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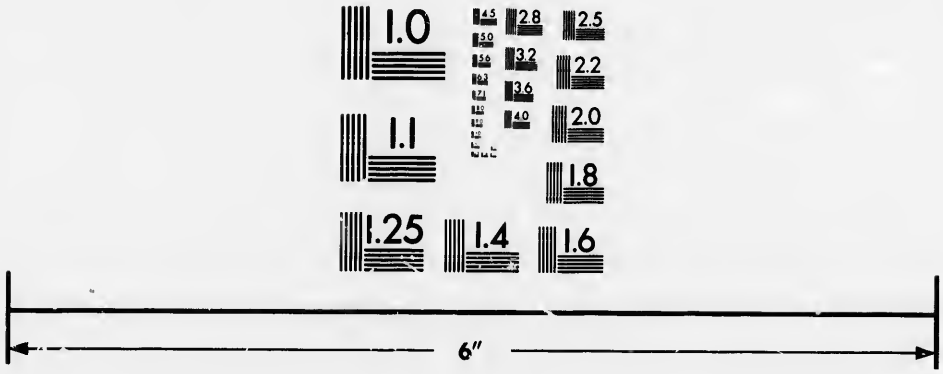

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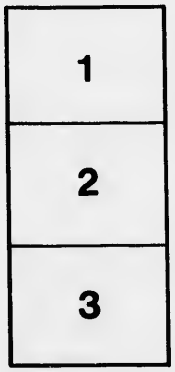

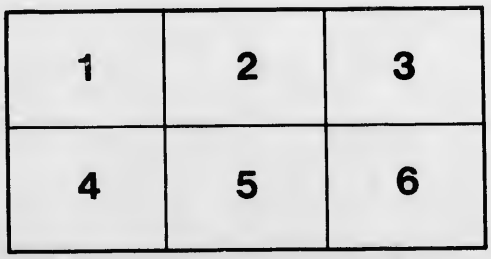

COURT OF CHANCERY, UPPER CANADA.

THE

SOLICITOR'S MANUAL:

CONTAINING AN OUTLINE

OF THE

EQUITABLE

JURISDICTION OF THE COURT

WITH

PRACTICAL DIRECTIONS

FOR THE

INSTITUTION AND PROSECUTION

OF A

SUIT THROUGH ITS SEVERAL STAGES.

BY WM. HEPBURN, ESQ., REGISTRAR.

TORONTO:
PRINTED AT THE PATRIOT OFFICE.

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It is not the intention of the Writer, in the following Pages, to do more than give a mere sketch of the leading branch of the jurisdiction of a Court of Equity in England as applicable to this Province, with an enumeration of the various Bills by which its interposition may be sought for specific relief in individual cases, accompanied by such practical directions for the commencement, progress, and termination of a Suit, as might aid the Provincial Practitioner to whom such proceedings must be entirely novel. To have attempted more would have involved the Writer in a task which he was neither willing nor able to undertake. Nor, indeed, is it at all necessary, for the Solicitor, by consulting the Books of authority upon the principles and practice of the Court of Chancery in England, to which the following Pages refer, will find abundant information to guide him in the various steps of a Cause. The present attempt is confessedly imperfect, but if it be found in any degree useful to the Profession, the Writer will have attained his end. Several forms of the ordinary proceedings of the Court might, and some persons may think, ought to have been supplied; but as such forms would not have superseded the necessity of the Profession procuring a Book of Practice containing all the usual formularies of the Court of Chancery in England, it was thought unnecessary to append any of them to the present publication.

Toronto, August, 1837.

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INTRODUCTORY OBSERVATIONS.

The Court of Chancery may be considered as comprehending four distinct jurisdictions; viz.,

1. The ordinary or Common Law jurisdiction.
2. The extraordinary or equitable jurisdiction.
3. The statutory jurisdiction.
4. The specially delegated jurisdiction.

In the following brief outline it is proposed to treat of the second only of these several branches of jurisdiction; namely, the extraordinary or equitable jurisdiction of the Court; inasmuch as by far the greater number of cases demanding its interposition will be embraced under that head.

A Suit to the extraordinary jurisdiction of the Court, on behalf of a subject merely, unconnected with any interest of the Crown, or of its prerogative, or of those whose rights are under its especial protection, is commenced by preferring, commonly termed filing a Bill, which is in the nature of a declaration at Common Law, by way of petition to the person or persons for the time being holding the great seal, or to the King himself in his Court of Chancery, if the person holding the seal be a party, or the seal is in the King's hands. As regards this Province, the Act of Parliament, 7 Wm. IV. c. 2, s. 1, constituting the Governor or person administering the government of it, Chancellor, but directing his judicial powers to be exercised by a Vice Chancellor, all Bills and other proceedings in the Court must be addressed to the latter.

The purposes for which Bills are brought are very various, but it is conceived they may be classified under the three following general heads; viz.,

I. Original Bills.
II. Bills not Original.
III. Bills *in the nature* of Original Bills.

Of Original Bills.

These Bills are twofold :—

Bills *praying relief.*

Bills *not* praying relief.

The *formal parts* of an original Bill as usually framed are eight ;—1. The address of the Bill to the proper authority; and the names of the parties, complainant, and their descriptions, thus :—

" To the Honourable Robert S. Jameson, Vice Chancellor of Upper Canada,

" Humbly complaining, sheweth unto your Honour, A. B., of," &c.

2. The case of the Complainant's, which is technically called the *stating part* of the Bill, thus :—

" That Complainant some time in or about," &c.

3. The general charge of *confederacy* against the persons complained of, commencing :—" But now so it is," &c. This charge, which is contained in adverse Bills only, is usually followed by an allegation, that the Defendant *pretends,* or sets up matter of defence, with a charge of matter which may be advanced to avoid it. This is commonly termed,

4. The *charging part* of the Bill, and commences " Some times pretending," &c.

5. This part of the Bill is intended to give *jurisdiction* to the Court by a general averment that the acts complained of are contrary to equity, and injurious to the Complainant, who is without remedy unless by the Court's assistance. The formal words begin " In tender consideration, and forasmuch as," &c.

6. This is called the *interrogating* part of the Bill, and is a repetition by way interrogatory of the matters most essential to be answered by the Defendant, " Whether the said Complainant did not some time in or about," &c.

7. This consists of the *prayer* of the Bill seeking relief; and

8. The *conclusion*, praying that process may be issued against the Defendant.

The *interrogating* part of the Bill, and the *prayer*, are

generally considered to try the skill of the Equity Pleader more than the other parts—the one in sifting the conscience of an evasive Defendant; and the other in praying the full and precise species of relief to which the Plaintiff is entitled; for it is to be observed that the Court never exceeds the relief prayed, though it frequently awards less, and refuses to administer a relief differing in kind from that sought by the Bill.

Of Original Bills praying Relief.

These may be divided as follows:—

I. Bills praying the Decree or Order of the Court, touching some right claimed by the Plaintiff, as opposed to some right claimed by the Defendant. II. Bills of Interpleader. III. Certiorari Bills.

The *first* division comprehends the following descriptions of Bills; namely,

1. Bills to *set aside* fraudulent, or rectify improper *conveyances*. 2. *Creditors Bills* for administering a Testator's Estate. 3. Bills by *Legatees*. 4. Bills by Infants. 5. Bills by *cestui que trusts* against Executors or Trustees. 6. Bills by Executors or Trustees. 7. Bills to compel the *specific performance* of Agreements. 8. Bills of Foreclosure. 9. Bills to redeem. 10. Bills for a *partition* of Estates. 11. Bills for *Dower*. 12. Injunction Bills. 13. Bills of *Peace*, to prevent a multiplicity of Suits. 14. Bills *quia timet*, which are brought for example when Legacies or Mortgage Monies are bequeathed payable at a distant period; in which case, should the Legatee be apprehensive of the solvency of the Executor, the latter may be called upon by a Bill of this nature to set apart a sum for those purposes. 15. Bills for *delivering up* or securing *Deeds*; or *for delivering up* specific *chattels*. 16. Bills to *marshal securities*, which are brought in cases like the following:—If a party have two funds by which his debt is secured, a person, having an interest in one of those funds only, has a right to compel the former to resort to the other fund, if that be necessary for the satisfaction of the demands of both parties. And lastly, Bills for *an account*, in which matter a Court of Equity has a concurrent jurisdiction with a

Court of Law, on the ground that the latter Court cannot give so complete a remedy as the former.

Bills of *Interpleader* form the *second* class of Bills praying relief, and are brought when the Plaintiff *claims no right*, but prays the decree of the Court touching the rights of the Defendant, for the safety of the Plaintiff; as for example, where two parties in opposite interests claim a debt or duty of a third party, this Bill prays judgment to which of the parties litigant it belongs.

Thirdly, Bills praying the Writ of Certiorari, which being the mode of removing a Cause from an inferior Court of Equity to a superior are inapplicable to this Province, and are here alluded to merely for the sake of arrangement.

Of Original Bills not *praying Relief.*

These Bills are threefold :—1. Bills to perpetuate the testimony of Witnesses, which lie, for instance, where a party is likely to be deprived of material evidence by the death or absence of his Witnesses. 2. Bills to perpetuate the testimony of Witnesses to a Will, when either through neglect, or in the absence of any particular necessity, a Will has not been proved or established at Law, and a devisee of lands conceives his title in danger on that account. This Bill lies to establish his rights, by proving the Will *per testes*, and the Defendant in it is the heir at law of the Testator, either amicably or adversely, as the circumstances may require. 3. Bills of *Discovery*, which are brought usually to aid proceedings in some other Court, by eliciting facts of which the Defendant is cognizant, but cannot otherwise be made to disclose on oath, as being injurious to his own rights. It lies also to discover deeds or other documents in the Defendant's custody or power.

Of Bills not *Original.*

A Suit imperfect in its frame, or become so by accident before its termination, may, in many cases, be rendered perfect by a new Bill, which is not, however, considered as an original Bill, but merely as an addition to a continu-

ance of the former Bill, or both. This description of Bills may be divided into three classes :—

1. *Supplemental Bills*, which are occasioned by the discovery of new *matter* arisen *since* the original Bill and Answer, and other proceedings in the Cause; and its object is to supply the defects of former proceedings when too late to be amended. In such cases a supplemental Bill may be filed of *course*, as a distinct Bill, reciting briefly the former proceedings, and then the new matter.

2. Bills of *Revivor*, the object of which Bills is to revive Suits and all proceedings thereon abated. They continue the original Bill when, by death, or other circumstances, some parties to the original Suit have become incapable of prosecuting or defending it. When, however, the abatement occurs by death of parties, it must be of such as were *so far materially concerned in interest* as to make it *necessary* to have their *representatives* before the Court before the Cause can be finally determined.

3. Bills of *Revivor* and *Supplement*, which are merely a compound of the two former kinds of Bills, upon which, in their separate parts, they are framed. A Suit being abated by any event other than the immediate cause of abatement, the rights of the parties are affected, so that to bring the whole before the Court a Supplemental Bill must be added to the Bill of Revivor. So, if any other cause of abatement is accompanied by any matter which ought to be stated to the Court to show the rights of the parties, and, consequently, to obtain the full benefit of the Suit, that matter must be set forth by way of Supplemental Bill added to the Bill of Revivor. Redesd. Tr. Pl.

Of Bills in the nature of Original Bills.

Bills for the purposes of cross-litigation of matters already depending before the Court—of controverting, suspending, avoiding or carrying into execution, the judgment of the Court, or of obtaining the benefit of a Suit to which the Plaintiff is not entitled to add to or continue for the purpose of supplying any defects in it, have been generally considered as falling under the denomination of

Bills *in the nature of original Bills*, though occasioned by or seeking the benefit of former Bills. Redesd. Tr. Pl. 35. They are of eight kinds; viz.,

1. *Cross Bills*, which may be filed before or after an Answer has been put in to the original Bill, or before a Decree; the original Bill, however, must be answered before an Answer can be insisted on to the Cross Bill.

2. Bills of *Review*, which may be preferred after a Cause is heard, and the Decree signed and enrolled, complaining of some error in law, or mistake appearing in the body of the Decree; or when some new matter is discovered that was not discovered at the time of making the Decree.

3. Bills *in nature of a* Bill of *Review*. Where a Decree is made against a person who had no interest in the matter in dispute, or not such an interest as was sufficient to render the Decree against him binding upon some person claiming the same or a similar interest, relief may be obtained against error in the Decree, by a Bill of this description, and it may be filed without leave of the Cou .

4. *Bills impeaching Decrees on the ground of fraud.*

5. *Bills to suspend or avoid the operation of Decrees signed and enrolled*, which are allowed under special circumstances; as for example:—In a case of foreclosure, where the Court, upon this Bill, has enlarged the time for performance of the Decree, the Mortgagor having been forced to leave the country, requesting the Mortgagee to sell and pay himself, which he did not, though apparently consenting to do so.

6. Bills *to carry Decrees into execution*, which are occasioned by the neglect of parties sometimes, and sometimes from other causes, making it impossible to carry a Decree into execution without the further Decree of the Court.

7. Bills *in the nature of Bills of Revivor*. If the death of a party, whose interest is *not determined* by his death, is attended with such a *transmission* of his interest, that the title to it, as well as the person entitled, may be litigated in the Court of Chancery, as in the case of a Devise, the Suit is not permitted to be continued by a Bill of Revivor.

An Original Bill, upon which the title may be litigated, must be filed; and this bill will so far have the effect of a Bill of Revivor, that if the title of the representative substituted by the act of the deceased party be established, the same benefit may be had of the proceedings upon the former bill, as if the Suit had been continued by a Bill of Revivor. The bill is said to be the original, merely for want of that privity of title between the party to the former and the party to the latter bill, though claiming the same interest, as would have permitted the continuance of the Suit by a Bill of Revivor.

8. Bills *in the nature of Supplemental Bills.* If the interest of a person suing or defending in his own right, wholly determine, and the same property become vested in others not claiming under him, the Suit cannot be continued by a Bill of Revivor, nor can its defects be supplied by a Supplemental Bill; but an Original Bill in the *nature* of a Supplemental Bill, will obtain the benefit of the former proceedings. This bill, though partaking of the nature of a Supplemental Bill, is not an addition to the Original Bill, but another Original Bill, which, in its consequences may draw to itself the advantage of the proceedings on the former bill.

Having given this brief and confessedly imperfect outline of the nature of the various bills which may be preferred in a Court of Equity, the Profession of this Province is referred for such full and explicit information on these subjects, as will be essentially necessary for the safe conduct of a Suit in the details of actual practice, to Mr. Maddock's valuable treatise On the Principles and Practice of the High Court of Chancery in England, 2 vols., 8vo; and to Lord Redesdale's treatise On the Principles of Pleading in Equity, 1 vol., 8vo.

PRACTICAL DIRECTIONS.

THE Solicitor having well considered the circumstances of his Client's case, and satisfied himself of the specific nature of the relief to which he is entitled from the Court, and of the particular form of bill applicable to it—[See forms of bills in The Equity Draftsman, by F. M. Van Heythuysen, Esq., 2 vols. 8vo]—will proceed in drawing such bill, to attend to the following practical directions:—

Each distinct allegation of facts should form the subject of a separate paragraph, commencing "That;" and the bill must conclude with the prayer in an inner margin, thus:—

"May it, therefore, please your Honour to," &c.

It must be engrossed on foolscap paper, bookways, in a neat and legible handwriting—the writing to be on one side of the page only—and signed by Counsel, which is indispensable—it is sufficient, however, if the rough draft have been signed by Counsel—he need not sign the fair copy—his name may be subscribed by the Solicitor. Fold up the fair copy once lengthwise, and endorse it thus:—

In Chancery,

A. B.
v.
C. D.

Bill.

And at the bottom add the Solicitor's name and place of residence. Take it to the Register Office, and file it with the Registrar—pay him 2*s.* 6*d.*—bring with you a Precipe for the Subpœna to compel the appearance of the Defendant in the following form:—

"Subpœna C. D. to appear in Chancery, returnable immediately, at the suit of A. B."

[Solicitor's name, and the date.]

Order II. of the Court, directing that a Writ of Subpœna to appear and answer shall be sued out for each Defendant—except in the case of husband and wife, Defendants—there must be a separate Precipe in the above form for a Subpœna for each Defendant. Where more than one Plaintiff, the Precipe will run thus:—"At the suit of" A. B., and another, or others, as the case may be.—

Pay the Registrar 6*d.* for filing each Precipe, and 4*s.* 3*d.* for each Subpœna.

As to when and under what circumstances the Court will permit a bill to be *amended*, see 1 Grant's Chancery Practice, vol. 1, ch. xiv.

Appearance of the Defendant.

The first step is *to compel the* appearance of the Defendant.

The Defendant's appearance is compelled by the service of the Subpœna. [*As to the mode of service and what the Court will deem good service, see* 1 *Grant's C. P., p.* 78, *et seq.*] By the 1st order of the Court, if the Defendant reside within the Home District, he must appear within eight days after the service of the Subpœna, and if in any other District, within fourteen days after such service.

PRACTICAL DIRECTIONS.

The Defendant's Solicitor must instruct the Registrar to enter an appearance for the Defendant, by a note in the following form:—

" In Chancery.

" Enter an appearance for C. D. at the suit of A. B."

[Solicitor's name and date.]

" To Wm. Hepburn, Esq.,
Registrar."

Pay the Registrar 2*s.* 6*d.* for filing the note and entering the appearance.

As to defendants of infirm mind, idiots or lunatic, *vide* 1 Grant's C. P., vol. 1, p. 110, *et seq.*, and the course of proceeding there detailed.

Should the Defendant not appear within the time prescribed by the Subpœna, he will be subject to the several processes for compelling appearance, which are termed Processes of *Contempt;* viz., Attachment, Attachment with Proclamations, Commission of Rebellion, Serjeant at Arms, Sequestration, Habeas Corpus, Distringas; and in ultimate default in appearance taking the bill *pro confesso* as to which proceedings. *Vide* ibid, vol. 1, chap. xvii, xviii, xix, xx, xxi, xxii, xxiii, and xxiv. See also as to contempts in general, ibid, vol. 1, chap. xxv.

Defendant's Answer.

The Defendant having appeared, must then answer the bill filed against him.

As to the general nature of an Answer, and the points to be attended to in framing it, the Solicitor is referred to 1 Grant C. P., vol. 1, chap. xxviii; and to the forms in Van Heythuysen's Equity Draftsman.

PRACTICAL DIRECTIONS.

Let the Defendant's Solicitor procure an office copy of the Bill from the Registrar—pay him 6*d.* per fol. for it. As to the drawing, engrossing, signing by Counsel, endorsing, and folding the Answer, the Solicitor must observe the directions before given at p. 12, with respect to the Bill, which are equally applicable to the Answer; it must be signed by and sworn to by the Defendant before the Master in Ordinary, if the Defendant reside in the City of Toronto, or within twenty miles thereof; or before a Master Extraordinary if the Defendant live beyond those limits.* See the formalities attending the swearing and transmitting the Answer fully set out in the XXIV Order of the Court. It must be filed with the Registrar according to Order I., within eight days after the Defendant's appearance where the Defendant resides in the Home District; and in other cases within fourteen days after his appearance, unless in either case the time be enlarged by order of the Court upon a special application made for the purpose, supported by affidavit. Pay the Registrar 2*s.* 6*d.* for filing.

If the defendant omit to put in his Answer within the time limited, he incurs a contempt of Court, and is liable to the several processes of contempt before enumerated, *ante* p. 13, with respect to his default in appearance.

After the Defendant has filed his Answer, the next step to be taken by the Plaintiff's Solicitor is to peruse it carefully, and satisfy himself that all the material parts of the bill are sufficiently answered, if not, he must except to the Answer within fourteen days if the Plaintiff reside in the Home District, and within one month if he reside in any of the other Districts—[*Vide* Order III.]—and if the exceptions are not submitted to by the Defendant the Plaintiff may after the expiration of eight days after the Exceptions are delivered but not sooner, unless in Injunction Causes, refer the Answer to the Master for insufficiency within the next six days—[See Order IV.]—who will report to the Court as to its sufficiency or insufficiency. [As to the course of proceeding, see 1 Grant's C. P., ch. lvi, title Exceptions; for forms of Exceptions, see 2 Van Heythuysen's Equity Draftsman, ch. xiv, and the references there given.]

Replication—Rejoinder, and joining in Commission.

[As to the nature of this proceeding, see 1 Grant's C. P., chap. xxx; and for a form of general replication to a Defendant's Answer, see 2 Van Heythuysen's Equity Draftsman, p. 119.]

* This shows the expediency, if not the necessity, of the Profession in the country applying to the Court for Commissions to act as Masters Extraordinary, and Examiners, without which parties residing more than 20 miles from Toronto must be put to the expense and inconvenience of going thither to be sworn to their Answers and Affidavits before the Master in Ordinary.

PRACTICAL DIRECTIONS.

Let the Plaintiff's Solicitor procure from the Registrar an office copy of the Defendant's Answer—pay him 6*d.* per fo. for it. General Replications are not settled or signed by Counsel—they will be prepared by the Registrar, and filed, upon a note in writing being given him for that purpose by the Solicitor; *special* Replications, however, require the signature of Counsel, and are of rare occurrence, but where used, the same directions as to the drawing, engrossing, signing by Counsel, endorsing, and folding must be observed as are before given, *ante* p. 12, with reference to the Bill and Answer. File it with the Registrar—pay him 2*s.* 6*d.*

When the Plaintiff has replied, the next step in the Cause is to be taken by the Defendant by *rejoinder*, whereby he traverses the Plaintiff's Replication, and asserts the truth and sufficiency of his own Answer. A Rejoinder, however, is not in *general* actually filed, but the Plaintiff obtains, *of course*, an order for a Subpœna, returnable immediately, against the Defendant, calling on him to appear to rejoin, the object of the Subpœna being merely to put the Cause completely at issue between the parties. [For further information on this step in the suit, see 1 Grant's C. P., chap. xxx.]

PRACTICAL DIRECTIONS.

Let the Plaintiff's Solicitor draw a Petition for leave to issue a Subpœna to rejoin, and for a Commission to examine (if any) witnesses in the country, if they reside above twenty miles from the City of Toronto returnable immediately. [See form, 2 Grant's C. P., p. 65.] File the Petition with the Registrar—pay him 2*s.* 6*d.*; he will draw up, pass, and enter the Order—pay him 2*s.* 6*d.* for the Order, &c., and 4*s.* 3*d.* for the Subpœna to rejoin. Serve the Order and Subpœna on the Defendant's Solicitor within one week from the filing of the Replication. [See Order XIII.] Witnesses living in the City of Toronto, and within the distance of twenty miles from it, must be examined before the Master in Ordinary, and Examiner of the Court; but any witnesses living in the Province, beyond those limits, must be examined under a Commission to be issued for that purpose. Let the Plaintiff's Solicitor, within four days after service of the Order for the Commission—[See the terms of the Order]—obtain from the Defendant's Solicitor the names of four persons who will act as Commissioners on behalf of the Defendant, not being concerned in the Cause; but if the Defendant's Solicitor fail within the time prescribed, to give the names of four Commissioners, then let the Plaintiff's Solicitor leave with the Registrar a note in writing, containing the names of four persons to act as Commissioners, on the part of the Plaintiff, in the following form :—

"In Chancery.

"Commission to examine Witness on the part of the Plaintiff directed to A. B., C. D., E. F., and G. H., returnable"—[The return day must be within one month from the teste. See Order XIII.]

[Name of Plaintiff's Solicitor and date.]

"To Wm. Hepburn, Esq.,
Registrar."

Should, however, the Defendant's Solicitor furnish the Plaintiff's Solicitor, within the time prescribed, with the names of four Commissioners, let the Plaintiff's Solicitor leave a Note of Instructions with the Registrar in the following form:—

"In Chancery.

A. B.
C. D.
E. F.
G. H.
} Names of Plaintiff's Commissioners.

J. K.
L. M.
N. O.
P. Q.
} Names of Defendant's Commissioners.

Let A. B. and C. D.'s names (or E. F. and G. H., at the option of the Plaintiff's Solicitor) stand in the Commission as the Plaintiff's Commissioners, and strike out the other two names proposed as Commissioners on the part of the Plaintiff, and also strike out the names of J. K. and L. M.'s names (or of N. O. and P. Q., at the option of the Plaintiff's Solicitor), named as Commissioners on the part of the Defendant, and let a Commission issue to examine witnesses, as well on the part of the Plaintiff as on the part of the Defendant, directed to A. B., C. D., N. O., and P. Q. (as the case may be), returnable. [See the observation above as to the return.]

[Plaintiff's Solicitor's name and date.]

"To Wm. Hepburn, Esq.,
Registrar."

It is to be observed that two of the Commissioners named in the Commission are sufficient to execute it; but one of such acting Commissioners must, in all cases, be a professional man, to take the evidence, and he must not be interested in the Suit. [See the instructions given to the Commissioners, which are endorsed on the Commission.]

Should the Plaintiff not proceed in the Cause by filing his Replication, serving the Subpœna to rejoin, and issuing the Commission for the examination of witnesses, [See the course of proceeding to be adopted on the part of the Defendant, detailed in Order XIII. of the Court.]

Parties now proceed in support of their case as stated in the pleadings to the

Examination of Witnesses.

If it be intended that the examination shall be wholly or

partly oral, the Plaintiff's Solicitor must attend the Master in Ordinary, and Examiner, before the Commissioners, according as the witnesses are to be examined in town or in the country, when the examination and cross-examination will be conducted, and the evidence taken as in a Court of Law. Should, however, it not be intended to examine the witnesses orally, the Plaintiff's Solicitor must prepare written interrogatories for the examination of his witnesses. [For forms of Interrogatories, see 2 Van Heythuysen's Equity Draftsman, p. 154.]

PRACTICAL DIRECTIONS.

Examination of Witnesses in Town.

The draft of the Interrogatories must be signed by Counsel, and very neatly and correctly engrossed on foolscap paper, bookways, and the Counsel's name subscribed thereto. File it at the office of the Master in Ordinary, and Examiner.—pay him *s. d.* The Master and Examiner should be fully instructed as to the points in the Cause on which the respective witnesses are to be examined, and a time appointed with him for the examination. Before any witness can be examined, notice in writing, containing the name and description of such witness, must be served upon the Solicitor for the opposite party.—*Vide* Order XIX, thus :—

"In Chancery.

[Name of the Cause.]

"Take notice that A. B., of [insert place of residence and profession], will be examined before ['the Examiner,' if the witness live in Toronto, or within twenty miles thereof, or 'the Acting Commissioners under the Commission issued for the examination of Witnesses in this Cause,' if in the country,] as a Witness on behalf of the [Plaintiff or Defendant as the case may be.]

[Solicitor's name and date.]

"To Mr. —— ——,"

[Plaintiff's or Defendant's Solicitor, as the case may be.]

If a witness refuse to attend to be examined, a Subpœna must be taken out and served *personally.* Leave a Precipe with the Registrar in the following form :—

"Subpœna for [name of witness] to appear in Chancery, returnable immediately, to testify on the behalf of A. B., [Plaintiff or Defendant, as the case may be.]

[Solicitor's name and date.]

"To Wm. Hepburn, Esq.,
Registrar."

Obtain from the Examiner a Subpœna notice in writing, signed by him, of the time and place of examination, and serve it with the Subpœna. If the witness prove contumacious and will not attend after being served with the Subpœna and Notice.—[See the course of proceeding to compel him, 1 Grant's C. P., c. xxxix.—See also the same chapter for the practice

where a witness is confined in prison or by sickness—examination in the country under a Commission.] Let the Solicitor issuing the Commission where the examination is to proceed on written interrogatories, procure an office copy of the Interrogatories from the Registrar—pay him 6*d.* per folio; annex them to the Commission, and transmit them made up in the form of a parcel, post paid, to one of the Commissioners, whom the Solicitor thinks most likely to act. Full instructions will be given to the Commissioners with the necessary forms endorsed on the Commission, which renders a statement here of the course of proceeding unnecessary.-For further information on this most important step of the Cause, see 1 Grant's C. P,, ch. xxxix, title "Examination of Witnesses;" ch. xl, title "Evidence;" ch. xli, title "Interrogatories and Depositions."

When the Depositions are completed and transmitted to the Registrar by the Examiner, or the Commissioners, as the case may be, which must be done within three days after closing the Commission.—[See the 12th article of instruction to the Commissioners.]—The Registrar, at the request of the Solicitors of both parties, will make and deliver office copies of the Depositions as expeditiously as possible after he has received them; and it may be here observed, that all original documents, Bills, Answers, and other pleadings, Interrogatories, Depositions, and Affidavits (except those made and used before the Master in Ordinary) must be filed with the Registrar, and office copies taken by the Solicitors, for use—the Court never regarding the originals except when there may be a dispute as to the correctness of the office copy. The originals are filed and kept inviolate, in case reference to them at a future period should be necessary.

Setting down the Cause.

If the Plaintiff's Solicitor think he can safely proceed to a hearing of the Cause upon Bill and Answer, without going into evidence in support of his case, or if evidence be gone into by the Plaintiff or Defendant, or by both; the next proceeding for him to take, is to set down the Cause for hearing, after the office copies of the evidence have been delivered to the Solicitors of the several parties by the Registrar.

PRACTICAL DIRECTIONS.

Let the Plaintiff's Solicitor leave a note in writing with the Registrar in

the following form, and pay him 6*d.* for filing it, and 5*s.* for setting the Cause down :—

" In Chancery.

A. B. *v.* C. D.

" Be pleased to set down this Cause for hearing forthwith.

[Name of Plaintiff's Solicitor and date.]

" To Wm. Hepburn, Esq.,
Registrar."

The Registrar will then enter the Cause in his Book of Causes accordingly, the next in succession after those already entered.

Order XIII, above referred to, provides a remedy for the Defendant in case of the Plaintiff's delay in setting down the Cause, which *vide.*

Subpœna to hear Judgment.

The Cause is now ripe for hearing, but by the terms of Order XIII the Plaintiff must serve a Subpœna to hear judgment, returnable within one week from the day on which office copies of the evidence are delivered out by the Registrar. This is the next step to be taken by the Plaintiff's Solicitor after setting down the Cause.

PRACTICAL DIRECTIONS.

Let the Plaintiff's Solicitor leave a Precipe with the Registrar in the following form—pay him 6*d.* for filing it, and 4*s.* 3*d.* for the Writ :—

" Subpœna for [Defendant's name] to appear in Chancery, to hear judgment on the ——— day of ———[One week from the delivery of the evidence, as above,] at the suit of [Plaintiff's name.]

[Solicitor's name and date.]

" To Wm. Hepburn, Esq.,
Registrar."

The Solicitor must endorse upon the Writ these words, " To hear Judgment." It need not be served personally on the Defendant, Order IV providing that service on his Solicitor shall be deemed good service.—[See further upon this subject, 1 Grant's C. P., ch. xlv.]

The Hearing.

The Cause will be heard in Court on or as soon after the day mentioned in the Subpœna to hear judgment as the Court may have disposed of the Causes standing before

it. The Solicitor, therefore, must from time to time watch the proceedings of the Court, to see when the Cause is likely to come on.

PRACTICAL DIRECTIONS.

Let the Plaintiff's Solicitor, according to the XXII Order, leave with the Registrar, for the use of the Court, a short statement of the pleadings, including a full copy of the prayer of the Bill, two clear days before the hearing.

After hearing the Cause, the Court, if all proper parties are before it, will pronounce its decision, by either dismissing the Bill—decreeing the relief prayed—or by referring the matter (if it be necessary) to ascertain certain facts before a Decree can be pronounced, to the Master in Ordinary, to make inquiry and report thereon, and after he has made his Report, the Court will pronounce such Decree as may be just.—[See further information with reference to the Hearing, and Decree, when *absolute* in the first instance or *nisi* only, 1 Grant's C. P., ch. xlvi, xlvii, and xlviii.] The Registrar takes minutes of the Decree made by the Court—pay him 1*s.* 3*d.* for every Exhibit marked and filed.

PRACTICAL DIRECTIONS.

Let the Solicitor, in whose Client's favour the Decree may have been given, attend the Registrar for a copy of the Minutes—pay him 2*s.* 6*d.* Give notice in writing to the Solicitor of the other parties of the day and hour fixed by the Registrar for settling the minutes of the Decree. Let all the Solicitors concerned attend the Registrar accordingly (having previously ordered copies of the Minutes, which will entitle them to attend), when he will settle and sign the Minutes. Leave the Minutes when settled, with the Registrar, with the Briefs of Counsel for all the parties, to enable him to draw up the Decree. The Solicitor having obtained the Decree, let him peruse, and carefully examine it with his documents and papers, and the Minutes—pay great attention to names, dates, and sums; marking, in pencil, any remarks or proposed attentions he may think necessary to submit to the Registrar. Give the following Notice to the other Solicitors concerned, to attend the Registrar, on *passing* the Decree:—

"In Chancery.

"A. B. *v.* C. D.

"Take notice that the Registrar will pass this Decree on ——— day of ——— at ——— noon or at ——— in the forenoon, or at ——— in the afternoon. [As the case may be.] ——— ——— [Name of the Solicitor, drawing up the Decree, and date.]

"To Mr. ———, Solicitor" [for the Defendant or Plaintiff.]

The Solicitors who do not draw up the Decree but take copies, will either when they meet the Solicitor drawing up the Decree, when he attends to pass it, with the Registrar, or afterwards, according to circumstances, take care to examine and see that their copies are correct with the original. The Decree must then be left with the Registrar to be entered. Pay the Registrar 1*s.* per fol. for drawing Decree, and 6*d.* per fol. for entering and copying.

Having said thus much with reference to the regular steps in a Cause, we shall now proceed shortly to advert to

Interlocutory Proceedings.

These occur in the commencement and during the progress of a Suit, and are resorted to for a great variety of purposes before the question between the parties is brought to a hearing at its regular period. They are of two classes —Motions and Petitions.

Motions.

These are of two kinds—*of course*, which are made without notice, being required to be given to the opposite party, and *special* motions, which are only allowed to be made upon such notice previously given —of the first kind are, for instance, the following:—To amend Bill before replication —to refer Bill or Answer for scandal, &c.—or an Answer for insufficiency or impertinence—for the different processes of contempt, and other matters, which by the ordinary course of the Court are allowed as necessary for the ends of justice. Some of these matters, however, must be actually moved in Court; others need not, and delivering a motion paper to the Registrar will be sufficient.—[See 1 Grant's C. P., ch. xxxv.]

PRACTICAL DIRECTIONS.

Motions of Course.

Let the Solicitor for the Applicant prepare a Motion Paper on half a sheet of draft-paper, or a quarter sheet of foolscap, once folded lengthwise. Write *inside* the title of the Cause thus, for instance:—

"In Chancery,

"Between J. M., an Infant, under the Age of Twenty-One years, by N. B., Esq., his next Friend, Plaintiffs;

and

W. P., M. M., and W. H., Defendants."

And on the outside thus :—

In Chancery,

M ——— } Brief for
v. } Plaintiff.
P ———

Motion to refer the
Defendant, W. P.'s Answer,
for insufficiency.

[Counsel's Name and date.]

[Solicitor's name.]

Deliver it to the Registrar, who will draw up the Order.—[See the directions before given as to drawing up, passing, and entering the Order.

Special Motions are very various, for example :—To pay money, admitted in an Answer into Court—that a Bill may be dismissed for want of prosecution—that the Defendant may leave with the Registrar a deed, admitted by his Answer, to be in his custody—to discharge an Order, and liberate a party committed for a contempt of Court—for the Master to review his taxation of a Bill of Costs—for an attachment for not leaving deeds in the Master's office—that plaintiff may produce witnesses to be cross-examined,

or that the depositions may be suppressed for irregularity—to enlarge the order for the trial of an Issue, and for a Special Jury, and for a view—for an injunction to restrain proceedings at law upon payment of money into Court, &c. &c.

PRACTICAL DIRECTIONS.

Special Motions.

The notice to be given must express shortly all the objects of the application, for in general the Court will not extend the Order beyond the motion; thus:—If the costs of the application are desired, they must be required by the notice of Motion, otherwise they will not be given. Suppose the application to be by the Plaintiff, that the Defendant may pay money into Court, admitted by his Answer to be in his hands, let the Solicitor, for the Plaintiff, give the following notice of Motion, which will serve as a form for other applications:—

"In Chancery.

"Between A. B., C. D., &c. [Insert all the names of the Plaintiffs.] Plaintiffs;

and

E. F., G. H., &c. [Insert all the names of the Defendants.] Defendants.

"Take Notice that the Plaintiffs intend to move his Honour the Vice Chancellor on——————— next, the———day of———— instant, or so soon after as Counsel can be heard, that the Defendant E. F. may be ordered on or before———— day of———— next, to pay into the Bank of Upper Canada, with the privity of the Accountant General of this Court, to be placed to the credit of this Cause the sum of £————, Halifax Currency, admitted by his Answer to be in his hands. And that the said sum of money, when so paid in, may be laid out in the purchase of Government Debentures, with the privity of the said Accountant General, in trust in this Cause.

"I. K., Plaintiff's Solicitor.

"Dated this——— day of————, 18—.

"To Mr.———, Solicitor for the Defendant E. F.

"To Mr.———, Solicitor for the Defendant G. H."

Serve copies of the notice on the Solicitors of all the parties interested, which, according to Order XVI, must be done at least two days before the hearing of the Motion, for instance, Monday for Thursday. These motions must always be supported by affidavits, verifying the material facts, which affidavits must be filed with the Registrar at least two days before the day of Motion; to give the opposite parties time to take office copies, and file others in reply, if necessary.—[As to affidavits, see the remarks post, p. 26.] Attend the Court—get the Minutes of the Order from the Registrar—give notice to parties to attend him on settling the Minutes and passing the Order, as before directed with respect to the drawing up and passing the Decree. The Order must be entered by the Registrar.

Petitions.

These, like Motions, are either *of course* or *special.* They either *Cause* Petition or Petitions *ex parte;* the former when the Petitioner is a party to a suit to which the Petition relates; the latter when they relate only to the Petitioner, and no suit exists. Cause Petitions, which are termed *of course*, are for those motions which, in general, may be also obtained by Motions of course for the ordinary purposes of forwarding a suit, such as for setting down Pleas, Demurrers, or Exceptions to be argued.

PRACTICAL DIRECTIONS.

Petitions of Course.

Engross the Petition in a neat hand-writing on foolscap paper, bookways—endorse it as before directed with respect to the Bill and Answer. Leave it with the Registrar to be answered by the Vice Chancellor. Pay Registrar for filing and getting the Petition answered, 2*s.* 6*d.* The answer consists of granting the prayer, and requiring notice of it to be given forthwith. The notice required to be given is, by drawing up the Order, and serving the Solicitors of the opposite parties with a copy of it. Leave the Petition with the Registrar to draw up the Order—pay him 2*s.* 6*d.*; and when ascertained to be correct, it must be passed, and entered with him, and served.—[See post, 25, as to drawing up and addressing the Petition.]

Special Petitions are presented to obtain important objects in the suit, and are, therefore, never granted without being heard in Court; for instance, for the transfer of funds and payment of money in the Cause to parties according to their respective rights and interest therein, as ascertained by prior proceedings in the suit. For the sale of stock to article a party (an infant) to a Solicitor upon the Master's Report.—For the transfer of funds on the death of an annuitant.—For money by a party entitled on coming of age, &c.

PRACTICAL DIRECTIONS.

Special Petitions.

Draw the Petition, stating the facts paragraphically. Address it thus:—

"In Chancery.

"To the Honourable Robert S. Jameson, Vice Chancellor of Upper Canada,

"Between, &c.

"The humble Petition of A. B.

"Sheweth,

"That," &c.

Concluding with the prayer, thus, in an inner margin:—

"Your Petitioner, therefore, humbly prays your Honour, that, &c.

"And your Petitioner will ever pray," &c.

It need not be signed either by the party, his Counsel, or Solicitor. Engross it on foolscap paper, bookways, on one side of the page only. Endorse it as before directed. Leave it with the Registrar, to be answered by the Vice Chancellor, which is done by his requiring the *attendance* of all parties on the matter of the Petition, and notice to be given as above mentioned in the case of Petitions *of course*. Pay the Registrar 2*s*. 6*d*. A copy of the Petition must be left by the Solicitor with the Registrar for the use of the Court. Serve copies of the Petition on the Solicitors of all necessary parties, with the Vice Chancellor's answer thereto, which is the notice thereby required to be given—it must be served two clear days before the day of hearing. [See Order XVI.] The copy of the Petition left with the Registrar are sufficient instructions to him to set down the same for hearing. Pay him 5*s*. for setting down the same accordingly. Attend Court—obtain and settle Minutes—pass and enter Order—[See the directions given respecting Special Motions, *ante*, p. 22.]

Ex-parte Petitions.

It is hardly possible to detail all the subjects of this class of Petitions, but it may be observed that the appointment of guardians to infants, and for an allowance for their *maintenance. forms a leading one*—[See 1 Grant's C. P., c. lxiii]—and if the heir and devise Commission be superseded by an Act to be passed by the Legislature, and the jurisdiction transferred to the Court of Chancery, which is considered very probable, such cases will be brought forward under this head of Petitions.

PRACTICAL DIRECTIONS.

Ex-parte Petitions.

See the directions given with reference to Special Petitions above.

General Proceedings for Plaintiffs.

[See 1 Grant's C. P., chap. lxviii.]

General Proceedings for Defendants.

[See 1 Grant's C. P., chap. lxix.]

Master's Office.

If the Decree or Order direct an inquiry to take place before the Master, who is to report thereon, [See the course of proceeding pointed out for the Solicitor's guidance, 1 Grant's C. P., ch. liv—see ibid, ch. lv, as to Reports—ch. lvi, as to Exceptions to Answers and Reports—and ch. lvii, as to sales before the Master.]

When the Master has made his Report, and it has been absolutely confirmed by the Court, the Cause must then be brought again before it, by being set down on what are termed

Further Directions.

When the Suit comes on, in this mode a final or such other Decree as the then state of the Cause may call for, will be pronounced, as to which see 1 Grant's C. P., ch. lx.

Costs.

Costs in Equity are discretionary with the Court.—[See chapter on this subject, 1 Grant's C. P. ch. lxvii, and as a general guide to the Solicitor as to the mode of making out his Bill of Costs—see ibid, ch. lxxiii, to be modified, however, as to the respective charges for the business done according to the Act 7, Wm. IV., ch. 2, sec. 23, and the Orders of the Court.]

Affidavits.

These, in the course of practice, are used to verify the service of process, or in support of Motions or Petitions, or other interlocutory proceedings in Causes or in applications *ex-parte*—[As to the points to be attended to in preparing Affidavits, see 1 Grant's C. P., ch. xxxiv.]

PRACTICAL DIRECTIONS.

Such as are to be used in Court must be filed with the Registrar, who makes office copies for that purpose, and no Affidavit, which is to be pro-

duced and used in Court, will be allowed to be used or otherwise acted upon, until filed. The office copy, and not the original, as before remarked, is what the Court regards. Pay the Registrar 6*d.* per folio for office copies, and 1*s.* 3*d.* for filing and registering each Affidavit. Such Affidavits, however, as may be required by the Master in Ordinary in proceedings before him, need not be filed with the Registrar, but being sworn before the Master must then be left in his office, whence copies may be taken by the parties requiring them. Deponents residing in the City of Toronto, or within twenty miles thereof, must attend the Master in Ordinary to be sworn—if within the Province, but beyond these limits, they must attend a Master Extraordinary for the same purpose. Where a Deponent is sick or unable to attend, the Master or Master Extraordinary (as the case may be) will attend and swear the party. No erasures with a knife will be allowed—the word must be struck out with the pen, so as to be legible though thus altered—and the Master will put his initials in the margin opposite such erasures or interlineations. Affidavits must be engrossed in a plain and neat manner, on foolscap paper, folded once lengthwise, and endorsed as before directed as to Bills and Answers, &c. The Registrar, when required, will grant certificates of Affidavits being filed [fee 2*s.* 6*d.*] and will search for Affidavits, to ascertain if any expected to be filed have been so or not [fee 1*s.*], and will make office copies of the same, if found, and required.

As stated at the outset, it was intended exclusively to confine the present observations to the Extraordinary or Equitable Jurisdiction of the Court, and not to speak of its three other Branches; it may, nevertheless, be convenient to refer the Practitioner to some authentic source of information upon these subjects; and it may be mentioned that Mr. Maddock's Treatise on Equity, before recommended, will be found most full and explicit.

Applications may be expected to be made to the Court to decree the issuing and refusal of Patents. These fall under its Common Law Jurisdiction, as to which see 1 Maddock's Eq., p. 1–22; and 1 Grant's C. P. p. 2–4.

Cases falling under its Statutory Jurisdiction must frequently arise, so soon as the Heir and Devise Commission shall have been placed by an Act of the Legislature under the control of the Court. As to this head of jurisdiction, see 1 Grant's C. P. ch. lxx, and the person and property of idiots and lunatics may also call for protection. This in England comes within the specially delegated power of the Court of Chancery. [See ibid, ch. lxxi.]