavits in reply, within six days after.

No further evidence, on either side, is to be used upon the hearing of such motion, without the leave of the court.

No further evidence except by special leave.

Upon hearing the application, the court, in its discretion, may either grant or refuse the motion, or may give such directions for the examination of either parties or witnesses, or for the making of further enquiries, as the circumstances of the case may require, and upon such terms as to costs as it may think right.

The court in its discretion may pronounce a decree,

or direct further enquiries, &c.,

MOTION FOR A DECREE BEFORE THE TIME FOR ANSWERING HAS EXPIRED.

The plaintiff may move for a decree in any case before the time for answering has expired, by leave of the court

XVII. When it can be made to appear to the court that it will be conducive to the ends of justice to permit such notice of motion to be served before the time for answering the bill has expired, the plaintiff may apply to the court, *ex parte*, for that purpose, at any time after the bill has been filed, and the court, if it thinks fit, may order the same accordingly; and when such permission is granted, the court is to give such directions, as to the service of the notice of motion and the filing of the affidavits, as it may deem expedient.

The court in its discretion may make a decree,

or may direct further enquiries, &c.,

or may order the suit to proceed.

Upon the hearing of the motion for a decree or decretal order, the court, in its discretion, may either grant or refuse the application, or may give such directions for the examination of either parties or witnesses or for the making of further enquiries, or with respect to the further prosecution of the suit, as the circumstances of the case may require, and upon such terms as to costs as it may think right.

JOINING ISSUE. REPLICATION.

No subpœna to rejoin.

Form of replication in schedule J.;

cause to be at issue on filing the replication.

XVIII. No subpœna to rejoin is to be issued. One replication only is to be filed in the cause, unless the court shall order otherwise; it is to be in the form set forth in schedule J. hereunder written, or as near thereto as circumstances admit and require; and upon the filing of the replication the cause is to be deemed to be completely at issue.

Where no order to amend has been obtained, replication to be filed, or cause to be set down on bill and answer, within one month after answer.

Sec. 2.—When the plaintiff has not obtained an order to amend his bill, he is either to file his replication, or set down the cause to be heard on bill and answer, within one month after the filing of the last answer.

Sec. 3.—When the plaintiff has obtained an order to amend his bill after answer, he is either to file his replication, or set down the cause to be heard on bill and answer, within the times following, viz.:

When an order to amend has been obtained after answer, the replication is to be filed, or the cause set down on bill and answer, within the following periods

(1) When the plaintiff amends his bill, and no answer is put in thereto, and no notice of an application for further time to answer is served within seven days after service of the notice of the amendment of the bill, the plaintiff, after the expiration of such seven days, but within fourteen days from the time of such service, is either to file his replication or set down the cause to be heard upon bill and answer; otherwise any defendant may move to dismiss for want of prosecution.

When no answer has been filed, and notice of an *application* for further time to answer, has been served, within seven days after the service of the notice of amendment, then within fourteen days after service of the notice of amendment.

(2) Where the plaintiff amends his bill after answer, and a defendant, within seven days after the service of the notice of the amendment of the bill, serves notice of an application for further time to answer the amendments, but such application is refused, the plaintiff is, within fourteen days after such refusal, either to file his replication, or to set down the cause to be heard on bill and answer; otherwise any defendant may move to dismiss the bill for want of prosecution.

Where an application has been made for further time to answer an amended bill, but such application has been refused, then within fourteen days after such refusal

(3) When a defendant puts in an answer to amendments, the plaintiff must either file his replication, or set down the cause to be heard on bill and answer, within fourteen days after the filing of such answer, unless he obtain, in the meantime, an order for leave to amend the bill; otherwise any defendant may move to dismiss the bill for want of prosecution.

Where an amended bill has been answered, then within 14 days from the filing of such answer.

FILING PLEADINGS. NOTICE.

On the same day that an answer, demurrer, or replication has been filed, notice is to be given to the adverse party.

XIX. When any party or solicitor causes an answer, demurrer or replication to be filed, he is to give notice thereof, on the same day, to the solicitor of the adverse party, or to the adverse party himself if he act in person.

EVIDENCE TO BE USED AT THE HEARING.

Plaintiff or defendant may obtain, upon præcipe, an order for production of books and papers, at any time after answer.

XX. Either plaintiff or defendant may, at any time after answer, or when the application is on behalf of the plaintiff, after the time for answering has expired, obtain an order of course upon præcipe, requiring the adverse party to produce, within a time to be limited by the order, all deeds, papers, writings and documents in his custody or power, relating to the matters in question in the cause, under oath, and to deposit the same with the registrar of the court, for the usual purposes. But neither plaintiff nor defendant is to be held bound to produce, in pursuance of such order, any deeds, papers, writings, or documents, which a defendant now admitting the same by his answer to be in his custody or power would not be bound to produce.

Affidavit to be made where party refuses to produce.

Sec. 2.—The affidavit to be made by a party who has been served with an order for the production of documents under the preceding section may be in the form or the effect set forth in schedule K, hereunder written.

Exhibits may be proved by affidavit, upon order.

Sec. 3.—Any exhibit which according to the present practice of the court might have been proved *viva voce* at the hearing, may be proved by the affidavit of a witness who would have been competent to prove the same at the hearing; an order having been taken out for that purpose.

Sec. 4.—Causes may be brought to a hearing upon evidence adduced upon affidavit, by consent of parties; and, when the evidence in a cause has been taken orally, affidavits of particular witnesses, or affidavits as to particular facts or circumstances, may be used by consent, or by leave of the court; and such consent to hear the cause upon affidavit, evidence, or to admit the affidavits of particular witnesses, or affidavits as to particular facts and circumstances, may be given on behalf of married women, or infants, or other persons under disability, with the approbation of the court.

Causes may be brought to a hearing upon affidavit, evidence *by consent*, and when the evidence has *been taken* orally, particular facts, &c., may be proved by affidavit, by consent of parties, or by order of the court.

Infants, &c., bound by such consent, with the approbation of the court.

Sec. 5.—Any witness who has made an affidavit filed by any party to a cause, *to be used at the hearing thereof*, is to be subject to oral cross-examination, before the court or a deputy master, or an examiner specially appointed for that purpose, in the same manner as if the evidence given by him in his affidavit had been given by him orally; and such witness is to attend before the court, or deputy master, or examiner, as the case may be, upon being served with a writ of *subpœna ad testificandum*, or *duces tecum;* and the expenses attending such cross examination and re-examination are to be paid by the parties respectively, in like manner as if the witness to be cross-examined were the witness of the party cross-examining, and are to be deemed costs in the cause of such parties respectively, unless the court think fit to direct otherwise.

Any witness who has made an affidavit to be used at the hearing of the cause, may be cross-examined.

Any party desiring to cross-examine a witness who has made an affidavit in any cause, *intended to be used at the hearing thereof*, is to give forty-eight hours' notice to the party on whose behalf such affidavit has been filed, or to the party intending to use the same, of the time and place of such intended cross-examination, in order that such party may, if he think fit, be present thereat.

Forty-eight hours notice of such cross-examination.

The re-examination to follow immediately the cross-examination.

The re-examination of any such witness is to follow immediately upon the cross-examination, and is not to be delayed to any future time.

INTERROGATORIES FOR THE EXAMINATION OF PARTIES AND WITNESSES.

No written interrogatories for the examination of parties or witnesses.

XXI. No written interrogatories for the examination of either parties or witnesses, either before or after decree, are to be filed, except by leave of the court. Examinations are to be *viva voce*, and may be conducted either by the parties or by their solicitors or counsel.

EXAMINATION OF PARTIES.

Any party to a suit may be examined *at the instance of any party adverse in point of interest.*

XXII. Any party to a suit may be examined as a witness by the party adverse in point of interest, without any special order for that purpose; and may be compelled to attend and testify in the same manner, upon the same terms, and subject to the same rules of examination, as any other witness, except as hereinafter provided. And any person for whose immediate benefit a suit is prosecuted, or defended, is to be regarded as a party, for the purpose of this order. Provided always, that when it appears upon the hearing that any party examined under this order is united in interest with the examining party, the evidence so taken is not to be used on behalf of either the examining party or the examinant, but may be struck out at the hearing at the instance of any party affected thereby.

A defendant *who has no interest* may be examined, as heretofore, upon order.

A plaintiff may be examined under similar circumstances, without order.

The examination of *an interested* party may be struck out at the hearing.

Sec. 2.—Any party defendant may be examined as a witness as heretofore, upon order for that purpose, on behalf either of the plaintiff, or of a co-defendant, upon points as to which the party to be examined is not interested. And any party plaintiff may be examined, under similar circumstances, by a co-plaintiff, or by a defendant. Provided, that where any party having an interest has been examined under this order, such evidence is not to be used on behalf either of the examining party, or of

the party examined, but may be struck out at the hearing at the instance of any party affected thereby; but such examination is not to preclude the court from making a decree, either for or against the party examined.

Sec. 3.—Evidence taken under the first section of this order may be rebutted by adverse testimony; and any party examined as therein provided, may be further examined, on his own behalf, in relation to any matter respecting which he has been examined in chief. And where one of several plaintiffs or defendants, who are joint contractors, or united in interest, have been so examined, any other plaintiff or defendant, so united in interest, may also be examined on his own behalf, or on behalf of those united with him in interest, to the same extent as the party actually examined. Provided nevertheless, that such explanatory examination must be proceeded with immediately after the examination in chief, and not at any future period, except by leave of the court.

Any party examined may give evidence on his own behalf as to any point to which he has been examined in chief.

And any party united in interest with the party examined may give evidence in like manner.

The explanatory examination will follow the examination in chief.

Sec. 4.—Any party to the record who admits, upon his examination, that he has in his custody or power any deeds, papers, writings, or documents relating to the matters in question in the cause, is to produce the same for the inspection of the party examining him, upon the order of the court, or of the deputy master, or examiner, as the case may be, before whom he is examined, and for that purpose a reasonable time is to be allowed. Either party may appeal from the order of such deputy master, or examiner; and thereupon such deputy master, or examiner, is to certify under his hand the question raised and the order made thereon; and the costs of such appeal are to be in the discretion of the court. But no party shall be obliged to produce any deed, paper, writing, or documents which would have been protected under the previous practice.

A party under examination may be ordered to produce deeds, &c., in his possession, relevant to the matter in question.

Orders of deputy master, &c., subject to appeal.

No order to be made as to documents entitled to protection.

When a party refuses to attend at the time and place appointed for the examination, he may be punished as for a contempt;

Sec. 5.—Any person refusing or neglecting to attend at the time and place appointed for his examination under the first section of this order may be punished as for a contempt; and the party who desires the examination, in addition to any other remedy to which he may be entitled, may apply to the court, upon motion, either to have the bill taken *pro confesso*, or to have it dismissed, according to circumstances; and the court, upon such application, may, if it think fit, order either that the bill be taken *pro confesso*, or that it be dismissed, as the case may be; and when, from the circumstances of the case, such order cannot be made consistently with the rights of other parties to the suit, then the court may make such order as to the enlarging the time for passing publication, or otherwise, as may seem just.

or the bill may be taken *pro confesso*, or dismissed, according to circumstances,

or the court in its discretion may make other order.

Where any part of an examination taken under the first section of the order is used, the examinant may put in the whole.

Sec. 6.—When the examining party uses any portion of the evidence taken under the first section of this order (but not otherwise), then it shall be competent for those against whom it is used to put in the entire evidence so taken, as well that given in chief, as that in explanation.

When parties may be examined.

Sec. 7.—Any party plaintiff examined under the first section of this order may be so examined at any time after answer; *and* any party defendant may be examined at any time after answer, or after the time for answering has expired, as the case may be; and such examination may be had without reference to the examination terms hereinafter established.

EXAMINATION OF WITNESSES.

A venue for the examination of witnesses to be stated in the margin of the bill of complaint.

XXIII. The plaintiff is to select the county in which the witnesses in the cause are to be examined, which may be any county where a deputy master has been appointed. The county selected is to be designated in the margin of the bill of complaint; and the witnesses of all parties are to be examined in the county so designated, unless the court order otherwise.

Sec. 2.—The defendant, or any one of several defendants, may apply to the court, upon notice to all parties, to change the venue, and thereupon the court is to make such order as to the taking of the evidence in the cause as the circumstances of the case may require; and such order is to be upon such terms and conditions, as to costs or otherwise, as the court may think it right to impose.

Defendant may move to change the venue.

Sec. 3.—Witnesses, whether parties to the record or not, may be examined before the court at the instance of any party willing to pay the *extra* expenses, if any, thereby incurred.

Venue may be removed to Toronto at the instance of any party willing to pay the extra expense thereby incurred.

Sec. 4.—All witnesses are to be examined either before the court, or before the deputy master in the county where the evidence is to be taken, unless the court order otherwise.

Sec. 5.—Witnesses resident out of the jurisdiction may be examined, as heretofore, upon commission.

Witnesses out of the jurisdiction may be examined upon commission.

Sec. 6.—The following terms are fixed for the taking of evidence, viz.—

Terms fixed for taking all evidence in equity suits.

From the second Monday in September to the Saturday of the following week.

From the second Monday in December to the Saturday of the following week.

From the second Monday in March to the Saturday of the following week.

From the second Monday in June, to the Saturday of the following week: And no witness whose evidence is to be used at the hearing of the cause is to be examined at any other time except by the order of the court.

No witnesses to be examined at any other time, except by order of the court.

Sec. 7.—No rules to produce witnesses or pass publication are to be taken out. When issue has been joined in a cause three weeks before the commence-

No rules to produce witnesses or pass publication. As to all cases entered more than three weeks

before the commencement of any examination term, publication to pass at the close of such term. As to all cases entered less than three weeks before the commencement of any examination at the close of the following term.

ment of the next ensuing examination term, publication is to pass at the close of such term; and when issue has been joined less than three weeks before the commencement of the next ensuing examination term, publication is to pass at the close of the following term.

Any party may obtain an appointment for the examination of his witnesses.

Sec. 8.—Any party to a suit who has witnesses to be examined whose evidence is to be used at the hearing of the cause, must obtain an appointment for that purpose from the court, or the deputy master, or the examiner, as the case may be, before whom the evidence in the cause is to be taken.

All appointments for the examination of witnesses in the same case are to be fixed for the same time.

Sec. 9.—An appointment for the examination of witnesses may be obtained by any party to the suit at any time after issue has been joined in the cause; and when an appointment for the examination of witnesses has been made at the instance of any party to the suit, all further appointments at the instance of any other party to the cause are to be fixed for the same day.

A copy of the appointment for the examination of witnesses is to be served on all parties, 14 days before the examination term; but no other notice, and no list of witnesses.

Sec. 10.—A copy of the appointment for the examination of witnesses is to be served upon the solicitors of all parties at least fourteen days before the commencement of the examination term during which such evidence is to be taken; but no other notice of the examination is to be served, and no list of the witnesses furnished.

The witnesses of all parties are to be examined at the time or place appointed, unless the examination has been postponed, or further time allowed.

Sec. 11.—The witnesses of all parties are to be examined at the time and place appointed, unless the court or deputy master shall have seen fit, upon a previous application, to postpone such examination; or unless the court, or the deputy master, or examiner, as the case may be, before whom the evidence is to be taken, shall see fit to postpone such examination, or to allow time for the production of further evidence; and when such examination is postponed in the manner aforesaid, or when time is allowed for the production

of further evidence, the order is to be upon such terms, as to costs or otherwise, as the court, or the deputy master or examiner, may think it right to impose.

Sec. 12.—Where differences arise as to the conduct of the examination, the court, or the deputy master, or examiner before whom the evidence is being taken, as the case may be, is to prescribe the order in which the several parties are to adduce their witnesses, or to give such directions as to the general conduct of the examination, as the circumstances of the case may require; and the evidence of any person who declines to produce his witnesses when called upon is to be altogether excluded, unless the court, or deputy master, or examiner, as the case may be, shall order otherwise.

The court, or deputy master, or examiner, to regulate the conduct of the examination.

Sec. 13.—Any witness may be recalled for further examination, as in trials at Nisi Prius, without any order of the court having been obtained for that purpose.

Witnesses may be recalled, as at Nisi Prius, without an order of court.

Sec. 14.—Articles are not to be filed in future for the purpose of discrediting a witness; but witnesses may be called for that purpose, without the leave of the court; and they are to be examined at the time and place fixed for the examination of the other witnesses in the cause, unless the court, or the deputy master, or the examiner before whom the evidence is being taken, as the case may be, shall otherwise order.

No articles are to be exhibited for the purpose of discrediting a witness.

Sec. 15.—Depositions are to be taken and expressed in the first person of the deponent.

Depositions to be in first person.

Sec. 16.—Any person is to be at liberty to make use of the depositions of any witness adduced by any other party to the suit, subject, however to such terms, if any, as to the costs of taking such evidence, as the court may think it right to impose.

Each party to be at liberty to use the depositions of any witness adduced by any other party.

If shewn that it would be conducive to the ends of justice that witnesses already examined should be examined before court, court may make order to that effect.

Sec. 17.—When the evidence in the case has been taken before a deputy master, or an examiner, and it can be made to appear that it would be conducive to the ends of justice that any of the witnesses so examined (whether parties to the record or not), should be examined before the court, upon the hearing, or otherwise, any party concerned in interest may, at any time after publication passed, apply to the court by motion, supported by affidavit, for that purpose; and thereupon the court is to make such order as under all the circumstances may be just.

Court may require production of witness, &c.

Sec. 18.—The court, if it see fit, may require the production and oral examination before itself of any witness or party in any cause, matter or proceeding, and is to direct the costs of and attending the production and examination of such witness or party to be paid by such of the parties to the suit, or in such manner as it may think fit.

DISMISSAL OF THE BILL FOR WANT OF PROSECUTION.

Defendant may move to dismiss, in certain cases.

XXIV. Any defendant may move the court, upon notice, that the bill may be dismissed with costs, for want of prosecution, and the court may order the same accordingly in the following cases, viz.—

(1.) If the plaintiff, not having obtained an order to enlarge the time, does not obtain and serve an order for leave to amend the bill, or does not file the replication, or set down the cause to be heard on bill and answer, within one month after the answer, or the last of the answers has been filed; or

(2.) If the plantiff, not having obtained an order to enlarge the time, does not amend the bill within fourteen days after the date of the order for leave to amend; or

(3.) If the plaintiff, not having obtained an order to enlarge the time, does not set down the

cause to be heard, and serve a notice of hearing within one month after publication has passed.

Sec. 2. Where the plaintiff has amended his bill, after answer, any defendant may move the court upon notice, that the bill may be dismissed with costs, for want of prosecution; if the plaintiff, not having obtained an order to enlarge the time, does not file the replication, or set down the cause to be heard on bill and answer, within the times following, viz.:—

(1.) Within fourteen days after service of the notice of the amendment of the bill, where no answer has been filed, and the defendant has not obtained or applied for time to answer.

(2.) Within fourteen days after the refusal of an application for further time, in cases where the defendant, desiring to answer, has not put in his answer within seven days after service of the notice of the amendment of the bill, and the application for further time has been refused.

(3.) Within fourteen days after the filing of the answer, in cases where the defendant has put in an answer to the amendments, unless the plaintiff, within such fourteen days, has obtained leave to re-amend the bill.

Sec. 3.—In every other case, where the plaintiff is delaying the suit unreasonably, any defendant may move the court, upon notice, that the bill may be dismissed with costs, for want of prosecution, after the expiration of one month from the time of filing his answer, in case the plaintiff, not having obtained an order to enlarge the time, does not obtain and serve an order for leave to amend the bill, or does not file the replication, or set down the cause to be heard, on bill and answer, within such month;

and, upon the hearing of such motion, the court is to make such order for the dismissal of the bill, or for the expediting of the suit, or as to the costs, as under the circumstances of the case may seem just.

Effect of party obtaining an order on condition and failing to perform it.

Sec. 4.—In all cases where a person or party obtains an order from the court, or from a master, upon condition, and fails to perform or comply with such condition, he is to be considered to have waived or abandoned such order, as far as the same is beneficial to himself; and any other party or person interested in the matter, on the breach and non-performance of the condition, may either take such proceedings as the order in such case may warrant, or such proceedings as might have been taken if no such order had been made.

SETTING DOWN THE CAUSE. HEARING. SUBPŒNA TO HEAR JUDGMENT.

Party to enter cause with registrar fourteen days before hearing.

XXV.—The party who desires to have a cause set down, to be heard is to enter it with the registrar for that purpose; and the registrar is forthwith to set down the same to be heard on the fourteenth day from the time of such entry, or as soon thereafter as the court may sit.

Registrar to prepare list of causes.

Sec. 2.—The registrar is to prepare a list of all causes entered for hearing; and each case is to be set down in such list in the order in which it has been entered with the registrar; and causes are to be called on and heard according to the registrar's list, unless the court order otherwise.

Subpœna to hear judgment abolished.

Sec. 3.—The subpœna to hear judgment is abolished: in lieu thereof, the party at whose instance the cause has been set down to be heard is to serve all proper parties with a notice in the form or to the effect set forth in schedule K, hereunder written.

Seven days notice of hearing.

Notice of hearing must be served at least seven days before the day for which the cause has been set down to be heard.

If plaintiff neglects to set down cause defendant may do so.

Sec. 4.—If the plaintiff neglects to set down the cause to be heard within one month after publication has passed, any defendant may cause the same to be set down, and may serve notice of hearing on the parties to the cause.

Defendant making default at hearing, the decree to be absolute in first instance.

Sec. 5.—Where a defendant makes default at the hearing of a cause, the court is to make such decree as it may think fit; this decree is to be absolute in the first instance, without giving the defendant a day to shew cause, and such decree is to have the same force and effect as if the same had been a decree *nisi* in the first instance, and had been afterwards made absolute in default of cause shewn by the defendant.

If plaintiff dismiss after cause set down to be heard—effect of.

Sec. 6.—If the plaintiff causes the bill to be dismissed, on his own application, after it has been set down to be heard; or if the cause is called on to be heard, and the plaintiff makes default, and by reason thereof the bill is dismissed; in either case such dismissal is to be equivalent to a dismissal on the merits, unless the court order otherwise, and may be set up in bar to another suit for the same matter.

Exceptions for scandal abolished.

Sec. 7. — The practice of excepting to bills, answers or other proceedings for scandal or impertinence is abolished. But if upon the hearing of any cause or matter the court is of opinion that any pleading, petition, or affidavit, or any part of such pleading, petition, or affidavit, is scandalous, the court may either order such pleading, petition, or affidavit to be taken off the file, or may direct the scandalous matter to be expunged, and is to give such direction as to costs as it may think right.

Motion to expunge, &c., scandalous pleading, &c.

Sec. 8.—A motion to have any pleading, petition, or affidavit taken off the file for scandal, or to have the scandalous matter expunged, may be made at any time before the hearing of the cause or matter.

If court consider that pleading is of unnecessary length, may award costs, &c.

Sec. 9.—If, upon the hearing of any cause or matter, the court is of opinion that any pleading, petition, or affidavit, is of unnecessary length, the court may either direct payment of a sum in gross in lieu of taxed costs therefor, or it may direct the taxing-officer to look into such pleading, petition, or affidavit, and to distinguish what part or parts thereof is or are of unnecessary length, and to ascertain the costs occasioned to any party by such unnecessary matter; and the court is to make such order as it thinks just, for the payment, set off, or other allowance of such costs, by the party, his solicitor, or counsel.

LEGAL RIGHTS—HOW DECIDED.

Court may determine legal title of party seeking relief, without requiring parties to proceed to law.

XXVI. In cases where according to the present practice the court is in the habit of refusing equitable relief until the party seeking such relief has established his legal title or right in a proceeding at law, the court will itself determine such title or right without requiring the party seeking such relief to proceed at law to establish the same; but the court may require the right or title to be established at law, whenever, in its discretion, it considers that course expedient.

INJUNCTION TO STAY PROCEEDINGS AT LAW.

Practice as to injunction to stay proceedings at law, assimilated to practice as to special injunctions.

XXVII. No injunction to stay proceedings at law is to be granted, for default of answer to the bill; but such injunction may be granted upon interlocutory application, in like manner as other special injunctions are granted.

Affidavits may be used to support or contradict the answer.

Sec. 2.—On any motion to obtain or dissolve a special injunction, affidavits may be used either to support or contradict the answer.

DECREES MERELY DECLARATORY.

No suit to be objected to because only declaratory order sought.

XXVIII. No suit is to be open to objection on the ground that a merely declaratory decree or order is sought thereby; but the court may make a binding declaration of right without granting consequential relief.

PARTIAL DECREES.

XXIX. When questions arise between parties (who are some only of those) interested in the property respecting which the question arises; or where the property in question is comprised with other property in the same settlement, will, or other instrument, the court may adjudicate on the questions arising between such parties, without making the other parties interested in the property respecting which the question arises, or interested under the settlement, will, or other instrument, parties to the suit, and without requiring the whole trusts and purposes of the settlement, will, or instrument, to be executed under the direction of the court, and without taking the accounts of the trustees, or other accounting parties, or ascertaining the particulars or amount of the property touching which the question or questions have arisen; but when the court is of opinion that the application is fraudulent, or collusive, or that for some other reason the application ought not to be entertained, it may refuse to make the order prayed.

Court may decide between some of the parties interested in property, or under a settlement, &c., without making the other parties interested in the property, or under the settlement, parties.

DECREE MAY BE MADE IN THE ABSENCE OF A PERSONAL REPRESENTATIVE.

XXX. Where, in any suit or other proceeding before the court, it is made to appear that a deceased person who was interested in the matters in question has no legal personal representative, the court may either proceeed in the absence of any person representing the estate of such deceased person, or may appoint some person to represent such estate for all the purposes of the suit or other proceedings, on such notice to snch person or persons, if any, as the court may think fit, either specially, or by public advertisement; and the order so made, and any orders consequent thereon, shall bind the estate of such deceased person in the same manner in every respect as if there had been a duly constituted legal personal representative of such person, and snch legal personal

Court may proceed without any personal representative of a deceased person, where none has been appointed; or it may appoint some person to represent the estate for the purpose of the suit.

representative had been a party to the suit or proceeding, and had duly appeared and submitted his rights and interests to the protection of the court.

MISJOINDER OF PLAINTIFFS.

XXXI. No suit is to be dismissed by reason only of the misjoinder of persons as plaintiffs therein; but whenever it appears to the court that, notwithstanding the conflict of interest in the co-plaintiffs, or the want of interest in some of the plaintiffs, or the existence of some ground of defence affecting some or one of the plaintiffs, the plaintiffs, or some or one of them, are or is entitled to relief, the court may grant such relief, and may modify its decree according to the special circumstances of the case, and for that purpose is to direct such amendments, if any, as may be necessary; and at the hearing, before such amendments are made, may treat any one or more of the plaintiffs as if he or they were defendant or defendants in the suit, and the remaining or other plaintiffs was or were the only plaintiff or plaintiffs on the record; and where there is a misjoinder of plaintiffs, and the plaintiff who has an interest has died, leaving a plaintiff on the record without any interest, the court may, at the hearing of the cause, order such an amendment of the record as may appear just, and proceed to a decision of the cause, if it shall see fit; and give such directions as to costs or otherwise, as may appear just and expedient.

Suits not to be dismissed for the misjoinder of the plaintiffs.

SUITS FOR FORECLOSURE OR REDEMPTION.

Mortgagor may be ordered to deliver possession of the mortgaged premises after final order for foreclosure or dismissal.

XXXII. In any suit for the foreclosure of the equity of redemption in any mortgaged property, or for redemption, the mortgagor may be ordered to deliver up possession of the mortgaged premises upon the final order for foreclosure, or for the dismissal of the bill, as the case may be.

In foreclosure suits, court may

Sec. 2.—In any suit for the foreclosure of the equity of redemption in any mortgaged property, the

court, upon the request of the mortgagee, or of any subsequent incumbrancer, or of the mortgagor, or any person claiming under them respectively, may direct a sale of such property, instead of a foreclosure of such equity of redemption, on such terms as the court may think fit to direct and, if the court so think fit, without previously determining the priorities of incumbrancers, or giving the usual or any time to redeem; but if such request be made by any such subsequent incumbrancer, or by the mortgagor, or by any person claiming under them respectively, the court is not to direct any such sale without the consent of the mortgagee, or the persons claiming under him, unless the party making such request deposit in court a reasonable sum of money, to be fixed by the court, for the purpose of securing the performance of such terms as the court may think fit to impose.

direct a sale of the mortgaged premises,

either immediately and before determining the priorities, or after the usual time to redeem;

but a sum must be deposited in court, unless the mortgagee consent to the sale.

Sec. 3. Instead of foreclosure, the bill in any such suit may pray a sale of the mortgaged premises, and that any balance of the mortgage debt which may remain due after such sale may be paid by the mortgagor, and the same may be decreed accordingly.

In case of sale, mortgagor may be ordered to pay any balance of the mortgage debt.

Sec. 4.—When any person is surety for the payment of a mortgage debt, such person may be made a party to any suit for the foreclosure of the equity of redemption of the mortgaged property, and the relief specified in the last section may be prayed against both the mortgagor and his surety, and the same may be decreed accordingly.

A surety of the mortgagor may be made a party, and ordered to pay any balance which may remain due after a sale.

Sec. 5.—When a suit has been instituted for the foreclosure of the equity of redemption in any mortgaged property for default in the payment of interest, or of an instalment of the principal, any defendant may move to dismiss such bill upon paying into court the amount then due for principal and interest, with costs.

Where the mortgagee's debt is payable by instalments, and some only have fallen due, the bill may be dismissed, *before decree*, on payment of the amount due, interest and costs;

and after the decree the proceedings may be stayed under the like circumstances;

Sec. 6.—When a suit has been instituted for the purpose and under the circumstances specified in the last section, any defendant may move to stay the proceedings in the suit, *after decree*, but before sale or final foreclosure, upon paying into court the amount then due for principal and interest, with costs.

and the decree may be enforced on any subsequent default.

When an application is made to stay the proceedings under this section, the decree may afterwards be enforced, by order of the court, upon any subsequent default in the payment of any further instalment of the principal, or of the interest.

When a foreclosure suit is set down to be heard upon an order to take the bill *pro confesso*, the plaintiff upon production of the affidavit specified in this order, may have a decree without a reference to the master.

Sec. 7.—When the cause is heard upon an order to take the bill *pro confesso*, in a suit for the foreclosure of the equity of redemption in any mortgage property, the plaintiff is to produce at the hearing—

(1.) The mortgage deed, and the assignments thereof, if any.

(2.) An affidavit which is to state the amount advanced upon the security, — the amount paid, whether by receipt of rents or otherwise, —and the amount remaining due for principal and interest, distinguishing how much for principal and how much for interest. The affidavit is to state whether the mortgaged premises, or any part of them, has been in the occupation of the mortgagee or of any one under whom he claims; and, when there has been any such occupation, the affidavit is to state its nature,—the time it continued,—and the fair rentable value of the property.

Upon production of such proofs and documents, the court may at once determine the amount due; and when a foreclosure is ordered, the time and place for the payment of the mortgage money may be fixed by the decree, without a reference to the master, or any further enquiry.

Where a sale is ordered, the judge at chambers, or the master acting in the matter, as the case may be, is to give such directions as he may think right for bringing in other incumbrancers; and the matter is to proceed in other respects as in ordinary cases when a sale has been ordered.

When a sale is ordered in a foreclosure suit heard upon an order to take the bill *pro confesso*, the judge or master is to give directions for bringing in incumbrances, and the sale is to proceed in other respects as in ordinary cases.

Sec. 8.—Where a suit for the foreclosure of the equity of redemption of any mortgaged property has been brought to a hearing in the ordinary way, neither the amount of the mortgage debt, nor the time and place of payment, are to be determined at the hearing, but the case is to be adjourned to chambers, or a reference to the master directed, as may be thought most convenient.

Where a suit for foreclosure is brought to a hearing in the ordinary way, the account is to be taken at chambers, or before a master, not at the hearing.

REFERENCES TO THE MASTER.

XXXIII. In all cases where according to the present practice, a reference to the master would be directed the court may dispose of such matters itself, if it think fit, and may direct the proceedings to be taken in full court, or at chambers, as it may find expedient.

Matters which would be referred to the master under the present practice may be determined by the court;

Sec. 2.—The court may obtain the assistance of accountants, merchants, engineers, actuaries, or other scientific persons, in such way as it may think fit, the better to enable it to determine any matter in evidence in any cause or proceeding, and may act on the certificate of such persons.

and the court may obtain the assistance of accountants, &c.

JUDGES' CHAMBERS. BUSINESS TO BE DESPATCHED THERE, AND MODE OF PROCEDURE.

XXXIV. In future one of the judges of the court will sit daily at chambers for the despatch of the following business, and of such other matters as the court from time to time shall think may be more conveniently disposed of in chambers than in full court, viz.:

One of the judges to sit daily in chambers for the despatch of business.

(1.) For the sale of the estates of infants, under statute 12 Victoria, chapter 72.

(2.) As to the guardianship, maintenance and advancement of infants.

(3.) For the administration of estates under order XV.

(4.) For time to answer or demur.

(5.) For leave to amend bills.

(6.) For changing the venue.

(7.) To postpone the examination of witnesses, or to allow the production of further evidence.

(8.) For the production of documents.

(9.) Relating to the conduct of suits or matters.

(10.) As to matters connected with the management of property.

Sec. 2.—A judge sitting at chambers may exercise the same power and jurisdiction, in respect of the business brought before him, as is exercised by the court; all orders made by a judge at chambers are to have the force and effect of orders of the court; and all or any of the powers, authorities, and jurisdictions, given to the master of the court by any act or acts now in force, or by any general order or orders of the court, may be exercised by the judge sitting at chambers.

A judge sitting at chambers is to have the same power as to matter brought before him as the court.

Sec. 3.—The court may adjourn for consideration in chambers any matter which in the opinion of the court may be disposed of more conveniently in chambers; and any judge sitting in chambers may direct any matter to be heard in open court which

The court may adjourn any matter to chambers;

he may think ought to be so heard; and such matter is to be adjourned at the request of either party, subject to such order as to costs or otherwise as the court may think it right to impose.

and the judge at chambers may adjourn any matter into court.

Sec. 4.—The course of proceeding in chambers is ordinarily to be the same as the course of proceeding in court upon motion. When an application is made to a judge at chambers, where, according to the present practice, a motion would have been made to the court, notice of the application (where the proceeding is not *ex parte*) is to be served on the opposite party, in the same manner as notice of the motion would have been. In other cases, an appointment is to be obtained from the presiding judge, which may be in a form similar to the form set forth in schedule M. hereunder written, with such variations as the circumstances of the case may require.

The course of proceedings in chambers to be ordinarily the same as the course of proceedings in court.

Notice of the application is to be served in like manner as notice of motion:

and in other cases an appointment to be made by the judge.

No state of facts, charges, or discharges, are to be brought in. But, when directed, copies, abstracts, or extracts of or from accounts, deeds, or other documents, are to be supplied for the use of the judge. But no copies of deeds, or documents, are to be made, where the originals can be brought in, without special direction.

No state of facts, &c., to be brought into chambers.

Sec. 5.—When it appears to the judge, upon the hearing of any matter, that, by reason of absence, or for any other sufficient cause, the service of notice of the application, or of the appointment, cannot be made, or ought to be dispensed with, the judge, if he think fit, may wholly dispense with such service, or may, in his discretion, order any substituted, service; or notice, by advertisement, or otherwise, in lieu of such service.

Service of notice of motion, or of an appointment may be dispensed with upon a sufficient case.

Sec. 6.—When, in the prosecution of any proceeding under a decree, it appears to the judge at chambers that some persons, not already parties,

New parties may be added in chambers;

ought to be made parties, and ought to attend, or be enabled to attend the proceedings before him, he may direct an office copy of the decree to be served upon such parties, and upon due service thereof such persons are to be treated and named as parties to the suit, and shall be bound by the decree in the same manner as if they had been originally made parties to the suit.

and upon service of an office copy of the decree they are to be bound as if they had been parties originally.

Every office copy of a decree directed to be served under this section is to be endorsed with a notice to the effect set forth in schedule N. to these orders, with such variations as circumstances may require.

The office copy of the decree is to be endorsed in the manner set forth in schedule N.

Sec. 7.—Any party served with an office copy of a decree under the preceding section may apply to the court, at any time within fourteen days from the date of such service, to discharge the order, or to add to or vary the decree.

A party served with an office copy of a decree may apply to discharge the order or vary the decree within fourteen days.

TAKING ACCOUNTS.

XXXV. When an account is taken at chambers the presiding judge may give such special direction, if any, as he may think fit, with respect to the mode in which the account is to be taken or vouched; and, in cases where he shall think fit so to do, he may direct that in taking the account the books of account in which the accounts required to be taken have been kept, or any of them, shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

The judge at chambers may give directions as to the manner in which the accounts are to be proved and vouched;

and may direct that books of account are to be taken as *prima facie* evidence.

Sec. 2.—An accounting party is to bring in his account in the form of debtor and creditor, and verify the same by affidavit, unless the judge shall otherwise direct. The items on each side of the account are to be numbered consecutively, and the account

An accounting party is to bring in his account in the form of debtor and creditor, unless the contrary is ordered.

is to be referred to by the affidavit as an exhibit, and not to be annexed thereto, and is to be left at judge's chambers.

Sec. 3.—Any party seeking to charge any accounting party beyond what he has by his account admitted to have received, is to give notice thereof to the accounting party, stating, as far as he is able, the amount sought to be charged, and the particulars thereof, in a short and succinct manner.

And any person desiring to charge an accounting party beyond what he has admitted is to state the amount sought to be charged, and the particulars, as far as he may be able.

SALES.

XXXVI.—Sales under the decree or order of this court are to be conducted in the following manner :—

(1.) No copy of the decree, or order, or any part thereof, is to be brought into the judge's chambers or master's office, but the original decree or order is to be used, unless the judge or master requires such copy.

Copy of decree.

(2.) An appointment or warrant is to be obtained from the judge or master, and served upon all necessary parties.

Appointment or warrant.

(3.) At the time appointed thereby the party having the conduct of the sale is to bring into the judge's chambers or master's office a draft advertisement, but no particulars or conditions of sale, or any draft or copy thereof.

Advertisement.

(4.) Such draft advertisement is to contain the following particulars, viz. :—1st. The style of cause ; 2nd. That the sale is in pursuance of the order or decree of this court ; 3rd. The time and place of sale ; 4th. A short and true description of the property to be sold ; 5th. The manner in which the property is to be sold, whether in one lot or several, and if in several in how many, and what lots ; 6th.

Its contents.

What proportion of the purchase money is to be paid down by way of deposit, and at what time or times, and whether with or without interest, the residence of such purchase money is to be paid; 7th. Any particular or particulars in which the proposed conditions of sale differ from the standing conditions.

(5.) At the time named in such appointment or warrant, the judge or master is, in the presence of all parties served, or of such of them as attend to settle such advertisement; to fix the time and place of sale; to name an auctioneer, where one is to be employed; and to make every other necessary arrangement preparatory to the sale, so that nothing may remain to be done but to insert the advertisement; and all the before mentioned matters must be done at one meeting—namely, upon the return of the appointment or warrant, where it is practicable, and no adjournment of such meeting is to take place, and no new meeting is to be appointed for the aforesaid purposes, unless it be unavoidable.

Attendance on appointment or warrant.

(6.) The advertisement is to be inserted by the party conducting the sale, at such times and in such manner as the judge or master has appointed at the meeting before mentioned.

Insertion of advertisement.

(7.) The judge or master may fix an upset price or reserved bidding, where it is thought expedient, without further order; but this must be done at the meeting before mentioned, and it must be notified in the conditions of sale; the master or his clerk is to conduct the sale where no auctioneer is employed; the deposit is to be paid to the vendor, if present, or if not, to his solicitor, at the time of sale, and is to be forthwith paid by him into court:

Upset price or reserved bidding.

Who to conduct sale.

Deposit.

biddings need not be in writing, and all parties, except the one having the conduct of the sale, may bid thereat, provided it be notified in the conditions of sale; a written agreement is to be signed by the purchaser at the time of sale; after the sale is concluded the auctioneer, where one is employed, is to make the usual affidavit according to the present practice, and where no auctioneer is employed the master or his clerk is to certify to the court to the same effect, but the master is to make no report, allowing the purchaser in any case

Biddings.

Agreement.

(8.) Under the printed conditions of sale is to be printed a blank form of contract in these words, or to this effect: "I agree to purchase the property or Lot No. —, mentioned in the annexed particulars, for the sum of £——, and upon the terms mentioned in the above conditions of sale,

(*Purchaser's signature*)

Witness."

Form of contract.

the purchaser is to sign one of these contracts and the affidavit of the auctioneer or certificate of the master or his clerk, and a printed copy of the particulars of sale are to be annexed to the contract so signed.

Signing.

(9.) The signed contract, with the printed copy of particulars and affidavit or certificate annexed as aforesaid, is to be filed by the vendor's solicitor, and if such sale is not objected to within fourteen days from the time of such filing, it is thenceforth to stand absolutely confirmed with the same effect as now follows from the absolute confirmation of the master's report allowing the purchaser.

Filing of contract

Confirmation of sale.

Objection to sale.

(10.) Such sale must be objected to by motion to the court to set aside the same, and notice of such motion must be served upon the purchaser and the other parties to the cause.

Payment of purchase money into court, and admission into possession.

(11.) At any time after the confirmation of the sale the purchaser may pay his purchase money and interest, or the balance thereof, into court without further order, but with the privity of the registrar and upon notice to the party having the conduct of the sale; and shall thereupon be entitled to be let into possession of the estate, and may either proceed, according to the present practice, to obtain possession thereof, or, if such possession be wrongfully withheld from him, may at his own expense obtain an order against the party in possession for the delivery thereof to him.

Obtaining possession.

Investigation of title.

(12.) When an enquiry into title has been directed by the court, the vendor is to deliver an abstract of the title to the purchaser, and if the purchaser does not object to the title and obtain and serve an appointment or warrant from the judge or master, to consider the same, within fourteen days after the delivery of such abstract, he is to be deemed to have accepted such title; at the time of serving the appointment or warrant the purchaser must deliver to the vendor a written notice of the objections to the title; at the time appointed a duplicate of such notice is to be brought into the judge's chambers or master's office by the objecting party, and such objections are to be argued before the judge or master, who is to allow or disallow such objections; and such allowance or disallowance is to be subject to appeal by way of motion to the court; the judge or master is to make no report upon the title, but the judge or master is merely to

mark the objections allowed or disallowed, as the case may be; such objections so marked are to be filed, and such allowance or disallowance is to stand absolutely confirmed, unless appealed from within fourteen days after such filing.

(13.) The standing conditions of sale are to be those set forth in schedule O, attached to these orders. Standing conditions of sale.

APPLICATION FOR THE SALE OF INFANTS' ESTATE UNDER 12 VICTORIA, CH. 72.

XXXVII. A petition for the sale or other disposition of the real estate of an infant, is to be intituled both in the matter of the infant and in the matter of the 12th Victoria, chapter 72. Petition to be intituled in the matter of the infant and the matter of the statute.

Sec. 2.—The petition is to be presented by the guardian of the infant, or by a person applying by the same petition to be appointed guardian, as hereinafter provided. Petition to be presented by guardian.

Sec. 3.—The petition is to state the nature and amount of the personal property to which the infant is entitled—the necessity of resorting to the real estate—its nature, value, and the annual profits thereof. It must state circumstances sufficient to justify the sale and disposition of the estate, and the application of the proceeds in the manner proposed. The prayer must state specifically the relief that is desired; it must designate the lands to be disposed of, and must propose a scheme for that purpose, and for the appropriation of the proceeds. If an allowance for the maintenance is desired, it must be so prayed, and a case must be stated to justify such an order, and to regulate the amount. The petition is to state the amount of personal estate, the value of the real estate, the circumstances which warrant a sale. The relief prayed must be specially stated.

The petition may pray for the appointment of a guardian as well as the sale of the estate.

Sec. 4.—The petition may pray for the appointment of a guardian, as well as for the disposal of the infants' estate. In that case a proper case must be made by the petition, and established by the evidence, for the appointment of the person proposed.

Infant to be produced before a judge or master.

Sec. 5.—Upon all petitions for the sale of an infant's estate, the infant is to be produced before one of the judges at chambers, or before a master.

Infant to be examined before a judge or master.

Sec. 6.—When the infant is above the age of seven years he is to be examined, apart, upon the matter of the petition, and his consent thereto, by the judge or master, as the case may be; and his examination is to be stated to have been taken under these orders, and is to be annexed to, and filed with the petition. Where the infant is under the age of seven years, the fact is to be certified by the judge or master before whom he has been produced.

Witnesses to be examined *viva voce* before the judge or master.

Sec. 7.—The witnesses to verify the petition are to be produced before the judge, or master, as the case may be; and are to be examined ***viva voce*** to the matter of the petition, and the depositions so taken are to be stated to have been taken under this order.

Masters to examine infants and witnesses, without special order.

Sec. 8.—The masters of the court are authorised to examine infants and witnesses under this order, without special order or reference.

Sec. 9.—Upon a petition so verified, the court may either grant the relief prayed at once, or make such order as to further evidence, or otherwise, as the circumstances of the case may require.

RECEIVERS.

Receivers, how appointed.

XXXVIII. Receivers are to be appointed in the following manner: The party prosecuting the order for a receiver is to obtain an appointment or a warrant from the judge or master, and to serve

the same on all necessary parties, naming in the copy thereof served the proposed receiver and his sureties; at the time appointed the party prosecuting the order is to bring into the judge's chambers, or the master's office, the recognizance or bond proposed as security: the bond or recognizance is to be to the master; any other party desirous of proposing another person as receiver, is to serve notice of his intention so to do upon the other parties, naming in such notice the person proposed by him as receiver and his sureties, and is then in like manner to bring into the judge's chambers or master's office the recognizance or bond proposed by him as security: at the time named in the appointment or warrant the judge or master is, in the presence of the parties, or those who attend, to consider of the appointment of the receiver, and to determine respecting the same; and to settle and approve the proposed security; the master is to make no report approving of or appointing the receiver; but the judge or master is to appoint such receiver by signing a written appointment to the following effect, viz., "IN CHANCERY, [*style of cause*]—I hereby appoint [*receiver's name*], receiver in this cause, [*signature of judge or master*];" which appointment is to be signed without any warrant or attendance for that purpose: when signed it is to be filed by the party who has procured the person named by him as receiver to be appointed, and is then to have the same effect as the filing of the master's report appointing the receiver now has; but the same is not to be filed until after the execution and filing of the securities settled and approved by the judge or master.

Appointment or warrant.

Attendance.

Securities.

Counter-proposal.

Appointment of receiver and settling security.

Filing of appointment.

Sec. 2. Committees of the persons and estates of lunatics, idiots and persons of unsound mind, and guardians, excepting guardians *ad litem*, are to be appointed in the same manner as nearly as circumstances will permit.

Committees and guardians, how appointed.

NOTICE OF MOTION.

Notice of motion may be served at any time after bill filed, without leave.

XXXIX. A notice of motion by any party to the suit may be served at any time after bill filed, without the leave of the court, except when the contrary has been expressly provided.

There must be two clear days between service of the notice and time for hearing the same.

Sec. 2.—There must be at least two clear days before the service of a notice of motion, and the day named in the notice for hearing the motion, unless the court give special leave to the contrary; and there must be two clear days between the service of the petition and the day appointed for hearing the same; and in the computation of such two clear days, Sundays, or days on which the offices are closed, are not to be reckoned.

EVIDENCE UPON MOTIONS, PETITIONS, AND INTERLOCUTORY PROCEEDINGS.

Admissions of service by a solicitor need not be verified by affidavit.

XL. Admissions of the service of a notice of motion or other paper, upon the opposite solicitor, need not be verified by affidavit.

Affidavits upon which a notice is founded are to be filed at the time the notice of motion is served.

Sec. 2.—All the affidavits upon which any notice of motion is founded must be filed at the time of the service of such notice of motion; and the affidavits either in support of, or in opposition to any special motion or petition, are to be filed, as heretofore, with the registrar.

The original affidavits may be read on the hearing in lieu of office copies.

Sec. 3.—Original affidavits may be used on the hearing of any matter, instead of office copies.

Office copies of affidavits and pleadings to be made by solicitors,

and ready for delivery within 48 hours.

Sec. 4.—Any party who requires an office copy of an affidavit to be used upon any application is to demand the same from the solicitor of the party by whom such affidavit has been filed, or on whose behalf it is to be used, and such copy is to be ready for delivery within forty-eight hours from the time of such demand, or within such other time as the court may in any case direct.

Sec. 5.—All affidavits are to be taken and expressed in the first person of the deponent, and his name at the commencement of the affidavit is to be written in full, and not designated by any initial letter merely.

Affidavits are to be taken in the first person of the deponent,

No costs are to be allowed in respect of any affidavit which has not been drawn in conformity with this section.

otherwise no costs to be allowed.

Sec. 6.—Every affidavit is to be read over to the deponent by the master or examiner who is required to administer the oath; and the master or examiner is to inform such witness that he is liable to be cross-examined touching the matter of such affidavit; and when the witness desires to qualify or add to his deposition, the master or examiner is to vary the same accordingly; and the jurat is to be in the form or to the effect set forth in schedule P., to these orders.

Master, &c., is to inform every deponent that he is liable to cross-examination,

and is to vary the affidavit if the deponent desire it.

Sec. 7. Any person in any cause or matter depending may, by a writ of *subpœna ad testificandum*, or *duces tecum*, require the attendance of any witness before the court, or before a deputy master, or before an examiner specially appointed for the purpose, and examine such witness orally for the purpose of using his evidence upon any motion, petition, or other proceeding before the court, in like manner as he may now require such witness to attend and be examined with a view to the hearing of the cause; and any party having made an affidavit to be used, or which shall be used on any motion, petition, or other proceeding before the court, shall be bound to attend for the purpose of being cross-examined, on being served with such writ; but the court, nevertheless, in its discretion, may act on the evidence before it at the time, and may make such *interim* order, or otherwise, as may appear necessary to meet the justice of the case.

Any witness may be compelled to give evidence orally *upon any petition or motion*, &c., by writ of subpœna.

And any witness who has made an affidavit to be used upon any motion, petition, &c., may be compelled to attend for the purpose of cross-examination.

The court may make *interim* orders.

Sec. 8.—Any party in any cause or matter who requires the attendance of any witness, whether a party to the cause or matter, or not, for the purpose of his being examined with a view to his evidence upon any motion, petition, or other proceeding before the court, *not being the hearing of a cause*, is to give to the opposite party or parties, forty-eight hours' notice, at least, of his intention to examine such witness and of the time and place of such examination, unless the court think fit in any case to dispense with such notice.

Where a witness is to be *examined*, for the purpose of a *motion*, &c., 48 hours notice of the examination is to be given to the opposite party.

The cross-examination, in such case, is to follow immediately upon the examination, and is not to be deferred to any future time.

The cross-examination of witnesses, examined for the purpose of a motion, is to follow immediately upon the examination.

Sec. 9.—Where it is desired to cross-examine any witness, whether a party to the cause or matter, or not, who has made an affidavit to be used, or which has been used upon any motion, petition, or other proceeding before the court, *not being the hearing of the cause*, the party who desires to cross-examine such witness is to give forty-eight hours' notice to the party on whose behalf such affidavit was filed, or to the party intending to use the same, of the time and place of such intended cross-examination, in order that such party, if he think fit, may be present at such intended cross-examination.

Forty-eight hours notice of the cross-examination of a witness who has made an affidavit, to be given to the opposite party.

EXAMINATION *PRO INTERESSE SUO* ABOLISHED.

XLI. The practice of applying to the court for an order to be examined *pro interesse suo* is hereby abolished.

Examination *pro interesse suo*.

Sec. 2.—In lieu thereof, any party who might have moved to be examined *pro interesse suo* may apply to the court, upon motion, for such relief as he may think himself entitled to.

Proceedings in lieu of present practice.

Sec. 3.—Motions under this order are to be governed by the practice prescribed by the tenth order, in relation to motions for a decree.

Sec. 4.—On hearing the motion, the court, in its discretion, may either grant or refuse the motion, or it may give such directions for the examination of parties or witnesses,—or for the making further enquiries,—or for the institution of any suit or action, as the circumstances of the case may require.

Sec. 5.—When it can be made to appear to the court that it would be conducive to the ends of justice to permit a notice to be served for some day earlier than that prescribed by the 16th order, leave may be obtained for that purpose, upon an *ex parte* application to a judge at chambers in the manner prescribed by the 17th order.

THE MASTER'S OFFICE.

XLII. Every decree or order referring any matter to the master is to be brought into his office within fourteen days after the decree or order shall have been pronounced, by the party having the carriage of the same; otherwise any other party to the cause, or any party having an interest in the reference, may apply to the court as he shall be advised, that the prosecution of such decree or order may be committed to him, or otherwise, for the purpose of expediting the prosecution thereof.

Bringing in decree or order of reference.

Sec. 2.—Upon the bringing in of every decree or order, the solicitor bringing in the same is to take out a warrant (unless the master shall dispense therewith) appointing a time, which is to be settled by the master, for the purpose of taking into consideration the matters referred by such decree or order, and is to serve the same upon the parties, or their solicitors, unless the master shall dispense therewith; and upon the return of such warrant to consider, or

Directions as to mode of prosecuting reference.

upon the bringing in of the reference when no such warrant shall have been issued, the master is to proceed to regulate in all respects the manner of proceeding with such reference, and the manner in which each of the accounts and inquiries is to be prosecuted.

As to the evidence to be adduced in support thereof, and therein to give such special directions (if any) as he may think fit with respect to the mode in which any accounts referred to him are to be taken or vouched; and, if he think fit so to do, to direct that in taking such accounts the books of account, in which the accounts required to be taken have been kept, or any of them, be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested take such objection thereto as they may be to advised.

As to the parties who are to attend on the several accounts and inquiries.

As to the time at which, or within which, each proceeding is to be taken.

And he is to fix a time at which to proceed to the hearing and determining of such reference, appointing a day in the meantime, if he shall think fit, for the purpose of entering into the accounts and inquiries, with a view to ascertaining what is admitted and what is contested between the parties; and such directions may be afterwards varied or added to, as may be found necessary; and in giving such directions and in regulating the manner of proceeding before him, the master is to devise and adopt the simplest, most speedy, and least expensive method of prosecuting the reference, and every part thereof, and with that view to dispense with any proceedings ordinarily taken in the master's office, which he may conceive to be unnecessary; to shorten the periods for taking any proceedings, or to substitute a different course of

Directions may be varied.

General powers.

proceeding for that ordinarily taken. Any party directed by the master to bring in any account, or do any other act, is to be held bound to do the same in pursuance of the direction of the master in that behalf, without any warrant or written direction being served upon him for that purpose.

Directions to be observed without warrant.

Sec. 3.—When the master shall appoint a day, as provided for in section 2 of this order, for the purpose of entering into the accounts or inquiries referred to him, with a view to ascertaining what is admitted and what is contested between the parties; and when it becomes necessary to adduce evidence, or to incur expenses otherwise, in establishing or proving items of account or other matters which in the judgment of the master ought, under all the circumstances, to have been admitted by the party sought to be charged therewith, and which such party shall refuse to admit, the master, before making his report, is to proceed to tax such costs, occasioned by such refusal, as shall appear to him reasonable and just, and shall state in his report the amount of such costs and how the same were occasioned; and the party to whom such costs are to be paid is to be entitled, upon the master's report becoming absolute, to such process of the court to compel payment thereof as in other cases, provided always, that when the party entitled to receive the general costs of the cause is the party ordered to pay such costs, he is to be at liberty to deduct such costs from such general costs, provided such general costs, and such interlocutory costs, are between the same parties. When the master shall omit to appoint a day for the purposes aforesaid, it shall be competent to him to grant to any party bringing in accounts a warrant to proceed on the same, for the purposes aforesaid; such warrant to be underwritten, as follows, "On leaving the accounts of, &c.; and take notice that you are required to admit the same, or such parts thereof as

Costs occasioned by improper refusal to admit.

you can properly admit." And when the party so notified shall refuse to admit the same, the like consequences shall follow, under the like circumstances, as are hereinbefore provided for.

Master's book to be kept.

Sec. 4.—The master and each of the deputy masters is to keep in his office a book, to be called the "master's book," in which, upon the bringing in of any decree or order of reference, is to be entered, the style of the cause, the name of the solicitor prosecuting the reference, the date of the decree or order being brought in, and an entry of the proceedings then taken; and the master shall enter therein, from time to time, the proceedings taken before him, and the directions which he may give in relation to the prosecution of the reference, or otherwise.

States of facts, &c., abolished.

Sec. 5.—No states of facts, charges, or discharges, are to be brought into the master's office. But, when directed, copies, abstracts of, or extracts from accounts, deeds, or other documents and pedigrees, and concise statements, are to be supplied; and, where so directed, copies are to be delivered as the master shall direct. No copies of deeds or documents are to be made where the originals can be brought in, without special direction.

Form of bringing in accounts.

Sec. 6.—Where any account is to be taken, the accounting party is, unless the master shall otherwise direct, to bring in the same in the form of debtor and creditor, verified by affidavit. The items on each side of the account are to be numbered consecutively, and the account is to be referred to by the affidavit as an exhibit, and not to be annexed thereto.

Surcharge—mode of.

Sec. 7.—Any party seeking to charge any accounting party beyond what he has in his account admitted to have received, is to give notice thereof to the accounting party, stating, so far as he is able, the amount so sought to be charged and the particulars thereof in a short and succinct manner.

Sec. 8.—Every reference appointed to be heard, as by section 2 of this order provided, is to be called on and proceeded with at the day and time so fixed, unless the master shall in his discretion think fit to postpone the same; and in granting any application to postpone the hearing of such reference, the master may make such order, as to the costs consequent upon such postponement, as he may think just. And as soon as the master shall have entered upon the hearing of such reference, he is to proceed therewith to the conclusion without interruption, where that is practicable; and when any reference cannot be concluded in a single day, the master is to proceed *de die in diem*, without any fresh warrant, unless he shall be of opinion that an adjournment other than *de die in diem* would be proper, and conducive to the ends of justice; and when any such adjournment shall be ordered, the master is to note in his book the time and reason thereof; and in no case is any matter to be discontinued or adjourned for the mere purpose of proceeding with any other matter (with the exception of the examination of witnesses during examination terms), unless such course shall have become necessary.

Proceeding on reference.

Sec. 9.—Upon any application made by any person to the court, the master is, at the instance of the person making the application, to certify to the court, as shortly as he conveniently can, the several proceedings had in his office in the same cause or matter, and the dates thereof.

Certificate of proceedings.

Sec. 10.—Where a party actually prosecuting a decree or order does not proceed before the master with due diligence, the master is at liberty, upon the application of any other party interested, either as a party to the suit, or as one who has come in and established his claim before the master under the decree or order to commit to him the prosecution of such decree or order, and from thenceforth neither the

Course where reference not prosecutod diligently.

party making default nor his solicitor is to be at liberty to attend the master as the prosecutor of such decree or order.

Proceeding on claims of creditors.

Sec. 11.—Advertisements for creditors are to appoint a day and hour, and to name the place at which creditors are to come in and present and prove their claims before the master; for this purpose no state of facts shall be necessary, but the claims are to be duly verified by affidavit. At the time and place named in such advertisement, the master is to proceed on the claims brought in before him without further notice, and may examine any parties as witnesses in relation thereto at such time, or thereafter, as he may see fit; and he is to allow or disallow, or adjourn the same, as to him may seem just. The costs of proving such claims are, in the discretion of the master, to be allowed to the creditors proving the same, and added to their debts respectively; or to be disallowed. And in case of their being allowed, they may be allowed in gross in place of taxed costs.

Accounts, &c., not to be stated in reports.

Sec. 12—In master's reports no part of any account, charge, affidavit, deposition, examination or answer, brought in or used in the master's office, is to be stated or recited, but instead thereof the same may be referred to by date or otherwise, so as to inform the court as to the paper or document so brought in or used.

What within cognizance of master in taking accounts.

Sec. 13—In the taking of accounts in the master's office, it shall be within the cognizance of the master to take the same with rests or otherwise; to take account of rents and profits received, or which, but for wilful neglect or default, might have been received; to set occupation rent; to take into account necessary repairs, and lasting improvements, and costs and other expenses properly incurred otherwise or claimed to be so. And generally, in the taking of accounts, to inquire and adjudge as to all matters relating thereto, as fully as if the same had been specifically referred; subject, nevertheless to the

revision of the court upon appeal from the master's report; and it shall not be necessary to the taking of such accounts that any of the matters aforesaid should have been stated in the pleadings; or that evidence thereof should have been given before the decree or order of reference; or that such decree or order should contain any specific direction in respect thereof.

What proceedings may be taken in master's office without special order.

Sec. 14.—Under any order of reference to the master, witnesses may be examined before any examiner of the court; and upon the certificate of the master foreign commissions may issue for the examination of witnesses without the jurisdiction of the court, the master is to be at liberty to cause parties to be examined, and to produce books, papers and writings as he shall think fit, and to determine what books, papers and writings are to be produced, and when and how long they are to be left in his office; or in case he shall not deem it necessary that such books and papers or writings should be left or deposited in his office, then he may give directions for the inspection thereof by the parties requiring the same, at such time, and in such manner as he shall deem expedient. The master is also to be at liberty to cause advertisements for creditors, and if he shall think it necessary, but not otherwise, for heirs or next of kin, or other unascertained persons, and the representatives of such as may be dead, to be published, as the circumstances of the case may require; and in such advertisements to appoint a time within which such persons are to come in and prove their claims, and within which time, unless they so come in, they are to be excluded from the benefit of the decree: and in taking any account of a deceased's personal estate, under any order of reference, the master is to require and state to the court what, if any, of the deceased's personal estate is outstanding or undisposed of; and is also to compute interest on

the deceased's debts from the date of the decree, and on legacies from the end of one year after the deceased's death, unless any other time of payment is directed by the will, and in that case according to the will: and under any order whereby any property is ordered to be sold with the approbation of the master the same is to be sold to the best purchaser that can be got for the same—to be allowed by the master, and either in one lot or in parcels, as the master shall direct; and all proper parties are to join therein as the master shall direct; and under every order whereby the delivery of deeds is ordered or the execution of conveyances is directed, the master is to give directions as to the delivery of such deeds, and to settle conveyances where the parties differ, and to give directions as to the parties thereto, and the execution thereof; and for the several purposes herein enumerated no special order of the court shall be necessary.

Parties may be added in master's office.

Sec. 15. Where in proceedings before the master it appears to him that some persons not already parties, ought to be made parties, and ought to attend, or be enabled to attend the proceedings before him, he may direct an office copy of the same to be served upon such parties; and upon due service thereof such parties are to be treated and named as parties to the suit, and to be bound by the decree in the same manner as if they had been originally made parties to the suit.

Every office copy of a decree directed to be served under the section, is to be indorsed with a notice to the effect set forth in schedule N. to these orders, with such variations as circumstances may require.

Report, preparing, settling, and signing.

Sec. 16.—So soon as the hearing of any matter pending before the master shall have been completed,

he shall so inform the parties to the reference then in attendance, and shall make a note to that effect in the master's book; and after such entry no further evidence shall be received, or proceedings had, without the special permission of the master; but the master shall proceed to prepare his report or certificate without further warrant, except the warrant to settle, which shall be served on the parties as the master shall direct. So soon as the master's report or certificate shall have been prepared, it shall be delivered out to the party prosecuting the reference, or in case he shall decline to take the same, then, in the discretion of the master, to any other party applying therefor; and a common attendance shall be allowed to the party taking the same.

Sec. 17.—Reports become absolute, without order confirming the same, in fourteen days after the signing thereof, unless previously appealed from. An appeal shall lie to the court upon motion, within fourteen days from the signing of the report, in respect of the finding of the master upon any matter presented in his office for his decision, without objections or exceptions being previously taken. The appeal motion may be made by any party affected by the report; and upon notice thereof being served, all the proceedings before the master in the matter, and all papers and evidence relating thereto, are, at the instance of any party interested therein, to be transmitted by the master to the registrar, to be produced by him in court, upon the hearing of such motion.

Reports when absolute—appeal from.

REGISTRAR'S OFFICE. SOLICITOR AND AGENT'S BOOK. OFFICE COPIES.

XLIII.—The registrar is to keep in his office a book to be called "The Solicitor and Agent's Book," in which each solicitor residing elsewhere than in the city of Toronto is to specify the name of an agent being a solicitor of this court, and having an

The Registrar to keep a solicitors' and agents' book.

office in the city of Toronto, upon whom pleadings, writs, notices, orders, appointments, warrants, and other documents and written communications may be served.

Service of pleadings, &c.

Where the pleadings in any cause have been filed in the office of the registrar, there all pleadings, writs, notices, orders, appointments, warrants, and other documents and written communications in relation to such suit, which do not require personal service upon the party to be affected thereby, are to be served upon the solicitor, when residing in the city of Toronto, or, where the solicitor resides elsewhere than in the city of Toronto, then upon his agent named in "The Solicitor and Agent's Book," as provided above; and, where the pleadings have been filed elsewhere than in the office of the registrar, then all notices, appointments, warrants, and other documents and written communications in relation to matters transacted in court, or chambers, or in the office of the master or registrar, are to be served in like manner; and if any solicitor neglect to cause such entry to be made in "The Solicitor and Agent's Book" the leaving a copy of any such pleading, writ, notice, order, appointment, warrant, or other document or written communication, for the solicitor so neglecting as aforesaid, in the office of the registrar, is to be deemed sufficient service, unless the court direct otherwise.

Name of solicitor to be endorsed on writs, &c.

Sec. 2.—Upon every writ sued out, and upon every information, bill, demurrer, answer, or other pleading or proceeding, there shall be endorsed the name or firm and place of business of the solicitor or solicitors by whom such writ has been sued out, or such pleading or other proceeding has been filed; and when such solicitors are agents only, then there shall be further endorsed thereon the name or firm, and place of business of the principal solicitor or solicitors.

Sec. 3.—Every party suing or defending *in person* is to cause to be indorsed or written upon every writ which he sues out, and upon every information, bill, demurrer, answer, or other pleading or proceeding, his name and place of residence, and also (when his place of residence is more than three miles from the office where such pleading or other proceeding is filed) another proper place, to be called his address for service, not more than three miles from the said office, where writs, notices, orders, warrants, and other documents, proceedings and written communications, may be left for him.

Where party acts in person.

Sec. 4.—In future office copies of pleadings and affidavits are to be made by the solicitor, and examined and certified by the registrar.

Office copies of pleadings and affidavits to be made by solicitors

Any party requiring an office copy of any pleading or affidavit is to make a written application for the same to the solicitor of the party by whom it has been filed or on whose behalf it is to be used; and when such party has no solicitor, then to the party himself.

A party requiring an office copy of any pleading or affidavit is to serve a written application on the solicitor.

When an application is made for an office copy of any pleading or affidavit it is to be delivered within forty-eight hours from the time of such demand; and any further time which may elapse before the delivery thereof is not to be computed against the party demanding the same.

Office copies to be delivered in forty-eight hours.

Office copies of pleadings and affidavits are to be written on paper of convenient size, in a neat and legible manner, and unless so written the solicitors furnishing them are not to be paid for the same.

Sec. 5.—All documents of whatever nature, required to be transmitted to the registrar of the court, or any of the deputy registrars, may be so transmitted through the post office, under cover, directed to the registrar or deputy registrar, as the case may

Papers may be transmitted through the post office,

be, sealed with the seal of the party required to transmit the same; or they may be forwarded by a special messenger: in that event the messenger is to make oath, before the registrar, or deputy registrar, that he received the document from the hands of the party required to transmit the same,—that it has not been out of his possession since he so received it,—and that it is in the same state and condition as when it was placed in his hands for transmission; and the name, style and place of residence of such messenger are forthwith to be endorsed upon the document so transmitted by the registrar or deputy registrar, as the case may be.

or by a special messenger.

Bonds for security for costs to be given to the registrar.

All defendants to be included in the same bond.

The penal sum to be fixed by the court upon the motion for security.

Sec. 6.—Bonds executed upon an order for security for costs are to be given to the registrar, or deputy registrar with whom the pleadings in the suit are filed; all the defendants are to be included in the same bond; and the penal sum to be inserted therein is to be fixed *upon* the application for security by the judge or master who makes the order.

Deposit on rehearing.

Sec. 7.—The amount to be deposited with the registrar of the court on any petition of rehearing is ten pounds.

Money ordered to be paid into court to be paid into the Commercial Bank, with the privity of the registrar,

Sec. 8.—Money ordered to be paid into court is to be paid into the Commercial Bank, with the privity of the registrar; the solicitor, or party paying the same is to furnish the bank with a correct copy of so much of the order of court as relates to such payment, with the names of the parties to the suit, and the date of the order.

and to be paid out upon the check of the registrar, countersigned by a judge.

All sums of money to be paid out of court are to be so paid upon the check of the registrar, countersigned by one of the judges of the court, and not otherwise.

Orders of course on præcipe.

Sec. 9.—All orders of course are to be drawn up by the registrar upon præcipe.

Sec. 10.—The evidence read upon the hearing of any cause or matter is not to be stated in the decree or order, but must be entered in the registrar's book at the time of the hearing.

The evidence read upon the hearing of a cause not to be entered in the decree, but noted in the registrar's book.

Sec. 11.—Where accounts are directed to be taken, or inquiries to be made, by any decree or order, each direction is to be numbered, so that, as far as may be, each distinct account and enquiry may be designated by a number, and such order may be in the form set forth in schedule Q., appended hereto, with such variation as the circumstances of the case may require.

Accounts and inquiries directed by a decree to be numbered.

Sec. 12.—Interlocutory orders are not to be enrolled. Decrees or decretal orders are not to be enrolled until the final order or decree in the cause has been pronounced. When the final decree or order is entered in the registrar's book he is to state in the margin of the book the date at which such entry was made; and after the expiration of thirty days from the date of such entry, if no petition for rehearing has been in the meantime filed, the registrar, at the instance of any party to the cause, is to attach together the bill, pleadings, and other proceedings in the cause, and is to annex thereto a fair copy of the decree or decretal order signed by the chancellor, and countersigned by the registrar, and the papers and proceedings so annexed and signed are to remain of record in his office, and such filing is to be deemed and taken to be an enrolment of the decree for all purposes.

Interlocutory orders are not to be enrolled.

Decrees, &c., not to be enrolled until the final decree has been pronounced.

After the expiration of thirty days from the entry of a decree it may be enrolled.

Manner of enrolment.

DEPUTY MASTERS AND DEPUTY REGISTRARS.

XLIV.—Deputy masters and deputy registrars respectively are to perform the duties of their several offices in the same manner, and under the same regulations, as the like duties are performed by the master and registrar respectively; and all orders, rules and regulations, in force respecting the master

Deputy masters and deputy registrars to perform the duties of masters and registrars respectively.

and registrar respectively, and respecting the regulations of their respective offices, are to be in force and applicable to the deputy masters and deputy registrars respectively, in relation to such duties as they are hereby required to perform; and the like sums and fees payable to the master and registrar respectively, are to be payable to the deputy masters and deputy registrars respectively in relation to similar matters.

Bill may be filed with registrar or deputy registrar, at the option of the plaintiff.

Sec. 2.—A bill of complaint may be filed either with the registrar, or with a deputy registrar, at the option of the plaintiff; but all the pleadings in any cause must be filed at the same office; and where a bill is filed in the office of a deputy registrar the endorsement thereon must be varied accordingly.

Powers of the master and registrar to be exercised by the deputy master and deputy registrar in certain cases.

Sec. 3.—When a bill is filed with a deputy registrar, the deputy master and deputy registrar respectively in the county where such bill has been filed are to have all such powers and authorities in relation to such suit as belong to the master and registrar respectively.

Applications may be made to deputy master in certain specified cases.

Sec. 4.—In addition to the powers and authorities conferred upon him by the previous section, the deputy master in the county where the bill has been filed is to hear and dispose of all applications in the progress of such suit, for the following purposes, viz.:—

(1.) To appoint guardians *ad litem* for infants.

(2.) For time to answer or demur.

(3.) For leave to amend before replication.

(4.) To postpone the examination of witnesses, or to allow further time for the production of evidence.

(5.) For security for costs.

Orders of course to be drawn up by the deputy registrar.

Sec. 5.—All orders in the progress of a cause which are drawn up by the registrar without the special direction of the court may be drawn up by the deputy registrar with whom the bill is filed.

Deputy registrar to keep a book to be called "the solicitors and agents' book."

Sec. 6. Each deputy registrar is to keep in his office a book to be called "The Solicitor and Agent's Book," in which each solicitor residing elsewhere than in the county in which such deputy registrar's office may be, is to specify the name of an agent, being a solicitor of this court, and having an office in the city or town where the office of such deputy registrar is situated, upon whom all writs, pleadings, notices, orders, warrants, and other documents, and written communications in relation to proceedings conducted in the office of the deputy master or deputy registrar of such county, may be served.

All writs, pleadings, notices, orders, warrants, and other documents and written communications in this section specified which do not require personal service upon the party to be affected thereby may be served upon his solicitor residing in the county where such proceedings are conducted, or, where such solicitor does not reside in the county where such proceedings are conducted, then upon the agent named in "The Solicitor and Agent's Book," as herein provided. And if any such solicitor neglect to cause such entry to be made in "The Solicitor and Agent's Book," the leaving a copy of any such writ, pleading, notice, order, warrant, or other document or written communication for the solicitor so neglecting as aforesaid in the office of such deputy registrar, is to be deemed sufficient service.

COSTS.

May be awarded in gross instead of taxed costs.

XLV. Upon interlocutory applications, where the court deems it proper to award costs to either party, it may by the order direct payment of a sum in gross in lieu of taxed costs, and direct by and to

whom such sum in gross is to be paid. And the same may likewise be done upon such proceedings before the court or in chambers as have heretofore been matters of reference to the master.

And it shall also be competent for the deputy master, upon disposing of applications made to him under order XLIV., in like manner to direct payment of a sum in gross in lieu of taxed costs, and to direct by and to whom such sum in gross is to be paid.

Costs of unnecessary proceedings.

If upon the taxation of costs it should appear to the master that any proceedings have been taken unnecessarily, and which were not calculated to advance the interests of the party on whose behalf the same were taken, it shall be the duty of the master to disallow the costs of such proceedings, as well on the taxation of costs between solicitor and client, and as between solicitor and client, as on a taxation between party and party, unless the master shall be of opinion that such proceedings were taken by the solicitor because they were in his judgment conducive to the interests of his client. It shall not be the duty of the master, on a taxation of costs between a solicitor and his client, to disallow to the solicitor his costs of such proceedings where it is made to appear that such proceedings were taken by the desire of the client, after being informed by his solicitor that the same were unnecessary and not calculated to advance the interests of the client: but the costs of such proceedings are not to be allowed in any case where, according to the present practice and rules of taxation, the same would not be allowed.

Sec. 3.—Where costs are to be taxed as between party and party, the master may allow to the party entitled to receive such costs the like costs as are taxable where costs are directed to be taxed as between solicitor and client in—

Advising with counsel on the pleadings, evidence, and other proceedings in the cause:

Procuring counsel to settle and sign such pleadings and petitions as may appear to have been proper to be settled by counsel.

Procuring and attending consultations of counsel.

The amendment of bills.

On proceedings in the master's office.

Supplying counsel with copies or extracts from necessary documents.

But in allowing such costs, the master is not to allow such party any costs which do not appear to have been necessary or proper for the attainment of justice, or for defending his rights; or which appear to have been incurred through over-caution, negligence or mistake, or merely at the desire of the party.

The following fees and disbursements may be charged and allowed in respect of the services hereinafter enumerated:

SOLICITOR.

Instructions for suit	£0	10	0
Instructions to defend	0	10	0
Instructions for petition where no bill filed	0	10	0
Letter of notice before instituting suit	0	2	6
Drafting bill not exceeding 20 folios, including copy to keep	1	0	0
For every additional folio above 20, (to be allowed in the discretion of the master) including copy to keep, per folio	0	1	0

[No greater sum than 30*s.* to be taxed by the master for drawing any bill, without the special direction of one of the judges of the court upon the application of the solicitor requiring the same, for which application no charge is to be made.]

Drafting answer or other pleading, petition or special affidavit, per folio	0	1	0

[No greater sum than 30*s.* to be taxed for drawing any answer, petition, or affidavit, without the special direction of one of the judges of the court, as provided for in the case of bills; and no greater sum is to be allowed for drawing any answer, petition or affidavit, than would have been taxed irrespective of this order.]

Engrossed copies to file, copies to serve (other than copies on which a fee is paid to the master or registrar, for reading over or authenticating the same) each per folio	0	0	6
Copies of orders or other papers or documents, not office copies, required to be served, per folio	0	0	6
Office copies to be authenticated by the registrar, and engrossment of affidavit read over by the master to the deponent, per folio	0	0	5
Affidavits of service, including attendance to swear	0	2	0
Præcipe for any process including attendance	0	1	3
Special attendance on the master's warrant or appointment, or on examination of witnesses, or on hearing of cause or demurrer or special motion	0	5	0
When the hearing shall exceed one hour, then for every additional hour which shall be occupied by such hearing, and at which the solicitor shall be present in court, provided the same be noted in the registrar's book, or be proved by affidavit (such affidavit to be without charge), the same not to exceed 20*s*.	0	5	0
For every additional hour beyond one hour in the master's office	0	5	0
For every additional hour in the examination of witnesses where no counsel employed	0	5	0
Attending consultations of counsel, per hour	0	5	0

[No special attendance to be allowed to a solicitor on proceedings upon which he appears also as counsel.]

Appointment to settle minutes, or to pass decree or order, copy and service	0	3	0
For every hour's attendance before the registrar by his appointment, on settling minutes, the same being noted by the registrar	0	5	0
For every hour's attendance before the registrar by his appointment, on passing decree or special order, the same being noted by the registrar	0	5	0
Where minutes settled, or decree or special order approved of or passed between the solicitors after appointment issued by the registrar	0	5	0

[In such case no fee to be allowed to either party as for attendance before the registrar in respect of the same settling or passing].

Fee on all writs and orders of court to the party obtaining the same	0	5	0
Instructions for brief	0	5	0
Brief, per folio, including briefing and fair copy, subject to be reduced by the master, if the same contain superfluous matter, or be of unnecessary length	0	0	6
Observations, or other original matter in brief, per folio	0	1	0

[No fee or brief for second counsel to be allowed, unless by order of a judge; and a brief of depositions or special affidavits to be allowed only where fee and brief for second counsel is taxed, and then only by the direction of a judge upon special application].

Advertisement for sale of real or personal estate, under the direction of the court, including all copies, except for printing	0	5	0
Copies for printing—per folio	0	0	6
Fee on conducting sale—including arrangements with auctioneer, correcting proof-sheet (if any), and attending at sale	1	5	0
For every hour beyond three occupied at such sale	0	5	0
Drawing bill of costs and attending taxation	0	5	0
Drawing judge's appointment, and attending for his signature, and to serve	0	5	0
Every necessary attendance	0	1	3
Postages—the amount actually disbursed.			

[The sum allowed for copying and briefing shall be six-pence per folio, except where authenticated by the registrar, or read over by the master: provided that the same shall not in any case exceed one half of the amount which shall be allowed for drawing what shall be so copied or briefed].

COUNSEL.

On argument at judges' chambers in cases proper for the attendance of counsel, to be increased at the discretion of the judge	0	10	0
On settling and signing pleadings and petitions respectively, where from their special nature the master shall think the pleading or petition a proper one to be settled by counsel	0	10	0
On consultations	1	5	0
On special applications to the court, arguing demurrer or other special argument, or at the hearing of a cause	1	5	0

To be increased, in the discretion of the master, to.....	5	0	0

[Any fee exceeding £5, to be allowed only by order of a judge, to be obtained at the cost of the solicitor making the application.]

MASTERS IN ORDINARY AND DEPUTY MASTERS; MASTERS AND MASTERS EXTRAORDINARY.

Every summons or warrant.....	0	1	3
Administering oath, or taking affirmation.....	0	1	0
Marking every exhibit.....	0	1	0
Drawing depositions, reports or orders, per folio.....	0	1	0
One fair copy when necessary, per folio.....	0	0	6
Copy of papers given out when required, per folio.....	0	0	6
Every attendance upon a reference.....	0	5	0
For each additional hour.....	0	5	0
Every certificate.....	0	2	6
Filing each paper.....	0	0	4
Taxing costs, including attendance.....	0	5	0
Making up and forwarding answers and depositions....	0	1	3
Every special attendance out of office, within two miles..	0	5	0
Every additional mile above two.....	0	1	0
Reading over affidavit—per folio.....	0	0	1
Matter added—per folio.....	0	1	0

REGISTRAR.

Entering parties' names and filing bill, answer or demurrer	0	2	6
Entering and filing all other pleadings, interrogatories and depositions, or other evidence.....	0	1	0
Filing and registering affidavits, exhibits, or other papers..	0	0	4
Subpœna, including filing prœcipe.....	0	2	6
Special writ, writ of commission.....	0	5	0
Office copy of papers required to be given out—per folio.	0	0	6
Examining and authenticating same, when office copy prepared by solicitor—per folio.....	0	0	1
Attendance on appointment of guardian.....	0	2	6
Amendment of record when re-engrossment not necessary —per folio.....	0	1	0
Drawing fiat on petition.....	0	1	0
Attending a Judge for his signature to any document or paper.....	0	1	3
Making up, and forwarding interrogatories.....	0	1	3
Setting down cause.....	0	2	6

Certificate of pleadings being filed	0	2	0
Certificate of state of cause	0	2	6
Drawing minutes of decree or special order—per folio	0	1	0
Drawing decree or order—per folio	0	1	0
Entering same—per folio	0	0	6
Fee on payment of money into court	0	1	3
Fee on payment of money out of court	0	1	3
Fee on admission of solicitor	0	5	0
Certificate on each office copy of the time of filing bill	0	1	3
Searching files in office	0	1	0
Commission appointing deputy master or registrar, or master extraordinary	0	10	0

PROCESS.

XLVI.—No writ of execution shall be issued for the purpose of requiring or compelling obedience to any order or decree of the court; but the party required by such order or decree to do any act, shall, upon being duly served with such order or decree, be held bound to do such act in obedience to such order or decree. Writ of execution abolished.

Sec. 2.—If any party, who is by any order or decree ordered to pay money, or to do any other act in a limited time, shall, after due service of such order or decree, refuse or neglect to obey the same according to the exigency thereof, the party prosecuting such order or decree shall, at the expiration of the time limited for the performance thereof, upon filing with the registrar an affidavit of the service of such order or decree, and of the non-performance thereof, be entitled without further order to a writ or writs of attachment against the disobedient party; and in case such party shall be taken or detained in custody under any such writ of attachment without obeying the same order or decree, then upon the sheriff's return that the party has been so taken or detained, the party prosecuting such order or decree shall be entitled without further order to a commis- Attachment. Sequestration.

sion of sequestration against the estate and effects of the disobedient party.

When an attachment cannot be executed.

Sec. 3.—If an attachment cannot be executed against such party so refusing or neglecting to obey such order or decree, by reason of his being out of the jurisdiction of the court, or of his having absconded, or that with due diligence he cannot be found, and the court be satisfied by affidavit that such is the case, the party prosecuting such order or decree shall be entitled to an order for a commission of sequestration against the estate and effects of the disobedient party; and it shall not be necessary for this purpose to sue out an attachment in the first instance.

Commission of sequestration to whom directed.

Sec. 4.—Commissions of sequestration are to be directed to the sheriff, unless some good reason exists for the contrary.

Attachment with proclamation and commission of rebellion, abolished.

Sec. 5.—Attachments with proclamations and commissions of rebellion are hereby abolished; and it shall not be necessary, in order to enforce any order or decree, to obtain any order for, or sue out a warrant to, the sergeant-at-arms.

Time to be limited by decree or order.

Sec. 6.—Every order or decree requiring any party to do any act thereby ordered shall state the time after service of the decree or order within which the act is to be done; and upon the copy of the order or decree which shall be served upon the party required to obey the same, there shall be endorsed a memorandum in the words, or to the effect following, namely, "If you, the within named (*here insert the name of the party*), neglect to obey this order or decree by the time therein limited, you will be liable to be arrested by the sheriff; and you will also be liable to have your estate sequestered for the purpose of compelling you to obey the same order or decree without further notice."

Indorsement.

Subpœna for costs abolished.

Sec. 7.—Subpœnas for costs are hereby abolished: A decree or order directing the payment of costs is in future to fix a time for such payment; and such

decree or order shall be enforced in the same manner as any other decree or order directing the payment of money; for this purpose it shall be necessary to serve only a copy of so much of the decree or order as directs the payment of such costs, and the time to be fixed is to be a certain time after such service.

Payment of costs, how enforced.

Sec. 8.—It shall not be necessary to issue any writ of attachment or injunction upon any decree or order for delivery of possession, but the party prosecuting such decree or order, upon filing with the registrar an affidavit of service of the same, and of non-compliance therewith, shall be entitled without further order to a writ of assistance.

Writ of attachment or injunction on decree or order to deliver possession dispensed with.

Sec. 9.—No order for the production of deeds, papers, writings or documents, made under the 20th order of this court, shall require personal service; if the party required to obey the same shall have a solicitor, it shall be sufficient to serve the same upon such solicitor: but any writ or writs of attachment to be issued for disobedience to any such order, must be obtained according to the present practice by orders *nisi* and absolute, and such orders *nisi* must be personally served.

Order for production of papers, how obtained.

Sec. 10.—Every person, not being a party in any cause, who has obtained any order, or in whose favor an order has been made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the cause; and every person not being a party in any cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such order as if he were a party to the cause.

Decrees or orders, by or against persons not parties.

XLVII.—The power of the court and of the judge sitting in chambers to enlarge or abridge the time for doing any act, or taking any proceeding in any cause or matter upon such (if any) terms as the facts of the case require, or to give any special directions as to the course of proceeding in any cause or matter, is unaffected by these orders.

Power of court or judge, not affected by these orders.

SCHEDULE A.

FORM OF BILLS.

1. By a legal or equitable mortgagee, or person entitled to a lien as a security for a debt, seeking foreclosure or sale, or otherwise to enforce his security.

In Chancery.

A. B. and C. D. (*enumerate all the parties plaintiffs*) ..... Plaintiffs.

and

E. F. and G. H. (*all parties defendants*) ..... Defendants.

CITY OF TORONTO, (*or the county town selected for the examination of the witnesses*). } TO THE HONORABLE, &c.

Humbly complaining, shows, &c. A. B. of &c. that under and by virtue of an indenture (*or other document*) dated, &c. and made, &c.* (*and a transfer thereof, made by indenture, dated, &c. and made, &c.*) the said A. B. is a mortgagee (*or, an equitable mortgagee*) of (*or, is entitled to hold a lien upon*) certain freehold property (*or leasehold, or other property, as the case may be*) therein comprised, being (*insert a general description of the property*) for securing the sum of £ ——— and interest; that the time for payment thereof has elapsed; that £ ——— has been paid on account of principal, and £ ——— on account of interest (*or, that no sum has been paid on account of either principal or interest*); that your orators have not been in the occupation of the premises, or any part thereof (*or, that your orators have been in the occupation of the premises, or of some part thereof, from the ——— day of ——— in the year ——— to the ——— day of ——— in the year ———*); that there is now justly due upon the said security, for principal, £ ——— and for interest £ ———. That E. F. and G. H., the defendants hereto, are entitled to the

* The names only of the parties are to be set out, not the substance or effect of the document.

equity of redemption of the said mortgaged premises (*or, the premises subject to such lien*). Your orators therefore pray that they may be paid the said sum of £ ——— and interest, and the costs of this suit; and in default thereof that the equity of redemption of the said mortgaged premises may be foreclosed, (*or, that the said mortgaged premises may be sold, or that the premises subject to such lien may be sold, as the case may be, and the produce thereof applied in or towards the payment of the said debt and costs, and that the said E. F. and G. H. may be ordered to pay the balance of the said mortgage debt and costs, after deducting the amount realized by such sale*), and for that purpose that all proper directions may be given and accounts taken (*and for further relief*).

2. By a judgment creditor, who has registered his judgment, seeking a sale, or otherwise to enforce his charge or lien.

In Chancery.

A. B. ..... Plaintiff.
and
C. D. ..... Defendant.

CITY OF TORONTO. (*or the county town selected for the examination of the witnesses.*) } TO THE HONORABLE, &c.

Humbly complaining, &c. your orator, &c. that in ——— term, in the year ——— *your orator, or G. H., late of* ——— *deceased, of whom your orator is the executor, or administrator, or assignee, under an assignment, dated, &c. and made, &c. or of whose executor or administrator, or administrator de bonis non, your orator is the assignee under,* &c.*) recovered a judgment in the court of ——— against C. D., the defendant herein named, for the sum of £ ———, in an action theretofore brought by your orator against the said C. D., which judgment was duly registered in the registry of the county of ———, on the ——— day of ———, at which time the said C. D. had divers lands, tenements and hereditaments in the said county, and that

* The character of the plaintiff must be described, without detailing the transactions whereby he acquired such character.

the said C. D. is now the owner of the same lands, tenements and hereditaments, subject to the said judgments. Your orator therefore prays that he may be paid the amount of the said judgment, together with interest thereon, and his costs of this suit, or in default thereof that the said lands, tenements and hereditaments, or a competent part thereof, may be sold for the satisfaction thereof, and the proceeds of such sale applied accordingly; and for that purpose that all proper directions be given and accounts taken.

3. By a person entitled to the redemption of any legal or equitable mortgage, or any lien, seeking to redeem the same.

In Chancery.

A. B. ..... Plaintiff.
and
C. D. ..... Defendant.

CITY OF TORONTO, (*or the county town selected by the plaintiff for the examination of the witnesses.*) } To THE HONORABLE, &c.

Humbly complaining, &c. your orator, &c. that under and by virtue of an indenture (*or other document*) dated the ——— day of ——— and made between (*parties*) (*and the assurances hereinafter mentioned—that is to say, an indenture dated the ——— day of ——— the will of ——— dated the ——— day of ———*) your orator is entitled to the equity of redemption of certain freehold property (*or leasehold, or other property, as the case may be*) therein comprised, being (*here describe the property shortly*) which was originally mortgaged (*or pledged*) for securing the sum of £ ——— and interest; and that C. D., the defendant hereinafter named, is now, by virtue of the said indenture, dated the ——— day of ——— (*and of subsequent assurances*), the mortgagee of the said property (*or holder of the said lien*), and entitled to the principal money and interest remaining due upon the mortgage (*or lien*); and your orator believes that the amount of the principal money and interest now due upon the said mortgage (*or lien*) is the sum of £ ——, or there-

abouts; and he has made, or caused to be made, an application to the said C. D. to receive the said sum of £ ——, and any costs justly payable to him, and to re-convey to your orator the said mortgaged property (*or property subject to the said lien*), upon payment thereof, and of any costs due to him in respect of this security, but that the said C. D. has not so done. Your orator therefore prays that he may be let in to redeem the said mortgaged property (*or property subject to the said lien*), and that the same may be re-conveyed (*or delivered up*) to him, upon payment of the principal money and interest, and costs due and owing upon the said mortgage (*or lien*); and for that purpose that all proper directions may be given and accounts taken.

4. By a person entitled to an account of the dealings and transactions of a partnership dissolved or expired, seeking such account.

In Chancery.

A. B. ..... Plaintiff.
and
C. D. ..... Defendant.

CITY OF TORONTO, (*or the county town selected for the examination of the witnesses.*) } TO THE HONORABLE, &c.

Humbly complaining, &c. your orator, &c. that from the ——— day of ——— down to the ——— day of ——— he and C. D., the defendant hereinafter named, carried on the business of ——— in co-partnership, under certain articles of co-partnership, dated the ——— day of ——— and made between (*parties*), (*or under a verbal agreement made between your orator and C. D., or through their respective agents E. F. and G. H.*), on the ——— day of ———; and he says that the said co-partnership was dissolved (*or expired, as the case may be*) on the ——— day of ———. Your orator therefore prays that an account of the partnership dealings and transactions between your orator and the said C. D. may be taken, and the affairs and business of the said partnership wound up and settled under the direction of this court, and for that purpose that all proper directions may be given, and accounts taken.

5. For dissolution of a co-partnership.

In Chancery.

A. B. ..... Plaintiff.

and

C. D. ..... Defendant.

City of Toronto, (*or the county town selected for the examination of the witnesses.*) } To the Honorable, &c.

Humbly complaining, &c. your orator, &c. that your orator and C. D., the defendant hereinafter named, are and have been, since the ——— day of ——— co-partners in the trade or business of ——— under certain articles of co-partnership, dated, &c. (*or under a verbal agreement made between them, on the ——— day of ———*), which partnership was to continue for ——— years, (*or for an indefinite time*); that the said business was carried on under the said agreement until ——— without any difficulty (*here state the facts relied on as warranting dissolution, as*) that from the last mentioned day, until the present time, the said C. D. has greatly misconducted himself in the said business, by removing the books of the co-partnership from the shop or counting-house of the said firm, and denying your orator, or debarring him from, access thereto; by discharging the clerks and servants of the said firm, and engaging others in his own interest in their room; by making false entries in the said books, or improperly keeping the same; all which was done with the view and has had the effect of excluding your orator from his due share in the management of the said business; by using the name of the firm for his own private purposes, and applying the moneys of the partnership to his own individual use: that there is nothing in the said articles, or in the said agreement, to justify such conduct; and your orator has made frequent applications to the said C. D. to desist therefrom, and to act in accordance with the said agreement and with his duty as a partner, but without effect; on which account your orator, on the ——— day of ——— gave notice to the said defendant that the said partnership should be dissolved from the ——— day of ———. Your orator therefore prays that the said partnership may be dissolved,

and that the accounts of the said business may be taken from the commencement thereof, and the affairs thereof wound up and adjusted, and that your orator may have (*such further relief, &c.*)

6. Bill by a person entitled to the specific performance of an agreement for the sale or purchase of any property, seeking such specific performance.

In Chancery.

A. B. ..... Plaintiff.
and
C. D. ..... Defendant.

CITY OF TORONTO, (*or the county town selected for the examination of the witnesses.*) } TO THE HONORABLE, &c.

Humbly complaining, &c. your orator, &c. that by an agreement, dated the ——— day of ——— and signed by C. D., the defendant hereinafter named, the said C. D. contracted to buy of your orator (*or to sell to him*) certain freehold property (*or leasehold, or other property, as the case may be*), therein described or referred to, for the sum of £ ———; and that he has made or caused to be made to the said C. D. an application specifically to perform the said agreement on his part, but that he has not done so. Your orator therefore prays that the said agreement may be specifically performed, and for that purpose that all proper directions may be given, he the said A. B. hereby offering to perform the said agreement specifically on his part.

7. Bill for the specific performance of a parol agreement partly performed.

In Chancery.

A. B. ..... Plaintiff.
and
C. D. ..... Defendant.

CITY OF TORONTO, (*or the county town selected for the examination of the witnesses.*) } TO THE HONORABLE, &c.

Humbly complaining, &c. your orator, &c. that on the ——— day of ——— your orator being seised in fee simple in possession (*or*

C. D., the defendant hereinafter mentioned, being or pretending to be seised in fee simple in possession, or in fee tail, or for years, or in remainder expectant upon the determination of a certain estate for the life, &c. as the case may be)* of lot number ————, your orator and the said C.D. entered into a verbal agreement for the sale and purchase of the said premises, at or for the price or sum of £——— payable by equal annual instalments, with interest, upon the payment whereof a proper conveyance was to be executed of the said premises, free from incumbrances: (*here state acts of part performance, as*) that your orator, or the said C. D. was accordingly admitted, and entered into possession of the said lot, and has continued in possession thereof ever since, and is still in possession thereof, and has made divers and considerable improvements thereon, and has paid the sum of £ ——— part of the said purchase money; and your orator submits that under the circumstances aforesaid the said agreement has been partly performed, so as to entitle your orator to a specific execution thereof; for which purpose your orator has made frequent applications to the said C. D., but without effect. Your orator therefore prays that the said contract may be specifically performed by the said C. D., your orator being ready and willing and hereby offering to perform the same in all respects on his part, and that your orator may have such further and other relief, &c.

8. Bill to stay waste.

In Chancery.

A. B. ..... Plaintiff.

and

C. D. ..... Defendant.

City of Toronto, (*or the county town selected for the examination of the witnesses.*) } To the Honorable, &c.

Humbly complaining, &c. your orator, &c. that your orator is and has been,

* If either party fills a representative character, say that the said ——— died on the ——— day of ———, and the said ——— is his executor, or administrator, or heir-at-law.

from before the acts hereinafter complained of until the present time, seised in fee simple (*or in tail, or for life in possession, or remainder expectant upon the determination of an estate for the life of, &c., under and by virtue of an indenture of settlement, dated, &c., or possessed for the remainder of a term of ——— years, under and by virtue of an indenture of demise, dated, &c., and made, &c.*) of lot number ———; and C. D., the defendant hereinafter named, is in possession of the said lot, as tenant, for a term of ——— years (*or from year to year, or at will*) of your orator, under and by virtue of an indenture of demise (*or an agreement, dated, &c. and made, &c.*) between your orator, (*or E. F. deceased, whose estate has come to your orator by descent, or devise, or purchase, or under and by virtue of his last will, dated, &c.*) and the said C. D. (*or G. H., whose estate has come to the said C. D. by operation of law, as executor, or administrator, or assignee in bankruptcy or insolvency of the said G. H., or by devise or purchase, under and by virtue of the will of the said G. H., or an indenture of assignment, dated, &c. or as tenant for life, impeachable for waste, under and by virtue of the aforesaid indenture of settlement*) has, since the ——— day of ——— committed waste on the said lot, by cutting down and removing from the said lot, and applying to his own use, a large number of the timber and other trees standing, growing and being thereon, and quarrying a large quantity of stone, being on and part of the said lot, and by pulling down, &c., houses, &c., and he continues and threatens and intends to continue to commit such waste as aforesaid, and other waste and destruction on the said lot, although frequently requested by your orator to desist therefrom. Your orator therefore prays that the said C. D. may be restrained by the order and injunction of this honorable court from committing such waste as aforesaid, or any other waste, spoil, or destruction on the said premises, and may account, &c., and that your orator may have such further and other relief in the premises.

9. Bill to stay trespass in the nature of waste.

In Chancery.

A. B. ..... Plaintiff.
and
C. D. ..... Defendant.

CITY OF TORONTO, (*or the county town selected for the examination of witnesses.*) } TO THE HONORABLE, &c.

Humbly complaining, &c. your orator, &c. that your orator was at the time of the acts hereinafter complained of, and has been since up to the present time, the owner in fee simple (*or seised in tail, or for life, or possessed for the remainder of a term of years, under and by virtue of an indenture, dated, &c. and made, &c. as the case may be*) and in possession of lot number ——— and that A. B., the defendant hereinafter named, has, from the ——— day of ——— until the present time, continually trespassed on the said lot, by cutting down and removing from the said lot, and applying to his own use, divers valuable timber and other trees which were growing, standing and being on the said lot (*by quarrying and removing from the said lot and applying to his own use large quantities of stone which were on and part of the said lot*), and he continues and threatens and intends to continue to trespass on the said lot, in like manner, although frequently requested by your orator to desist therefrom. Your orator therefore prays that the said defendant may be restrained by the order and injunction of this honorable court from committing the acts aforesaid, and other acts of a like nature, and may account for the value of the timber and other trees cut down (*or stone quarried*), removed and applied to his own use as aforesaid, and that your orator may have such further and other relief as may seem meet.

10. Bill by a person entitled to an equitable estate or interest and claiming to use the name of his trustee in prosecuting an action for his sole benefit.

In Chancery.

A. B. ..... Plaintiff.
and
C. D. ..... Defendant.

CITY OF TORONTO, *(or the county town selected for the examination of the witnesses.)* } TO THE HONORABLE, &c.

Humbly complaining, &c. your orator, &c. that under an indenture, dated the ——— day of ——— and made between (*parties*), he is entitled to an equitable estate or interest in certain property therein described or referred to; and that C. D., the defendant hereinafter named, is a trustee for him of such property; and that being desirous to prosecute an action at law against ——— in respect of such property, he has made, or caused to be made, an application to the said defendant to allow him to bring such action in his name, and has offered to indemnify him against the costs of such action, but that the said defendant has refused or neglected to allow his name to be used for that purpose. Your orator therefore prays that the said A. B. may be allowed to prosecute the said action in the name of the said defendant, he hereby offering to indemnify him against the cost of such action.

11. Bill by a person entitled to have a new trustee appointed in a case where there is no power in the instrument creating the trust to appoint new trustees, or when the power cannot be exercised, and seeking to appoint a new trustee.

In Chancery.

A. B. ..... Plaintiff.
and
C. D. ..... Defendant.

CITY OF TORONTO, *(or the county town selected for the examination of the witnesses.)* } TO THE HONORABLE, &c.

Humbly complaining, &c. your orator, &c. that under an indenture, dated the ——— day of ——— and made between (*parties*),

(*or will of* ———, *or other document, as the case may be*), your orator is interested in certain trust property therein mentioned or referred to; and that C. D., the defendant hereinafter mentioned, is the present trustee of such property (*or, is the real or personal representative of the last surviving trustee of such property, as the case may be*); and that there is no power in the said indenture (*or will, or other document*) to appoint new trustees (*or that the power in said indenture, or other document, to appoint new trustees cannot be exercised*). Your orator therefore prays that new trustees may be appointed of the said trust property, in the place of, &c. (*or to act in conjunction with*) the said C. D.

SCHEDULE B.

FORM OF ENDORSEMENT ON BILL OF COMPLAINT.

Your answer is to be filed at the office of the registrar, at Osgoode Hall, in the city of Toronto, (*or, when the bill is filed in an outer county, at the office of the deputy registrar at* ————.)

You are to answer or demur within four weeks from the service hereof, (*or, when the defendant is served out of the jurisdiction, within the time limited by the order authorising the service.*)

If you fail to answer or demur within the time above limited, you are to be subject to have such decree or order made against you as the court may think just, upon the plaintiff's own shewing; and, if this notice is served upon you personally, you will not be entitled to any further notice of the future proceedings in the cause.

NOTE.—This bill is filed by Messrs. A. B. and C. D., of the city of Toronto, in the county of York, solicitors for the above named plaintiff; (*and, where the party who files the bill is agent, add, agents of Messrs. E. F. and G. H., of* ———, *solicitors for the above named plaintiff*).—

Where the plaintiff sues in person, his place of residence is to be stated; and where that is more than three miles from the office where the bill is filed, an address for service must be designated, in accordance with the provisions of section 3, order XLIII.

SCHEDULE C.

FORM OF AFFIDAVIT OF THE SERVICE OF AN OFFICE COPY OF A BILL.

In Chancery.

Between A. B. ..... Plaintiff.
and
C. D. and E. F. ..... Defendants.

I, G. H. of ————, in the county of ————, yeoman, make oath and say (*when the affidavit is made by several deponents it is to commence*, We,

G. H., of ————, in the county of ————, yeoman, and J. K., of ————, in the county of ————, gentleman, make oath and say; and first, I G. H., for myself, make oath and say) that I did on the ———— day of ————, personally serve the above named defendant C. D. with a paper which purported to be an office copy of the bill filed in this cause, by delivering to and leaving with the said defendant C. D., (*if served otherwise than personally, say*, with a grown up person, (*or as the case may be*,) at the dwelling house of the said defendant C. D.,) the said office copy. I further say that upon the said office copy there was a certificate to the effect that the original bill in this cause had been filed at Osgoode Hall in the city of Toronto, on the ——— day of ————, which certificate purported to be signed by A. G., registrar of the court, (*where the bill has been filed in an outer county state the fact accordingly*,) and that each page of the said office copy was sealed with a seal similar to the one which I now look upon in the margin of this affidavit. I further say that upon the said office copy, at the time of the service thereof, there was endorsed the following memorandum—to wit, (*here insert the endorsement set out in the preceding schedule.*)

SCHEDULE D.

NOTICE IN CASE OF AN ABSCONDING DEFENDANT.

To the order directing publication the following notice is to be added :—

C. D.: Take notice that if you do not answer or demur to the bill pursuant to the above order, the plaintiff may obtain an order to take the bill as confessed against you, and the court may grant the plaintiff such relief as he may be entitled to on his own shewing, and you will not receive any further notice of the future proceedings in the cause.

SCHEDULE E.

FORM OF AN ANSWER.

In Chancery.

A. B. ..... Plaintiff.
and
C. D. and E. F. .... Defendants.

The answer of C. D., one of the above named defendants, to the bill of complaint of A. B., the above named plaintiff.

In answer to the said bill I, C. D., say as follows:—

I believe that the defendant E. F. does claim to have a charge upon the farm and premises comprised in the indenture of mortgage of the ———— day of————, in the plaintiff's bill mentioned.

Such charge was created by an indenture dated &c., made between myself of the one part &c.

To the best of my knowledge, remembrance and belief, there is not any other mortgage, charge, or incumbrance affecting the aforesaid premises.

Such statements as are considered necessary or material are to be introduced with as much brevity as may consist with clearness; and where a defendant seeks relief, under section 4 of order XII, the answer is to ask the special relief to which he thinks himself entitled.

ENDORSEMENT.

This answer is filed by Messrs. A. B. and C. D., of the city of Toronto, in the county of York, solicitors for the above named defendants (*and, where the party who filed the answer is agent, add, agents of Messrs. E. F. and G. H., of* ————, *solicitors for the above named defendants.*)

Where the party defends in person the answer must be endorsed, in conformity with the 3d section of order XLIII.

FORM OF JURAT TO ANSWER.

The defendant C. D. on the ——— day of ————, appeared before me at my chambers in ————, and signed the foregoing answer in my presence, and thereupon was sworn before me that he had read the said answer and knew the contents thereof, and that the same was true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believed it to be true.

IN THE CASE OF AN ILLITERATE PERSON.

The defendant C. D., not being able to read or write, E. F., solicitor (*or clerk to the solicitor*) for the said defendant, was sworn before me at my chambers in ————, on the ——— day of ————, that he had truly and faithfully read the contents of this answer to the said C. D., and that he appeared perfectly to understand the same; and the said C. D. was thereupon sworn that he heard the said answer subscribed by him with his mark read over to him by the said E. F., and that he knew the contents thereof, and that the same was true of his own knowledge, except as to matters which are therein stated to be on his information, and as to those matters he believes it to be true.

SCHEDULE F.

NOTICE IN CASE OF AN ABSENT DEFENDANT.

In Chancery.

A. B. ..... Plaintiff.
and
C. D. ..... Defendant.

To the Defendant C. D.,

Take notice, that a motion will be made to the court, on the ——— day of ———, (*the time fixed by the order authorising publication,*) that the bill in this cause may be taken as confessed against you; and such order having been made, the court may grant to the plaintiff such relief as he may be entitled to on his own shewing; and you will not receive any further notice of the future proceedings in the cause.

SCHEDULE G.

NOTICE OF MOTION FOR THE ADMINISTRATION OF THE ESTATE OF A DECEASED PERSON.

In Chancery.

In the matter of the estate of John Thomas, late of the township of ———— in the county of ————, deceased.

Joseph Wilson
against
William Cochran.

To William Cochran, executor of John Thomas, deceased,

Take notice that Joseph Wilson, of the city of Toronto in the county of York, Esquire, (*or other proper description of the party,*) who claims to be a creditor upon the estate of the above named John Thomas, will apply to one of the judges of the Court of Chancery, at Osgoode Hall, in the city of Toronto, on the ———— day of ————, at the hour of noon, for an order for the administration of the estate real and personal of the said John Thomas, by the Court of Chancery.

NOTE: If you, the above named William Cochran, do not attend, either in person or by your solicitor, at the time and place above mentioned, such order will be made in your absence as the judge may think just and expedient.

A. D.,

Of the city of Toronto, solicitor for the above named Joseph Wilson.

SCHEDULE H.

FORM OF REPLICATION.

In Chancery.

A. B. ..... Plaintiff.
and
C. D., E. F., and G. H. ..... Defendants.

The plaintiff in this cause joins issue with the defendants E. D., (*all the defendants who have answered,*) and will hear the cause upon bill, and answer against the defendant E. F., (*all defendants against whom the cause is to be heard upon bill and answer,*) and on the order to take the bill *pro confesso* against the defendant G. H., (*as the case may be.*)

SCHEDULE 1.

FORM OF AFFIDAVIT AS TO PRODUCTION OF DOCUMENTS UNDER ORDER XX.

In Chancery.

Between &c.

I ——————, of ——————— make oath and say as follows:—

(1). I say I have in my possession or power the documents relating to the matters in question in this suit, set forth in the first and second parts of the first schedule hereto annexed.

(2). I further say, that I object to produce the said documents set forth on the second part of the said first schedule hereto.

(3). I further say,

(*State upon what grounds the objection is made, and verify the facts so far as may be.*)

(4). I further say, that I have had, but have not now, in my possession or power the documents relating to the matters in queston in this suit, set forth in the second schedule hereto annexed.

(5). I further say, that the last mentioned documents were last in my possession or power on (*state when*).

(6). I further say,

(*State what has become of the last mentioned documents, and in whose possession they now are*).

(7). I further say, according to the best of my knowledge, remembrance, information and belief, that I have not now, and never have had, in my own possession, custody or power, or in the possession, custody or power of my solicitors or agents, or solicitor or agent, or in the possession, custody or power of any other person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other docu-

ment whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the first and second schedules hereto.

NOTE 1.—(*If the party denies having any, he is to make an affidavit in form of the seventh paragraph, omitting the exception*).

NOTE 2.—(*This form of affidavit, though not obligatory, will be satisfactory*).

SCHEDULE K.

FORM OF NOTICE OF HEARING.

In Chancery.

A. B. ..... Plaintiff.
and
C. D. ..... Defendant.

TO THE ABOVE DEFENDANT, C. D.

Take notice that this cause has been set down to be heard on the ——— day of ———; and unless you attend at the time and place appointed, a decree may be pronounced in your absence.

G. H., Solicitor for the plaintiff.
(*or as the case may be*).

SCHEDULE L.

FORM OF APPOINTMENT.

In Chancery.

A. B. ..... Plaintiff.
and
C. D. ..... Defendant.

I hereby appoint the ——— day of ——— to proceed (*here state the nature of the business for which the appointment is made*), when all parties are to attend at chambers in Osgoode Hall, in the City of Toronto, at the hour of noon.

(*to be signed by judge*).

NOTE.—If you do not attend either in person or by your solicitor, at the time and place above mentioned, such order

will be made and proceedings taken in your absence, as the judge may think just and expedient.

G. H., Solicitor for

SCHEDULE M.

NOTICE TO BE ENDORSED ON AN OFFICE COPY OF A DECREE UNDER RULE XXXIV., SECTION 6.

To Mr. ———— (*the person upon whom service has been directed.*

(*set out the order*).

If you wish to apply to discharge the foregoing order, or to add to or vary the decree, you must do so within fourteen days from the service hereof. (*When the order fixes a time for the further proceedings, add*) And if you fail to attend at the time and place appointed, either in person or by your solicitor, such order will be made and proceedings taken in your absence, as the judge may think just and expedient; and you will be bound by the decree and the further proceedings in the cause in the same manner as if you had been originally made a party to the suit, *without any further notice.*

SCHEDULE N.

CONDITIONS OF SALE.

1st. No person shall advance less than £2 at any bidding under £100, nor less than £5 at any bidding over £100, and no person shall retract his bidding.

2nd. The highest bidder shall be the purchaser; and if any dispute arise as to the last or highest bidder, the property shall be put up at a former bidding.

3rd. The parties to the suit, with the exception of the vendor, are to be at liberty to bid.

4th. The purchaser shall, at the time of sale, pay down a deposit in the proportion of £10 for every £100 of his purchase money to the vendor or his solicitor, and shall pay the remainder of the purchase money on the ———— day of ———— next; and upon such payment the purchaser shall be entitled to the conveyance, and to be let into

possession ————; the purchaser, at the time of such sale, to sign an agreement for the completion of the purchase.

5th. The purchaser shall have the conveyance prepared at his own expense, and tender the same for execution.

6th. If the purchaser shall fail to comply with the conditions aforesaid, or any of them, the deposit and all other payments made thereon shall be forfeited, and the premises may be re-sold, and the deficiency, if any, by such re-sale, together with all charges attending the same or occasioned by the defaulter, shall be made good by the defaulter.

SCHEDULE O.

JURAT OF AFFIDAVIT.

Sworn before me, at ———, on the ————, having been first read over to the deponent C. D., whom I informed that he was liable to cross examination as to its contents, and that he was at liberty to add to or vary the same.

Signature of officer.

WM. HUME BLAKE, *Chancellor.*
J. C. P. ESTEN, *V. C.*
J. G. SPRAGGE, *V. C.*

ADDENDA.

ORDER OF COURT.

6TH JUNE, 1853.

I.

The following orders and parts of orders, comprised in the general orders of the third instant—namely, VI, section 9 of IX, section 3 of XII, section 8 of XIII, XV, XVI, XVII, XX, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVIII, XXXIX, XL, XLI, XLII, XLIII, XLIV, XLV, XLVI—are to take effect from the date hereof, as to all suits, as well those now pending, as those subsequently instituted.

II.

A party desirous of appointing a guardian for him to defend a suit, may go before a judge or master with the proposed guardian, and the judge or master may appoint such guardian if he shall think fit so to do. But he must be satisfied by affidavit that such proposed guardian is a fit person and has no interest adverse to that of the person of whom he is to be the guardian in the matter in question; and if the affidavit is not sufficient for this purpose, he may examine the proposed guardian, or the person making the affidavit, *viva voce*, or require further evidence to be adduced until he is satisfied of the propriety of the appointment.

Appointment of guardian *ad litem* by party himself.

WM. HUME BLAKE, *Chancellor.*
J. C. P. ESTEN, *V. C.*
J. G. SPRAGGE, *V. C.*

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