FORMS AND PRECEDENTS

OF

PLEADINGS AND PROCEEDINGS

IN

The Court of Chancery for Ontario.

BY

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OF OSGOODE HALL, BARRISTER-AT-LAW, LATE MASTER AT HAMILTON.

SECOND EDITION.

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PREFACE

TO THE SECOND EDITION.

This work may be considered as the third volume of Leggo's Chancery Practice now in the hands of the profession; though it is framed for use either as a companion volume to the Practice, or as an independent work.

It will be observed that the arrangement of the forms differs from that of the first edition, and follows more nearly the ordinary course of procedure in suits, which it is hoped will be found an improvement, and facilitate reference to the work.

All the forms have been framed to meet the practice in this Province, and all matter based on that of England only has been carefully eliminated.

Many forms, not appearing in the first edition, have been added, and much care has been taken to make the list of bills as complete as possible.

This edition has been thoroughly revised by George S. Holmested, Esq., the Registrar of the Court of Chancery, whose position and experience have peculiarly qualified him for the task.

HAMILTON, July, 1876.

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FORMS AND PRECEDENTS

OF

PROCEEDINGS IN CHANCERY.

CHAPTER I.—*Pleadings.*

Section I.—Forms of Bills (*a*).

1. *Style of Cause.*

1. Style of Cause.

The style of the cause is a collection of the names of the plaintiffs, and of the defendants: *e.g.*

Between John Jones and William Brown,
And Plaintiffs,
James Smith, and Her Majesty's Attorney-General for Ontario, Defendants.

Where the plaintiff sues on behalf of himself and others, or is under disability, it is usual to state that fact in the title of the bill, and of the future proceedings in the cause; as thus:—

Between John Lee, on behalf of himself and all other the creditors of A.B., deceased - - plaintiff.
Or,
John Lee, an infant, by C.D., his next friend, plaintiff.
Or,
John Lee, a person of unsound mind, by C.D., the committee of his estate, and the said C.D., plaintiffs.
Or,
John Lee, a person of unsound mind, not so found, by C.D., his next friend - - plaintiff.
Or,
Jane Lee, wife of the defendant John Lee, by C.D., her next friend - - - - - plaintiff.

(a) Pleadings and all other proceedings in a cause may be written or printed, or partly written and partly printed, and where wholly printed, dates and sums occurring therein are to be expressed by figures instead of words. *Ord.* 66. All pleadings and other proceedings, are to be written or printed, neatly and legibly, on good paper of the ordinary foolscap size, and if printed, pica type leaded is to be used. The costs of proceedings not conforming to this rule are disallowed, and the Clerk of Records and Writs or Deputy Registrar is to refuse to file such proceeding. *Ord* 67.

Or,

Her Majesty's Attorney-General for (the Province of Ontario *or* Dominion of Canada) Informant, and C.D., plaintiff.

It is not usual to state in the title of the bill that a defendant is under disability; but after a guardian *ad litem* of such defendant has been appointed, it is usual to state that fact in the title of all future proceedings; as thus:—

James Styles, an infant, by Edward Styles, his guardian.

Or,

James Styles, a person of unsound mind, not so found, by Edward Styles, his guardian.

Or,

James Styles, and Amy the wife of the said James Styles, by Edward Styles, her guardian.

2. *Address.*

2. Address. To the Honourable the Judges of the Court of Chancery.

FORMS OF BILLS.

3. *Modes of describing Informants and Plaintiffs in an Information or Bill* (*b*).

3. Information without a relator(*c*). Informing, sheweth unto your Lordships the Honourable O.M., Her Majesty's Attorney-General for the Province of Ontario on behalf of Her Majesty, as follows:

4. Same, with a relator. Informing, (*&c., as above, to* Majesty), at and by the relation of C.D., of (*residence and addition*), as follows:

5. Information and bill with relator and plaintiff. Informing (*&c., as in* No. 4, *to addition*), and humbly complaining, sheweth the said C.D., the above-named plaintiff, as follows:

(*b*) If, at the time of amending the bill, the description of the plaintiff, or of his next friend, is not the same as when the original bill was filed, the new description should appear in the amended bill.

On amending an information, the proper name of the informant by whom the information was filed is retained, notwithstanding he may not be in office at the time when the information is amended. In the information, the Attorney-General, whether informant or defendant, is described in the style of the cause as "Her Majesty's Attorney-General for the Province of Ontario," without his proper name.

(*c*) An information must be signed by the Attorney-General by whom it purports to be filed, otherwise it will be irregular. *Atty. Genl. v. Street Railway* 2 Ch. R. 165.

The Provincial Attorney-General, and not the Attorney-General of the Dominion, is the proper party to file an information where the matter complained of is an invasion of the rights of the public of Ontario. *Seeus:* Where the complaint is in respect of an injury to property vested in the Crown as representing the Government of the Dominion. *Atty. Genl. v. Niagara Falls International Bridge Co.* 20 Gt. 34.

Informing (*&c., as in* No. 3, *to* Majesty), and humbly complaining, C.D., of (*residence and addition*), the above-named plaintiff, sheweth as follows: **6.** Same, with a plaintiff and without a relator.

Informing (*&c., as in* No. 3, *to* Ontario), on behalf of C. D., of (*residence*), a lunatic, at and by the relation of E.F., of (*residence and addition*), as follows: **7.** Same on behalf of a lunatic.

The Bill of Complaint of the United States of America, Sheweth as follows: **8.** Government of Foreign State.

The Bill of Complaint of the Mayor and Aldermen of the City of Hamilton (*or as may be*), Sheweth as follows: **9.** Corporation aggregate.

The Bill of Complaint of the B. of L., a company incorporated by Act of Parliament, and carrying on business in the City of London, Sheweth as follows: **10.** Incorporated Banking Company.

The Bill of Complaint of F.H., of, *&c.*, on behalf of himself and all other the shareholders (except the defendants hereto) in a certain company called "The Canada Screw Company," Sheweth as follows: **11.** On behalf of Shareholders.

The Bill of Complaint of A.B., of (*residence and addition*), on behalf of himself and all other the creditors of C.D., late of (*residence and addition*), deceased [*Or*, and all other the creditors of C.D., of *&c.*, for whose benefit the indenture of the —— day of ——, 18—, hereinafter stated, was made], Sheweth as follows: **12.** On behalf of creditors.

The Bill of Complaint of A.B., of (*residence and addition*), the official [*Or*, creditors'] assignee of the estate and effects of C.D., an insolvent, Sheweth as follows: **13.** Assignee of a bankrupt.

The Bill of Complaint of A.B., of (*residence and addition*), and C.D., an infant, by the said A.B. [*Or*, by E.F., of (*residence and addition*], his next friend, Sheweth as follows: **14.** Adult and Infant.

The Bill of Complaint of A.B., an infant, by C.D., of (*residence and addition*), his next friend, Sheweth as follows: **15.** Infant by next friend.

The Bill of Complaint of A.B., a person of unsound mind, by C.D., of, *&c.*, the committee of his estate, and the said C.D., Sheweth as follows: **16.** Idiot or lunatic by committee.

17. Person of unsound or weak mind not so found.

The Bill of Complaint of A.B., a person of unsound mind, not so found [*Or*, a person of weak mind], by C.D., of (*residence and addition*), his next friend, Sheweth as follows:

18. Husband and wife, jointly.

The Bill of Complaint of A.B., of (*residence and addition*), and C., his wife, Sheweth as follows:

19. Husband alone, and wife by next friend.

The Bill of Complaint of A.B., of, *&c.*, and C., the wife of the said A.B., by E.F., of, *&c.*, her next friend, Sheweth as follows:

20. Wife by next friend: husband a defendant. (*d*)

The Bill of Complaint of C.B., the wife of the defendant A.B., by E.F., of, *&c.*, her next friend, sheweth as follows:

21. Same; husband *civiliter mortuus*.

The Bill of complaint of C.B., of (*residence*), the wife of A.B., late of (*residence*), who hath abjured the realm [*Or*, who is an alien enemy—*or as may be*], Sheweth as follows:

22. Same; husband residing abroad.

The Bill of Complaint of C.B., of (*residence*), the wife of A.B., who is now residing at G., out of the jurisdiction of this Honorable Court, by E.F., of *&c.*, her next friend, Sheweth as follows:

23. Wife as a *feme sole*.

The Bill of Complaint of C.B., of (*residence*), the wife of A.B., of, *&c.*, suing as a *feme sole* [*Or*, but who has obtained a statutory order for protection from her husband], Sheweth as follows:

4. *Certificates to obtain Attorney-General's sanction to information.*

24. Counsel's Certificate of information being proper for the informant's sanction.

I hereby certify that this information is proper for the sanction of Her Majesty's Attorney-General. Dated this —— day of ——, 18—.

(*Counsel's signature*).

---

25. The like, of amended information.

I hereby certify that this information, as amended, is proper for the sanction of Her Majesty's Attorney-General; and that the amendments therein are not made for the purpose of delay. Dated this —— day of ——, 18—.

(*Counsel's signature*).

(*d*.) See now 35 Vic. c. 17, s 9, Ont.

I hereby certify that A.B., the proposed relator in this information, is a proper person to be such relator; and that he is competent to answer the costs thereof. **26.** Solicitor's Certificate of ability of relator to pay costs, and verifying print.

I also certify that this is a true copy of the draft information, as settled and signed by Mr. C.D., as counsel for the informant. Dated this —— day of ——, 18—.

E.F., of, *&c.*,
Solicitor for relator.

I hereby certify that this is a true copy of the draft amended information, as settled and signed by Mr. C.D., as counsel for the informant. Dated (*&c., as in last Form*). **27.** Certificate verifying reprint.

E.F., of, *&c.*,
Solicitor for relator.

(*Style of cause*).

I hereby consent that my name be used as relator in the information in this cause. **28.** Relator's consent to his name being used.

(*Relator's signature*).

Forms of Bills.

The following forms of bills, No. 29 to 38, are those referred to in Schedule B to Gen. Ord. 75.

29. *For foreclosure of sale by a legal or equitable mortgagee or person entitled to a lien* (*e*). **29.** Bill for foreclosure or sale.

In Chancery.

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

City of Toronto.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of A.B., of the City of Toronto, in the County of York, Merchant;

Sheweth as follows:

1. 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 plaintiff is a mortgagee (*or, an equitable mortgagee*) of (*or, is*

(*e*) "Every material allegation in a bill must be positive. In an answer it is necessarily otherwise because an answer is sworn to." Per Mowat V.C. *Yarrington v. Lyon*, 12 Gt. 310; and see *Garrow v. McDonald*, 20 Gt. 122. *Atty.-Genl. v. Boulton*, 20 Gt. 402.

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.

2. The time for payment has elapsed, and no sum has been paid on account of principal or interest, (*or, $—— has been paid on account of principal, and $—— on account of interest*).

3. There is now due under and by virtue of the said Indenture of mortgage, for principal money the sum of $——, and for interest the sum of $——.

4. The plaintiff has not been in occupation of the said mortgaged premises, or of any part thereof, (*or, the plaintiff has 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 ——*).

5. The defendant C.D. is entitled to the equity of redemption in the said lands (*or, the premises subject to such lien*).

The plaintiff therefore prays:

1. That he may be paid the said sum of $——, and interest thereon, and the costs of this suit (*f*); and in default thereof, that the equity of redemption in the said lands may be foreclosed.

(*Or, that in default thereof the said mortgaged premises may be sold and the produce thereof applied in or towards payment of the said debt and costs.*)

(*That the defendant C.D. may be ordered to pay the balance of the said mortgaged debt and costs after deducting the amount realized by such sale*).

2. That for the purposes aforesaid all proper directions may be given and accounts taken.

3. That the plaintiff may have such further or other relief as the nature of the case may require.

And the plaintiff will ever pray(*f*).

(*f*) Where it is sought to restrain mortgagor from committing waste.—See form No. 70.

30. *For redemption of any legal or equitable mortgage, or lien.*

30. Bill for redemption.

In Chancery.

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

City of Toronto.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of A.B., *&c.*
Sheweth as follows:

1. Under and and by virtue of an Indenture (*or other document*) bearing date, &c., and made between (*parties*) the plaintiff is entitled to the equity of redemption in certain freehold property therein comprised, being (*insert description of property*) which was originally mortgaged for securing the sum of ——— and interest thereon.

2. The defendant C.D., is now, by virtue of the said Indenture, dated the ——— day of &c., the mortgagee of the said lands, and entitled to receive the principal money and interest remaining due upon the said mortgage.

3. The amount of principal money and interest now due upon the said mortgage is the sum of ——— or thereabouts.

4. The plaintiff has made, or caused to be made, an application to the said C.D., to receive the sum of ———, and any costs justly payable to him and re-convey the said mortgaged property to the plaintiff upon payment thereof, and of any costs due to him in respect of the said security, but the said C.D. has not so done.

The plaintiff therefore prays:

1. That he may be let in to redeem the said mortgaged property, and that the same may be re-conveyed to him upon payment of the principal money and interest and costs due and owing upon the said mortgage.

2. That for the purposes aforesaid all proper directions may be given and accounts taken.

3. That the plaintiff may have such further or other relief as the nature of the case may require.

And the plaintiff will ever pray.

31. Bill to wind up partnership (*g*).

31. *For an account of the dealings of a partnership dissolved or expired.*

In Chancery.

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

City of Toronto.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of A.B., &c.

Sheweth as follows:

1. From the ——— day of ——— down to the ——— day of ——— the plaintiff and the defendant C.D., carried on the business of ——— in partnership under certain articles of co-partnership dated, &c., and made between ——— [*parties*], [*or under a verbal agreement made between the plaintiff and C.D., or through their respective agents E.F. and G.H.*]

2. The said co-partnership was dissolved (*or expired*) on the ——— day of ———.

The plaintiff therefore prays:

1. That an account of the partnership dealings and transactions, between the plaintiff 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 Honorable Court.

2. That for the purposes aforesaid all proper directions may be given and accounts taken.

3. That the plaintiff may have such further or other relief as the nature of the case may require.

And the plaintiff will ever pray.

32. Bill to dissolve partnership (*h*).

32. *For dissolution of co-partnership.*

In Chancery.

Between—A. B.....Plaintiff,
and
C. D.....Defendant.

City of Toronto.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of A. B., &c.

Sheweth as follows:

(*g*) For another form see No. 83.
(*h*) For another form see post No. 83.

1. The plaintiff and the defendant C. D., are and have been since the ——— day of ——— co-partners in the trade or business of ——— under ——— articles of co-partnership dated, &c., and made between, &c. (*or, under a verbal agreement made, &c.*) which partnership was to continue for ——— years (*or for an indefinite time*).

2. The said business was carried on under the said agreement until ——— without any difficulty warranting dissolution.

3. 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 firm, and denying the plaintiff or debarring him from access thereto, by discharging the clerks or 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.

4. The said defendant has also used the name of the firm for his own private purposes, and has applied the moneys of the partnership to his own individual use.

5. There is nothing in the said articles or agreement of co-partnership to justify such conduct on the part of the defendant.

6. The plaintiff has made frequent applications to the said defendant to desist from such conduct and to act in accordance with the said agreement and with his duty as a partner, but without effect.

7. The plaintiff, on the ——— day of ——— gave notice to the said defendant that the said partnership would be dissolved from the ——— day of ———.

The plaintiff therefore prays:

1. 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.

2. That the plaintiff may have such further or other relief as the nature of the case may require.

And the plaintiff will ever pray.

33. Bill for specific performance of agreement for sale or purchase of property.

33. *For specific performance of written agreement for the sale or purchase of any property.*

In Chancery.

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

City of Toronto.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of A. B., &c.

Sheweth as follows:

1. By an agreement dated the ——— day of ——— and signed by the defendant C. D., the said defendant contracted to buy of the plaintiff *(or to sell him)* certain freehold (*or leasehold*) property therein described or referred to, for the sum of ———.

2. The plaintiff has made, or caused to be made, to the said C. D, application specially to perform the said agreement on his part, but he has not done so.

The plaintiff therefore prays:

1. That the said agreement may be specially performed, and for that purpose that all proper directions may be given, the plaintiff hereby offering to perform the said agreement on his part.

2. That the plaintiff may have such further or other relief as the nature of the case may require and, &c. (*i*)

34. Bill for specific performance of parol agreement partly performed (*j*).

34. *For specific performance of a parol agreement partly performed.*

In Chancery.

Between—A. B.....Plaintiff,
and
C. D.....Defendant.

City of Toronto.

To the Honorable the Judges of the Court of Chancery.

The Bill of C. B., &c.

Sheweth as follows:

1. The defendant C. D. being or pretending to be seized

(*i*) For other forms, see Nos. 59, 68 and 91.
(*j*) For another form see No. 90.

in fee simple in possession of lot No —, in, &c., the plaintiff and the said C. D. on or about the———day of——— entered into a verbal agreement for the purchase by the plaintiff of the said lot of land at or for the price or sum of—— payable &c., with interest, and upon payment thereof a proper conveyance was to be executed of the said premises free from incumbrances.

2. The plaintiff 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.

3. The plaintiff has made divers and considerable improvements thereon and has paid the sum of —— part of the said purchase money.

4. The plaintiff submits that under the circumstances aforesaid the said agreement has been partly performed so as to entitle the plaintiff to a specific execution thereof.

5. The plaintiff made and caused to be made frequent applications to the said C. D. for the purpose of obtaining a specific execution of the said agreement but without effect.

The plaintiff therefore prays:

1. That the said contract may be specifically performed by the said C.D., the plaintiff being ready and willing and hereby offering to perform the same in all respects upon his part.

2. That the plaintiff may have such further or other relief as the nature of the case may require.

And, &c.

35. *To stay waste.*

35. Bill to stay waste.

In Chancery.

Between—A. B..... .....Plaintiff,
and
C. D.....Defendant.

City of Toronto.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of A. B., &c.
Sheweth as follows:

1. The plaintiff is and has been from before the acts hereinafter complained of until the present time seized in fee simple (*or, as the case may be*) under and by virtue of an

Indenture, &c., bearing date, &c., and made between, &c., of lot No—, &c.

2. The defendant C.D. is in possession of the said lot as tenant for a term of ——— years (*or, as the case may be*), of the plaintiff under and by virtue of an Indenture of demise &c., bearing date, &c., and made between, &c.

3. The said defendant has since the ——— day of——— committed waste upon the said lot by cutting down and removing from off the said lot and applying to his own use a large number of the timber and other trees standing, growing, and being thereon, and also by quarrying a large quantity of stone being on and part of the said lot, and by pulling down, &c., houses, &c.

4. The defendant continues and threatens and intends to continue to commit such waste as aforesaid, and other waste and destruction of the said lot, although frequently requested by the plaintiff to desist therefrom.

The plaintiff therefore prays:

1. 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 for the waste already committed.

2. That the plaintiff may have such further or other relief as the nature of the case may require.

And, &c. (*k*)

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

36. *To stay trespass in the nature of waste.*

In Chancery.

Between—A.B..... .....Plaintiff,
and
C.D.. .....Defendant.

City of Toronto.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of A. B., &c.

Sheweth as follows:

1. The plaintiff was at the time of the acts hereinafter complained of and has been since up to the present time

(*k*.) For another form, see No. 58.

the owner in fee simple (*or as the case may be*) in possession of lot No. &c., under and by virtue of an Indenture, &c., and made, &c.

2. The defendant C. D. has from the ———day of—— until the present time continually trespassed upon the said lot by cutting down and removing from off 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.

3. The defendant continues and threatens and intends to continue to trespass on the said lot in like manner, although frequently requested by the plaintiff to desist therefrom.

The plaintiff therefore prays:

1. 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, removed and applied to his own use as aforesaid.

2. That the plaintiff may have such further or other relief as the nature of the case may require.

And, &c. (*l.*)

37. *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.*

37. Bill to use name of trustee in prosecuting an action.

In Chancery.

Between—A. B..... .....Plaintiff,
and
C. D.....Defendant.

City of Toronto.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of A.B., &c.

Sheweth as follows:

1. Under an Indenture dated, &c., and made between, &c., plaintiff is entitled to an equitable estate or interest in certain property therein described or referred to, and the defendant C. D. is a trustee for the plaintiff of the said property.

l.) For another form, see No. 58

2. The plaintiff being desirous to prosecute an action at law against ——— in respect of such property, has made, or caused to be made, an application to the said defendant to allow the plaintiff to bring such action in his name, and has offered to indemnify the defendant against the costs of such action.

3. The said defendant refuses to allow his name to be used by the plaintiff for the purposes of the said action.

The plaintiff therefore prays:

1. That he may be allowed to prosecute the said action in the name of the said defendant C. D., the plaintiff hereby offering to indemnify him against the costs of such action.

1. That the plaintiff may have such further or other relief as the nature of the case may require.

And, &c.

38. Bill to appoint new trustee

38 *To appoint a new trustee in a case where there is no power in the instrument creating the trust to appoint new trustees, or where the power cannot be exercised.*

In Chancery.

Between—A. B..... .....Plaintiff,
and
C. D.....Defendant.

City of Toronto.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of A. B., &c.

Sheweth as follows:

1. Under an Indenture dated, &c., and made between, &c. (*or the will of*), the plaintiff is interested in certain trust property therein mentioned or referred to.

2. The defendant C. D. is the present trustee (or the real or personal representative of the last surviving trustee) of such property.

3. There is no power in the said Indenture (*or will, &c.*) to appoint new trustees (*or* the power in said will, &c., to appoint new trustees cannot be exercised).

The plaintiff therefore prays:

1. That new trustees may be appointed of the said trust property, in

the place of (*or* to act in conjunction with) the said C.D.

2. That the plaintiff may have such further or other relief as the nature of the case may require.

And, &c.

39. *Bill by infant heir against widow and administratrix for administration and for maintenance of plaintiff.*

39. Bill by infant heir at law next of kin, against the widow and administratrix, for general administration of the real and personal estate, and to make plaintiff a ward of Court. (*m*).

Title—and address of bill: see ante, No. 29.

The Bill of Complaint of J. S., of *&c.*, an infant by J. I., of *&c.*, his next friend, the above-named plaintiff, Sheweth as follows:

1. The plaintiff's father J. S., late of *&c.*, yeoman, died on, *&c.*, intestate: leaving the plaintiff (who was born on, *&c.*), his only child, his heir at law, and his sole next of kin; and leaving the plaintiff's mother, the above-named defendant M. S., his widow.

2. Letters of administration of his personal estate and effects have been granted to the defendant by the Surrogate Court of the County of, *&c.*

3. The said J. S. died seized of and entitled to real estate of great value: which has descended on the plaintiff; and possessed of and entitled to personal estate: to which, or to a share of which, the plaintiff is entitled.

4. The said J. S. died indebted to various persons, and his debts have not been paid (and the personal estate is insufficient for the payment of the same).

5. The defendant claims to be entitled to a distributive share of the personal estate, and to dower out of the real estate, of the intestate.

The plaintiff prays as follows:

That the real and personal estate of the intestate J. S. may be administered, and proper provision made for the plaintiff's maintenance and education, by and under the direction of this Honorable Court; and that the plaintiff may have such further protection and relief as his case requires. (*n*).

(*m*) The following forms from No. 39 to No. 45 inclusive, are, with slight variations, taken from Daniell's Forms.

(*n*) The practitioner will find it needful to exercise caution in advising a bill to be filed for administration. Whenever the object of the proceedings can be attained by means of an application under the 12 Vic. by petition for sale of infant's estate, that course should be adopted: See *Fenwick* v. *Fenwick*, 20 Gr. 381. *Goodfellow* v. *Rennie*, *ib.* 425. So also, unless there be something special about the case, an administration order should be obtained in Chambers. If a bill be unnecessarily filed the plaintiff may be visited with the extra costs occasioned thereby.

40. Bill by a married woman for administration of real and personal estate of a testator.

40. *Bill by married woman for administration, and for execution of trusts of will.*

Title—and address of bill: see ante, No. 29.

The Bill of Complaint of E. M. C. of, *&c.*, the wife of the defendant J. C., by H. J. A., of, *&c.*, her next friend, the above-named plaintiff,

Sheweth as follows:

1. E. A., late of, *&c.*, esquire, deceased, was at the time of his death seized of, or entitled to, certain freehold and copyhold messuages, lands and hereditaments; and was also possessed of personal estate to a considerable amount.

2. The said E. A. duly made and executed his last will and testament, dated, *&c.*, and thereby, [*&c.: Statement showing general devise and bequest of real and personal estate to A. B., and defendants W. F. and C. W., upon trust to convert, pay debts, legacies, funeral and testamentary expenses and invest; and then in trust for the plaintiff for life, for her separate use, with remainder to her children; and, in default of children, for the defendant Z. F.; and showing appointment of A. B., and defendants W. F. and C. W., executors*].

3. The said testator died on, *&c.*, without having revoked or altered his said will; and the same was duly proved by the said A. B., and the defendants W. F. and C. W. in Her Majesty's SurrogateCourt of the County of, *&c.*, *&c.*

4. The plaintiff has never had a child.

5. The said A. B. died on, *&c.:* having duly accounted with the defendants W. F. and C. W. for all the receipts of the said A. B. up to the date of his death, in respect of the real and personal estate of the said testator; and there is nothing due from or to the estate of the said A. B. to or from the estate of the said testator.

6. The defendant J. C. is now residing at ——, out of the jurisdiction of this Honorable Court.

7. Various claims have been made against the estate of the said testator, and difficulties have arisen in the administration thereof; and the defendants W. F. and C.W. allege that they cannot safely administer the said estate except under the direction of this Honorable Court.

The plaintiff prays as follows:

1. That the trusts of the will of the said E. A. may be carried into execution, and his real and personal estate administered, under the direction

of this honorable Court; and that for that purpose all proper directions may be given, inquiries made, and accounts taken.

2 *General Relief: see ante*, No. 29.

41. *Bill by equitable mortgagee, for foreclosure or sale.*

41. Bill by an equitable mortgagee, by deposit, for foreclosure or sale.

Title,—and address of bill: see ante, No 29.

The Bill of Complaint of D. J., of, *&c.*, the above-named plaintiff,

Sheweth as follows:

1. On or about the 12th of May, 1851, the defendant M. R., then of, *&c.*, applied to the plaintiff for the loan of $150: which the plaintiff agreed to advance, as to $100 forthwith, and as to the remaining $50 when the defendant should apply for the same; and it was agreed that the defendant should give his promissory note for the said sum and interest, as hereinafter mentioned; and should deposit the title deeds hereinafter mentioned as a further security for such loan.

2. The plaintiff accordingly lent and advanced to the defendant the sum of $100 on the said 12th of May, 1851; and the defendant signed and delivered to the plaintiff his promissory note in the words and figures following: [*Promissory note set out.*]

3. At the same time the defendant deposited with the plaintiff the title deeds relating to (*describing land*) which had been conveyed to the defendant in fee simple, but no memorandum of such deposit was then, or has since been, given to the plaintiff.

4. On or about the 4th of June, 1851, the defendant applied to the plaintiff to advance him the further sum of $50, in accordance with the agreement hereinbefore stated; and accordingly the plaintiff advanced the defendant the said sum of $50 on the said 4th of June, 1851; and the defendant signed and delivered to the plaintiff a promissory note in the words and figures following: [*Promissory note set out.*]

5. In or about the month of June, 1852, the defendant applied to the plaintiff to advance him the further sum of $60 for a week, under special circumstances, in order to save him the expense of a journey to London; and the defendant agreed to repay the plaintiff the sum of $60 in a week's time, and also $10 for the accommodation. The plaintiff accordingly advanced and paid the said sum of $60 to the defendant; who at the same time gave him a

memorandum in the words and figures following: [*Memorandum set out.*]

6. The defendant made default in payment of the said sum of $60 and interest; and in the month of July or August, 1852, the plaintiff had an interview with the defendant, and then proposed that the defendant should execute to him a legal mortgage of the said freehold premises, of which the title deeds had been so deposited as aforesaid, together with certain leasehold property at C., which the defendant then stated he had recently agreed to purchase; to secure the said several loans and interest thereon, at the rate of $5 per cent. per annum: to which proposal the defendant agreed; but such mortgage was never completed.

7. The whole of the three several sums of $100, $50, and $60, amounting together to the sum of $210, together with interest thereon, still remains due from the defendant to the plaintiff.

8. The defendant subsequently became involved in pecuniary difficulties; and on or about the 18th of October, 1852, he left his home, and has not since been seen nor heard of, although repeated and diligent inquiries have been made for him.

The plaintiff prays as follows:—

1. That an account may be taken of what is due to the plaintiff on security of the said deposit of deeds; and that the defendant may be decreed to pay to the plaintiff what shall, on taking the said account, be found due to him: together with the costs of this suit: by a short day to be appointed for that purpose; and, in default of such payment, that the defendant may be for ever barred and foreclosed of all right and equity of redemption in the said hereditaments at E. aforesaid; and that the said hereditaments and the legal estate therein may be conveyed to the plaintiff: or otherwise that the same may be sold; and that the produce of such sale may be applied to the satisfaction of what shall be found due to the plaintiff; and for the above purposes that all necessary directions may be given.

2. That some proper person may be appointed by the order of this honorable Court to receive the rents and profits of the said hereditaments.

3. *General relief: see ante*, No. 29.

42. *Bill by executors of mortgagee by deposit, for specific performance of agreement by third party to take a transfer of security, or for foreclosure or sale.*

42. Bill by executors of mortgagee, for specific performance of agreement to take a transfer; or for foreclosure or sale.

Title and address of bill: see ante, No. 29.

The Bill of Complaint of T. M., of, *&c.*, W. S., of, *&c.*, and J. C., of, *&c.*, the above-named plaintiffs, Sheweth as follows;

1. On the 7th day of May, 1852, G. C., late of R., deceased, lent and advanced to the defendant E. V. the sum of $3,000 on the security hereinafter stated.

2. For securing the said sum of $3,000 and interest the defendant E. V. signed and delivered to the said G. C. the following agreement: [*Articles of agreement set out, verbatim: by which, after reciting the deposit of a lease, a policy of assurance, and gas shares, with G. C., E. V. declared that they were deposited as a security for* $3,000, *and interest at 5 per cent.; and E. V. charged the leasehold property, the policy, and gas shares, and also a certain rent charge to which he was entitled in reversion, with the payment of the money and interest; and E. V. agreed, when required, to execute a mortgage and transfer of the said premises, shares, policy of assurance and rent charge: with power of sale, and such other clauses as G. C. should require.*] The defendant E. V. at the same time deposited with the said G. C. the several documents mentioned in the said agreement.

3. The said G. C. died in the month of April, 1853: having first duly made and published his last will and testament in writing, and thereby appointed the plaintiffs executors, who, after his decease, proved the same in the Surrogate Court of the County of————.

4. The said sum of $3,000 is still due and owing on the said security with interest thereon.

5. The defendant T. E., by letters signed by him, agreed with the plaintiffs, that if they would postpone giving notice of the said agreement to the tenants of the said property, and to the said gas and insurance offices, he would take a transfer of the said security. The plaintiffs accordingly, relying on such agreement, forbore to give such notice; but the defendant T. E. now refuses to perform his said agreement. The defendant T. E. acted in the said matter in concert with the defendant E. V., for the purpose of delaying the plaintiffs' proceedings against him, and enabling him to dispose of portions of his property; and the defendant E. V. has accordingly realized

portions of his property, and placed the same out of the hands of his creditors.

The plaintiffs pray as follows:

1. That an account may be taken of the amount due and owing on the said security.

2. That the said agreement with the defendant T. E. may be specifically performed; and that the defendant T. E. may be decreed to pay to the plaintiffs the amount due on their said security with the costs of this suit: the plaintiffs being willing, and hereby offering on such payment, to transfer to him the said security; or otherwise that the amount so due: together with the costs of this suit: may be paid to the plaintiffs by the defendant E. V., by a short day to be appointed for that purpose; and that in default of such payment the defendant E. V., and all persons claiming under him, may be debarred and foreclosed of and from all right and equity of redemption in the said mortgaged premises; and may be decreed to convey and transfer the same to the plaintiffs; or otherwise that the said mortgaged premises may be sold, and the proceeds thereof applied in payment of the amounts due on the said security, and the plaintiffs' costs of this suit.

3. That some proper person may be appointed, under the order and direction of this honorable Court, to collect, receive, and get in the rents and profits of the said leasehold premises and the dividends of the said shares, and the said rent charge; when the same shall become payable.

4. *General relief, see ante,* No. 29.

43. Bill to restrain infringement of patent, and for account, and damages.

43. *Bill to restrain infringement of Patent and for account.*

Title—and address of bill: see ante, No. 29.

The Bill of Complaint of J. T., A. T., W. T., and H. T., all of, *&c.*, the above-named plaintiffs,

Sheweth, as follows:

1. Before and at the time of the making of the letters patent next hereinafter mentioned the plaintiffs had discovered and were the sole, true, and first inventors

of the improvements in machinery for the manufacture of looped or knitted fabrics in such letters patent mentioned; and no other person before or at such time made, used, exercised or vended the said improvements or invention.

2. On the 10th of October, 1855, Her present Majesty, by letters patent of that day, under the Great Seal of Great Britain, did for herself, her heirs and successors, give and grant unto the plaintiffs her special license, that they, their executors, administrators and assigns, or such others as the plaintiffs, their executors, administrators and assigns, should at any time agree with, and no others, from time to time, and at all times thereafter, during the term of fourteen years from the date of the said letters patent should and lawfully might make, use, exercise, and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, an invention for "Improvements in Machinery for the Manufacture of Looped or Knitted Fabrics": upon the condition that the plaintiffs, their executors, or administrators, by an instrument in writing under their hands and seals or under the hands and seals of one of them, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in the Great Seal Patent Office, within six calendar months next and immediately after the date of the said letters patent: as by the said letters patent, when produced, will appear.

3. In pursuance of the said condition the plaintiffs, by an instrument in writing under their hands and seals, dated the 7th of April, 1856, and enrolled in the Great Seal Patent Office on the 9th of the same month of April, 1856, particularly described the nature of their said invention, and in what manner the same was to be performed: as by the said instrument in writing, when produced, will appear.

4. *Concise statement, from the specification, of the nature of the invention.*

5. The said letters patent have never been impeached; and the same have, from the day of the date thereof, remained and now are, in full force, and of valid and effectual authority; and the said improvement and invention was and is novel, useful and valuable; and from the day of the date of the said letters patent the plaintiffs have applied the said invention with great success; and have manufactured large quantities of looped fabrics, by means of machinery constructed according to the said invention; and have derived great profit from the manufacture of such looped fabrics.

6. The plaintiffs have never permitted any machines to be constructed according to the said invention for any person, except for themselves; and they have never granted any license to use the said invention to any person whomsoever.

7. In the month of ———, the plaintiffs discovered, for the first time, as the fact is, that the defendant has caused to be constructed for himself, and erected at L., several machines constructed according to the plaintiff's said invention, or upon the principle of, or only colourably differing from the plaintiffs' said invention, and that by means of such machines the defendant is manufacturing large quantities of looped fabrics.

8. The defendant has made and is now making such goods as last aforesaid, and is selling the same: to the great prejudice and damage of the plaintiffs; and he has derived, and is now deriving large gains and profits therefrom.

9. The defendant has sold the looped fabrics so manufactured by him by means of such machines as aforesaid, at a great reduction on the price at which they had been sold previously by the plaintiffs; and the plaintiffs have been thereby compelled to reduce their charges for manufacturing such looped fabrics; to the great loss and damage of the plaintiffs.

10. The plaintiffs have frequently applied to the defendant, and requested him to discontinue the use of their said invention, and the infringement of their said patent, and to come to an account with the plaintiffs for the profits made by the defendant by such use and infringement; but the defendant has refused to comply with such requests.

The plaintiffs pray as follows:—

1. That an account may be taken of the profits made by the defendant from the sale of looped fabrics manufactured by him by means of machines constructed according to the plaintiffs' said invention, or constructed upon the principle of, or only colourably differing from, the said invention; and that the defendant may be decreed to pay to the plaintiffs what, upon taking such accounts, shall be found due from him.

2. That the amount of the damages sustained by the plaintiffs, by reason of the defendant infringing their said letters patent, beyond the amount which, upon taking the account aforesaid, shall

appear to be the profits made by the defendant as aforesaid, may be ascertained by and under the direction of this Honorable Court; and that the defendant may be decreed to pay such amount to the plaintiffs.

3. That the defendant, his servants, agents, and workmen may be restrained, by the order and injunction of this Honorable Court, from making, using, or selling machines for the manufacture of looped fabrics constructed according to, or upon the principle of, or upon any principle only colourably differing from, the plaintiffs' said invention; and from selling looped fabrics manufactured by means of any such machine: except such fabrics shall have been manufactured by the plaintiffs, or some person duly licensed by them.

4. That the defendant may pay the cost of this suit.

5. *General relief, see ante,* No. 29 (*o*).

44. *Bill for appointment of Receiver at the instance of alleged heir, pending litigation.*

44. Bill for appointment of a receiver of real and personal estate, at the instance of alleged heir at law and next of kin; pending litigation as to his title.

Title—and address of bill: see ante, No. 29.

The Bill of Complaint of S. W., of, *&c.*, the above-named plaintiff,

Sheweth, as follows:

1. M. E., late of, *&c.*, widow, was for many years prior and down to, and at the time of her death hereinafter mentioned, seized or otherwise well entitled in fee simple of or to real estate of large value: consisting of houses and hereditaments situate in the counties of M. and E., and elsewhere.

2. The said M. E. was also, at the time of her death, possessed of or entitled to a large leasehold estate: consisting of houses and hereditaments situate in the counties of M. and E., and elsewhere; and also of or to a large personal estate: consisting of money, securities for money, and other particulars of very large value.

3. The said M. E. died intestate on or about, *&c.*, a widow, and without issue.

4. At the time of the death of the said M. E. the plaintiff was, and he is, her heir-at-law: being the eldest son of S. W. the younger, late of, *&c.*, deceased, who was the

(*o*) For another form, see post No. 49.

only brother of the said M. E., and who died in her lifetime. The said S. W. the younger, and the said M. E., were the son and daughter of S. W. the elder of, *&c.*, and M. his wife, who died many years ago.

5. The plaintiff was also at the time of the death of the said M. E., and he is now, one of her next of kin according to the statutes for the distribution of the estates and effects of intestates. The only other next of kin of the said M. E. were and are E., now the wife of J. G., A. W., and J. W.: the only other children of the said S. W. the younger who were living at the time of the decease of the said M. E.

6. Shortly after the death of the said M. E., untrue information was given to Her Majesty's Attorney-General for the Province of Ontario, that the plaintiff and his said brother and sister were illegitimate, and that the said M. E. had died without leaving any lawful heir or next of kin; and thereupon, and on the —— day of ——, 186—, a caveat was entered in the office of the Surrogate Clerk in Chancery by Her Majesty's Attorney-General for Ontario, on behalf of Her Majesty, against the grant of letters of administration of the effects of the said intestate to any except such person as should be nominated by or on behalf of her Majesty.

7. The plaintiff, as such heir at law of the said M. E., has commenced divers actions of ejectment against the tenants in possession of divers parts of the said M. E.'s real estate, to recover possession thereof; and Her Majesty's said Attorney-General has undertaken to defend such actions on behalf of the tenants in possession; but some considerable time must elapse before such actions can be tried, or the title of the plaintiff as such heir at law can be determined.

8. In the meantime the rents of the said M. E.'s real estate: which consists in great part of divers small houses and tenements, let to divers persons as weekly tenants: have run into arrear; and the tenants in possession refuse to pay any rent to the plaintiff; and very large sums are due in respect of the same rents; which are in danger of being lost, and in fact very large sums have already been lost in respect thereof.

9. The plaintiff has applied to her Majesty's Surrogate Court of the County of Y. for the grant of letters of administration of the estate and effects of the said M. E. to him, as the lawful nephew, and one of the nearest of kin of the said M. E.; but by reason of the grant of such letters being opposed by Her Majesty's said Attorney-General, un-

der the circumstances aforesaid, the right to such letters of administration is now under litigation; and some time must necessarily elapse before the right of the plaintiff thereto can be determined.

10. Under the circumstances aforesaid there is no personal representative of the said M. E.

11. For the reasons aforesaid, the rents of the leasehold estate of said M. E.: which consists of divers small houses let out to weekly tenants: are likewise in arrear, and in danger of being lost; and a large portion thereof has already been lost.

12. Moreover, the houses and buildings on the said estate are falling into bad repair, and they require considerable outlay to keep them in proper condition; and the covenants to repair and insure contained in several of the leases under which the said M. E.'s leasehold estate is held have been broken; and the said leases are liable to forfeiture; and, indeed, the landlords of some parts of the said leasehold estate have already entered upon the same for breaches of covenant: whereby the same have become lost to the said intestate's estate.

13. The moneys and other personal estate of the said M. E. are likewise in danger of being lost for want of some person to collect and get in the same.

14. The plaintiff submits that some proper person or persons ought to be appointed to receive the rents and profits of the said M. E.'s freehold and leasehold estates, and to collect and get in her personal estate, as hereinafter prayed.

15. At the time of the death of the said M. E., there were in her house divers deeds, books, and documents belonging to her, and relating to her real and personal estate, and such deeds, books, and documents were taken possession of on the part of her Majesty; and the same are now under the control of Her Majesty's said Attorney-General; and the plaintiff submits that the same ought to be produced and handed over to such person or persons as may be appointed to be such receiver or receivers as aforesaid, for the purpose of facilitating the receipt of the rents and profits of the said real and leasehold estate, and the receipt and getting in of the said intestate's other personal estate.

The plaintiff prays as follows:

1. That some proper person may be appointed to receive the rents and profits of the real estate of the said M. E., and to let and manage the

same: until such time as the plaintiff's title shall be determined in the said action at law.

2. That some proper person may also be appointed to receive the rents and profits of the leasehold estates of the said M. E., and to let and manage the same, and to receive, collect and get in her personal estate: pending the aforesaid litigation in Her Majesty's Surrogate Court of the County of Y——.

3. That all deeds, books, and documents now under the control of Her Majesty's said Attorney-General, belonging or relating to the real and personal estate of the said M. E., may be delivered over to the person or persons so to be appointed, or that the same may be deposited in this Court: for the purpose of enabling such person or persons to refer to and use the same, as may be necessary.

4. That for the purposes aforesaid all usual and necessary directions may be given, and inquiries directed.

5. *General relief: see ante,* No. 29.

45. Bill for limitation of liability of ship-owner, under the Merchant Shipping Acts.

45. *Bill for limitation of liability of Ship-owner under Merchant Shipping Act.*

Title—and address of bill: see ante, No. 29.

The Bill of Complaint of T. G. (*and five others*), all of S., in the county of D., and severally ship-owners, the above-named plaintiffs,

Sheweth, as follows:

1. The plaintiffs are the owners of the British brig Edith Mary, of 248 tons burthen, as per register.

2. The said brig Edith Mary was, on Saturday, the 13th of February, 1864, on a voyage, bound northward, in ballast; and during a severe gale of wind on that day, when off Filey, in Yorkshire, the said brig came into collision with a vessel called the Thomas Barker; and by such collision the said Thomas Barker was sunk and totally lost, and all the crew but two were drowned.

3. The said Thomas Barker was the property of the defendant T. B.; and the vessel was laden with coal, the property of the defendants the C. G. C., L. There was not any passenger on board the said Thomas Barker.

4. The defendants E. D., E. T. S., J. B., M. B., A. C. E., M. B., and M. P. are respectively the legal personal repre-

sentatives of T. D., T. R. S., J. B., J. B., R. E., W. B., and R. P., who formed seven of the crew of the said Thomas Barker, and who were respectively drowned. J. D., another of the crew of the said Thomas Barker, was drowned, but he has not any legal personal representative. The defendants, W. C. W. and J. M. D., the only other members of the crew, survived the said collision, and are now living. All the crew of the said Thomas Barker had on board the said vessel, at the time of the said collision, clothes, sea chests, bedding, and other chattels.

5. No passengers or cargo were on board the Edith Mary at the time of the collision aforesaid.

6. The defendant T. B. has threatened to take proceedings against the plaintiffs, as owners of the Edith Mary, to recover from them a very large sum for the loss incurred by him through the said collision. The defendants, E. D., E. T. S., J. B., M. B., A. C. E., M. B., and M. P., have severally commenced actions in Her Majesty's Court of Q. B., at Toronto, against the plaintiffs, to recover from them very large sums of money by reason of the loss of the lives of the seamen aforesaid, and the loss of their clothes and property; and such proceedings are still pending. The defendants W. C. W. and J. M. D. also threaten proceedings against the plaintiffs for the loss of their clothes and baggage; and the defendants, the C. G. C., L., claim a large sum of money from the plaintiffs for the loss of the cargo of the Thomas Barker, by the collision aforesaid.

7. The total amount of the several claims exceed by a large amount the sum of $1984; which is the value of the Edith Mary, reckoned at £8 sterling per registered ton.

8. The plaintiffs admit that they are answerable in damages, in respect of the matters aforesaid, in manner mentioned in Part 9 of the Merchant Shipping Act Amendment Act, 1862, to the extent of £8 sterling per registered ton of the Edith Mary; which the plaintiffs submit is, according to the said Act, the limit of their liability where there has been no loss of life of, or personal injury to, any passenger; and they are desirous of having such limit of liability declared, and the amount thereof distributed, under the direction of this Honorable Court.

The plaintiffs pray as follows:

1. That the amount of the plaintiffs' liability in respect of the matters aforesaid, according to the said Act, may be declared and distributed between the defendants, and all other persons

who shall establish claims against the plaintiffs in respect of the matters aforesaid, by and under the direction of this Honorable Court.

2. That in the meantime the defendants, and each of them, may be restrained, by the order and injunction of this Honorable Court, from prosecuting the said actions so already commenced as aforesaid, and each of them, and from commencing and prosecuting any other action or actions against the plaintiffs, or any of them, touching the matters aforesaid, or any of them.

3. *General relief, see ante,* No. 29.

46. Bill by judgment creditor to set aside deed from his debtor to a third party as fraudulent and void.(*p*)

46. *Bill to set aside fraudulent conveyance.*

Between W. E. S. and A. McI.....Plaintiffs
and
R. G., M. A. E. G. and R. L., Defendants.

City of Hamilton.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of W. E. S. and A. McI., of the City of Hamilton, Merchants,

Sheweth:

1. The plaintiff's above named recovered a judgment in the County Court of the County of Wentworth, on the 12th day of September, A. D. 1862, against R. G., a defendant hereto for $347.99 damages and $42.45 costs, and on the same day caused a writ of *fieri facias de bona* to be issued thereon, and placed in the hands of the Sheriff of Oxford, being the proper Sheriff in that behalf, indorsed to levy the above sums and two dollars and fifty cents for that writ and Sheriffs' fees, poundages and incidental expenses out of the goods of the said R. G.

2. The said writ against the goods and chattels of the said R. G. was afterwards duly returned, *nulla bona* by the said Sheriff.

3. On the 29th day of May, A. D. 1866, the plaintiffs caused a writ of *fieri facias de terris* to be issued and placed in the hands of the Sheriff of the United Counties of Huron and Bruce, indorsed to levy the above sums for damages and costs, and $5.00 for writs and Sheriff's fees, poundages and incidental expenses out of the land and

(*p*.) The forms Nos. 46 to 61, and 71 to 91 inclusive, are taken from pleadings actually used in our own Courts, with very slight variations.

tenements of the said R. G., and the said writ now remains in the hands of the said Sheriff of the United Counties of Huron and Bruce.

4. The said judgment remains wholly due and unsatisfied.

5. On or about the 5th day of September, A. D. 1864, the said R. G., with the intent and design of defeating, delaying, and hindering the plaintiffs and his other creditors in the recovery of their debts, purchased the following property, viz: Lot No. in Sparling's Survey, Seaforth, Township of McKillop, with his own money, from one G. F., and took the conveyance thereof with the intent aforesaid, in the name of M. A. E. G., his wife, who became a party thereto for the purpose of assisting her said husband in his said intent and design, and without any consideration moving from her for the same.

6. By an indenture of Bargain and Sale by way of Mortgage purporting to have been made on the 26th day of January, 1866, between the said R. G. and the said M. A. E. G. of the first part, and R. L. another defendant hereto of the second part, the said R. G. and M. A. E. G. purported to convey the said Lot No. to the said R. L. in fee subject to a proviso to become void on payment of the sum of $250, as therein mentioned.

7. The said Indenture of Mortgage was registered on the 30th day of the said month of January.

8. The plaintiffs charge that the said Indenture of Mortgage was made and executed by the said R. G. and M. A. E. G. with the intention and design of defeating, delaying or hindering the plaintiffs and the other creditors of the said R. G. in the recovery of their said debt: That the said R. L. advanced no money nor was there any consideration for the said mortgage: that the said R. L. became a party thereto with the design and intention of aiding and assisting the said R. G. to defeat, delay or hinder the plaintiffs, and his other creditors in recovering their debts.

The plaintiffs therefore pray:

1. That they may be paid the amount of the said judgment together with interest thereon and the costs of this suit: and in default thereof that the said land and premises may be sold for the satisfaction thereof and the proceeds of such sale applied accordingly.

2. That the said Conveyance to the said M.A. E.G. and the said Indenture of Mortgage may

be declared fraudulent and void as against the plaintiffs, and may be set aside or postponed to them.

3. And for that purpose that all proper directions may be given and accounts taken.

4. And that the plaintiffs may have such further and other relief as the circumstances of the case may require.

And the plaintiffs will ever pray, &c. *(q)*.

47. Bill by judgment creditor to obtain equitable execution against his debtor.

47. *Bill by Judgment Creditor for Equitable Execution.*

In Chancery.

H. McM..... .....Plaintiff,
and
W. G..... .....Defendant.

City of Hamilton.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of H. McM. of the City of Hamilton, carpenter,

Sheweth as follows:

1. That the plaintiff, on the 10th day of April, A.D. 1872, in the Court of Queen's Bench for the Province of Ontario, at Toronto, by the Judgment of the said Court, recovered against the Defendant $362 for damages, together with $84.90 for his costs of suit, which said Judgment is still in force and unsatisfied.

2. On the said 10th day of April, the plaintiff sued out of the said Court of Queen's Bench, on the said Judgment a writ of *fieri facias* against the goods and chattels of the said defendant, and the same was duly indorsed with a direction to the Sheriff of the County of Wentworth to levy the said sum of $362 damages, and the said sum of $84.90, taxed costs, and also $12 for that writ, and one against lands, with interest from the said 10th day of April, together with his own fees, poundage and incidental expenses: and the said writ so indorsed was duly delivered to the said Sheriff on the said 10th day of April, to be executed.

3. On the said 10th day of April, the plaintiff sued out of the said Court of Queen's Bench, on the said Judgment, a writ of *fieri facias* against the lands and tenements of the said defendant, and the same was duly indorsed with a direction to the Sheriff of the said County of Went-

(q) For other forms, see Nos. 54, 57.

worth, to levy the said sum of $362 damages, and the said sum of $84.90, taxed costs, and also $12 for that writ, and one against goods and chattels, with interest from the said 10th day of April, together with his own fees, poundage, and incidental expenses; and the said writ, so indorsed, was delivered, to the said Sheriff, on the said 10th day of April, to be executed.

4. That both of the said writs are now in the hands of the said Sheriff for execution, and the said Judgment has not been satisfied either in whole or in part.

5. That the said Sheriff was and is unable to execute either of the said writs, the defendant not having any goods or chattels, or any lands which can be seized or attached by him under either of the said writs, or by any process at law.

6. The defendant has contracted to purchase from Her Majesty a certain parcel of land known as (*describing land*) and has paid part of the purchase money therefor, and upon payment of the balance of the said purchase money, which amounts to $120 or thereabouts, he is entitled to obtain a Grant from Her Majesty of the said lot.

8. The said defendant now is entitled, to a valuable equitable interest in the said lands as purchaser thereof, as aforesaid, which interest ought to be made available for the payment of the said Judgment of the said plaintiff, and is far more than sufficient to satisfy the same, but the same cannot by means of the said common law writs, or by any other process or proceedings capable of being had or taken at law be levied upon by the said Sheriff, or otherwise made available for the satisfaction of the said Judgment or of any part thereof.

1. The plaintiff therefore prays that the defendant may be ordered to pay to the plaintiff the amount due to him as aforesaid with the costs of this suit.

2. And in default thereof the execution of his said Judgment may be aided by this Honorable Court, and the said equitable interest may be seized, and sold in such manner as to this Honorable Court may seem meet; and the proceeds applied in satisfaction of the said Judgment, and of the subsequent costs attendant thereon including the costs of this suit.

3. That in the event of a sale of the said lands the plaintiff may be allowed to pay up the arrears due to Her Majesty in respect of the said

lands, and to add the amount which he may so pay to his said debt, and that the same may be ordered to be repaid to the plaintiff, out of the proceeds of such sale.

4. That the defendant may be ordered to pay the costs of this suit.

5. And that the plaintiff may have such further and other relief as may, to your Lordships, seem meet.

And the plaintiff will ever pray, &c.

48. Bill to declare defendants, assignees in insolvency, trustees for plaintiff, as to part of a judgment obtained by the insolvent against a debtor of both. (r.)

48. *Bill to declare assignees of an insolvent, trustees for the plaintiff in respect of part of a judgment recovered by the insolvent.*

In Chancery.

Between I. McM.....Plaintiff,
and
F. M. W. and A. McK. and R. J. H
Defendants.

City of Hamilton.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of I. McM., of the City of Hamilton, in the County of Wentworth,

Sheweth as follows :

1. One J. C. T., formerly of the City of Hamilton, Hotel-keeper, was indebted to the plaintiff in the sum of $1000, for money lent and advanced by him to the said T., and as evidence thereof, your complainant took from said T. his two promissory notes for $500 each, one of them dated the 30th January, 1862, and the other dated the 12th November, 1862, both bearing interest at six per centum per annum from their respective dates, and both made by J.C.T.

2. J.C.T. was also largely indebted to one R.J.H., a defendant hereto upon promissory notes, and having made default as well in paying the amount due on the notes to the plaintiff, as in paying those to H. the said H. was about to give instructions to his attorneys to bring an action for the recovery of those due to him and proposed to the plaintiff that the plaintiff's notes should be included in the same action, to which the plaintiff assented and delivered them to H. without any consideration and for that purpose only.

3. Shortly afterwards, and on the 9th of August in the

(r.) *Quære* whether this Bill would lie now. See Insolvent Act, 1875, s. 125, *Crombie v Jackson*, 34 U. C. Q. B., 583

year 1864, H. instructed his attorneys to bring an action against T. for eleven promissory notes including the two belonging to the plaintiff: an action was accordingly brought in the Court of Queen's Bench, in the name of H. against T., and such proceedings were thereupon had that judgment was obtained thereon on the 28th day of August, in the year 1864, for the sum of $13,369.26 damages, and $18.48 costs, and on the 31st day of August, in the same year, a writ of *fieri facias de bonis* issued upon that judgment, was placed in the hands of the Sheriff of the County of Wentworth, indorsed to levy these sums, fees for writ, and sheriffs' fees of the goods and chattels of T.

4. Of the amount for which judgment was so obtained, and which was required to be levied, $1000 of principal money and interest upon $500, from 30th of January, 1862, and upon $500 from 12th of November, 1862, till the date of the judgment, amounting in all to $1131.25, were the property of the plaintiff.

5. On the 4th of November, 1864, H. signed an instrument, to which the plaintiff craves leave to refer, declaring that he was a trustee of the said judgment for the plaintiff to the extent mentioned in the last preceding paragraph.

6. H. became insolvent, and on the 10th of November, 1864, the defendants W. and McK. were duly appointed assignees of his estate under the Insolvent Act of 1864.

7. While H.'s writ against the goods of T. was in the Sheriff's hands there were other writs also in his hands against the goods of T. and against the goods of H., the priorities of which were in dispute, as also the property affected thereby, and it was agreed by T.'s creditors that the chattels seized under the writs against his goods should be sold by the Sheriff and the proceeds placed in the hands of a trustee, to be paid to such one or more of the creditors as should be eventually found and declared entitled thereto.

8. The sale accordingly was made by the Sheriff and a large sum realized thereby and deposited in the hands of a trustee. The respective rights of the execution creditors were the subject of litigation in this Court between the defendants as assignees of H. and other parties, but to which the plaintiff was no party and it was ultimately and recently determined that the defendants W. and McK. as such assignees were entitled to the proceeds of the sale, and the trustees in pursuance of a decree of

this Court to that effect, delivered over the proceeds of the sale in his hands to the defendants.

9. The plaintiff submits that under the Insolvent Acts, only the beneficial interest of the insolvent H. passed to the assignees, the defendants W. and McK., and that of the proceeds of the sale which have reached their hands in the manner detailed above, they are trustees for the plaintiff to the extent specified in the fourth paragraph.

10. The plaintiff has submitted to the defendants W. and McK., affidavits and all necessary and reasonable proofs of the correctness of his claims establishing his title to the portion of the proceeds of the sale claimed by him, but they have refused to pay over the same to him or any part thereof.

1. The plaintiff prays that it may be declared that the defendants were and are trustees of the said judgment and the money realized by the said sale to the extent mentioned in the fourth paragraph of this Bill.
2. And that the defendants W. and McK. may be ordered to pay the same to him with the interest accrued thereon or so much as has been realized thereon from the date of the judgment.
3. And that the plaintiff may be declared entitled to his costs from the defendants, W. and McK. or out of the insolvent's estate.
4 And for that purpose that all proper directions may be given and accounts taken.
5. And that the plaintiff may have such further and other relief as the circumstances of the case may require, and the plaintiff will ever pray, &c.

49. Bill to restrain infringement of patent, and for an account.

49. *Bill to Restrain Infringement of Patent and for an Account.*

In Chancery.

Between S. N.....Plaintiff.
and
J. W.....Defendant.

Town of Woodstock.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of S. N. of the City of Hamilton, Manufacturer,

Showeth as follows:

1. By Letters Patent under the Great Seal of the Province of Canada, bearing date the tenth day of April

A.D. 1863: Reciting amongst other recitals that M. N. then of the Town of Brantford, in the County of Brant, Builder, had then lately made application by petition to the Governor of said Province, in the manner provided by law, setting forth amongst other things that he claimed to be the original inventor or discoverer of "M. N.'s Economical Drum-heater," which said invention or discovery might be shortly described, reference being first had to the specification and drawing annexed to and forming part of such Letters Patent in the words in such Letters Patent in that behalf used, Her Majesty, by and through Her Governor of Her said Province of Canada, did for herself, her heirs and successors give and grant unto the said M.N., his heirs, lawful representatives and assigns the full and exclusive right and liberty of making, constructing and vending to others to be used, the said invention or discovery within the said Province of Canada, in such manner as to said M.N., his heirs, lawful representatives and assigns or any of them should seem meet for and during and unto the full end and term of fourteen years from the date of such Patent, and to the end that the said M.N., his heirs, lawful representatives and assigns, and every of them might the more effectually have and enjoy the full benefit and sole use, exercise and enjoyment of the aforesaid invention and discovery in pursuance of the statute in such case made and provided, Her said Majesty did by the said patent for herself and her heirs and successors require and strictly command all and every person or persons, bodies politic and corporate, and all her subjects whomsoever of what state, quality, name or condition, so ever they might be within her said Province of Canada, that neither they nor any of them at any time during the continuance of the said term of fourteen years thereby granted either directly or indirectly, should make, use or put in practice the said invention or discovery or any part of the same so attained unto and invented by said M.N. as aforesaid, nor in any wise counterfeit, imitate, or resemble the same, nor make nor cause to be made any addition thereto or subtraction therefrom whereby to pretend himself, herself, or themselves the inventor or inventors, deviser or devisers thereof, without the license, consent or agreement of the said M.N., his heirs, lawful representatives or assigns, in writing under his or their hands first had and obtained on that behalf upon certain conditions in said Patent set forth, and amongst others that the said Letters Patent should be void if the said short description and specification and drawing did not con-

tain the whole truth relative to said invention or discovery.

2. Said M.N. so applied for such Letters Patent and the same were so granted under and by virtue of the Thirty-fourth Chapter of the Consolidated Statutes of Canada, entitled an Act respecting Patents for invention, and the said M.N. at the time of his said discovery and invention and when he so applied for and when he so obtained such Letters Patent was a subject of Her Majesty and a resident in the then Province of Canada.

3. The said specification was also in writing, and in duplicate and signed by said M.N., and attested by two witnesses, and such drawing was also in duplicate and such specification and drawing, together with such Letters Patent were duly recorded and enrolled in the office of the then Minister of Agriculture of such Province of Canada, whereby and by such statute such drawing shall be considered and is a part of the said specification and the said short description of such invention and discovery so contained in such Letters Patent as aforesaid shall be considered and is a mere reference to the fuller description and more ample details contained in such specification so including such drawing.

4. Such specification so including such drawing cannot be conveniently fully set forth in this Bill, and therefore the plaintiff refers your Lordships thereto and to said Letters Patent for the full description and details of the said invention and discovery for which such Letters Patent were so granted as aforesaid.

5. The said patent invention in so far as the purposes of this suit are concerned, consists and in the specification so including such drawing is described as consisting of a drum-heater inside a drum of cylindrical shape, closed at the sides and the ends thereof except as hereinafter mentioned, and an air pipe extending from the floor to the bottom of such drums, and passing upwards through the centre and top of such drum and drum-heater, which air pipe is open at the top and bottom thereof and has openings in the sides thereof where it rests upon the floor, but otherwise is closed at the sides; and which drum-heater consists of a spiral flue extending from the bottom to the top of such drum and passing several times around inside such drum and outside such air pipe, into and through which spiral flue the fire heat of a stove passes by means of an opening at the bottom of such drum upwards, and escapes through an opening in the top of such drum into the stove pipe, heating in such its passage the air of the

room in the house or public building where such drum-heater and air pipe may be placed, and also the air inside such air pipe thereby causing such air inside such air pipe to ascend and be discharged through the opening at the top of such air pipe and the cold air at the floor to be thereby drawn in at the bottom of such air pipe, passed up such air pipe, heated in its passage and so discharged through such opening at the top of such air pipe. And the said specification including the said drawing, besides describing in detail the various parts of the said machinery and its mechanism, construction, operation, concludes with a claim which in part is as follows, viz: The said M.N. thereby claimed as his invention such spiral flue in connection with such air pipe and also that such his invention is peculiarly adapted for heating rooms in houses and public buildings, and that by its use not only is a great saving of fuel effected but the air in rooms is rendered of a more uniform and equal temperature at top and bottom.

6. The said patent invention was at the time of the discovery thereof and at the time of the said application for the said Letters Patent therefor, and at the time of the said granting of such Letters Patent therefor, new, and useful, and unknown, and unused in said Province of Canada, and the conditions on which the said Letters Patent were granted have been complied with, the said Letters Patent are now in full force and unrevoked, and in no wise void or voidable.

7. Upon obtaining such Letters Patent the said M. N. and the plaintiff entered into co-partnership in the manufacture and sale of such drums and drum-heaters according to the said patent invention, and continued in such trade and business during the lifetime of said M. N.

8. Said M. N. on the 27th day of December, A.D. 1856, made his will of that date, and on the 10th day of December, A.D. 1864, made a codicil thereto, to each of which documents the plaintiff refers your Lordships, and the said M. N. thereby willed the plaintiff should thenceforth carry on such business, give one-half of the profits thereof to E. N. said M. N.'s wife, and retain the residue for the plaintiff's own use. And the said M. N. thereby willed and devised all other his estate and effects, real, personal and otherwise, which should belong or appertain to him at his decease to his said wife, and thereby made her sole executrix of his said will.

9. The said M. N. afterwards on the 10th day of December, A. D. 1864, died, leaving the plaintiff and his said

wife, him surviving, and without revoking the said will or codicil thereto, and they are both still in full force.

10. The said E. N. thereupon accepted such executorship and devises to her and duly proved such will in the Surrogate Court of the County of Brant, which was the proper Surrogate Court in that behalf, and she was and is his sole legal personal representative.

11. Such executrix of said M. N., by indenture dated the 22nd day of May, A.D. 1866, made between her of the first part and the plaintiff of the second part, for and in consideration of $300 therein mentioned, sold and assigned to the plaintiff all her interest then to come in such Letters Patent, and in the said business.

12. Such will and codicil were each witnessed by two credible subscribing witnesses, and published and declared by the said M. N. in the manner by the statutes and laws of the said Province of Canada, required for the passing of real and personal estate therein.

13. The said indenture of assignment was duly recorded on the 3rd day of July, A.D. 1866, in the Bureau of Agriculture and Statistics of said then Province of Canada.

14. The plaintiff has ever since the death of the said M. N., under and by virtue of the premises, carried on and is still carrying on the said business in his own name, and excepting, as hereinafter mentioned, all of such drums and drum-heaters manufactured and sold in such business, have always been and still are of the outward form of that shewn and designated by the letter LR. A. upon the said drawing, but some thereof vary therefrom in some immaterial particulars, scarcely capable of detection, and all of them were and are constructed according to the said patent invention, and those constructed by the plaintiff and M. N. in his lifetime, and by the plaintiff since his death, have been and are offered for sale, and sold, some thereof by the trade name of "M. N. Economical drum-heater," others thereof by the trade name of "N's patent heater," and the residue thereof by the trade name of "N's patent drum-heater," and each and every thereof had and has thereupon a raised bronze label, on which was inscribed "M. N's. patent, patented April 10th, 1865."

15. These drums and drum-heaters have, during all that time, been favourably known to the trade and to the public by such outward form thereof. and by each of those trade names, by such bronze-coloured label thereof, and have been and are, with continually increasing favour,

known and inquired for and purchased by each of such trade names, as well as by such bronze labels, to the great gain and profit of the plaintiff in his said trade and business.

16. The defendant was never licensed or empowered by the plaintiff, nor by the said M. N., his heirs, lawful representatives or assigns, to make or sell machines wholly or in part thereof in accordance with the said patent invention or any part thereof, or in any wise to make, use or put in practice said patent invention, or any part thereof, or in any wise to counterfeit, imitate or resemble the same, or make or cause to be made any addition thereto, or subtraction therefrom, whereby to pretend himself the inventor or deviser thereof.

17. Yet the defendant, on the 29th day of February, A.D. 1868, or thereabouts, contrary to the provisions of the said Letters Patent, and of the statutes in that behalf, and within the now Province of Ontario, counterfeited, and imitated the said patent invention by simply changing the form and proportion of, and making additions to, and subtractions from said "M. N.'s economical drum-heater," so patented as aforesaid, for the purpose of pretending himself the inventor of such counterfeit imitation and resemblance thereof, and the defendant then named his said pretended invention and discovery, "J.W.'s economising heater for wood and coal."

18. The said pretended invention so named and designated "J. W.'s economizing heater for wood and coal," was and is according to, although it in fact, only imperfectly, and in an unnecessarily complex manner carries out the principle of the said patent invention, so as aforesaid named and designated "M. N.'s economical drum-heater," and, in fact, only varies therefrom by and through the substitution, in the said pretended invention, of old and well-known, and less simple and less effective mere mechanical equivalents for the said spiral flue and the portion within the drum of the said air-pipe of the said patent invention, without any novelty or invention in such substitution, and without any useful purpose being thereby attained by means whereof all drum-heaters made according to such pretended invention became much sooner filled and encumbered with soot, and are much more difficult to cleanse the soot from, and give out far less heat, and in a far less degree equalize the temperature at the top and bottom of the rooms in which they are used, than those constructed according to the said patent invention.

19. Nevertheless, the defendant applied to the Governor of the Province of Ontario for Letters Patent in that behalf, and upon such his application pretended and misrepresented to the Governor of such Province that his said pretended invention was a new and useful invention and discovery, and by means of such pretence and misrepresentation obtained Letters Patent under the Great Seal of the said Province of Ontario, dated the 10th day of March, A.D. 1868, and similar in form to the Letters Patent so issued to the said M. N. as aforesaid, to be issued to him, the defendant in that behalf, which Letters Patent so issued to the defendant were and are upon and subject to the following amongst other conditions contained therein: that is to say, that if the defendant was not the first discoverer and inventor of the alleged invention therein mentioned, or if the same was known or in use in such Province before the same was invented by the defendant, and before his application for those Letters Patent, then and in every such case such Letters Patent should cease and determine, and become null and void.

20. The plaintiff charges that the defendant was not the first discoverer or inventor of the alleged invention in such patent, and that such alleged invention was known and in use in said Province before the same was invented by the defendant, and before his application for such Letters Patent, and submits that by reason thereof such Letters Patent always were and are null and void.

21. The defendant now pretends the said pretended patent invention is an improvement upon the said patent invention of the said M. N., and is as such new and useful and patentable, while the plaintiff charges the contrary, and that the said pretended patent so issued to the defendant as aforesaid was not granted in respect of any alleged improvement, and that the defendant does not in his specification in that behalf so claim.

22. The defendant has continually since the said issue to him of the said Letters Patent for his said pretended invention, and under colour and pretence thereof, and within the Province of Ontario, and in fraud and wrong of the plaintiff, and to his great injury, manufactured, used and sold by a very great number of persons, and amongst others, by one W. B., one M. H., and one J. C., for profit and gain to the defendant in that behalf, great numbers of drums and drum-heaters of such close outward resemblance to those drums and drum heaters so manufactured and sold by the plaintiff as aforesaid as not to be

distinguishable therefrom, unless by very minute inspection and examination, and constructed according to said patent invention of the plaintiff, but not thoroughly and properly carrying out the principles thereof, and being by reason thereof inferior articles, and of less value than those of the plaintiff above mentioned.

23. The defendant also in fraudulent and wrongful imitation of the said trade names and bronze-coloured label of the plaintiff, all of which were, in fact, well-known to the defendant, labelled and designated each of such drums or drum-heaters so by him, the defendant, manufactured and sold and licensed, caused and procured to be manufactured and sold as aforesaid, with a label in shape, size, colour and general appearance closely resembling the said label of the plaintiff, but having thereon the words "W.'s Economizing Heater," patented March 10th, 1868, and also advertised and offered for sale such drums and drum-heaters of defendant by trade names closely resembling those of the plaintiff above mentioned, and also caused to be published in the public newspapers of Ontario, articles in the form of editorials, falsely, wrongfully and maliciously slandering and depreciating the said patent invention, drums and drum-heaters of the plaintiff, and comparing them falsely and disparagingly to and with the said pretended patent invention of the defendant and his said drums and drum-heaters, and in particular the defendant caused one of such false, wrongful, malicious, defamatory editorial articles to be published in the issue of the 30th December, A.D. 1868, of the Hamilton *Evening Times* newspaper, of the City of Hamilton, in the Province of Ontario, and in the issue of the 31st December, A.D. 1868, of the Hamilton *Evening Times*, of same place, to which the plaintiff refers your Lordships for particulars thereof, and the defendant threatens and intends to, and unless restrained as hereinafter prayed will, continue such grievances.

24. By means of such wrongful and fraudulent devices the defendant has greatly interrupted and injured the plaintiff's said trade and business, and has so sold and so caused and procured to be sold, in divers places in the Province of Ontario, to divers of the public there (who otherwise would have purchased the drums and drum-heaters made by the plaintiff) the said drums and drum-heaters so fraudulently made, and caused to resemble the plaintiff's as aforesaid, and in particular, the defendant so sold and licensed, and caused and procured to be sold two of such drums and drum-heaters so resembling those of the

plaintiff as aforesaid to one D. T., of the Village of Paris, in the County of Brant, in said Province; two more thereof to one G. H., of the same place; two more thereof to one J. B., of the same place; two more thereof to one R. O. C., of the City of Hamilton, in the said Province; two more thereof to E. and G. M., of the same place; two more thereof to W. B., of Hamilton aforesaid; two more thereof to J. M., of Hamilton aforesaid; two more thereof to A. W., of Hamilton aforesaid; four more thereof to the Trustees of the Pearl Street school-house, of St. Mary's Ward, in Hamilton aforesaid; two more thereof to J. W., of Hamilton aforesaid; two more thereof to M. H., of Hamilton aforesaid: two more thereof to G. S., of Hamilton aforesaid; two more thereof to the G. W. R. Coy., at Hamilton aforesaid.

25. The said inferiority of those drums and drum-heaters so sold and licensed, and caused and procured to be sold by the defendant in the manner aforesaid, together with their said similarity in appearance, and in the alleged trade names thereof, and the label prices and labels thereupon to those of the plaintiff, also is calculated to injure, and in fact does wrongfully injure the plaintiff in his said trade and business, by damaging the public reputation of the said drums and drum-heaters of the plaintiff, for which they are designed and likely to be and are often mistaken.

The plaintiff therefore prays as follows:

1. That the said Letters Patent so issued to the defendant as aforesaid may be declared to be and to have always been null and void by reason of the aforesaid misrepresentation and misconduct of the defendant in obtaining the same, and by reason of the said want of novelty, in the said pretended invention of the defendant and by reason of its said want of usefulness and by reason of those Letters Patent including the same invention and discovery, or a material part of the same invention and discovery, as the prior Letters Patent so granted to said M. N. as aforesaid.

2. That the defendant, his agents, servants and workmen may be restrained by the Order and Injunction of this Honorable Court until the hearing of this cause and thenceforth perpetually by the decree of this Court, from manufacturing, using, selling, offering for sale or

licensing or causing any other or others to manufacture, use, sell, offer for sale drums and drum-heaters or other machines constructed according to his said pretended patent invention, and from selling or offering or exposing for sale or disposing of or parting with the custody of any of the said drums or drum-heaters so by the defendant manufactured and offered for sale as aforesaid, or any other similar drums and drum-heaters bearing and having the above mentioned, or any other fraudulent and colourable imitation of the said trade, name and style of the plaintiff thereon without the license and authority of the plaintiff in that behalf.

3. And from manufacturing, using, selling or disposing of or parting with the custody of, unless with the leave, and license of the Plaintiff, any drum-heaters or other machines or any mechanism or apparatus calculated or intended to be used in or as parts thereof made in accordance with the said patent invention of the said M. N. or with colourable deviation therefrom or with the substitution of mere mechanical equivalents for the same or some parts or otherwise in accordance with said patent invention of said M. N., or by simply changing the form or the proportion of the drum-heater or machine; whether the same be or be not also constructed according to the said pretended patent invention of the defendant.

4. That an account may be taken of the gains and profits which the defendant has made as aforesaid and that he may be decreed to pay the same to the plaintiff.

5. That defendant may be decreed to compensate the plaintiff for the damage by him sustained by the wrongful acts of the defendant in the premises, and that all proper directions may be given and accounts taken in that behalf.

6. That the defendant may be decreed to deliver up to the plaintiff, all drum-heaters and other machines, mechanism and apparatus in the possession or power of the defendant which have not been made by the plaintiff, or the plaintiff and the said M. N or the said M. N. or his heirs, lawful representatives or assigns or by their or some of their license or authority

and which have been made according to the said patent invention or with such deviations or substitutions as aforesaid or which are calculated and intended to be used as aforesaid or which have the above mentioned or any other wrongful and fraudulent imitations of the said trade, name and style of the plaintiff thereon.

7. That defendant may pay all the costs of this suit.

8. And that plaintiff may have such further and other relief as may seem meet. (*s*.)

50. Bill to prevent use of a trade-mark.

50. *Bill to prevent use of Trade Mark.*

In Chancery.

Between—E. D., and S. D. D.....Plaintiffs,
and
J. K.....Defendant.

City of Hamilton.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of E. D., of &c., and S. D. D., of &c.;

Sheweth as follows:

1. In the winter of the years 1839 and 1840, P. D., the father of the plaintiffs, who then resided at Taunton, in the State of Massachusetts, invented and compounded a certain medicine of great value, useful in curing many ailments and diseases, and in the early part of the year 1841, commenced to manufacture the same at Fall Rivers, in said State of Massachusetts, in quantities, and applied thereto the trade-mark and name of "Pain-Killer," and by that name and trade-mark sold the same in bottles, on which, and on the wrappers of which, the word "Pain-Killer," was conspicuously printed or impressed, and the said medicine was then called "Pain-Killer," and has ever since been and is now known by that name.

2. The said P. D. was the original and first inventor of the said medicine, and of the said name of "Pain-Killer," therefor, and was the first person who used the name of "Pain-Killer" as a trade-mark as applied to said medicine, by which the said medicine should thereafter be known and sold, and no person but said P. D. ever before had used the said name of "Pain-Killer," or applied the same as a name or trade-mark for any medicine or article of commerce.

(*s*) For another form see No. 43.

3. In the year 1843, the said P. D. removed to Providence aforesaid, where he continued the manufacture of the said medicine and the use of the said trade-mark of "Pain-Killer," as applied thereto in manner aforesaid, and the said medicine acquired great reputation, and large quantities thereof were thereafter continually manufactured and sold by the said P. D. in Canada West, and in the United States of America, Great Britain and many other parts of the world. The said P. D. spent large sums of money in advertising his said medicine and the said trade-mark of "Pain-Killer," as applied thereto, and by these means the same was known to the trade and the general public of Canada West, and elsewhere, by the name of "Pain-Killer," and whenever "Pain-Killer," was asked for in shops and elsewhere, the said medicine so invented as aforesaid by the said P. D. was intended, and was supplied by that name, and that state of facts has continued from the year 1841 down to and at the present time.

4. In the year 1850 the said P.D. sold and transferred to the plaintiff, E. D., one half share or interest in the said medicine, and in the said trade-mark of "Pain-Killer," and the said P. D. and E. D. adopted the name, style and firm "P. D. and Son," and by that name advertised the said medicine and trade-mark in manner aforesaid, and continued in manner aforesaid, at Providence aforesaid, to manufacture the said medicine, and to sell the same in Canada West and elsewhere, and to apply thereto the said trade-mark of "Pain-Killer," and to sell the same by said name in the same way and manner in Canada West and elsewhere, as it is hereinbefore stated, that the said P. D. had done prior to the said sale and transfer to the said E. D.

5. On the 2nd day of May, 1862, the said P. D. died intestate, at Providence aforesaid, having at the time of his decease his fixed place of abode and domicile at Providence aforesaid, leaving him surviving his widow R. D., the said E. D., his only son, and the said plaintiff, S. D. D., his only daughter, and no other child or children, or the descendants of any child, and by the laws of the said State of Rhode Island, in that case and under the said state of facts, the property in the said trade-mark and business thereby, under the circumstances stated in this paragraph, became absolutely vested in the said plaintiff, E. D., as surviving partner of the said P. D., and (on the appointment of said E. D. as administrator of said P. D., as hereinafter mentioned) as the legal personal representative of the said P. D., and the said plaintiffs and R. D. were

the sole next of kin of said P. D., and as such entitled to the whole of the property and effects of the said P. D., and being so entitled the plaintiffs purchased from the said R. D. all her share and interest in the said estate, business and trade-mark of the said P. D., and the said R. D., by deed poll, dated 1st day of January, 1863, duly conveyed and assigned to the plaintiffs all her said share and interest in the said estate of the said P. D., and in the said trade-mark, and the said plaintiffs then agreed to, and did become jointly the owners of the said trade-mark, and of the whole of the estate and effects of the said P. D., and the plaintiffs continued the said business of the said firm of P. D. and Son, under the same name, and also continued the manufacture and sale of said medicines and the use of said trade-mark, by the same means and in the same way and manner in every respect as the said P. D. and E. D. had done, and they still continue the same.

6. On the 10th day of June, 1862, the said E. D. was duly appointed administrator of the personal estate and effects of the said P. D. by the Municipal Court of the City of Providence aforesaid, within the jurisdiction of the said Court.

7. The plaintiffs are now the sole and absolute owners of the said business of manufacturers of the said medicine called "Pain-Killer," and sole and absolute owners of the said trade-mark called "Pain-Killer," applied thereto in manner aforesaid, and carry on the said manufacture and use of said trade-mark in manner aforesaid, at the said factory, in Providence, where the said P. D. carried on the same, and the said medicine of the plaintiffs is still called and known, and by them sold throughout the whole of Canada and elsewhere as aforesaid as "Pain-Killer," and the said trade-mark or name of "Pain-Killer," is still applied thereto as a trade-mark in the way and manner aforesaid, and the same is sold by the said plaintiffs and dealers in said article by the said trade-mark "Pain-Killer," and save in the illegal and fraudulent way and manner in the ninth paragraph of this Bill set forth, there is no other medicine to which the trade-mark of "Pain-Killer" is applied, and whenever medicine called "Pain-Killer" is asked for, the said medicine of the plaintiffs is the article thereby intended, and the said medicine and trade-mark still preserve their said high reputation and value.

8. On the 22nd day of March, 1866, the plaintiffs caused their said trade-mark of "Pain-Killer," as applied to their said medicine, and the bottles, wrappers and packages con-

taining the same, and used by them in manner aforesaid, to be registered as a trade-mark by the Secretary of the Board of Registration and Statistics, at the said Bureau, in strict accordance and compliance with the Statute of Canada, called "An Act to amend the Act respecting trade-marks, and to provide for the registration of designs," passed in the twenty-fourth year of the reign of Her Majesty Queen Victoria, chapter 21, and have procured the certificate of such registration, in accordance with the terms of said Act, and for greater certainty as to the contents thereof, crave leave to refer thereto when produced by the plaintiffs, and such registration remains in full force and effect.

9. The defendant was and is well aware of the facts and circumstances hereinbefore stated, but knowing the value of the said medicine, and the value and reputation of the said trade-mark, applied thereto in manner aforesaid, but intending to defraud the plaintiffs, and to violate the provisions of the said Statute, and to enrich himself at the plaintiffs' expense and deceive the public, has fraudulently manufactured, used and put up, and sold in the City of Hamilton, in Canada West, a certain compound or medicine in colourable imitation of the plaintiffs', and bottled the same, and stamped, affixed, printed and applied to the said bottles and wrappers thereof, the plaintiffs' said trade-mark "Pain-Killer," in imitation of the said trade-mark of the plaintiffs, called "Pain-Killer," in such a way and manner that the public are, by the said fraudulent use of the plaintiffs' trade-mark, "Pain-Killer," deceived and led to purchase the articles so made by the defendant instead of those so made by the plaintiffs, and at lower prices than that of the plaintiffs', whereby the plaintiffs are greatly injured in their trade, and the public defrauded, and by reason of the premises the value of the said trade-mark is greatly injured, and the defendant is actively engaged in carrying on the said fraudulent use of the plaintiffs' said trade-mark in the way and manner in this paragraph set forth.

10. The plaintiffs are unable to discover when the said defendant first commenced to use their said trade-mark in the manner set forth in the next preceding paragraph, but on learning the said facts in the autumn of the year 1866, the plaintiffs sent their agent, W. L., to warn the defendant to desist from his said conduct, and to cease using the plaintiffs' said trade-mark. The said L. then saw the said defendant at his place of business, in Hamilton aforesaid, and gave him express notice of the

registration of the said trade-mark, as set forth in the eighth paragraph of this Bill, and of all the other facts hereinbefore set forth, and requested him to desist from the further use of the plaintiffs' said trade-mark, but, nevertheless, the said defendant fraudulently continues at his said place of business, in Hamilton aforesaid, and elsewhere in Canada West, to use and apply the plaintiffs' said trade-mark to his own medicines in the way and manner hereinbefore mentioned, and thereby to deceive the public, and does in manner aforesaid deceive the public, and defraud the plaintiffs in manner aforesaid, and the defendant by so doing obtains benefits and advantages for himself in fraud of the plaintiffs, and the defendant is now daily selling his said medicine by means of his said fraudulent use of the said trade-mark applied thereto, and the defendant threatens and intends to continue so doing, and will do so unless restrained by the order and injunction of this Honorable Court.

11. The defendant has a large quantity of his said medicines put up and labelled, and marked in manner aforesaid, with the said trade-mark of the plaintiffs, and has offered the same for sale, and by means of the said fraudulent use of the plaintiffs' said trade-mark, is daily selling the same in fraud of the said rights of the plaintiffs, and to their injury.

The plaintiffs pray as follows :—

1. That the defendant, his servants, agents and workmen may be restrained by the order and injunction of this Honorable Court from the further use of the plaintiffs' said trade-mark, "Pain-Killer," and from printing, impressing or applying the same to any bottle or package of any kind, containing medicine manufactured, sold or put up by him, his servants, workmen or agents, or applying the same to any wrapper, package, parcel or other thing, or in any other way using or applying the said trade-mark or name of "Pain-Killer," and that the medicine so put up by the defendant, and fraudulently marked with the trade-mark of the plaintiffs, as set forth in the eleventh paragraph of the plaintiffs' Bill may be destroyed.
2. That the defendant may be ordered to pay the costs of this suit.
3. That an account be taken of the profits in anywise directly or indirectly made by the de-

fendant by the use of the said trade-mark of the plaintiffs.

4. That such other accounts may be taken and orders made, and relief granted, as the nature and circumstances and the Court shall require.

And the plaintiffs will ever pray, &c.

E. M.
Plaintiff's Solicitor.

51. *Bill to correct error in a deed and mortgage.*

51. Bill to correct error in description of lands in Deed and Mortgage.

In Chancery.

Between the Merchants' Bank of Canada, Plaintiffs,

and

E. G., J. B. M., C. G., G. W. B., C. A. S., J. F., C. F., R. J. C., J. A. M., and T. C S., Executrix and Executor of O. T. M., H. McK., and A. K., ...Defendants.

City of Hamilton

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of the Merchants' Bank of Canada.

Sheweth as follows :

1. In and prior to the year 1853, the defendant, H. McK., was the owner in fee simple of a certain parcel of land situate in the City of Hamilton, in the County of Wentworth, described as follows, that is to say : (*copy description of land.*) This property the said H. McK., on the 1st June, 1853, sold to the defendants, G. W. B. and C. A. S., for the sum of $1,375 ; no part of the said money was to be paid down, the agreement being that said H. McK. should convey the said lands to the defendants, G. W. B. and C. A. S., who were upon such conveyance to mortgage the said lands in fee to the said H. McK., to secure payment of the said sum of $1,375, and interest at the rate of six per cent., at the end of ten years from the said 1st June, 1853, with interest payable yearly in the interim. At the time of said sale the said parcel of land was fenced in, a Tavern was built on part thereof, and the whole of said land was used in connection with the said Tavern and then in the occupation of a tenant, and the said Lot surveyed and laid out into Town Lots, and said H. McK. owned no other portion of said Lot number——.

2. In execution of the said agreement the said H. McK., by Indenture dated 1st June, 1853, conveyed the said lands, in fee simple, to said defendants, G. W. B., and C. A. S., who immediately mortgaged the said lands in fee to the said H. McK., to secure the payment of the sum of $1,375, and interest at the times and in the manner hereinbefore mentioned, the said mortgage bearing date on 1st June, 1853, and being made by the said G. W. B. and C. A. S., of the first part, E. the wife of said G. W. B., who merely joined therein to bar her inchoate right to dower, of the second part, and the said H. McK. of the third part, and the said tenant of the said H. McK., by the directions of the said H. McK., attorned to and became the tenant of the said lands to the said G. W. B., and C. A. S., in pursuance of the terms of the said sale. The said deed of conveyance and mortgage of said lands were prepared by the defendants, G. W. B. and C. A. S., and said lands were and are by mere error and inadvertence erroneously described in the said deed and mortgage, the description therein given being incorrect only so far as the metes and bounds of the said parcel are concerned, the said parcel being properly described as to the extent thereof, and as to being a part of said original Township Lot —— now a part of the City of Hamilton as aforesaid, but the point of commencement of the metes and bounds of said parcel and the courses of the boundaries thereof are therein stated in these words, (*copy description,*) the error in said description being that the position of the post therein referred to is stated to be on the limits between lots 13 and 14, instead of on the limits between lots 12 and 13, as the position of said post in fact is, and said post in fact was at the time of making the said deed and mortgage, and now is the north-west angle of King and Wellington Streets aforesaid. The other courses of the boundaries given in the description contained in the said deed are wholly inapplicable to a parcel of land to be contained within said boundaries as the parcel so described would not from the relative positions of said original Township lots 13 and 14, include any portion of said original Township lot 13, beyond the imaginary line forming the extreme west boundary of said lot 13. The said G. W. B., C. A. S., and H. McK., at the time of the execution of said deed and mortgage, believed that the post referred to as on the limit between lots 13 and 14, and being point of commencement was, in fact, the north-west angle of King and Wellington Streets aforesaid, and intended that such angle should be the point of commencement.

3. The said H. McK., by an Indenture dated 2nd January, 1863, and made for valuable consideration between the said H. McK., of the first part, and the Commercial Bank of Canada of the second part, bargained, sold, assigned, transferred and set over to the said Commercial Bank of Canada, their successors and assigns, the said Indenture of Mortgage referred to in the second paragraph hereof, together with the said sum of $1,375 and interest thereon from 1st December, 1859, (all prior interest having been paid,) and the said lands described in the first paragraph hereof, but by error and inadvertence the said lands were and are described in said Indenture of Assignment in the same words as the same are described in the said deed and mortgage, the error therein being of precisely the same nature as that set forth in the second paragraph hereof, the description of the lands given in said assignment being copied from that given in said mortgage, without any knowledge of the error aforesaid. The estate, rights and interest of the said Commercial Bank of Canada in the said lands, mortgage, mortgage money, interest and assignment, became, and were and are vested in the plaintiffs, under and by virtue of an Indenture of union, dated 27th February, 1868, made between the said Commercial Bank of Canada and the Merchants' Bank, whereby the property and effects of the said Banks became amalgamated and vested in the plaintiffs, by their said corporate name, under the provisions of the "Commercial Bank Act, 1867." The said Indenture of union has been duly published in the Official Gazettes, as required by the said Statute.

4. The defendants G. W. B. and C. A. S. sold a portion of the said lands to R. R. W. and D. B. G., under whom the defendants E. G., J. B. M., C., G.. G. W. B., as Executors of A. C., R. J. C., J. A. M., and T. C. S., Executrix and Executor of O. T. M. and A. K., respectively, claim Title. The deeds of conveyance of the said portion sold to said R. R. W. and D. B. G., describe the same correctly as being situated on the north-west corner of King and Wellington Streets, and on such sales the said G. W. B. and C. A. S. delivered possession of the portions so sold to the said R. R. W. and D. B. G.

5. All the interest which accrued due upon the said mortgage made by the said defendants B. and S., to the defendant McK., up to and inclusive of the instalment of interest which fell due on 1st December, 1859, has been fully paid and satisfied, but no further sum has been paid on account of interest, except by receipt of rents and

profits as hereinafter mentioned, and the whole amount of principal thereby secured is now past due and wholly unpaid and unsatisfied.

6. The said Commercial Bank of Canada took possession of a portion of the said lands as Mortgagees as aforesaid, on or about the 19th day of August, A. D. 1863, and of the residue of said lands about the 16th day of September, 1864, and continued in possession thereof till the time of the amalgamation of the said Bank with the plaintiff's Bank hereinbefore mentioned, and the plaintiffs are now in possession of said mortgaged lands.

7. The defendants, other than the defendant McK., are entitled to the equity of redemption of the said mortgaged premises. The defendant G. W. B., as well in his own individual interest as executor of the last will and testament of A. C., deceased, the said R. R. W. and D. B. G., and all the said defendants had actual notice and knowledge of all the facts and circumstances hereinbefore set forth before and at the time they severally acquired their respective estates and interest in the said mortgaged premises.

8. The plaintiffs have offered to the defendants, to join in and execute a proper deed or proper deeds to correct the said errors and requested the said defendants to join in and execute the same or that said defendants, except said H. McK., should pay off the said mortgage, but the said defendants neglect and refuse to comply with said request.

The plaintiffs pray as follows:

1. That the said deeds of conveyance and mortgage and assignment thereof, in the first and second paragraphs of the Bill mentioned, may be rectified by correcting the description of the lands therein referred to so as to describe the said lands as the same are described in the first paragraph of said Bill; and that the plaintiffs may be declared mortgagees thereof, and entitled to have a lien thereon for the said $1,375, and interest.

2. That the plaintiffs may be paid the said sum of $1,375 and interest, and costs of this suit; and in default thereof, that the equity of redemption of the said mortgaged premises may be foreclosed.

3. That for the purposes aforesaid, all other necessary directions may be given and accounts taken; and that the plaintiffs may have such further and other relief as the nature of the case

requires, and to the Court shall seem meet. And the plaintiffs will ever pray, &c.

E. M.,
Plaintiffs' Solicitor.

52. *Bill to enforce covenants in building lease against representatives of lessor.*

52. Bill to enforce covenants of a building lease, against the personal representatives of the lessor.

In Chancery,

Between S.M.....Plaintiff,
and
W. H., W. M. S. and C. S., his Wife, G. R. and M. R., his Wife, J. B. and E. B. his Wife, R. McE, and C. McE., his Wife, J. T. and C. T. his Wife, S. McD., G. B., J. B. and C. W.....Defendants.

City of Hamilton,

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of S. M. of the City of Hamilton, Esquire.

Sheweth as follows:

1. P. H. in his lifetime, of the City of Hamilton, Gentleman, but now deceased, was the owner in fee simple, of lot number one at the Northern corner of York and Hess Streets, on the North side of York Street in the said City, and while so seized by Indenture, dated the 20th day of April, 1854, and made between the said P. H. and one J. McC., the said P. H. demised and leased the said lot to the said J. McC., his executors, administrators and assigns, for the term of eight years from the date of said Indenture, at the yearly rent of $15, payable on the 20th day April of each year during said term; and it was further declared and agreed by the said lease, that the said P. H., his heirs, executors, administrators or assigns, at the expiration of said term should pay or cause to be paid to the said J. McC., his heirs, executors, administrators or assigns, the value of any house or houses, and all other buildings and improvements that the said J. McC., his heirs, executors, administrators or assigns might, during the said term, erect and put up on said premises after a valuation thereof should have been made.

2. The said J. McC. took possession of the said lot under the said lease, during the said term, and erected valuable houses and buildings, and made valuable improvements thereon, and afterwards and during said term, by indenture dated the 4th day of June, 1857, made between said J. McC. and one C. T., the said J. McC. assigned the said

lease, covenants and agreements and said term, and his right to the said buildings and improvements to the said C. T., who also during said term erected valuable buildings and made valuable improvements thereon, and the said C. T., by deed dated the 22nd day of December, 1862, assigned to the plaintiff the said lease and the covenants and provisoes therein contained, and his right to all the said buildings and improvements, and to compensation therefor.

3. The said P. H. died in August, 1855, having first duly made and published his last Will and Testament, dated the 17th day of July, 1855, and a Codicil thereto dated the 30th day of July, 1855, both duly executed so as to pass real estate in Upper Canada, whereby the said P. H. did, amongst other things, devise and bequeath the said lot one to H. S., E. J. and J. K., who were the executors named in his will in trust for the only benefit of R. B. (a grandson of said P. H.), until he should attain the age of thirty years, and then the residue to the said R. B. in fee simple; but if he should not attain the age of thirty years, then in trust for the heirs of the body of the said R. B. in fee simple, and in default of such issue, then in trust for the right heirs of said P. H. By the said Will and Codicil, the said P. H. gave a legacy of $100 to the defendant G. B., a legacy of $100 to said J. B., also a legacy of $1,500 to the defendant S. McD., also a legacy of $200 to the defendant C. W., the said P. H. also devised a certain lot of land to his widow, R. H. in trust for the defendant C. W., subject to certain conditions which have happened; the said P. H. also by his said Will made a certain provision for R. H. his widow, and thereby directed that such provision should be in lieu of the dower of said R. H. as the widow of said P. H., and the said R. H. has accepted such provision in lieu of said dower, and after devising certain portions of his real estate respectively to his daughters, the defendants C. S., M. R., E. B., S. McD., and to his grandson the defendant W. H., and his granddaughter the defendant C. T., and to the said H. S., E. J., and J. K. in trust for said R. B. as aforesaid, and another portion of said real estate to the Wesleyan Methodists; the said P. H. bequeathed and devised the whole of his personal estate, which exceeded $80,000 in value, and the residue of his real estate, and of all his property and effects (after paying his debts and funeral expenses) to the said H. S., E. J., and J. K. in trust to sell and convert into money, and divide the whole thereof between and among the said C. S., M. R., E. B., S. McD., W. H., C. T. and R.

B., for their own use in certain shares and portions therein set forth, it being provided by the said Will, that on the death of the said S. McD. her share should fall into said residue and be equally divided amongst the Testator's surviving grand-children and children, as provided in reference to the residue, and for greater certainty as to the contents of the said Will, the plaintiff prays to refer thereto when produced.

4. The said H. S., E. J. and J. K., duly proved the said Will, and probate thereof was granted them by the proper Court in that behalf whereby they became the legal personal representatives of said P. H.; and afterwards a suit for the administration of the estate of said P. H. was duly instituted in this Court in which the said C. S. by her next friend, and the said W. H. were plaintiffs, and the said executors (as such executors) and others were defendants, and in which cause the whole of the estate of the said P. H. was distributed under the order and direction of this Court, and no part thereof now remains in the hands or custody of the said H. S., E. J. and J. K., or either of them as such executors as aforesaid. The said devise to the Wesleyan Methodists was declared void by the decree in said suit, and the said P. H. died intestate as to the said parcel of land devised to the said Wesleyan Methodists.

5. Neither the plaintiff, the said J. McC., nor C. T. were parties to the said suit or the proceedings therein, or had any notice or knowledge thereof, nor was the claim for the said buildings or improvements, proved or proveable in the said cause, or in any way adjudicated upon therein.

6. The said R. B. died in the month of August, 1867, a bachelor under the age of 30 years, and intestate and insolvent, and no person has been appointed or is likely to be appointed as his personal representative.

7. The said P. H. left him surviving, and his heir and and heiresses-at-law, his grandson the said R. B. and his granddaughter the said C. T., and his daughter S. McD., the wife of the defendant S. McD., and the defendants, C. S., wife of the defendant W. M., S. M. R., wife of the defendant G. R., E. B., wife of the defendant J. B., C. McE., wife of the defendant R. McE., and no other child or children, or the issue or descendants of any deceased child or children. The said S. McD survived the said P. H. a short time, and then died intestate without issue, and she left no personal estate or debts, and no person has been appointed, or is likely to be appointed as her personal representative. The defendants G. B., J. B., and C. W., have

each received the said legacies to which they were respectively entitled, and the said lot of land bequeathed to said B. H. in trust for said C. W., has been conveyed to said C. W., in accordance with the terms of said devise, and the said C. W. has since sold and disposed thereof, and neither said G. B., J. B., or C. W., are entitled to, or have received any other benefit under said will or codicil. The defendants, G. R., J. B., J. T., and W. M. S., have respectively received, with the consent of their said wives, portions of the real and personal estate of the said P. H. to which their said wives were entitled respectively and the defendants hereto, have under the terms of said will and codicil, received all that they were entitled to respectively thereunder, and have now in their possession a large amount of personal property, being a part of the residuary estate of the said P. H., and a large amount of money, being also a portion of the proceeds of the residuary personal estate of the said P. H., and to an amount more than sufficient to satisfy the claim of the plaintiff for the said buildings and improvements made under said lease, and the defendants the said heiresses-at-law of P. H. and W. H., have also received large sums of money, the proceeds of the said real estate of the said P. H., and became entitled as heiresses and devisees as aforesaid of said P. H., to other portions of his said real estate of which they are still respectively the owners, and which in value far exceeds the said claim of the plaintiff, and the said lot so leased as aforesaid, is now vested in the said heiresses-at-law of the said P. H., and has not been in any way disposed of.

8. Neither the said plaintiff, nor the said J. McC., nor the said C. T., have been paid for the said buildings and improvements, or any part thereof, and the plaintiff charges that he is entitled to be paid the value thereof, with interest, under the said covenant of the said P. H., contained in the said lease and that the real and personal estate of the said P. H. was liable to pay and make good the same to the plaintiff, and that the defendants are under the facts in the bill set forth now in respect of their proportionate shares of the personal estate of said P. H. received by them, liable to pay and make good the same to the plaintiff, and for that purpose, to refund proportionately a sufficient amount of the personal estate of the said P. H.; and the plaintiff, before the commencement of this suit, gave all the defendants hereto notice in writing of the nature and effect of said lease and the said facts relating thereto, requested the said defendants to have said houses, buildings and improvements

valued under the term of said lease, and asked the defendants to appoint a valuator thereof on their behalf, offering to do the same on his behalf, and also to do and perform all other acts and things (if any) necessary to have a valuation of said houses, buildings and improvements made under the provisions of the said lease, and requested the defendants, in manner aforesaid, to pay the plaintiff the value of said buildings and improvements, and the plaintiff thereby warned the defendants, that unless the plaintiff's claim for said houses, buildings and improvements under said lease, was fairly adjusted and paid within a reasonable period (which had long elapsed before the commencement of this suit), the plaintiff would institute this suit for the purposes set forth in the prayer hereinafter contained; but the said defendants have paid no attention whatever to the said demand, but on the contrary deny that the plaintiff has any claim whatever under the said lease, and the defendant R. McE. insists that the said lease is a forgery.

9. All the covenants and agreements contained in the said lease, to be performed by the said J. McC., his heirs, executors, administrators or assigns, have been fully kept and performed so as to entitle the plaintiff to be paid for the said buildings and improvements under the terms of said lease, and the term created by the said lease, has expired since the death of said P. H., and save the said claim of the plaintiff, there is no debt or claim against the said estate of said P. H., now unsettled or outstanding.

10. The defendants, G. B., J. B. and C. W., have removed to some portion of the United States of America, unknown to the plaintiff, and said defendants are now permanently residing in the said United States, and they have no means or property within the jurisdiction of this Honorable Court.

The plaintiff prays as follows:

1. That an account may be ordered to be taken of the amount to which the plaintiff is entitled for the value of the houses, buildings, and all other the improvements erected on the said lot, by the said J. McC. and C. T. under the terms of said lease, and that for that purpose a valuation thereof may be made; the plaintiff hereby offering to do and perform all (if any) acts, matters or things that may be necessary on his part for that purpose; and that the plaintiff may be paid the amount so ascertained by the defen-

dants, and for that purpose that the said defendants may be decreed to pay and refund to the plaintiff a sufficient sum to make good the same ratably and proportionally to their shares of the personal estate of the said P. H. received by them as aforesaid respectively.

2. That it may be declared that the real and personal estate of the said P. H., was and is liable to pay and make good to the plaintiff, the amount to which he may be found entitled as and for the value of said houses, buildings and improvements aforesaid, under the account to be taken as prayed for above, and that the said amount may be paid out of the said personal assets of the said P. H., but if the same shall be insufficient for that purpose, then that the same may be raised and paid out of the said real assets and estate of the said P. H., and that the said real estate so specifically devised and descended, may be declared to remain assets of the said P. H., in the hands of said devisees and heirs respectively applicable to pay the said claim of the plaintiff as aforesaid, and if the said defendants last named shall have disposed of any part of the said real assets so devised or descended as aforesaid, and there shall not remain enough of said real estate not disposed of to satisfy the said claim of the plaintiff, then that the said defendants last named, or such of them as shall have disposed of the said real estate so devised or descended, may be decreed to pay and refund to the plaintiff ratably and proportionally to their said shares of the said real estate, a sufficient sum to pay and discharge the said claim of the plaintiff.

3. That for the purposes aforesaid, and in order to enable the plaintiff to be paid the amount of his said claim, that all further directions and enquiries may be given, orders made and accounts taken that may be required.

4. That the plaintiff may be paid his costs of this suit.

5. That the plaintiff may have such further and other relief in the premises as the nature of the case may require.

E. M.
Plaintiff's Solicitor.

53. *Bill for account against a defendant who has fraudulently obtained letters of administration.*

53. Bill for an account against a defendant who has fraudulently obtained administration of an estate.

In Chancery.

Between—J. G. S.....Plaintiff,

and

C. P., M. C., his wife, A. G. and M. B.....Defendants.

City of Hamilton.

To the Honorable the Judges of the Court of Chancery:

The Bill of Complaint of J. G. S., of Temmelsdorf, in the Grand Duchy of Saxony, Gentleman,

Sheweth as follows:

1. J. G. S. the son of the plaintiff, for some years previous to the year 1863, resided in the City of Hamilton in Canada West, where he carried on the business of a saloon keeper, and was in that year the owner in fee simple of a valuable brewery and several city lots in the said City of Hamilton, and possessed of cash, moneys and personal property to a large amount.

2. The defendant, M. C., lived with the said J. G. S. for several years, prior to and in the year 1863, and was in fact his mistress: the said J. G. S. being desirous to put an end to the said connection which had subsisted between him and the defendant M. C., with that view prepared a document for the signature of the said defendant M. C., acknowledging that she was his mistress, and that such connection had been dissolved, and in order to make a suitable provision for the said M. C., and to procure her to execute said document, he then paid her the sum of $1,500 in cash, and thereupon on the 13th day of July, 1863, such document was duly signed by both, the said M. C., and the said J. G. S., and for greater certainty as to the contents thereof, the plaintiff craves leave to refer thereto when produced.

3. Immediately after the execution of the said document, and payment of the said sum of $1,500 to the said defendant, M. C.—that is to say, some time in the month of July, 1863, the said J. G. S., left Hamilton to pay a visit to the plaintiff, who then and still lived at Temmelsdorf aforesaid, intending to stay there for some months, and then return to his home, in Hamilton aforesaid.

4. The said J. G. S., agreed to allow the said defendant, M. C., during his absence, to retain possession of his saloon and furniture, and to carry on the business for her own benefit, and the same are now in the possession of the said defendants, M. C. and C. P.

5. On the 13th day of July, 1863, immediately before leaving Hamilton for his said intended journey, the said J. C. S., deposited in the Bank of British North America, in Hamilton, the sum of $4,000 at interest, and received from the Bank six deposit receipts therefor, each of said receipts bearing date the 13th day of July, 1863, two thereof being for the sum of $1,000 each, and the other four for $500 each, bearing four per cent., interest if allowed to remain for three months or beyond that date: these receipts the said J. G. S., kept in his own possession and took with him to Temmelsdorf aforesaid. The said J. G. S., is described in the said receipts as "J. G. S," by which name and also by the name of "J. S.," the said J. G. S. was known in Hamilton.

6. The said J. G. S., while on his said visit at Temmelsdorf aforesaid, died there on the 11th day of March, 1864, intestate, and a bachelor, leaving the plaintiff, his father, him surviving, whereby the plaintiff became, and was, and is enitled to, and the absolute owner of the whole of the said real and personal estate of the said J. G. S., and the said J. G. S., was not indebted in any sum whatever at the time of his decease.

7. The said defendant M. C., on hearing of the death of the said J. G. S., fraudulently represented and pretended that she was his lawful widow, and immediately applied for administration to the estate of the said J. G. S., to the Surrogate Court of the County of Wentworth, in Upper Canada, in which County the said J. G. S. had his fixed place of abode, and had left goods at the time of his death, and thereupon such proceedings were had within the jurisdiction of the said Surrogate Court, that the Defendant, M. C., was, on the 25th day of August, 1864, appointed sole administratrix of the personal estate and effects of the said J. G. S., and such grant has not been revoked.

8. In making application to the said Surrogate Court for administration to the estate of the said J. G. S., the defendant, M. C., falsely and fraudulently represented, and swore that his personal estate was under the value of $150, and procured two persons of little or no means to become surety to the extent of $300 for the due admistration of the said estate, and the said defendants, C. P. and M. C. P. are in indigent circumstances.

9. It is the well known and established custom of the said Bank in respect of Deposit Receipts, like that granted to the said J. G. S., to pay the moneys therein mentioned, only upon the production of said receipts, and on the person applying for such payment being identified if not

known to the said Bank, or their Managers for the time being, and such rule is adopted for the protection of the persons to whom such receipts are granted, and the said deposits were made by said J. G. S., with the knowledge of and in reliance upon such custom, and he, in order to obtain and retain the benefit thereof, carefully retained such receipts in his own possession, and had the same with him in Temmelsdorf, aforesaid when he died, and the same are now in possession of the plaintiff.

10. Upon the defendant, M. C., demanding from the said Bank the said moneys, deposited therein by the said J. G. S., the said Bank having regard to their said custom and duty refused to pay the same to her until the said receipts should be produced, whereupon the said defendant, M. C., applied for advice to the defendants A. G. and M. B, who are both men of some small means, and said A. G., is brother of the defendant M. C., and the defendant M. B., is a connection of the said defendant, M. C. and the said defendant, M C., stated to them all the facts and circumstances hereinbefore set forth, and asked them to aid and assist her in so fraudulently obtaining the said moneys, and offered them a share thereof for the trouble and risk they would incur, the said defendants A. G., and M. B., fraudulently agreed to assist the said defendant, M. C., in her said fraudulent design, and accepted the terms offered by said defendant, M. C., to share in the way and manner hereinafter mentioned, the said moneys so obtained from the said Bank: and in order to induce the said Bank to pay said moneys to the defendant M. C., the said defendants, A. G., M. B. and M. C., falsely and fraudulently represented to the said Bank that the said receipts were lost, and then offered to enter into a bond to the said Bank, to secure the said Bank against loss or damages by reason of their paying said moneys to the said M. C., the said Bank agreed to accept such indemnity and pay over said money, and a Bond to secure the said Bank from loss or damage by reason of the payment of said moneys to said M. C., was prepared and executed by the said defendants M. C., A. G. and M. B., and thereupon in the month of September, 1864, the said moneys were paid over to the said defendant, M. C., by the said Bank, and the said M. C., in pursuance of her said agreement immediately handed over the same to the defendants, M. B. and A. G., upon the trusts and for the purposes hereinafter mentioned.

11. Before and at the time of the execution of the said Bond, and of the payment of the said moneys by the said

Bank to the said defendant, M. C., and of the receipt of said moneys by said defendants, A. G. and M. B. from said M. C., the said defendants, A. G. and M. B. had actual knowledge and notice that M. C. was not the wife or widow of the said J. G. S., and that the said moneys were the sole property of the plaintiff as such next-of-kin of the said J. G. S., as hereinbefore mentioned, and of all the other facts and circumstances hereinbefore set forth.

12. In pursuance of the said fraudulent arrangement, the said defendants, A. G. and M. B., received the said moneys from the defendant, M. C., upon the trust and understanding that they should retain the same in their own hands, deal with, use and appropriate the same in some way or manner for the benefit and advantage of the said defendants, M. C., A. G. and M. B,, and fraudulently to hinder and prevent the plaintiff from recovering or receiving the same.

13. The said moneys so received from the said Bank, are invested in mortgages, promissory notes, and other instruments and securities for moneys and lands, all whereof are in the possession and under the control of the defendants, but of the nature and particulars whereof the plaintiff is wholly ignorant, and the said defendants threaten and intend forthwith to dispose thereof, and convert the money received therefrom to their own use, and for that purpose have offered for sale several of the said securities, and have pressed for payment of others thereof, and the said securities are taken, and stand in the names of the said defendants or some of them, and are not stated to be held or taken on account of said estate of the said J. G. S., deceased, but appear on the face thereof to be the absolute property of the defendants holding the same, or to whom the same are made payable or transferred, and this plan has been adopted by said defendants, with the fraudulent purpose, intent, and design, of more easily disposing thereof to their own use, and frustrating the plaintiff in any endeavours to recover the same, and said defendants will dispose thereof for their own use, unless prevented by the order and injunction of this Honorable Court, and in order that the said securities and personal estate of said J. G. S., deceased, may be properly secured, collected and got in, it will be necessary that some proper party be appointed as a receiver thereof.

14. The said M. C., some time in the year 1865, intermarried with the defendant, C. P., and the said C. P. has acquiesced in, approved of and ratified the said dealings of the said defendants, M. C., A. G. and M. B., with the said

estate of the said J. G. S., and is aiding and assisting them in their carrying out the design and purposes set forth in the preceding paragraphs of this Bill.

The plaintiff therefore prays as follows:

1. That the personal estate of the said J. G. S. may be wound up, and administered under the order and direction of this Honorable Court.

2. That the said defendants may be directed to bring in and deposit under oath in this Honorable Court, all and singular, the said mortgages, promissory notes and securities, in which the said moneys belonging to the said estate of the said J. G. S., may now be invested, or which have been purchased with the said moneys, and if the said moneys be invested in lands that such lands may be conveyed and dealt with in such way and manner as this Honorable Court shall direct in order to secure the same, or if any of said moneys be in the hands of said defendants, that the same may be forthwith paid into Court.

3. That the said defendants, and each of them, may be restrained by the order and injunction of this Honorable Court from further dealing or intermeddling in any way with the personal estate of the said J. G. S.

4. That the defendants may be directed to pay the plaintiff's costs of this suit, and make good to the said estate whatever moneys and effects they have received on account thereof.

5. That a receiver of the said personal estate may be appointed.

6. And that for the purposes aforesaid, all proper accounts may be taken, and directions given.

7. And for such further and other relief as the nature of the case shall require, and shall seem just.

8. And the plaintiff will ever pray, &c.

E. M.,
Plaintiff's Solicitor.

54. Bill by judgment creditor to set aside conveyance by his debtor as fraudulent, under 13 and 27 Eliz., and of Con. Stat. of Canada, c. 26.

54. *Bill to set aside fraudulent conveyance by debtor.*

In Chancery.

Between—M. B. .....Plaintiff,
and
J. McC. and L. McC.....Defendants.

Town of St. Catharines.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of M. B., of the Township of Caistor, in the County of Lincoln, Spinster, Sheweth:

1. That on the 2nd day of September, in the year 1868, your complainant commenced an action in Her Majesty's Court of Common Pleas for Ontario, against the above-named defendant, J. McC., and on the 5th day of November, in the year 1868, a verdict was rendered in the said action in favour of the plaintiff for $325.00, and on the 2nd day of January, in the year 1869, your complainant recovered a judgment in the said action at law, for the sum of $398.10.

1. That on the 2nd day of January aforesaid, your complainant caused a writ of *fieri facias* against the goods and chattels of the said defendant, J. McC., and also a writ of *fieri facias* against the lands and tenements of the said defendant, J. McC., to be issued upon the said judgment, which writs of *fieri facias* were placed in the hands of the Sheriff of the County of Lincoln, the County wherein the said last named defendant resided, and the said writ of *fieri facias* against the goods of the said last-named defendant, has been returned by the said Sheriff *nulla bona*, meaning that the said defendant, J. McC., had not any goods or chattels in his bailiwick whereof he could cause to be made the said judgment, or any part thereof, and the said writ against the lands of the said last-named defendant now remains in the hands of the said Sheriff to be executed.

3. That the said judgment remains wholly due and unsatisfied, and the defendants refuse to pay the same.

4. That at the time your complainant commenced her said action at law, the said defendants were joint tenants in and entitled to the equity of redemption in the following lands: (*Describe the lands.*).

5. That shortly before your complainant recovered a verdict in the said action at law, and on the 3rd day of November, in the year 1868, the defendant, J. McC., conveyed, or purported to convey, to the defen-

dant, L. McC., who is his brother, all the undivided interest of him, the said defendant, J. McC., of, in, or to the said land and premises, and the consideration expressed in the said deed was the sum of $550.00, which deed has been registered in the Registry Office of the County of Lincoln, and the same now appears in the books of registry in the said Registry Office.

6. Your complainant charges that although the conveyance in the fifth paragraph hereof purports to have been made for the valuable consideration of $550.00, no consideration in fact passed from the said defendant, L. McC., to the defendant, J. McC., but the conveyance was simply voluntary and void as against your complainant.

7. Your complainant further charges that the said deed was and is fraudulent and void, as against your complainant, the same having been made as aforesaid, for the purpose of defeating and delaying your complainant, or of preferring the said defendant, L. McC., and being in contravention of the provisions of Statutes passed in the 13th and 27th years of the reign of Her late Majesty Queen Elizabeth, and of the Consolidated Statutes of Upper Canada, chapter 26.

8. That since the making of the said deed, mentioned in the fifth paragragh hereof, and up to the present time, the said defendant, J. McC., has remained in the possession, use, and occupation of the said premises with his brother, the said defendant, L. McC., the same as he did prior to the said conveyance to his said brother, the defendant, L. McC.

9. The said Sheriff has been, and still is, prevented and hindered by the said deed or conveyance from executing the said writ against the lands of the said defendant, J. McC., and unless the said deed is set aside your complainant will be unable to obtain the fruits of her said execution against the lands of the said last-named defendant.

10. That for the reasons aforesaid, your complainant submits that the said deed is fraudulent and void as against your complainant, and ought to be set aside and cancelled.

Your complainant therefore prays:

1. That the said deed made to the said defendant, L. McC., by the defendant, J. McC., may be declared to be fraudulent and void as against your complainant, and may be set aside and ordered to be delivered up to be cancelled, and that the regis-

tration and registered duplicate thereof may in like manner be ordered to be cancelled.

2. That the defendants may be ordered to pay your complainant her costs of this suit.
3. That for the purposes aforesaid all proper directions may be given and accounts taken.
4. That your complainant may have such further and other relief as to your Lordships may seem meet.

And your complainant will ever pray (*t*).

55. Bill to declare a deed executed by plaintiff, while an infant, void, and for a re-conveyance.

55. *Bill to avoid conveyance made by plaintiff while an infant.*

In Chancery.

Between—M.F.T.B.....Plaintiff,
and
J.B.,.....Defendant.

City of Kingston.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of M. F. T. B., of the City of Kingston, spinster,

Sheweth as follows:—

1. One N.B., in his lifetime of the Town of Oakville, mariner, the plaintiff's father, died on or about the——— day of July, A.D. 1852, the owner in fee simple to his own use and in possession of that certain parcel of land situate in the (*describe land*).

2. By his last will and testament duly executed as by law is required for the effectual devise of real estate in Ontario bearing date on or about the 21st day of June, A.D., 1852, the said N.B. devised the said parcel of land to his wife M. A. B. until the plaintiff should attain the age of twenty-one years, or until his said wife should marry again, in trust for the support and maintenance of his said wife, and of the plaintiff until his said wife should marry again or the plaintiff should attain the age of eighteen years.

3. In and by his said will the said N.B. further directed that, in the event of his said wife marrying again, the said parcel of land should be rented and managed by the executors in the said will named for the plaintiff's benefit and support in such manner as such executors should think proper, and he thereby declared that the said parcel

(*t*) For other forms, see Nos. 46, 57.

should become the sole property of the plaintiff in fee simple when the plaintiff should attain the age of eighteen years.

4. The said N.B., shortly afterwards, made a codicil to his said will, but he did not thereby or otherwise alter or revoke the disposition hereinbefore stated of the said land before his death.

5. The said M. A. B. married one P. H. in or about the year 1853, and the plaintiff, who was then an infant of the age of four years, lived with her mother and the said P.H. thenceforth until the making of the conveyance hereinafter mentioned, and afterwards.

6. The plaintiff attained the age of eighteen years on or about the 3rd day of December, 1867, and in the month of January following the said P.H. informed the plaintiff that he had sold the said parcel of land to the defendant and required the plaintiff and her mother to go to Hamilton to meet the defendant to carry out the sale.

7. Thereupon and on or about the 6th day of January, 1868, the said P. H. brought the plaintiff and her mother to Hamilton where the said P. H. and the defendant induced the plaintiff and her mother to execute a conveyance of the said parcel of land to the defendant, and such conveyance was accordingly in fact executed to the defendant by the plaintiff and her said mother, and the same was accordingly afterwards registered in the Registry Office for the County of Wentworth by the defendant.

8. The plaintiff executed the said deed under the coercion and at the request of the said P. H. and the defendant, and she was then an infant under the age of twenty-one years, and had no advice or assistance, and was ignorant of her rights in the premises.

9. The plaintiff received no benefit from the said sale or from the purchase money, but the said P. H. received the benefit thereof as was intended when the bargain was made between the said P. H. and the defendant.

10. The defendant immediately after the execution of the said conveyance entered into possession of the said premises and has continued in possession thereof and in the receipt of the rents and profits thereof ever since.

11. The plaintiff's mother died in April, 1870, and the plaintiff attained her age of twenty one years in the month of December in the same year, and as soon after as she was properly advised of her rights she repudiated the said conveyance and notified the defendant that she did so,

and she refused to be bound thereby, or to ratify or confirm the same.

12. The registration of the said deed forms a cloud on the plaintiff's title to the said parcel of land, and the plaintiff applied to the defendant before suit to execute, and tendered to him for that purpose a proper instrument to remove such cloud; but the defendant refused and still refuses to execute any such instrument or to deliver up possession to the plaintiff.

13. The defendant was well aware, when he took the said conveyance and entered into possession as aforesaid, of the plaintiff's infancy, and the plaintiff submits that the defendant is accountable to her as a bailiff for the rents and profits of the said parcel of land since he took such possession.

14. The defendant threatens and intends to, and will, unless restrained by the order and injunction of this Honorable Court, alienate or encumber the said land and commit waste thereon.

The plaintiff therefore prays as follows:—

1. That the defendant may be ordered to execute such instrument as may be necessary to remove the cloud on the plaintiff's title caused by the registration of the said conveyance, and to deliver the said conveyance to the plaintiff to be cancelled.
2. That the defendant may also be ordered to account for and to pay to the plaintiff the rents and profits of the same parcel of land since he entered into possession or occupation thereof, and the costs of this suit.
3. That in the meantime the defendant may be restrained from alienating or encumbering the same, and from committing any waste or destruction thereon.
4. That for the purposes aforesaid all proper directions may be given and accounts taken, and that the plaintiff may have such further and other relief as to this Honorable Court shall seem meet.

And the plaintiff will ever pray, &c.

56. *Bill to set aside conveyance as fraudulent under Insolvent Act.*

56. Bill to set aside conveyance as fraudulent and an evasion of the Insolvency Act.

In Chancery.

Between F. M. W. and A. McK.....Plaintiffs,
and
J. S., J. W. M and J. L.....Defendants.

City of Hamilton.

To the Honorable the Judges of the Court of Chancery:

The Bill of Complaint of F. M. W. and A. McK., both of the City of Hamilton, in the County of Wentworth, accountants.

Sheweth as follows:

1. R. J. H. and one M. D. for many years previous to and in the year 1864, carried on business in Hamilton in Canada West, as bankers and brokers under the style and firm of "H. D. & Co."

2. Prior to and in the month of September, 1864, the said firm had become and it then was insolvent, and has since continued insolvent, and the joint estate was inadequate to the payment of the joint debts, and the separate property and estate of the said R. J. H. was and is inadequate to the payment of his separate debts, and though the separate estate of the said M. D. was more than adequate to the payment of his separate debts, yet the surplus of the separate estate of said M. D. was inadequate to the payment of the deficiency between the amount of the assets of the joint estate and the amount of the joint debts.

3. In the month of August, 1864, one O. recovered a Judgment for a large sum against the said R. J. H. and placed an execution in the hands of the Sheriff of the County of Wentworth thereon against the goods and chattels of the said R. J. H., but the same was still in the hands of the said Sheriff, wholly unsatisfied, on the 13th day of September, 1864, and on and prior to the 13th day of September, 1864, there were a great number of actions pending against the said R. J. H., representing in the aggregate over ten thousand dollars, to which actions the said R. J. H. had no just defence and the said R. J. H. was well aware that Judgments could be obtained against him in such actions upon or within a few days, after the 13th day of September, 1864, and the said firm of H. D. & Co. had stopped payment and suspended business and their insolvency was public, and the defendant S. was prior to

and on the said 13th day of September, 1864, well aware and had actual notice and knowledge of the said insolvency of the said R. J. H. and of the said firm of H. D. & Co., and of the recovery of said O.'s said Judgment, of the pending of said actions against the said R. J. H. and that said R. J. H. had no defence thereto and of the period when Judgment could be entered therein against him and execution issued upon such Judgments, and both the said R. J. H. and the defendant S. then were well aware that proceedings had been taken and were then pending, under the Insolvent Act of 1864, to place the estate of R. J. H. and M. D. as partners as aforesaid and as individuals in compulsory liquidation under the said Act.

5. Under these circumstances, the said R. J. H. fraudulently desiring to evade the provisions of the said Insolvent Act, and to secure the administration of his estate by a trustee of his own choosing and to fraudulently hinder, impede, obstruct and delay his creditors in their remedies against him under the said Insolvent Act formed the fraudulent design to accomplish his said objects by means of an indenture by way of assignment of his estate and effects to be made otherwise than in the manner prescribed by said Act to the defendant S., and to be expressed to be in trust for the benefit of the creditors of the said R. J. H

6. In pursuance of the said fraudulent design and with the intent, object and purpose aforesaid, on the 13th day of September, 1864, an Indenture of Assignment for the pretended benefit of creditors was made and executed by the said R. J. H. to the said J. S., and by him accepted and executed otherwise than in the manner prescribed by said Act, dated the 13th day of September, 1864, comprising the whole of the estate and effects of the said R. J. H., which said indenture is in the words and figures following: "Know all men by these presents that I, R. J. H., of the City of Hamilton, Esquire, do grant and assign into J. S., of the same place, accountant, his heirs, executors, administrators and assigns that certain Judgment recovered by me against J. C. T. on the 25th day of August last, for the sum of $13,387. 74, in Her Majesty's Court of Queen's Bench for Upper Canada, and all moneys hereby due thereunder made payable and all benefits and advantages which I now have and may hereafter have, and all other debts owing or accruing due to me.

"To have and to hold the same, unto the said J. S., his executors, administrators and assigns, In trust for the general benefit of the creditors of me, the said R. J. H.

pari passu and without any preference and priority according to the provisions of Insolvent Act of 1864.

"Witness my hand and seal the 13 September, 1864.

"Signed, sealed and delivered in presence of R. A. L. } "R. J. H. "J. S. "T. H."

7. The Judgment of H. versus T. in said Indenture of Assignment referred to was and is in point of fact the only asset of any nature or kind whatever of the estate of said R. J. H. that was or is of any value whatever.

8. At the time of the making of the said Indenture of Assignment, and of the acceptance thereof, by the defendant S., the said defendant, had actual notice and knowledge of all the facts and circumstances set forth in all the preceding paragraphs of this Bill.

9. Your orators submit that the said Indenture of Assignment was and is void as against your orators under the provisions of the Insolvent Act of 1864.

10. The said T. H. who executed the said pretended Indenture of Assignment was at the time of the execution thereof a creditor of the said R. J. H. and executed the same as such but he has since ceased to be a creditor of the said R. J. H.

11. The names of all the creditors of the said R. J. H., individually and as a partner of the firm of H. D. & Co., are unknown to your orators, but the number of such creditors of each class which are known to your orators are very large, exceeding fifty in number of each class; the defendant, J. W. M., is a creditor of the said R J. H., individually, and the defendant, J. L., is a creditor of the said R. J. H., as a partner of the firm of H. D. & Co.; your orators submit that the said defendants, J. W. M. and J. L., sufficiently represent the creditors of the said R. J. H., who would be entitled to share in the moneys to be realized under the said pretended assignment.

12. The said J. S. has taken and retains possession of the said Deed of Assignment and has under colour thereof endeavoured to collect and get into his possession, and is now endeavouring to collect and get into his possession the moneys arising from the said Judgment in the said assignment referred to, and has, with the object aforesaid, in like manner demanded and is demanding the same from the Sheriff of the County of Wentworth, and has also in like manner attempted to collect or compromise other debts due to the said R. J. H. at the time of making the said as-

signment, and in like manner has, with full notice and knowledge of the appointment of your orators as assignees of the said R. J. H., as set forth in the thirteenth paragraph of this Bill obstructed and impeded, and is impeding and obstructing, your orators, in the execution of their duties as official assignees of the estate and effects of the said R. J. H., and threatens and intends to and will receive and collect the said debts and moneys and intermeddle with the estate and effects of the R. J. H. unless restrained by the order and injunction of this Honorable Court.

13. On the 1st day of October, A. D. 1864, a writ of attachment was issued out of the County Court of the County of Wentworth, under the Insolvent Act of 1864, at the suit of G. L., against the said R. J. H. and M. D., as partners and as individuals, and thereupon such proceedings were duly had and taken against the said R. J. H. and M. D. under the provisions of said Act, that, at a meeting of the creditors of said R. J. H. and M. D., holden before the Judge of said Court at Hamilton, on the 10th day of November, A. D. 1864, the plaintiffs were duly appointed the official assignees of the estate and effects of the said R. J. H. and M. D., as such partners and as individuals, and the plaintiffs then became and were and now are such official assignees of the whole of the separate estate of the said R. J. H. and of the whole of the said partnership property and of the individual property of the said R. J. H., and the same became vested in the plaintiffs, as such assignees, as aforesaid.

Your orators pray as follows:

1. That the said Indenture of Assignment to the defendant S. may be declared fraudulent and void as against your orators, and that the same may be delivered up to be cancelled.

2. And that the defendant S. may be ordered to deliver up to your orators all deeds, books of account, bills, notes, vouchers, moneys, documents, goods, effects and property, whatever belonging to the estate of the said R. J. H. which have come to the possession or control of the said defendant S. and retransfer and reassign the same to your orators.

3. And that the defendant S. may be restrained by the order and injunction of this Honorable Court from interfering or intermeddling with the said Judgment of H. versus T. in the Bill men-

tioned and from collecting the moneys thereby secured, and from collecting any debts or moneys due to the said R. J. H., or in any way dealing with or disposing thereof and from impeding your orators in the execution of their said duties as such assignees of the estate and effects of the said R. J. H.

4. And that the said S. may be ordered to account to your orators for all moneys, securities, goods, property or effects he may have received under the said assignment, and pay and deliver the same to your orators.

5. And that the defendants, or one of them, may be directed to pay the costs of this suit.

6. That for the purposes aforesaid all proper accounts may be taken and directions given that may be necessary.

7. And for such further and other relief as the nature of the case shall require and shall seem just.

8. And your orators will ever pray, &c. (*u*)

57. *Bill by Assignee in Insolvency to set aside Fraudulent Conveyance by Insolvent.*

57. Bill by Official Assignee to set aside deed, as fraudulent, and void against creditors.(*v*)

In Chancery.

Between—J. J. M. . . . . Plaintiff (*v*)

and

D. V. S., R. M., H. C. and E. S., an infant under the age of twenty-one years . . . . . Defendants.

City of Hamilton.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of J. J. M., of the City of Hamilton, Accountant, the assignee of the estate and effects of T. O. S., under the provisions of the Insolvent Act of 1869. Sheweth:

1. The said T. O. S. carried on business as a merchant, at the Village of Princeton, in the County of Oxford, previous to and on the 2nd day of March, A. D. 1871, and he was then indebted in the sum of $4,100 and upwards to various unsecured business and other creditors, and such debts still subsist, and are unpaid, and he

(*u*) See next form.

(*v*) In a bill of this kind by an official assignee, the insolvent is not a proper party defendant. See *Boustead* v. *Whitmore*, 22 Grt. 222 *Kerr* v. *Read*, ib. 529.

was, and is now, also indebted in $2,500, secured by mortgage on the farm then belonging to him hereinafter mentioned.

2. In the said month of March, and for some time previously thereto, and at the time of the execution by him of the Indenture of the 2nd March, A. D. 1871, hereinafter mentioned, the stock in trade, and all the property and assets of the said T. O. S., of every kind, except the farm hereinafter particularly mentioned, did not exceed in value the sum of $1,400, the said farm was of the value of about $2,000 over and above all incumbrances by mortgage, and the said assets then were, and have ever since remained, insufficient for the payment of the debts of the said T. O. S., and he then was insolvent within the meaning of the Statutes relating to Insolvency in force in this Province, and was then aware of said facts.

3. While the affairs of the said T. O. S. were in the position hereinbefore stated, an Indenture, dated the 2nd March, A. D. 1871, expressed to be made between the said T. O. S. of the first part, and the defendants, R. M. and H. C., therein described as both of the City of Hamilton, in the County of Wentworth, Solicitors, of the second part, was prepared, and the same was executed by the said T.O.S., R.M. and H.C. whereby, after reciting that the said T. O. S. was desirous of making a provision for the support and maintenance of his said wife during her life, and the support, maintenance, and education of their children, and that the said Indenture was made for the said consideration, and the further sum of $1, the said T. O. S. did convey unto the said defendants, R. M. and H. C., hereafter called the Trustees in fee as joint tenants his said farm, which is described as follows, that is to say (*Describe the lands*), upon Trust, to collect and get in the rents thereof, and pay the same to the said wife of the said T. O. S., for the support of herself and the said children during the life of the said wife, and after his death to the duly appointed guardian of the children till they should respectively attain the age of twenty-one years. But if the said wife should live till the said children should attain the age of twenty-one years, the said defendants, the Trustees, are empowered to pay such portion of the said rents to the said defendant, D. V. S., as they shall see fit, and after the death of the said D. V. S., but not before the youngest child shall become of age, then, in trust, to sell the said lands and divide the proceeds equally, or to divide the

said lands equally, between the said children, with power to the said defendants, the Trustees, to make advances for the education of any of the said children out of his or her presumptive share, it being declared by the said deed that the share of any child or children dying and leaving issue, shall belong to such issue, but if any child or children should die without issue, his or her share shall be equally divided amongst the survivors; and it is by said Indenture further provided that the defendants, the Trustees, may at any time sell the said lands, invest the proceeds thereof, and apply the income and proceeds in the manner hereinbefore set forth, and that if the children of the said T. O. S., by his said wife, should die without lawful issue, the said lands or proceeds thereof should, after the death of the said D. V. S., revert and belong to the said T. O. S. The said Indenture contains no covenant or agreements of any kind from the said Trustees to the said T. O. S., or from him to them. The said deed was executed upon the day of the date thereof, or within four days thereafter; the lands thereby conveyed formed by far the largest part of the property of the said T. O. S., and the residue of his property was insufficient for the payment of his debts.

4. The defendants, the Trustees, before and at the time of the execution of the said Indenture, knew that the defendant was indebted in a sum exceeding $1,000 in respect of a private debt over and above all his business debts, and that he had no property of any kind except the said farm and his stock in trade, and the assets of his said business; and the said deed was executed by the said T. O. S. with intent to hinder, defeat and delay his creditors in their remedies against him.

5. At the time of the execution of the said deed, several of the debts then and still owing by the said T. O. S. were past due, and he was without the means for payment thereof; and within a few days thereafter he called a meeting of his creditors, and, failing to pay or satisfy them, was served with a demand to execute an assignment in Insolvency under the Insolvent Act of 1869, whereupon he did on the 1st day of May, A.D. 1871, voluntarily assign his estate and effects under the said Act to J. McW., an official assignee duly appointed under said Act, and resident in the said County of Oxford, as the interim assignee of the said estate; and subsequently at the meeting of the creditors, duly called for the appointment of the assignee, and held on the 23rd day of

May, A.D. 1871, the plaintiff was duly appointed the assignee to the estate of the insolvent by the creditors, who had duly proved their claims as provided by the said Act, and thereupon the said J. McW. duly executed the deed of transfer of said estate to the plaintiff, dated the 23rd day of May, A.D. 1871, and delivered over the said estate to the plaintiff, who duly accepted the same.

6. The said T. O. S. and the defendant D. V. S. had been married over eleven years prior to the execution of said Indenture, and had married without any settlement or agreement for settlement whatever, and they had issue of their said marriage three children, the eldest of whom is under ten years of age—the defendant E. S. is the eldest of such children—and the plaintiff submits properly represents the rest of said issue. The said E. S. resides with the said D. V. S., at the Township of Saltfleet, in the County of Wentworth.

7. The said Indenture was made and executed as aforesaid, without any money or valuable consideration whatever, and hinders, defeats and delays the creditors of the said T. O. S., in their remedies against him and his estate; and the plaintiff submits that said Indenture is, under the circumstances aforesaid, voluntary and fraudulent and void as against the plaintiff as assignee as aforesaid, and the creditors of said T. O. S., under the provisions of the several Statutes in that behalf, especially the Statute of 13 Elizabeth, chapter 5, and the Statutes of Canada, known as the Insolvent Act of 1869, and the Indigent Debtors' Act.

8. The defendants, the Trustees, are in receipt of the rents and profits of the said farm, and have paid some thereof to the said D. V. S., and have some thereof in their hands.

The plaintiff prays as follows:

1. That the said Indenture of the 2nd day of March, A.D. 1871, may be declared voluntary, fraudulent and void as against the plaintiff as such assignee as aforesaid, and the creditors of said T. O. S., and may be set aside accordingly.
2. That the plaintiff as such assignee as aforesaid may be declared to be entitled to the said lands, and that the Trustees may be directed to pay over to them all rents received or to be received from the said premises.

3. That the said defendants, or some of them, may be ordered to pay the costs of this suit.
4. That all such other accounts may be taken and directions given as may be necessary.
5. That the plaintiff may have such further and other relief in this matter as the nature of the case may require (*v*).

58. *Bill by execution creditor to prevent waste.*

58. Bill by execution creditor to prevent waste.

In Chancery.

Between—The C. B. of C.....Plaintiffs,
and
R. J. H., S. B. F., and M. O'R.,
Defendants.

City of Hamilton.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of the C. B. of C., the above named Plnintiffs, a corporation duly incorporated under the Statutes of this Province,

Sheweth as follows:

1. G. C. C. was in his lifetime the owner in fee simple of a certain farm, known as the "C. farm," composed of (*describe the land*).

2. The said G. C. C. died on or about the 24th day of June, 1864, having first made his will, the same being contained in two instruments, the one dated the 19th day of July, A. D. 1861, the other dated the 9th of September, A. D. 1863, both duly executed and attested, so as to pass real estate in Upper Canada, and by the first mentioned of said instruments he appointed the defendant, M. O'R., sole executor of his said will, and by the second thereof, without revoking the appointment of said M. O'R. as executor, as aforesaid, he devised the said lands unto the defendants S. B. F. and R. J. H., as joint tenants, and to the heirs and assigns of the survivor, in trust for the benefit, use and advantage of A. H. H., during her natural life, but in such manner that no husband of hers shall have any control over the same, and after her death then to her children, their heirs and assigns for ever, and in the event of her death without children then living, then to the use, benefit and advantage of J. M. and J. C. H., and upon the condition that W. H., a son of the said R. J. H., should not in any event take any advantage or benefit from any of the foregoing trusts.

(*v*) For another form, see No. 56.

3. The defendant, M. O'R., has duly proved the said two instruments as the will of the said G. C. C.—probate thereof has been granted to him as sole executor of said will, in due form of law, by the Surrogate Court of the County of Wentworth, the proper court in that behalf.

4. The defendants, S. B. F. and R. J. H., have accepted the said trusts, under the said will, and have caused the same to be registered in the proper Registry for lands in the County of Halton.

5. The said G. C. C. was, in his lifetime, indebted to the plaintiffs in a sum of $42,000, as indorser of two certain Bills of Exchange, held by the said Bank; one thereof for $40,000 made by the firm of H., D. & Company, of which the defendant, R. J. H., was a partner, and on which the defendant, S. B. F., was also an endorser; the other for $2,000, made by the defendant, R. J. H. On this last mentioned note, the defendant, R. J. H., paid $500, but failed to pay any portion of the residue of either of said notes, and thereupon on the death of said C., the plaintiffs, in due course of law, sued the defendant, M. O'R, as executor of the last will and testament of the said G. C. C., in the Court of Queen's Bench, to recover the said moneys, and thereupon the plaintiffs duly recovered judgment in the said action, on the 7th day of June, 1865, for $42,812.92 damages, and $28.55 costs, issued an execution thereon in due form of law against the defendant, M. O'R, as such executor, as aforesaid, addressed to the Sheriff of the County of Wentworth, commanding him to levy the said moneys of the goods and chattels in his county, of the said G. C. C., in the hands of said M. O'R., as such executor, as aforesaid, to be administered, and to return the same in due form of law.

6. The said Sheriff afterwards returned the said writ with his return thereon endorsed to the effect that the said defendant, M. O'R., as such Executor as aforesaid, had no goods of the said G. C. C., in his hands, whereof he could cause the said moneys, or any part thereof, to be levied, and thereupon a writ of execution was duly issued by the plaintiffs, upon said judgment against the defendant, M. O'R., as such executor as aforesaid, directed to the Sheriff of the County of Halton, commanding him to levy the said moneys and interest of the lands and tenements in his county of the said G. C. C., in due course of law, which said writ duly indorsed, was delivered to the Sheriff of the County of Halton, for execution, on the 9th day of June, 1865, and your orators submit that they

have thereby acquired a lien upon the said lands, and the timber and trees thereon, and privileges and appurtenances thereto belonging and are entitled to have the same applied in and towards payment thereof.

7. The said lands and another parcel of about 150 acres devised by said C. to one H. E. F., form the whole of the lands of the said late G. C. C., in the County of Halton, and the whole thereof together are not worth the sum of $15,000, and your complainants have no other security for the said judgment debt except the said lands, and a parcel of about 60 acres of land in the Township of East Flamborough, in the County of Wentworth, worth not more than $1,500, and which are levied on by a concurrent writ against lands issued upon said judgment, and directed to and placed in the hands of the Sheriff of the County of Wentworth for execution, and the whole of the said lands in the Counties of Wentworth and Halton form an insufficient security for the payment of the said judgment debt. The said firm of H., D. & Co., and said R. J. H. have both become insolvent; their estates are wound up in insolvency, but it is as yet impossible to tell accurately the amount of the dividend, but the same will be exceedingly small, certainly under 25 cents on the dollar: the plaintiffs recovered from the defendant, S. B. F., who was an endorser on said note of $40,000, the sum of $10,000, and save as aforesaid, your complainants have not received, nor do they hold any security or satisfaction whatever for the said judgment debt, interest and costs, and the whole of said real properties of said C., in the Counties of Wentworth and Halton, form a security insufficient by at least $20,000 for the payment of the said judgment debt of your complainants.

8. The lands mentioned in the first paragraph of this Bill have always been used together as one property, and known as the "C. Farm," of which about 180 acres are cleared, and when the said writ against lands was placed in the hands of the Sheriff of the County of Halton, as stated in the 6th paragraph of this Bill, there was a large quantity of timber, trees, wood and underwood, and valuable fallen timber, growing, being and lying on the said lands, of the value of at least $2,000. And the said premises would, if stripped of said timber, be much less valuable as a farm, and less saleable, the said timber being required for the purposes of fencing, fuel and building on the said farm.

9. The defendant, R. J. H. has always acted, now acts, and is acting on behalf of himself and the defendant S.B.F.,

as Managing Trustees under said trusts contained in said C.'s Will, and the said defendants, R. J. H. and S. B. F., threaten and intend to commit waste on the said premises, by cutting down, removing, selling, and disposing of the whole of the timber, trees, wood, underwood and fallen timber on the last said mentioned lands, and applying the proceeds thereof for the purposes of the said trusts, and the defendant, H., so acting as aforesaid, on behalf of himself and the said S. B. F., has offered, and now is offering the same for sale, and has employed one W. C. to cut and remove the said fallen timber, a great deal of which is valuable for saw logs and fencing purposes, and has thrown down fences on said lands to enable said C. and others the more easily to remove timber or wood fallen thereon, and said C. has removed a large quantity of such fallen timber: and unless restrained by the order and injunction of this Honorable Court, the said defendants, H. and F., will cause the said lands to be wholly stripped of said timber, trees, wood, underwood and fallen timber.

10. The defendant, M. O'R. objects to the said proceedings of the defendants R. J. H. and S. B. F., and to any waste whatever being committed on said farm. The said S. B. F. in answer to enquiries in that behalf made by your complainant denies all knowledge of the said acts of the defendant R. J. H., but has in no way interfered to prevent the same or expressed his dissent or disapproval thereof, and the said R. J. H. has avoided the agent of your complainant sent to notify him to desist from the waste aforesaid.

11. The defendants, S. B. F. and R. J. H., have both actual notice and knowledge of the fact of the recovery of the said judgment by your complainants; the placing of the said writs of execution in the hands of the Sheriff of the County of Halton, and of every other fact and circumstance in this Bill set forth.

Your complainants therefore pray:

1. That the defendants, S. B. F. and R. J. H. may be restrained by the order and injunction of this Honorable Court, from committing such waste as aforesaid, and from selling, or attempting to sell the said timber, and other trees standing, growing and being thereon, and from removing the said fallen timber, and from commiting any other waste, spoil or destruction on the said premises, and may account for the waste already committed.

2. That the said defendants may be ordered to pay your complainants the costs of this suit.
3. That for the purposes aforesaid all such other accounts may be taken, enquiries made, and directions given, as the nature of the case may require.
4. And for such further and other relief as the nature of the case shall require and shall seem just.
5. And your complainants will ever pray (*w*).

59. *Bill for specific performance of written agreement for sale of land.*

59. Bill to enforce specific performance of an agreement to convey land.

In Chancery.

Between—A. S..... .....Plaintiff,
and
L. McC..... .....Defendant.

Town of Woodstock.
To the Honorable the Judges of the Court of Chancery.
The Bill of Complaint of A. S., of the Township of St. Vincent, in the County of Grey, and Province of Ontario, yeoman,
Sheweth as follows:

1. That by an agreement dated the 14th day of January, A.D., 1869, the above-named defendant agreed with your complainant to sell to your complainant certain freehold property therein described as all and singular (*describe the land*), for the price or sum of $2850, payable in the manner and on the days and times following: the sum of $1,200 to be paid on the 1st day of March, A.D. 1869, the sum of $1,260 to be paid on a mortgage on said lands held by one W. H. P., and to be paid in accordance with the conditions of said mortgage, and the remaining sum of $390 to be paid in three equal annual instalments of $130, with interest on the same at the rate of six per cent. per annum, as mentioned in said agreement, as will thereby more fully appear, and to which, when produced, the plaintiff craves leave to refer.
2. That by the said agreement the defendant agreed to give the plaintiff a good and sufficient deed of the said land in fee simple with usual covenants of warranty, and freed and discharged of all dower and incumbrances.

(*w*) For simpler forms, see Nos. 35, 36.

3. That on the 28th day of January, A.D. 1869, the plaintiff, in consideration of the said agreement, and relying upon the same, and upon the defendant's fulfilling his part thereof, paid to the said defendant the sum of $200 on account of said purchase money of the said land.

4. That on the 1st day of March, A.D. 1869, your complainant went to the defendant and tendered to him the sum of $1,000, being the balance of said cash payment of $1,200, and requested the defendant to fulfil his part of said agreement, the plaintiff offering to do all things necessary on his part to carry out said agreement, but the defendant refused to accept the said sum of $1,000 and refused to carry out said agreement, or to convey said land to the plaintiff.

5. That by the said agreement the plaintiff and defendant mutually agreed that if either of them should fail to perform the conditions required of them thereby, the party so failing should forfeit and pay to the other party the sum of $400.

6. That on or about the 11th day of March, A.D. 1869, the plaintiff again went to the defendant and tendered to the defendant the sum of $1,000, and also tendered to the defendant a deed in duplicate, in proper form, for execution (which the plaintiff craves leave to refer to when produced to this Honorable Court), and desired the defendant to perform the said agreement, and execute the said deed or conveyance, but the defendant again refused, and still refuses to execute said deed, or to carry out his part of said agreement.

7. The plaintiff claims that he is entitled to a specific performance of said agreement on the part of the defendant, hereby offering to do all things necessary on his part to be done in the premises, or that in default of such specific performance, he is entitled to receive from the defendant the said sum of $400, and also to be repaid the sum of $200 (and interest thereon) paid by him as aforesaid to the defendant on account of said purchase money.

The plaintiff, therefore, prays as follows:

1. That the said contract or agreement may be specifically performed by the said L. McC., the plaintiff being ready and willing, and hereby offering to perform the same in all respects upon his part, or that in default of the said L. McC. performing same, that plaintiff may be paid the said sum of $400, and also the sum of $200 paid by him as aforesaid with interest.

2. That the said sums of $400 and $200 may be declared to be a lien upon the said lands.
3. That the said land may be sold, and the proceeds applied in payment of the said two sums of money.
4. That the plaintiff may have such further and other relief as the nature of the case may require, and as to your Lordships may seem meet.

And your complainant will ever pray. (*x*)

60. *Bill for administration and partition.*

60. Bill for administration and partition.

In Chancery.

Between—I. C. S., an Infant under the age of twenty-one years, by W. W. W., his next friend,.....Plaintiff,
and
J. P., R. P., E. P. S., H. C. and T. C.,
.....Defendants.

City of Hamilton.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of I. C. S., of the Town of Lowell, Kent County, in the State of Michigan, an infant under the age of twenty-one years, by W. W. W., of the City of Hamilton, his next friend.

Humbly sheweth:

1. That A. C., late of the Township of Saltfleet, in the County of Wentworth, yeoman, was, in his lifetime and at the time of his death, hereinafter mentioned, seized in fee simple or otherwise well and sufficiently entitled to the following lands and premises, that is to say: (*insert description of lands.*)

2. Being so seized, the said A. C. died on or about the 15th day of April. A. D. 1853, without having made any last will or testament.

3. The said A. C. left him surviving his widow, the defendant, R. P., and the following children:—I. C., who resides in Kent County, in the State of Michigan; M. A., wife of the defendant, P. A., who resides in the Township of Caradoc, in the County of Middlesex; D. G., who married one R. G., in the year 1855: B. S., wife of the defendant, E. P. S., of Kent County, in the State of Michigan; S. A., wife of J. A., of the Township of Cascade, in the County of Kent, in the State of Michigan; J. C., wife

(*x*) For another Form, see No. 33.

of C. C., of the Township of Saltfleet, in the County of Wentworth; and the defendants H. C. and T. C., also of the said Township of Saltfleet.

4. The said R. G. died six or seven years ago. The said B. S. died about thirteen years ago, intestate, and leaving her surviving, her husband, the defendant E. P. S., and her son, your complainant herein.

5. The defendant R. P. married the defendant, J. P. in the fall of the year 1854.

6. The defendant R. P. is entitled to dower in the said lands.

7. By Quit-claim deed, bearing date the 30th day of January A. D. 1861, and registered on the 11th day of March, A. D. 1868, the said I. C. released unto the said J. P. and R. P., all his right, title and interest in the said lands.

8. By another deed bearing date the 13th day of December, A. D. 1869, and registered on the 4th day of January, A. D. 1870, the said S. A. and J. A., released unto the said J. P. and R. P. all their right, title and interest in the said lands.

9. By a certain other Indenture bearing date the 29th day of July, A. D. 1869, and registered the 31st day of July, A. D. 1869, the said D. G. conveyed all her right, title and interest in the said lands to the said J. P. and R. P.

10. By a certain other Indenture bearing date the 29th day of October, 1869, and registered the same day, the said M. A. and P. A. conveyed all their right, title, and interest in the said lands to the said J. P. and R. P.

11. By virtue of the several Indentures in the four last paragraphs mentioned, the said J. P. and R. P. are joint owners in fee simple of four undivided one-eighth shares or interest in the said realty.

12. By deed of Bargain and Sale bearing date the 19th day of May, 1870, and registered on the following day, the said J. C. and C. C. granted and conveyed all their right, title and interest in the said lands to the said H. C.

13. By Indenture of Bargain and Sale by way of Mortgage, bearing date the 19th day of May, and registered on the same day, the said H. C. mortgaged all his interest in the said lands to the said J. P. and R. P., for securing the sum of $700 and interest thereon.

14. By virtue of the Indentures in the two last paragraphs mentioned, the said H. C. is owner in fee simple of two undivided one-eighth shares, or interest in the said lands subject to the Mortgage aforesaid.

15. The said T. C. is entitled to an undivided one-eighth share or interest in the said realty, and your complainant is entitled to the remaining one-eighth share, subject to the life interest of his father, the defendant, E. P. S. as tenant by the curtesy (*y*).

16. Your complainant is desirous that the said lands and premises be partitioned amongst the several parties entitled thereto, under the statutes of this Province, or if the sale thereof should on the whole be considered by this Honorable Court more advantageous to the parties interested, that the sale thereof should be made accordingly and the proceeds thereof distributed among the parties entitled thereto.

17. The said A. C. died possessed also of personal estate of or about the value of $1,000.

18. By letters of administration bearing date the 6th day of August, A. D, 1853, the defenant R. P., was by the proper court in that behalf appointed administratrix of all and singular, the personal estate and effects, rights and credits of the said A. C.

19. After the death of the said A. C. the said R. P. remained in possession of the said lands and premises and of the said goods, chattels and effects, until her marriage with the said defendant J. P., since which time they have been jointly in possession of the whole of the said estates.

20. Your complainant and some of the defendants have repeatedly applied to the defendant R. P. for an account of the said personal estate, and a distribution thereof, and both to her and the said J. P. for an account of the rents and profits of the said realty, but they absolutely refuse to render or furnish any account thereof, or to allow your complainant or the other parties interested therein, anything whatever for the use and occupation of the said premises since the death of the said A. C.

21. The said J. P. has committed waste upon the said lands and premises, by cutting down and removing therefrom and selling large quantities of pine and hardwood timber growing and being thereon; the proceeds of which he has applied to his own use.

22. Your complainant is desirous that the personal estate of the said A. C. should be administered under the guidance and direction of this Honorable Court; that an occupation rent of the said premises from the date of the death of the said A. C. should be fixed and the defendants R. P. and J. P. charged therewith; and that the said

(*y*) See now 35 Vic. c. 16, s. 1 (O.)

J. P. should be charged with the timber converted to his own use as aforesaid.

Your complainant therefore prays:—

1. That the personal estate of the said A. C. may be administered under the directionof this Honorable Court.
2. That an enquiry as to what would be a fair occupation rent of the said lands and premises may be ordered, and the defendants R. P. and J. P. may be charged with the same from the time they have been in possession; and that the said J. P. may be ordered to account for all timber that he has removed as aforesaid.
3. That a partition of the said reality and an allotment of the several shares thereof, may be made between your complainant and the other parties interested therein.
4. Or if a sale be considered on the whole more advantageous, that a sale thereof may be ordered accordingly, and the proceeds thereof distributed among the parties entitled thereto.
5. That the dower of the said R. P. may be assigned to her, or in the event of her consent ing thereto, that an allowance in lieu of such dower may be fixed under the direction of this Honorable Court.
6. That all necessary accounts may be taken and inquiries made.
7. That your complainant may have such further and other relief as to your Lordships may seem meet.

And your complainant will ever pray, &c.

61. Bill for alimony.

61. *Bill for alimony.*

In Chancery.

E.—A..... .....Plaintiff,

and

S.—A.....Defendant.

City of Hamilton.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of E. A., late of the Township of ————, in the County of————, now of the Township of ————, in the County of ————, wife of S. A., the above-named defendant,

Showeth as follows:

1. The plaintiff was married to the defendant in the month of December, A.D. 1856, and they shortly after their marriage took up their residence on a farm in the said Township of————, where they have till lately continued to reside as man and wife.

2. In a very short time after their said marriage, the defendant began to exhibit a very bad temper, and disposition towards your complainant, and has continued to do so, until she was compelled to leave him as hereafter stated.

3. The defendant during all this time has been in the habit of using intoxicating drinks and has been frequently so much under their influence as to become very abusive in his language to your complainant, and this has occurred so often that her life with him, during all the period above mentioned, has, from this cause alone, been one of constant unpleasantness and apprehension—quite irrespective of the personal violence used by him towards her, hereafter particularly mentioned.

4. During this period the defendant has frequently struck your complainant; and has pulled her violently by the hair and otherwise aassaulted her in so gross a manner as to compel her on several occasions to escape from him either by locking herself in a room, or by leaving the house and hiding in the adjoining premises.

5. The low, scurrilous abuse which the defendant has, during the sixteen years of their married life, heaped on your complainant, interspersed with the personal violence he has used towards her, your complainant has (until recently) borne with—being unwilling to expose these unhappy private relations to the public, and hoping that time would produce a favourable change; but her forbearance has brought no improvement in the conduct of the defendant towards her.

6. Among the numerous instances of gross personal violence inflicted on your complainant by the defendant, she avers that, about five years ago the defendant violently expelled your complainant from his house, and about three years ago his abuse and threats of violence to her were so great that she in fear of her life locked herself in her room in order to be secure against his approach. On New Year's day A.D. 1868, the defendant choked your complainant. In the fall of the year 1869, he caught her by the hair and brutally dragged her around the cellar of his house, causing such apprehensions for her life that she barred herself in a room to prevent the infliction of further violence. In the month of March

A.D. 1870, he so violently struck and bruised her, that she feared he would take her life, and on the 25th of May last, he threw at her and broke upon her head and face a number of eggs; and choked her by the throat until she feared he would strangle her (*z*).

7. During all this period your complainant has discharged all the duties of a wife to the defendant, and she has by her exertions contributed in a great degree to the accumulation of the property which he now owns, consisting of a good and well-stocked farm with comfortable house and out-buildings being lot No.—, in the First Concession of the said Township of ——, worth about $4,000, and money out at interest and other personalty worth about $6,000 more.

8. Your complainant has never had any children by the defendant, and neither he nor she had any family before they were married.

9. Your complainant, in consequence solely of the constant abusive and violent conduct of the defendant as above detailed, and from the apprehension that her life is at no moment safe while living with the defendant, left his house and premises on the 7th day of June, A. D. 1872.

10. Your complainant has no means of living excepting by her daily labour, and unless relief be afforded by this Honorable Court, she will be reduced to great distress.

1. Your complainant, therefore, prays that she may be declared entitled to alimony from the defendant (and also to interim alimony) sufficient under the circumstances; and that he may be decreed to pay the same to her, and that he may be ordered to pay the costs of this suit.

2. And that your complainant may have such further and other relief in the premises as the circumstances of the case may require; and that for that purpose all necessary directions may be given and accounts taken.

3. And the plaintiff will ever pray, &c. (*a*)

(*z*) The several acts of violence or other misconduct of Defendant intended to be proved at the hearing, must be specifically set forth in the bill with specific allegations as to times and places; a slight variance however, between a date alleged and proved, would not be fatal to plaintiff's right to prove the act complained of: *Rodman* vs. *Rodman*, 20 Gt. 429.

(*a*) For notice of claim for interim alimony to be indorsed on office copy of bill. See post No. 179.

62. *Bill of interpleader and for injunction to restrain action at law.*

62. Bill of interpleader and to restrain threatened actions at law.

In Chancery.

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

City of Toronto,

To the Honorable the Judges of the Court of Chancery:

The Bill of Complaint of A. B., &c. (as in form No. 29.)

Sheweth as follows:

1. On the 5th day of June, 1871, the plaintiff contracted and agreed, in writing, with one Y. Z. to purchase from him a certain lot of land, known as lot No. (*describing it*) for the sum of $5,000; ten per cent. of which sum the plaintiff paid to the said Y. Z. on the said 5th day of June, 1871, and the balance thereof he agreed to pay to the said Y. Z. on the 5th day of September, 1871.

2. On the 1st day of July, 1871, the said Y. Z. became insolvent and made an assignment of his estate and effects to the defendant, C. D., under the provisions of the Insolvent Act of 1869, and the said C. D. duly accepted the said assignment, and now claims to be the assignee in insolvency of the said Y. Z.

3. On the 5th day of July, 1871, the said Y. Z., by deed granted, assigned and transferred unto the said E. F. the said lands and all his estate and interest therein, subject to the contract he had entered into with the plaintiff as aforesaid, and also all his the said Y. Z.'s interest in the balance of the purchase money payable by the plaintiff, which assignment the defendant, C. D., alleges is null and void, but which assignment the said E. F. maintains is valid and effectual, notwithstanding the said assignment of the 1st day of July, 1871, to the said C. D., because the said E. F. alleges that the said Y. Z. was not, at the time of the execution of the said last mentioned assignment, a trader, or capable of making any assignment under the provisions of the said Insolvent Act.

4. The defendants each claim that they are entitled to the balance of the said purchase-money, and they have both served upon the plaintiff notice in writing of their respective claims, and demanded payment of the said moneys (which now amount with interest to the sum of $4,520), and each of the said defendants have forbidden

the plaintiff to pay the said moneys to the other of them.

5. The said defendants have lately threatened to commence actions against the plaintiff to recover the said balance of purchase-money, but no proceedings have yet been taken.

5. The plaintiff submits that the defendants ought to interplead between themselves, the plaintiff hereby offering to pay the said sum of $4,520 into Court.

The plaintiff prays as follows:

1. That the defendants may be decreed to interplead and settle between themselves their rights in respect of the said balance of purchase-money, the plaintiff hereby offering to pay the same as this Honorable Court shall direct.

2. That the defendants may be restrained from commencing or prosecuting any action at law or other legal proceedings against the plaintiff for the recovery of the said moneys.

3. That the defendant who may be found entitled to the said balance of purchase-moneys may be ordered, upon payment of the same by the plaintiff, to convey the said premises to the plaintiff, or procure the same to be well and sufficiently conveyed to him.

4. That the plaintiff may be paid his costs o this suit.

5. And that the plaintiff may have such further and other relief as the nature of the case may require and to this Honorable Court shall seem meet.

And the plaintiff will ever pray.

N.B.—The plaintiff is required to make an affidavit intituled in the cause "that the bill in this cause is not filed in collusion with either of the defendants in the said bill named, but merely of his own accord and for relief in this Honorable Court;" this affidavit must be attached to and filed with the bill—an affidavit by the solicitor is ordinarily insufficient. If the bill is filed by a company the affidavit should be made by one of its officers and should state that the company do not collude. For forms of affidavit, see post.

Forms of affidavits to be attached to bill of interpleader.

63. Affidavit by sole plaintiff, of no collusion.

In Chancery.

(*Title of the cause.*)

I, A. B., of (*residence and addition*) the above-named plaintiff, make oath and say, that the bill in this cause hereunto annexed [*or*, now produced and shown to me, and marked A.], is not filed in collusion with the above-named defendants, or any or either of them; but merely of my own accord, for relief in this Honorable Court.

Sworn, &c.

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64. Affidavit by several plaintiffs, of no collusion.

Proceed as in ante, No. 63, *to* make oath and say; *and continue thus:* The bill in this cause hereunto annexed [*or*, produced and shown to us respectively, at the time of swearing this affidavit, and marked A.], is not filed by us, or any or either of us, in collusion with the above-named defendants, or any or either of them; but merely of our own accord, for relief in this Honorable Court.

Sworn, &c.

In Chancery,

(*Title of the cause.*)

65. The like, by one of several plaintiffs.

I., A. B., of (*residence and addition*), one of the plaintiffs named in the bill in this cause, and hereunto annexed, make oath and say as follows:

I alone of the plaintiffs have attended to the matters mentioned in the bill of complaint hereunto annexed; and my co-plaintiffs are not acquainted with the facts; and I say that the said bill of complaint is not filed by myself, nor any of the plaintiffs therein named, in collusion with the defendants, or any or either of the defendants in the said bill named; but merely of the plaintiffs' own accord, for relief in this Honorable Court.

Sworn, &c.

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66. The like, by a public officer, so suing.

Proceed as in No. 65, *ante, to* as follows:

The bill in this cause hereunto annexed [*or*, now produced and shown to me, and marked A.], is not filed by me in collusion with the above-named defendants, or any of them, nor, to the best of my knowledge, information, and belief, do or does any other person or persons on behalf of the —— company, in the said bill named,

collude, nor does the said company in any way collude, with the said defendants or any of them; but the said bill is filed merely of my own accord, as the public officer of the said company, for relief in this Honorable Court.

Sworn, &c.

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67. Affidavit by the plaintiff's solicitor, of no collusion.

In Chancery.

(*Title of the cause.*)

I, A. B., of (*place of business*), gentleman, the solicitor in this cause for the above-named plaintiff, make oath and say as follows:

1. *Show why the affidavit it not made by the plaintiff; e. g.*: The above-named plaintiff is resident at ——, out of the jurisdiction of this Honorable Court.

2. The bill in this cause hereunto annexed [*or*, now produced and shown to me, and marked A.], is not filed by me in collusion with the above-named defendants, or any of them, nor, to the best of my knowledge, information, and belief, is the above-named plaintiff, or any person or persons in his behalf, in collusion with the said defendants, or any of them, nor is the said bill filed to avoid or delay the payment of the sum of $——, in the said bill mentioned [*or as may be*]; but merely of the plaintiff's own accord for relief in this Honourable Court.

3. *Show means of knowledge.*

Sworn, &c.

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68. Bill for specific performance vendor charging that vendee has accepted the title.

68. *Bill for Specific Performance by Vendor charging that Vendee has accepted the Title.*

(*Proceed as in No.* 33 *to end of paragraph* 1.)

2. On the 10th day of November, 1871, the plaintiff's solicitor, at the defendant's request, sent to his solicitors, Messrs. A. & B., a perfect abstract of the plaintiff's title to the said lands.

3. On the 1st day of December, 1871, the said Messrs. A. & B. delivered to the plaintiff's solicitor certain objections to and requisitions upon the said title; and the plaintiff's solicitor, on the 3rd day of December, 1871, delivered to the said Messrs. A. & B. a full answer to all such objections and requisitions.

4. No further or other objection to the said abstract or to the title of the said plaintiff has been sent to the plain-

tiff or his solicitor by the defendant or his solicitors, and the defendant has never returned the said abstract and still retains possession thereof.

5. On or about the 10th day of December, 1871, the defendant was let into possession of the said premises, and has ever since continued in the possession and in the receipts of the rents and profits of the said premises.

6. Under the circumstances, the plaintiff charges that the defendant ought to be deemed to have waived all objection to and to have accepted the title of the plaintiff to the said premises, and to be ordered specifically to perform the said agreement and to pay the costs of this suit.

(*Add paragraph* 2 *in form No* 33 *and prayer. Add to the prayer*—"That the defendant may be ordered to pay to the plaintiff the costs of this suit.")

69. *Bill for Redemption charging mortgagee with dilapidation.*

69. Bill for redemption charging mortgagee with waste and dilapidation.

(*Proceed as in No.* 30 *to end of paragraph* 2.)

3. On the 14th day of April, 1869, the defendant obtained possession of the said mortgaged premises, and has ever since continued in possession and in receipt of the rents and profits thereof.

4. At the time the defendant obtained possession of the said premises, they were in the occupation of one A. W., as a tenant to the plaintiff, at a rental of $50 per month; and the said A. W. was a careful and respectable tenant, and had always paid his rent punctually, and had kept the said premises in proper repair; and the said A. W. was ready and willing and offered to attorn to the said defendant upon the same terms as he had held the said premises from the plaintiff; but the defendant refused to accept his attornment, and compelled him to quit the said premises.

5. The defendant subsequently rented the said premises to one O. D., his brother, for the sum of $30 per month rent, and the said O. D. has been in the occupation of the said premises, at such rental, since the 1st day of May, 1870; and the defendant refuses to give the plaintiff credit for more than the said rental of $30 per month, during the time the said O. D. has been in the occupation of the said premises, although, as the plaintiff charges and as the fact is, such rental is much less than the plaintiff could have obtained for the said mortgaged premises from

the said A. W., and from other persons, had he used reasonable care and diligence in renting the said premises, as the defendant well knew. (*b*).

6. The said O. D., during his said tenancy, has committed great waste and destruction upon the said premises, by pulling down and removing therefrom a certain barn and stable, and has suffered the houses and buildings upon the said premises to become greatly dilapidated; and the plaintiff charges that the said defendant is liable to the plaintiff for the said waste and dilapidation.

7. The plaintiff charges that the damages he has sustained, by reason of the said waste and dilapidation of the said mortgaged premises, ought to be charged against the defendant, in taking his accounts as mortgagee in possession; and that the defendant is also chargeable with a large sum for rents of the said premises, which he might have received, but for his wilful neglect and default.

(*Add prayer, as in form No.* 30, *to the end of paragraph* 1, *and continue thus.*)

2. That an account may be taken with yearly rests of rents and profits of the premises comprised in the said mortgage received by the defendant or by any other person for his use, or which, without his wilful neglect and default, might have been so received.

3. That an enquiry may be made whether the said mortgaged premises have become depreciated, by reason of the waste and dilapidations aforesaid, to any and to what extent; and that what shall appear due to the plaintiff, in respect of such depreciation, may be set off against the amount which may be found due to the defendant for principal, interest and costs; and that the balance (if any) in favour of the plaintiff, may be ordered to be paid by the defendant to the plaintiff.

(*Add clauses* 2 *and* 3 *of prayer, as in form No.* 30.)

(*b*) *Merriam* v. *Cronk*, 21 Gt. 60.

70. *Bill by mortgagee to foreclose and to restrain waste by the mortgagor.*

70. Bill to foreclose and to restrain waste by mortagor.

(*Proceed as in No.* 29 *to end of paragraph* 5.)

6. There are divers valuable oak, pine, elm and other timber trees growing and standing upon the lands comprised in the plaintiff's mortgage, which trees and timber are a material part of the plaintiff's said security, and, if the same, or any of them, were felled and taken away, the said mortgaged premises would be an insufficient security to the plaintiff for the money due thereon.

7. The defendant who is in possession of the said mortgaged premises has lately cut down some of the said oak trees lately growing upon the said lands, and has marked for felling a large quantity of the said oak, pine and elm trees and other timber, and he has engaged a large number of workmen to cut and remove, and he threatens and intends forthwith to cut down and remove a large quantity of the said trees and timber from off the said mortgaged premises.

(*Add to the prayer after clause* 1 *in form* 29.)

2. That the defendant may be restrained by the injunction of this Honorable Court from felling, cutting, removing or disposing of any of the timber or timber-like trees now standing or growing or being in or upon the said mortgaged premises.

(*Proceed as in form* 29.)

71. *Information to restrain encroachment on public highway.*

71. Information to restrain encroachment on public highway.

In Chancery.

Between Her Majesty's Attorney-General for the Province of Ontario, at and by the relation of A. B.....Informant.
and
C. D., E. F., G. H.....Defendants.

City of Toronto.

To the Honorable the Judges of the Court of Chancery.

Informing, sheweth unto your Lordships the Honorable Oliver Mowat, Her Majesty's Attorney-General for

the Province of Ontario, at and by the relation of A. B., of the City of Toronto, in the County of York, and Province of Ontario, grocer.

1. That there is situate in the said city a certain highway or public road commonly called or known as Yonge Street, the said street is throughout its entire length sixty-six feet wide.

2. The above-named defendants C. D. and E. F. are jointly seized in fee simple in reversion of that lot of land known as (*describing it*) situate on the west side of the said Yonge Street, and abutting on the same, and the defendant G. F. is lessee for a term of years of the said land as tenant of the said C. D. and E. F., and is in possession thereof as such lessee.

3. The defendants have surrounded the said lot with a board fence, and instead of conforming to the proper boundary line of the said street have enclosed within their fence a considerable portion of the soil of the said Yonge Street, and the defendant G. H. has been ever since the erection of such fence, and is now, in possession of the soil of the said street so enclosed as aforesaid.

4. The above-named relator A. B. is owner in fee of a house and grounds which abut on the said Yonge Street, and are situated on the east side thereof.

5. The board fence surrounding the said lot and enclosing a portion of the said street materially diminishes the width of the said street, and is, your informant submits, an illegal obstruction thereof, and deprives the relator and the many persons residing on the said street of the free and uninterrupted use thereof, to which they together with all the rest of Her Majesty's subjects, are entitled.

6. Your informant therefore prays.

1. That the defendant may be restrained by the order and injunction of this Honorable Court from permitting the said board fence to remain on the soil of the said Yonge Street, or so that the said street and the right to the use and enjoyment thereof by the public may be in any way hindered, obstructed or interfered with.
2. That the defendants may be ordered to pay the costs of this suit.
3. That your informant may have such further or other relief as to your Lordship may seem meet.
4. And your informant will ever pray.

(Signed) O. MOWAT.

72. *Bill to enforce Mechanics' Lien.*

72. Bill to enforce Mechanics' lien.

In Chancery.

Between—J. E. and W. B.....Plaintiffs,
and
M. A. T.....Defendant

City of Toronto.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of J. E., of the City of Toronto, in the County of York, builder, and W. B., of the same place, bricklayer,

Sheweth:

1. On or prior to the 11th day of November, 1873, the defendant was and she has ever since remained and now is the lessee of certain leasehold premises in the City of Toronto, in the County of York, more particularly described in the claim or lien hereinafter set forth.

2. On or about the said 11th day of November, the plaintiffs, who are mechanics, at the request of the said defendant, agreed to perform certain work and to furnish certain materials for the erection of a brick hotel upon the said land for the said defendant, and there was no agreement between the said defendant and the plaintiffs that the plaintiffs should not be entitled to a lien upon the said lands and buildings for the price of the said work and materials.

3. In pursuance of the said agreement, the plaintiffs did do a large amount of work upon and did furnish large quantities of materials, which were used in and about the erection of the said brick hotel upon the said lands, to the value of $18,000, and completed the same on or about the 4th day of September, 1874, whereby the defendant became indebted to the plaintiffs for the said work and materials in the said sum of $18,000.

4. The sum of $15,000 has been paid on account of the said sum of $18,000, leaving a balance of $3,000 still due and payable to the plaintiffs.

5. On the completion of the said work the plaintiffs became and are entitled to a lien on the said lands for the said sum of $3,000, under the provisions of "The Mechanic's Lien Act of 1873."

6. On or about the 21st day of September, 1874, the plaintiffs, in pursuance of the said Act, caused to be filed in the Registry Office in and for the City of Toronto a statement of their said claim, which statement is in the words and figures following, that is to say:

"J. E., of the City of Toronto, in the County of York, "builder, and W. B., of the same place, bricklayer, under "'The Mechanics' Lien Act of 1873,' claim a lien upon "the estate or interest of M. A. T., of the said City of "Toronto, in respect of the following work and materials, "that is to say:

To amount of contract	$17,000

Bill of Extras.

To extra stone in foundation	500
" Brick pointing	200
" Second flats of extra ¼-bricks in thickness	300
	$18,000

1873.				
Dec.	1.—By cash		$2,000	
"	22.— "		1,000	
1874.				
Jan.	5.— "		5,000	
July	6.— "		7,000	
			——	15,000
		Balance.....		$ 3,000

—"which work was done and materials provided for the "said M. A. T. on or before the 4th day of September, "A. D. 1874, the amount claimed to be due or become "due is the sum of $3,000; the description of the land "to be charged is as follows:—All and singular that cer- "tain parcel of land known as lot 3, on the west side of "John Street, as shown on the plan of J. S. Dennis, "P. L. S., registered in the Registry Office of the said City "of Toronto, and numbered D 63.

"Dated at the City of Toronto, in the County of York, "this 21st day of September, A. D. 1874.

"Witness, } Signed. J. E. [L.S.]
"Signed. J. BARNES. } Signed. W B. [L.S.]"

—which statement was verified by an affidavit of the plaintiffs, sworn before a Commissioner for taking affidavits in the said County of York, as required by the said statute.

7. The lands referred to in the first paragraph of this bill, and particularly described in the said claim or lien hereinbefore set forth, are the lands occupied by and usually enjoyed with the said hotel.

The plaintiffs therefore pray:

1. That the defendant may be ordered to pay to the plaintiffs the said sum of $3,000, together with interest thereon and the costs of this suit.
2. And that in default of such payment the said lands and buildings, or a competent part thereof, may be sold and the proceeds thereof applied in payment of the plaintiffs' debt and the costs of this suit.
3. That for the purposes aforesaid all proper directions may be given and accounts taken.
4. And that the plaintiffs may have such further and other relief as to this Honorable Court may seem meet.

And the plaintiffs will ever pray.

G. M.

73. *Bill to remove from Registry Office an improperly registered plan.*

73. Bill to remove from Registry Office an improperly registered plan.

In Chancery.

Between—F. P.....Plaintiff,

and

J. A., J. S. and J. L.....Defendants.

Town of Barrie.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of F. P., of the City of Toronto, in the County of York, Esquire,

Sheweth:

1. In the year 1853, one W. P. became, and from thenceforth until he conveyed the same as hereinafter mentioned continued to be the owner in fee of that certain parcel of land known as lot 5, in the 6th Concession of the Township of Orillia, in the County of Simcoe.

2. The said W. P., while such owner as aforesaid, by Indenture dated the 29th day of December, 1860, mortgaged the said premises to Mary and Jessie McM., and afterwards, by Indenture dated the 19th day of April, 1870, he released to the said Mary and Jessie McM. his equity of redemption therein.

3. By deed dated the 10th day of November, 1871, the said Mary and Jessie McM. conveyed the said premises to the plaintiff in fee simple for a valuable consideration then paid to them by the plaintiff.

4. Before paying his purchase money and accepting the said conveyance, the plaintiff searched the title of the

said premises in the Registry Office of the said County of Simcoe, and as the result of such search ascertained that there was no deed, conveyance, plan or other instrument registered against the said premises which in any way affected or impaired the registered title of the said Mary and Jessie McM. to the same, and thereupon the plaintiff paid his purchase money and became and now is the owner in fee of the said premises.

5. The plaintiff caused the conveyance of the said premises to him to be registered in the said Registry Office on the 8th day of January, 1872.

6. The said premises were at the time of the plaintiff's purchase thereof, and still are, uncultivated and in a state of nature, but the plaintiff has ever since paid all taxes assessed upon the same, but the plaintiff is not nor has nor have any person or persons ever been in the actual occupation of the same or any part thereof.

7. The said premises are wholly situate in the Township of Orillia, near to the Village of Orillia, in the said County of Simcoe, and are divided from the said Village by a strip of land running the whole length of the said lot and containing about five acres.

8. By deed poll dated the 6th day of December, 1861, and registered in the said Registry Office on the 15th day of the same month, made by the Sheriff of the said County of Simcoe, the said Sheriff purported to convey to the defendant J. A., certain lands described in the said deed poll as "all that certain parcel or tract of land situate in the Village of Orillia, in the County of Simcoe, containing by admeasurement two acres, be the same more or less, being composed of Village lot No. 9, on the south side of St. Andrew Street, Cameron's survey in the said Village of Orillia," and the said defendant J. A., now claims to own the lands in the said deed described.

9. By a certain other deed poll dated the 12th day of December, 1861, and registered in the said Registry Office on the 19th day of the same month, made by the said Sheriff, the said Sheriff also purported to convey to the defendant, J. S., certain lands in the said deed described respectively as lot No. 8 on the south side of St. George Street, in the Village of Orillia, Cameron's survey, and lot No. 1, on the south side of St. George Street in the said Village of Orillia, Cameron's survey, and the said defendant J. S., now claims to be the owner of the said lands in the said deed described.

10. By two certain other deeds poll dated respectively the 25th day of February, 1862, and registered on the

27th day of March in the same year, and made by the said Sheriff, the said Sheriff also purported to convey to the defendant J. S., certain lands in the said deeds described respectively as lots 1 and 2 on the north side of George Street, in the Village of Orillia, two acres, Cameron's survey, and the said defendant J. S. now claims to be the owner of the said lands in the said two deeds described.

11. One Cameron did in fact make a survey and register a plan of the said Village of Orillia, but he never made a survey or registered a plan of the said premises so conveyed to the plaintiff as aforesaid, and no plan relating to or affecting the said premises or any part thereof was ever registered until the registration of the pretended copy of a plan by the defendant J. A., as hereinafter mentioned.

12. On the 29th day of July, 1873, the defendant, J. A., without making any survey, adopted a plan or sketch of the plaintiff's said lot, made in the year 1853, and caused to be registered in the said Registry Office what purports to be a copy of the said plan, whereby the plaintiff's said lot is represented as forming part of the Village of Orillia, and whereby his said lot appears to be subdivided into 50 different lots, with six different streets intersecting the same, as by the said pretended copy of plan will, when produced, more fully appear.

13. The said six streets depicted on the said pretended copy of plan are named respectively St. David Street, St. Andrew Street, St. Patrick Street and St. George Street, and the said lots or subdivisions are numbered on the said pretended copy plan with reference to the said streets. But the plaintiff charges that the pretended copy plan is not in fact a true copy of the plan or sketch which was actually made in the year 1853, but that, on the contrary, in the original plan made in the year 1853 the streets shown thereon were not designated by any name whatever, but in the said pretended copy the said defendant J. A., or some one acting in his behalf, has arbitarily assigned names to the different streets shown on the said plan without knowing or having any means of knowing by what names the said streets were respectively intended to be designated by those by or for whom the said original plan or sketch was prepared.

14. There are in fact no streets in the said Village of Orillia called St. David Street, St Andrew Street, St. Patrick Street, or St. George Street.

15. The effect of the registration of the said pretended

copy of a plan has been and is to make the hereinbefore described parcels of land owned or claimed to be owned by the defendants under the respective deeds poll mentioned in the 8th, 9th and 10th paragraphs hereof, appear to form part of the plaintiff's said lot, and the defendants now claim to be entitled under the said deeds poll to various portions of the plaintiff's said lot, according to the said pretended copy plan.

16. The plaintiff charges and the fact is that no original plan of the plaintiff's said lot corresponding with the said pretended copy so registered by the defendant J. A. was ever made; but if any such plan ever were made it was not registered in the said Registry Office before or at the dates of the said advances by and conveyances to the said Mary and Jessie McM., of the said lot 5, and they had no notice or knowledge of any such plan, and they advanced and paid their money and received the said conveyances to themselves in good faith, and they were in fact innocent purchasers for value of the said lands without notice of the said plan.

17. The plaintiff further charges that before and at the date of the payment by him of his purchase money, and the conveyance of the said lot 5 to him, no plan of the said lot was registered in the said Registry Office, and he paid his said purchase money and received his said conveyance in good faith and without notice or knowledge of any such plan, and he is in fact an innocent purchaser for value of the said lands without notice of the said plan, and the plaintiff claims the benefit of the Registry laws in force in this Province.

18. The plaintiff submits that the said pretended copy of plan could not legally be registered on the strength of the supposed survey of 1853, and that it forms a cloud on the plaintiff's title to the said lot 5, and that the said registration ought to be declared illegal and void and ought to be cancelled,

19. The plaintiff further submits that while the registration of the said pretended copy of plan remains uncancelled the said deeds poll form a cloud upon the title of the plaintiff to the said lot; and if for any reason this Court should see fit to permit the said registration to remain uncancelled, then the plaintiff avers that at and before the time when the said Mary and Jessie McM. advanced their moneys and received the said conveyances of the said lot 5, they had no notice or knowledge of the said deeds poll, or of any or either of them, and they became and were purchasers of the said lot for value in good

faith and without notice of the said deeds poll, or any or either of them; and that at and before the time when the plaintiff paid his purchase money and received his said conveyance of the said lot No. 5, he had no notice or knowledge of the said deeds poll or of any or either of them, and he was and is a purchaser for value without notice thereof, and he claims the benefit of the Registry laws in force in this Province, and the plaintiff submits that the said deeds poll should, in the event of the said registration of the said pretended copy of plan remaining uncancelled, be delivered up to be cancelled, or that the defendants should be ordered to execute such instruments as shall remove the cloud on the plaintiff's said title created by their registration.

20. The plaintiff did not intend that the said lot 5 should be subdivided or laid out in lots and streets, and such subdivision is altogether contrary to his intention and wish.

21. The defendants, sometimes pretend that the defendant J. A. was, at the time of the registration of the said pretended copy of plan, the owner of the lot now claimed by him, and as such entitled to register a plan or a copy of a plan which it is alleged was made by a former owner of the said lands; but the plaintiff alleges that he had no such right, and in any event the plaintiff shows that by reason of the facts and circumstances hereinbefore set forth, and by force of the Registry laws in force in this Province, the said defendant was not, and is not, and cannot rightfully claim to have been or to be the owner of the said lot as depicted on the said pretended copy of plan, as against the plaintiff, and the plaintiff further shews that even if the said defendant, J. A., had been or was such owner, and therefore entitled to register such plan, the copy of said plan so registered is not a true copy of the original plan prepared by or for the original owner of the said lands, and is not certified to by the original owner of said lands or his representatives as required by law, and is not in other respects a compliance with the statutes in force in this Province with respect to the survey of lands and the registration of deeds and plans and other instruments.

22. The plaintiff and the defendants are the only persons who appear by the books in the said Registry Office to be affected by the registration of the said pretended copy of plan.

23. The said defendants are not, nor is, nor are any or either of them in the actual possession of the parcels of

the said lot No. 5, respectively claimed by them or of any part thereof.

The plaintiff therefore prays:

1. That it may be declared that the said pretended copy of plan and the registration thereof, are illegal and void as against the plaintiff and that the registration of the said pretended copy of plan may be ordered to be cancelled.

2. Or if for any reason this Honourable Court should see fit to permit the said registration to remain uncancelled, then that the same may be declared to be inoperative and of no force or effect as against the plaintiff's right to the said lot, and that the said deeds poll may also be declared void as against the plaintiff's said title and that the registrations thereof form a cloud upon the plaintiff's said title, and that the defendants may be ordered to deliver up the said deeds poll to be cancelled, or to execute such instruments as shall remove the said cloud.

3. That the plaintiff may be paid his costs of this suit, and may have such further and other relief as may seem just.

And the plaintiff will ever pray.

C. M.

74. Bill to set aside By-law of municipal corporation granting a bonus to a Railway Company.

74. *Bill to set aside By-law of Municipal Corporation granting a Bonus to a Railway Company.*

In Chancery.

Between—G. F. and J. G., the elder, G. N., and R. M., who sue on behalf of themselves and all other Ratepayers of the Township of Turnberry, except the defendant, J. M., ... Plaintiffs,

and

The Wellington, Grey and Bruce Railway Company, the Corporation of the Township of Turnberry, W. McG., and J. M..... Defendants.

City of London.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of G. F., J. G., the elder, G. N., and R. M., all of the Township of Turnberry, in the County of Huron, Yeomen, who sue on behalf of themselves and

all other Ratepayers of the said Township of Turnberry, except the defendant, J. M.

Sheweth as follows:

1. By an Act of the Parliament of the late Province of Canada, passed in the 27th and 28th Years of the Reign of Her Majesty Queen Victoria, and Chaptered 93, the above named defendants, the Wellington, Grey and Bruce Railway Company, were incorporated with power and authority to lay out, construct, make and finish a double or single Iron Railway from the Town of Guelph to the Village of Southampton or other point on Lake Huron, in the County of Bruce, with a branch, should they so desire it, to the Town of Owen Sound in the County of Grey; and other powers and authorities were by the said Act conferred upon, and vested in the said defendants the Wellington, Grey and Bruce Railway Company.

2. By an Act of the Legislature of the Province of Ontario, passed in the 31st year of the Reign of Her said Majesty, and Chaptered 13, after reciting that the said Wellington, Grey and Bruce Railway Company had by their petition set forth that various Municipalities to the north and north-west of the Town of Guelph being deeply interested in the establishment of Railways, and being destitute of proper facilities for communicating with the various Produce Markets of the Province were desirous of aiding the undertaking of the said Wellington, Grey and Bruce Railway Company, by free grants or donations of debentures by way of bonus; but that no means existed by law of granting such proposed aid, except by the subscription of stock, which the said Municipality desired to avoid, it was amongst other things enacted, that it should be lawful for any Municipality interested in the said undertaking, to pass a By-law or By-laws authorizing aid to the said Railway, by the issue of Debentures, to be given to the said Railway Company, as a free gift or donation, by way of bonus, upon such terms and subject to such restrictions and conditions as might be mutually agreed on between snch Municipality and the Directors of the said Railway Company; and the Directors for the time being were authorized and empowered, on behalf of the Company, to enter into an agreement or agreements for the due performance of any such terms and conditions as might be contained in such By-law, or mutually agreed upon between said Directors and the Council of such Municipality; provided always, that any such By-law to be valid, should be made in conformity with the laws of the said Province respecting Municipal Institutions.

3. By the said in part last recited Act, it was further enacted that it should be lawful for the Council of such Municipality, with the assent of the Ratepayers, at the request of the Railway Company, from time to time, to make such alterations in the conditions of such By-laws as might be found necessary or expedient, due notice being given for the same period, and in the same manner as required under the 196th section of the Municipal Act, and that a copy of any By-law containing such alterations, should be forthwith transmitted to the Treasurer of the Province of Ontario.

4. The defendants, the Corporation of the Township of Turnberry, are a Municipal Corporation under the statutes in that behalf, and a Municipality within the meaning of the last mentioned Act of the Legislature of the Province of Ontario; and the plaintiffs have for several years been, and now are, Ratepayers of the said Township, duly qualified, and having the right to vote upon the By-law hereinafter mentioned.

5. The Council of the said Municipality during the year 1871, was composed of the following persons, viz:—the Defendant, J. M., Reeve; W. C., Deputy Reeve; and J. H., W. H. L., and D. H., Councillors.

6. At a meeting of the said Council, held on the 14th day of August, 1871, a resolution was passed in the words and figures following; that is to say,—"That this Coun-"cil submit a By-law to the Ratepayers of this Town-"ship, to grant a bonus of $28,000, to aid in the construc-"tion of the Wellington, Grey and Bruce Railway, and "that a vote of the electors be taken at Lot 15, Con. 7, on "the 11th September next (1871), and that James John-"ston be Returning Officer."

7. In pursuance of the said resolution, and on the 11th day of September, 1871, the said Council pretended or assumed to submit to the said Ratepayers a By-law, and on the conclusion of the voting thereon, the same was declared carried by a majority of twelve of the Ratepayers who voted upon said By-law.

8. The said By-law is in the words and figures following:—

"A BY-LAW.

"To aid the Wellington, Grey and Bruce Railway Company by a free grant or donation of debentures by way of bonus, to the extent of $28,000, subject to certain terms, restrictions and conditions."

"Whereas, by certain Acts passed by the Legislature of

the Province of Ontario, the Municipalities therein referred to are authorized to aid the Wellington, Grey and Bruce Railway, by free grants or donations of Debentures by way of Bonus. And whereas the Municipal Council of the Township of Turnberry, being one of the Municipalities so authorized, are desirous of aiding the said Railway by the free grant or donation of Debentures, to the extent of Twenty-eight thousand Dollars, and propose to issue Debentures for that purpose. And whereas it will require the sum of $3,080 to be raised annually by special rate for the payment of the said Debentures, and the interest thereon as hereinafter mentioned.

"And whereas, the amount of the whole rateable property of the said Municipality, irrespective of any future increase of the same, and also irrespective of any income to be derived from the temporary investment of the Sinking Fund, hereinafter mentioned, or any part thereof, according to the last revised Assessment Roll, of the said Municipality, being for the year 1871, was $286,500, (Two hundred and eighty-six thousand five hundred Dollars.)

"And whereas the amount of the existing debt of the said Municipality is as follows: Principal, the sum of nothing; Interest, the sum of nothing; making in the aggregate the sum of nothing, of which Interest no portion is in arrear.

"And whereas, for paying the Interest and creating an equal yearly Sinking Fund for paying the said sum of $28,000, and Interest, as hereinafter mentioned, it will require an equal annual special rate of one and one-tenth cents in the dollar, in addition to all other rates to be levied in each year."

"Be it therefore enacted by the Municipal Council of the Township of Turnberry :—

1. "That it shall be lawful for the Reeve of the said Township, and he is hereby required to issue Debentures, to the extent of Twenty-eight thousand Dollars in sums not less than $100 each, which Debentures shall be sealed with the seal of the said Municipal Council, and be signed by the said Reeve, and countersigned by the Treasurer."

2. "That the said Debentures shall be made payable in twenty years from the day hereinafter mentioned for this By-law to take effect, at the Office of the Canadian Bank of Commerce, at Goderich; and shall have attached to them Coupons for the payment of Interest.

3. "That the said Debentures shall bear Interest at and after the rate of six per cent. per annum from the date

thereof, which Interest shall be payable on the first days of January and July in each year.

4. "That for the purpose of forming a Sinking Fund for the payment of the said Debentures, and the Interest at the rate aforesaid to become due thereon, an equal special rate of one and one-tenth cents in the dollar, shall in addition to all other rates be raised, levied and collected in each year, upon all the rateable property in the said Municipality, during the continuance of the said Debentures, or any of them.

"Provided always, and it is hereby declared, that this By-law is passed subject to the following stipulations and conditions:—

1. "That before the Reeve shall issue the said Debentures, the Railway Company shall furnish an agreement under the seal of the Company (a copy whereof has been submitted to and approved of by this Council), undertaking and binding the Company in the manner set forth therein, to commence the extension therein referred to, that is to say, the extension of the said Wellington, Grey and Bruce Railway, through South Bruce and North Huron to Lucknow, within three months after the final passing of this By-law, and to complete the same to Lucknow ready for traffic, within two years from that time; and to erect a station at or near to Bluevale, and another at or near to Wingham.

"And provided, that the Debentures shall be deposited with the Treasurer of the Province of Ontario, or in one of the chartered banks of this Province, or of the late Province of Canada, and the same shall be delivered to the Company on the certificate of the engineer of the Company, confirmed by the certificate, for the time being, of the Chief Engineer of the Great Western Railway, as the work progresses through the Township of Turnberry, the production of which certificate shall entitle the Company to demand and receive from the said Municipality Debentures to the amount so mentioned, with the current coupon and those yet to mature.

"And provided further, that if the work shall not be commenced within the said period of three months above specified, it shall be optional with the Council, by resolution duly passed to that effect, to declare this By-law and the agreement founded thereon, cancelled and at an end.

5. "That this By-law shall take effect and come into operation upon the 2nd (second) day of October, A.D. 1871."

6. "That the said Debentures shall be deposited within one month after the final passing of this By-law, either with the Provincial Treasurer, or in one of the chartered banks of this Province, or of the late Province of Canada.

7. "And be it further enacted, that the votes of the electors of this Municipality shall be taken upon this By-law, as follows, namely: At the place hereinafter mentioned and referred to in the notice appended to this By-law, being the place at which the elections of members of Council are held, on the eleventh day of September next (1871), at the hour of nine o'clock in the forenoon, and ending at five o'clock in the afternoon of the same day, and that the following person shall be Returning Officer to take the votes at such place:—

"Returning Officer, James Johnston. Place of voting, lot 15, concession 7, Turnberry."

9. The said By-law was not, prior to submitting the same to the ratepayers of the said Municipality, read a first and second time before the said Council, as by law required.

10. In and by the agreement between the said defendants the Railway Company and the said Council referred to in the said By-law, to be furnished by the said Railway Company under the seal of the said Company, and a copy whereof had been submitted to and approved by the said Council, it was expressly stipulated and agreed, that the said By-law and agreement were based upon the contingency of the said Railway Company obtaining from the Government of the Province of Ontario a grant of at least the minimum amount authorized to be granted in aid of Railways, out of the funds set apart and designated as the "Railway Fund," in an Act of the Legislature of the said Province, passed in the 34th year of the reign of Her Majesty Queen Victoria, and chaptered 2, and by the same agreement it was provided that if the amount to which the said Railway Company was entitled was not obtained within three months from the passing of the By-law, the said agreement was at the option of either party to be cancelled and rescinded, and the Company were not in such event to be entitled to the said Debentures but the said By-law was to be treated as if it had never been made, ratified or passed.

11. The said stipulation and agreement were well known and understood by the ratepayers of the said Township, and it was strongly urged upon and represented to the said ratepayers, by the supporters of the said By-

law in the interest of the said Railway Company, as a principal inducement for voting in favour of the said By-law, that in the event of the same being passed the ratepayers of the Township would not be taxed for the said Debentures, unless within the three months specified in the said agreement after the passing of the said By-law the said Railway Company procured from the Government as aforesaid a grant of at least the minimum amount authorized to be granted in aid of Railways as aforesaid, and a great number of those ratepayers who voted in favour of the said By-law, so voted upon the faith of the said stipulation and agreement, and upon the understanding that they would not be burdened or taxed for the said Debentures, unless the said grant was obtained as aforesaid.

12. The plaintiffs charge that had it not been for such representations as aforesaid, and the understanding of the ratepayers as to the said stipulation and agreement as aforesaid, the said By-law would not have been passed by the said ratepayers, but on the contrary would have been rejected by a large majority.

13. A large number of persons who voted in favour of the said By-law were persons who were not duly qualified or entitled to vote upon the said By-law, the said persons either not having their names upon the Assessment Roll of the said Township at all, or being assessed in respect of property which would not entitle or qualify them legally to vote upon the said By-law, or being persons owning or holding no property in the said Township, or owning or holding no property which would entitle or qualify them legally to vote upon the said By-law; and some persons voted more than once in favour of the said By-law, and the plaintiffs charge that upon a scrutiny and enquiry into the validity and legality of the votes given and recorded in favour of the said By-law, a large number of them will be found illegal and improper, for the reasons above stated, as well as for other good and valid reasons.

14. Among the persons so voting, and who were not duly qualified or entitled to vote, as aforesaid, are the following, that is to say: E. F., R. S., I. T., H. B., J. McD., W. L., R. W., J. F., A. G., W. M., J. R., W. F., M. F., J. A., J. L., the elder, P. W., W. A. C., T. McC., the elder, H. R., J. K., R. C., C. G., J. L., J. G., and others.

15. The plaintiffs allege, that the said Railway Company paid divers sums, and made divers promises of reward and emolument, and held out inducements of per-

sonal advantage to several of the ratepayers of the said Township, in order to procure their votes in favour of the said By-law; and that several of the said ratepayers of the said Township were, by bribery and corruption, as aforesaid, induced to vote, and did vote in favour of the said By-law.

16. The plaintiffs charge, and the fact is, that the said By-law was not duly passed by a majority of the duly qualified ratepayers of the said Township, entitled to vote upon the said By-law, but on the contrary, the majority of the valid and legal votes recorded upon the said By-law, was in favour of rejecting the same, and that the same is not a valid and legal By-law.

17. After the said By-law was declared carried, as aforesaid, the same was at a special meeting of the said Council, held on the 21st day of September, 1871, read a first, second and third time, before and passed by the said Council, which said action of the said Council was, at a meeting thereof held on the 2nd day of October, 1871, confirmed by a resolution of the said Council, passed at the said last mentioned meeting.

18. The plaintiffs show, that previous to the said By-law having been submitted to the said ratepayers, as aforesaid, the same had not been read a first time, or a first and second time, as by law required, and the plaintiffs submit and charge, that by reason of such omission on the part of the said Council, the said By-law could not legally be submitted to the votes of the ratepayers, and was not capable of ratification, and is not a legal and valid By-law.

19. Shortly after the said By-law was declared passed by the said Council, as aforesaid, the agreement referred to in the said By-law was duly signed and sealed on behalf of the said Railway Company, and delivered into the custody of the defendant, J. M., who now has the same in his possession; and the plaintiffs crave leave to refer thereto when produced to this Court.

20. Sometime in the month of November, 1871, the said Company having ascertained, as the fact was, that they would not be able to obtain from the Government a grant out of the said Railway Fund, as aforesaid, within the period of three months from the passing of the said By-law, and that they were therefore unable and could not entitle themselves to call upon the said Township to issue the Debentures provided for in the said By-law, made some application to the said Council, or the members thereof the nature whereof the plaintiffs are unable

to set forth, for the purpose and with the view of altering the terms, conditions and stipulations of the said agreement, so signed and delivered by the Railway Company, as aforesaid, in order that the said Company might be put in a position to demand the said Debentures from the said Township, notwithstanding their failure to procure the said grant within the said period.

21. On or about the 25th day of November, 1871, a new agreement was drawn up, signed and delivered by the said Railway Company to the said defendant, J. M., as the Reeve of the said Council, in which said agreement the stipulation and agreement hereinbefore set forth, with respect to the said Railway Company obtaining the said grant within three months from the passing of the said By-law, was omitted and in lieu thereof was inserted a proviso, that the said agreement was based upon the contingency of obtaining from the Government of Ontario at least the minimum amount authorized to be granted to railways, as aforesaid ; and in the event of such aid not being obtained, the agreement should, at the option of the Company, be cancelled and rescinded ; but no time was limited within which the said grant was to be obtained, and no option to rescind the same was given to the said Township, and the plaintiffs crave leave to refer to said agreement when produced.

22. The plaintiffs show that the said last mentioned agreement is materially different from the agreement upon the faith of which the said By-law was submitted to and voted upon by the said ratepayers, and is in direct violation of the representations and understanding upon which the said By-law was voted for and declared carried, as aforesaid, and no By-law containing such alteration of the terms and conditions of the said By-law was ever submitted to the said ratepayers, or assented to by them as required by the Statutes hereinbefore referred to, nor was the consent of the said ratepayers thereto ever obtained, nor the proceedings prescribed by the said 196th Section of the Municipal Act ever taken with regard thereto.

23. The said defendant J. M., as such Reeve as aforesaid assumed to accept the said last mentioned agreement in lieu of and in substitution for the said former agreement and he assumed to sign and seal the said Debentures mentioned in the said By-Law, on behalf of the said Township.

24. On the 1st day of January, 1872, the Election of Reeve, Deputy Reeve and Councillors for the said Township, for the year 1872, was held pursuant to the statutes

in that behalf, and the principal question upon which the Electors of the said Township pronounced an opinion by their votes, was the conduct of the then members with regard to the said By-Law, and at such Election none of the former members of the said Council were re-elected.

25. The defendant, J. M., having determined to aid the said Railway Company in obtaining the said Debentures, caused a special meeting of the said old Council to be called at the instance, and request of the Directors of the said Railway Company, for the 8th day of January, 1872, and the said meeting was attended by the said J. M., Reeve, W. C., Deputy Reeve and J. H., and W. H. L., Councillors; the said D. H., not having received any notice of such meeting as by law required, and at such meeting a resolution was passed that the said Debentures so signed and sealed by the said defendant J. M., on behalf of the said Township, should be placed in the hands of the Provincial Treasurer of the Province of Ontario, and that the said defendant J. M., should deposit the same forthwith, but the plaintiffs allege that the said meeting was not duly called, and was wholly irregular; and that the said resolution could not and did not give the said defendant J. M., any power or authority to deposit the said Debentures as therein mentioned.

26. In pursuance of the said resolution, the said defendant J. M., undertook to deposit the said Debentures with the Provincial Treasurer, as aforesaid; but before depositing the same as directed by the said resolution, the said defendant J. M., communicated the said resolution and his intention to deposit the said Debentures to the defendant W. McG., who is the President of the said Railway Company, and thereupon the said defendants J. M., and W. McG., assumed to again alter the said agreement entered into on the 25th day of November, 1871, by striking out and cancelling the proviso that in the event of the said aid not being obtained, the said agreement should at the option of the said Railway Company, be cancelled and rescinded.

27. The plaintiffs shew, that the said alteration was made in the agreement theretofore signed and sealed on the part of the said Railway Company, and the Municipality of the Township of Turnberry, and that the said alteration was effected by striking out or obliterating with a pen the proviso in the last preceding paragraph referred to; and the plaintiffs charge, and the fact is, that the said defendant J. M., had not authority, nor was he empowered, on behalf of the said Municipality, to make or

consent to any or such alteration, as aforesaid, and the same was a wholly unauthorized act on the part of the said defendants.

28. After the said alteration had been effected, the said defendant J. M. deposited the said Debentures with the Provincial Treasurer of this Province, in whose custody the same now are.

29. The said defendants, the Railway Company, did not, within the period of three months from the passing of the said By-law, obtain, nor have they since obtained, nor are they in a position to obtain from the Government a grant out of the said Railway Fund in aid of their said undertaking; but, nevertheless, they insist and claim that they are entitled to the benefit of the said Debentures, and to have the same from time to time delivered to them by the said Provincial Treasurer, in accordance with the terms of the said By-law; and they threaten, and intend to and will, unless restrained by the injunction of this Court, require and procure the said Provincial Treasurer to deliver to them from time to time such portions of the said Debentures as the amount of work certified to be done, according to the terms of the said By-law will enable them to demand.

30. The plaintiffs submit, that by reason of the said By-law not having been read before the said Council, before the same was submitted to the ratepayers of the said Township, as in the 18th paragraph hereof set forth, the said Debentures could not be legally issued under the authority thereof, and that the plaintiffs and the other ratepayers of the said Township are not bound by the said By-law, and ought not to be called upon to meet or pay the said Debentures.

31. The plaintiffs further submit that by reason of the illegal votes recorded in favour of the said By-law, and by reason of the same not having in fact been ratified or passed by a majority of the ratepayers of the said Township qualified and entitled to vote thereon, and by reason of a large number of votes in favour of the said By-law having been procured by bribery and corruption practised by and on behalf of the said Railway Company, the said By-law is not binding on the plaintiffs and the other ratepayers of the said Township, and that they ought not to be called on to meet or pay the said Debentures.

32. The plaintiffs further submit that by reason of the material alterations and variations of the said agreement upon the faith of which the said By-law was voted for and declared passed hereinbefore set forth, the said De-

bentures have been illegally and improperly issued and deposited with the Provincial Treasurer, and that they ought to be delivered up to be cancelled.

33. The plaintiffs further submit that the defendants the Railway Company ought to be restrained from requiring or procuring, or endeavouring to procure, the said Provincial Treasurer to deliver to them any of the said Debentures, and from in any other way dealing, or attempting to deal with the said Debentures or any of them.

34. The defendants the said M., and the said Railway Company and the said McG., combined and confederated together in order to procure the said resolution of the 8th January, 1872, to be passed with the intent of fraudulently obtaining the said Debentures to be issued contrary to the contract with the said Township, upon which the same had originally been agreed to be issued and contrary to law, and the passing and acting upon such a resolution was a fraud upon the ratepayers of the said Township.

35. The defendants J. M., and W. McG., have fraudulently combined together in altering the said agreement, and in aiding the said Railway Company to obtain the said Debentures and the benefit thereof, notwithstanding the failure of the said Railway Company to comply with the terms and conditions of the agreement, upon the faith of which the said By-law was declared passed, as aforesaid, and they ought to be ordered to pay the plaintiffs costs of this suit.

The plaintiffs therefore pray—

1. That the said By-law may be declared illegal and invalid, and may be set aside and quashed; and that the plaintiffs and the other Ratepayers of the said Township may be declared not liable to meet or pay the said Debentures issued in pretended pursuance thereof, as aforesaid.

2. That it may be declared that the said Debentures were illegally and improperly issued, and that the same may be delivered up to be cancelled.

3. That the said defendants the Railway Company and W. McG., their President, may be restrained by the Order and Injunction of this Court from requiring or procuring, or endeavouring to procure, the said Provincial Treasurer to deliver to them any of the said Debentures, and from dealing, or in any way attempting to deal with the said Debentures, or any of them.

4. That the plaintiffs may be paid their costs of this suit, and may have such further and other relief as may appear just.

75. Bill by creditor to wind up Joint Stock Company.

75. *Bill by creditor to wind up Joint Stock Company.*

In Chancery.

Between—J. M., on behalf of himself and all other creditors of the defendants, the P. L. A. and I. Company, who shall come in and contribute to the expenses of this suit .....Plaintiff,

and

The P. L. A. and I Company, J. H. C., H. R., D. T., T. W., B. W. S., H. R., J. S. D., J. T., and D. M. and C. E. C., A. A. E., R. J. O. and S. J. B.....Defendants

City of Toronto.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of J. M., of the Township of Vaughan, in the County of York, farmer,

Sheweth:

1. By an Act of Parliament of the late Province of Canada, passed in the eighteenth year of the reign of Her Majesty, Queen Victoria, Chapter 111, entitled "An Act to incorporate the P. L. A. and I. Company," the defendants, the P. L. A. and I. Company were duly incorporated to carry on in the said Province of Canada, now forming the Province of Ontario, and elsewhere, business such as is usually entertained and carried on by Life Assurance and Investment Companies.

2. It was in and by the said Act provided, that the capital stock of the said corporation should, until otherwise determined as therein provided, consist of the sum of £100,000, and should be divided into 5,000 shares of £20 each, which shares should be, and the same were by the said Act, vested in the stockholders in the said Company, their successors and assigns, according to the shares and interests which they might subscribe, purchase, acquire or hold in the same, and that the said stockholders should pay their shares respectively when called upon to do so by the Directors of the said Company.

3. It was also in and by the said Act provided, that so soon as 2,500 of the said shares should have been sub-

scribed for, and 20 per cent should have been actually paid thereon, the said Company should have power and legal authority to make and effect contracts of assurance with any person or persons, bodies politic or corporate, upon life or lives, or in any way dependant upon life or lives, and to grant or sell annuities, either for lives or otherwise, and on survivorships, and to purchase annuities, to grant endowments for children or other persons, and to receive investments of money for accumulation, to purchase contingent rights, whether of reversion, remainder, annuities, life policies, or other, and generally to enter into any transactions depending upon the contingency of life, and all other transactions usually entered into by Life Assurance Companies, including reassurance.

4. It was further in and by the said Act provided, that the business of the said Company should be conducted by a Board of twelve Directors, one of whom should be chosen President, one Vice-President, and one Managing Director, and that a general meeting of the stockholders of the said Company should be holden in the City of Toronto, at the place of business of the said Company, on the first Tuesday in the month of June, in each and every year, and that at such meetings the three Directors whose names should stand first on the roll or list of Directors, should be held to vacate their seats, and that the stockholders should proceed to elect by ballot three stockholders to serve as Directors for the ensuing four years, and that if any Director of the said Company should die, resign, or become disqualified or incompetent to act as a Director, the remaining Directors, if they should think proper so to do, might elect in his place any stockholder duly qualified to be a Director.

5. And it was further in and by the said Act provided, that the Directors of the said Company should have the management and superintendence of the affairs of the said Company, and might lawfully exercise all the powers of the said Company, and might use and affix, or caused to be used and affixed, the seal of the Company to any document or paper which in their judgment might require the same, and might make and enforce the calls upon the shares of the respective shareholders, and might appoint the times and places of holding meetings, and might divide and allot among the assurers, upon the participation scale, so much of the profits realized from that branch, and might make any payments and enter into all contracts for the execution of the purposes of the Company, and do and perform all other matters and things necessary

for the transaction of the affairs of the said Company, and might generally deal with, treat, sell, and dispose of, and exercise all other acts of ownership over the lands, property and effects of the said Company in such manner as they should deem expedient and conducive to the benefit of the said Company; but for further particulars of the powers of the said Directors, and of the business to be carried on by the said Company, the plaintiff craves leave to refer this Honourable Court to the said Act.

6. It was also in and by the said Act provided, that the shares of the said capital stock should be transferable, but that no transfer should be valid until sanctioned and approved by the Directors, and duly registered in a book or books to be kept for that purpose by the Secretary, and that after any call had been duly made no person should be entitled to sell or transfer any share he might possess, until he should have paid all calls, for the time being, due on any share held by him.

7. It was also in and by the said Act provided, that if any stockholders should, for the space of thirty days, next after such call, neglect or refuse to pay his ratable share he should forfeit the sum of ten shillings for each share, and in case he should continue to refuse or neglect, for the space of sixty days, to pay such call, the Directors might declare such shares forfeited, or might sue such defaulting stockholder for the amount of such call.

8. And it was also in and by the said Act provided, that the said Directors should cause to be yearly prepared and submitted to the said stockholders at the annual meeting a full and correct statement of the accounts of the said Company, the receipts and expenditures of the past year, the number of the policies issued, the amount covered by policies in force, together with a general abstract of the estimated liabilities and assets of the Company, a copy of which statement, under the hand of the Managing Director, and countersigned by the Secretary, should be transmitted to every shareholder and to the several branches of the Legislature of the then Province of Canada.

9. Shortly after the passing of the said Act, the said Company commenced business in the said City of Toronto, and the whole of the said shares, being in number 5,000, were duly taken up and subscribed for, and twenty per cent. thereof was actually paid thereon, or on a sufficient part thereof to comply with the provisions of the said Act, and entered upon their several duties, and in every way the said Company became and were entitled to carry

on the businesses which the said Act permitted them to enter into.

10. The said Company, in the course of their said business and under the powers granted to them by the said Act, received money on deposit from several persons for the purpose of investing the same and accumulating the interest thereon for the benefit of the said depositors, and also assured the lives of different persons, and thereby, in many other different ways, became indebted to several different persons.

11. The said Company was duly and lawfully carrying on business in the years 1858 and 1862 and subsequently. In the year 1858 the plaintiff deposited with the said Company the sum of $200, at interest at the rate of 7½ per cent. per annum, and in the year 1862 the plaintiff deposited with the said Company the further sum of $905.63 at interest at the rate of 7½ per cent. per annum. It was before and at the respective times of the said deposits agreed and understood by and between the said Company and the plaintiff that the said Company should pay the interest upon the said deposits to the plaintiff half-yearly, and that the plaintiff should be at any time entitled to withdraw his said deposits, upon giving to the said Company one month's notice of his wish so to do.

12. The said Company duly paid the interest upon the said deposits up to the 28th day of November, 1867, but since such last mentioned date the said Company have neglected and refused, and still neglect and refuse to pay any interest upon the said deposits. Since the year 1867 the plaintiff gave the said Company due and sufficient notice that he wished to withdraw from the said Company the amount of his said deposits, and he has on several different occasions demanded from the said Company the amount of his said deposits, but the said Company have neglected and refused, and still neglect and refuse to pay the amount of the said deposits or any part thereof.

13. In or about the month of January, 1872, the plaintiff commenced an action against the said Company in Her Majesty's Court of Queen's Bench for Ontario, to recover the amount of the said deposits and interest, and in or about the month of April, 1872, the plaintiff recovered a judgment against the said Company for the sum of $1449.79 damages and costs, and on or about the 19th day of April, 1872, the plaintiff caused a writ of *fieri facias* to be issued out of the said Court on his said judgment against the goods and chattels of the said Company, directed to the Sheriff of the County of York, being the

County in which the said Company always had their place of business, and on or about the said 19th day of April, 1872, the said writ was duly placed in the hands of the said Sheriff, endorsed to levy the amount of the said judgment debt and cost of writs, &c., but the said Sheriff subsequently returned the said writ *nulla bona*.

14. The plaintiff has been unable to recover anything from the said Company, on account of his said judgment, and the said Company is now indebted to the plaintiff in the full amount of the said judgment, together with subsequent interest and costs, and the said Company have no available assets out of which the plaintiff can recover the amount of his said debt and interest or any part thereof, and it is absolutely necessary that the plaintiff should apply to this Honourable Court in order to obtain payment of the amount due to him.

15. Shortly after the payment of the last instalment of interest to the plaintiff, or about the time the same was paid, the said Company ceased to carry on business, and were only in operation for the purpose of winding up the affairs of the said Company, and since the year 1867 the said Company have done no new business, but have been in course of liquidation.

16. On or about the 1st day of June, 1868, the Directors of the said Company held their annual meeting pursuant to the said Act, and the said Directors, pursuant to the said Act, caused a report to be prepared of the affairs of the said Company, and the same was signed by the defendants, H. R., and D. T., and by one J. B., and was printed and distributed amongst the stockholders of the said Company, but for particulars of the said report the plaintiff craves leave to refer this Honourable Court to the same when it shall be produced.

17. It appears upon the face of the said report, and the facts are that the said Company had, previous to such meeting, appointed certain of the Directors of the said Company a committee for the purpose of winding up the affairs of the said Company, and that the said committee had, previous to the said meeting, been winding up the affairs of the said Company, and had received certain of the assets of the said Company and paid and applied the same in liquidation and satisfaction of certain policies of assurance which had been effected with the said Company.

18. A statement of the assets and liabilities of the said Company was also prepared and laid before the said meeting, and from such statement it appears, and the facts are that the debts and liabilities of the said Company were

$4,714.97 in excess of the assets of the said Company, and that the said Company was hopelessly insolvent and unable to pay their debts in full out of their assets.

19. Previous to the said meeting the said Directors had duly made calls upon the stock of the said Company, and had duly notified the stockholders, and amongst others the defendants, of such calls and had demanded from such stockholders, and amongst others from the defendants, the amounts of such calls.

20. At such meeting the said Committee were directed to continue to wind up the affairs of the said Company, and the said Directors were authorized to sue the stockholders in arrear for the amounts of their unpaid calls.

21. At such meeting the defendants B. W. S., D. M., and J. T., were duly elected three of the Directors of the said Company in the place of the three Directors who had retired.

22. The defendants, J. H. C., H. R., T. W., B. W. S., H. R., J. S. D., J. T., D. M., together with W. S., E. B., G. S. B., and J. B., were the last duly elected and appointed Directors of the said Company, and no other person or persons since the said first day of June, 1868, has or have been elected or appointed a Director or Directors of the said Company.

23. There has been no annual meeting of the said Company since the one held on the first day of June, 1868, and no report or statement of the accounts or position of the said Company has been prepared or furnished since the said Report presented on the first day of June 1868, but the said Directors have neglected and still neglect to carry on the affairs of the said Company, or to wind up the same, or to furnish or make up any statement of the affairs or position of the same.

24. The said E. B., and G. S. B., are now dead, but no Directors have been elected in their places, and the said W. S., has left the Province of Ontario and is now permanently residing in the Province of New Zealand, out of the jurisdiction of this Honourable Court, and the said J. B. has also left the Province of Ontario and is now permanently residing in the State of Kansas, one of the United States of America, out of the jurisdiction of this Court, but the other Directors sufficiently represent the Directors of the said Company, and the said J. B., and W. S., have not nor has either of them any rights or interests separate from those of the other Directors.

25. The said Company have now no office or place of business, and have no Secretary, and have had none for some years past, and the books, papers, and assets of the

said Company are in the possession or under the control of the said defendant, H. R.

26. The stock of the said Company was taken up and subscribed to by a very great number of persons, and the stock of the said Company is now held by a very great number of persons, several of them holders of from one to five shares, and the holders of the said stock are too numerous to be made parties to this cause, and it would be almost impossible for the plaintiff to proceed with this cause, and the expense attending the same would be very large were he compelled to make all the shareholders of the said Company parties to this suit.

27. The defendants, J. H. C., H. R., and D. T., are respectively President, Vice-President and Managing Director of the said Company and stockholders thereof to a large amount, and the defendants, T. W., B. W. S., H. R., J. S. D., J. T., and D. M., are Directors of the said Company and stockholders thereof to a large amount, and the defendants C. E. C., A. A. E., R. J. O., and S. J. B., are stockholders of the said Company, to the extent of twenty-seven shares, and sufficiently represent for the purposes of this suit the other stockholders of the said Company.

28. The said defendants, other than the defendants, the Company, sufficiently represent and protect the rights and interests of the stockholders of the said Company, who are not parties to this suit, and the stockholders who are not parties to this suit have no separate rights or interests other than those of the said defendants, and will not suffer any loss or injury by not being made parties defendants.

29. Besides the plaintiff, there are several other creditors of the said Company whose claims are unpaid, but the plaintiff sufficiently represents their rights and interests for the purposes of this suit, and they will not, nor will the defendants be prejudiced by their not being made parties hereto, and the said other creditors have no separate interests from the plaintiff.

30. The defendants (other than the Company) and the other stockholders of the said Company have not paid up the full amount of the calls made by the Directors of the said Company, and have not paid up the full amount of their stock, and the said defendants (other than the Company) and the other stockholders of the said Company are now indebted to the said Company in large sums of money on account and in respect of the stock of the said Company held by them, and they neglect and refuse to pay the same.

31. The defendants (other than the defendants, the Company and the defendants C. E. C., R. J. O., and S. J. B.,) are collecting the assets of the said Company, and they threaten and will continue to collect the assets of the said Company, unless restrained by the order and injunction of this Honourable Court.

32. In order to realize the amount due to the plaintiff from the various stockholders of the said Company, it would be necessary to bring a great number of separate actions at law, and the plaintiff would be put to great loss of time, trouble and expense, whereas the amount due to the plaintiff and the other creditors of the said Company can be realized in this suit with less expense and in less time.

33. The plaintiff does not know the state or condition of the affairs of the said Company, and does not know all the stockholders of the said Company, nor the amounts due and owing by them respectively, and it is necessary, in order for the plaintiff to obtain full and adequate relief, that a discovery should be made by the defendants of the affairs and position of the said Company and of the names of the stockholders thereof, and of the amounts due from them respectively, and the plaintiff could not, without such discovery, safely proceed at law. (*a*).

34. The plaintiff submits that he is entitled to have the affairs of the said Company wound up under the direction of this Honourable Court, that he is entitled to have an account taken of the amounts due by the several stockholders of the said Company upon their respective shares of the stock of the said Company, that the several stockholders who have not paid the calls pursuant to the demand made by the Directors of the said Company, are liable in addition to amount of their calls for the payment of the sum of ten shillings upon each share held by them respectively, and that he is entitled to the relief sought by him by this Bill without making all the stockholders or Directors parties to this Bill, and that the rights and interests of such stockholders or Directors will be sufficiently protected by being made parties (if necessary) in the Master's office.

35. The plaintiff also submits that he is entitled to have a Receiver appointed to collect and get in the outstanding assets of the said Company and the balance due upon calls already made, and that he is also entitled to an injunction restraining the defendants, the Directors, from collecting any further money on account of the said

(*a*) But see now Administration of Justice Act 1873, s. 24.

Company, and from further intermeddling with the affairs of the said Company.

36. The plaintiff also submits that if the amounts unpaid upon the said stock are insufficient to pay the debts and liabilities of the said Company and the costs of this suit, the stockholders are personally liable for the deficiency.

37. The plaintiff also submits that he should be declared entitled to be paid his costs, charges and expenses of this suit between Solicitor and Client.

38. The plaintiff therefore prays :—

1. That the said Company may be ordered to pay to the plaintiff the amount of his said judgment debt, and the interest and the costs of this suit, and in default thereof, that the affairs of the said Company may be wound up and administered under the direction of this Honourable Court.

2. That an account may be taken of the outstanding assets and liabilities of the said Company, and an account taken of what disposition has been made of the assets, property and moneys of the said Company by the Directors of the said Company.

3. That an enquiry may be made as to who are the stockholders of the said Company, and, who were such stockholders at the time the said Company became insolvent, or ceased to carry on business, and when to whom such last mentioned stockholders assigned their stocks, and whether such last mentioned stockholders are still liable in respect of such stock.

4. That the stockholders of the said Company may be made parties hereto in the Master's office, and their respective rights and liabilities ascertained.

5. That an account and enquiry may be taken and made of what is due from the several stockholders of the said Company, and to what extent and in what proportion the said stockholders are liable for the debts and liabilities of the said Company.

6. That the stockholders of the said Company may be ordered to pay to the plaintiff and the other creditors of the said Company the amounts found due to the plaintiff and the other creditors of the said Company.

7. That a Receiver may be appointed to collect and get in the outstanding assets and property of the said Company, and to collect and get in the amounts due from the several stockholders upon the calls heretofore made by the Directors of the said Company, including the sum of ten shillings chargeable as aforesaid in respect of each share held by such stockholders, and that the said defendants, the Directors, may be restrained by the order and injunction of this Honourable Court from collecting, selling, or in any way intermeddling with the property, assets and liabilities of or due to the said Company.

8. That the plaintiff may be paid his costs, charges and expenses of this suit between Solicitor and Client.

9. For the purposes aforesaid, that all proper directions may be given and accounts taken, and that the plaintiff may have such further and other relief as may seem meet.

And the plaintiff will ever pray, &c.

76. *Bill against shareholders of Joint Stock Company, by creditor of the Company for payment of debt.*

76. Bill against Shareholders of Joint Stock Company by creditors of the Company for payment of debt.

In Chancery

Between—N. D., J. I. D., and J. N.....Plaintiffs,

and

The O. W. P. Company of Toronto, G. A., J. L., J. McM., and J. D., Defendants.

City of Toronto.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of N. D., J. I. D., and J. N., of the City of Toronto, in the County of York, and Province of Ontario, Iron Founders, who sue as well on their own behalf as on behalf of all the creditors of the defendants, the O. W. P. Company of Toronto, humbly complaining, Sheweth as follows:

1. The defendants, the O. W. P. Company of Toronto, are a body corporate within the Province of Ontario, incorporated by virtue of Letters Patent issued under the Great Seal of the Province of Ontario, in pursuance of certain statutes in that behalf in force in the said Province.

2. The plaintiffs, on the 8th day of January, 1872, recovered a judgment in the Court of Common Pleas in

Ontario against the defendants, the O. W. P. Company of Toronto, for $4,984 58 damages and $64 22 costs.

3. On the same day the plaintiffs sued out upon the said judgment a writ of *fieri facias* against the goods and chattels of the said defendants, the O. W. P. Company of Toronto, directed to the Sheriff of the County of York, and on the same day delivered the same to the said Sheriff to be executed.

4. The said Sheriff under the said writ seized and took in execution and sold all the goods and chattels of the said defendants the O. W. P. Company of Toronto, which could be seized and taken in execution, and made upon the said execution the sum of $1,400; but there still is due to the plaintiffs on account of the said judgment the balance of the said judgment debt, interest and costs.

5. There are also divers other creditors of the said defendants the O. W. P. Company of Toronto, whose claims are unsatisfied.

6. There is no other fund, and there are no assets of the defendants, the O. W. P. Company of Toronto, available for payment of the debt of the plaintiffs, except the sums due upon the stock hereinafter mentioned.

7. The defendants, other than the defendants the O. W. P. Company of Toronto, are the Directors of the said Company, and are the holders of 1,310 shares in the stock thereof, but in what shares and proportions the plaintiffs are unable to set forth.

8. No more than 1,310 shares of the stock of the Company were subscribed or taken up.

9. The amount of the stock of the said Company held by the said defendants, other than the defendants the O. W. P. Company of Toronto, is $131,000, upon which the said defendants, other than the Company, have paid the sum of $8,000 and no more, and a balance of $123,000 is still due from the said defendants, other than the defendants the O. W. P. Company of Toronto, to the said last-named defendants, in certain proportions which the plaintiffs are unable accurately to set forth.

10. The defendants, other than the O. W. P. Company of Toronto, have in their possession all the stock books and other papers of the defendants the O. W. P. Company of Toronto, and refuse to allow the plaintiffs to inspect the same or to furnish any information respecting the amount of stock held by the said several defendants, other than the O. W. P. Company of Toronto.

11. The said defendants the O. W. P. Company of Toronto have ceased their operations, and do not intend to commence the same again.

12. The plaintiffs applied to the defendants, other than the O. W. P. Company of Toronto, to make payment of the balance of the said judgment, and for that purpose to compel payment of the balance of the amounts due from the defendants, other than the O. W. P. Company of Toronto, to the said defendants the O. W. P. Company of Toronto, upon the said stock subscribed by them respectively, but the said defendants, other than the O. W. P. Company of Toronto, refuse so to do.

13. By the terms of the charter of the said Company and of the said statutes, it is provided that in the event of the property or assets of the said Company becoming insufficient to liquidate the liabilities or engagements thereof, the shareholders of its stock shall be individually liable for the deficiency, and shall contribute thereto ratably, but to no greater extent than to an amount equal to that not paid up on the said stock held by them respectively.

14. The plaintiffs are unable in Courts of Law to recover their debt, and their only remedy is in this Honourable Court, as well to avoid circuity of action and a number of actions as to ensure a ratable contribution from the said defendants the shareholders.

The plaintiffs therefore pray as follows:—

1. That they may be paid the amount of their said debt, or, in default thereof, that the defendants, other than the O. W. P. Company of Toronto, may be ordered to contribute in proportion to their several liability, and thereby to pay up, so far as may be required, the balance due upon the stock held by them, and that the same may be applied in payment of the amount of the claim of the plaintiffs and the said other creditors.

2. That the plaintiffs may have such further and other relief as to this Honourable Court may seem meet.

3. That the plaintiffs may be paid their costs of suit.

4. That for the purposes aforesaid all proper directions be given and accounts taken.

And the plaintiffs will ever pray.

77. Bill by Joint Stock Company to set aside secret fraudulent agreement entered into by Defendants with promoter of Company.

77. *Bill by Joint Stock Company to set aside secret fraudulent agreement entered into by Defendants with promoter of the Company.*

In Chancery.

Between the C. O. R. Company Limited, Plaintiff,

and

E. H. and H. F. H.....Defendants.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of the C. O. R. Company Limited, humbly complaining, sheweth as follows:

1. Previously to and in the year 1869 the defendants were carrying on a small business in copartnership as manufacturers of lubricating oil and grease at St. Catharines, Ontario, under the style or firm of "H. and H.," and the defendant H. F. H. claimed to have discovered certain processes much less expensive than those commonly in use whereby the crude oil of Canada might be manufactured into carbon or burning oils free from offensive smells, and superior in all respects to the carbon and oils produced from the crude oil of the United States, and he also claimed to have discovered a process whereby the residuum or tar which remains after the crude oil has been refined for the purpose of extracting carbon oils therefrom could be utilized for the manufacture of a lubricating oil having no equal either in Europe or America. The defendant E. H. was by virtue of the contract of copartnership jointly interested with the defendant H. F. H. in all the said processes.

2. In the year 1869 the defendants were desirous of forming a Company for the purpose as, they alleged, of raising additional capital to enable them to extend their business and they entered into negotiations with a Mr. T. H., of St. Clement's House, St. Clement's Lane, in the City of London, and after considerable correspondence the said T. H. undertook to form and organize such Company upon certain terms which were embodied in the following agreement:—

> "This agreement, made and entered into this 28th "day of March, A. D. 1870, between E. H. and H. H., "trading under the firm of H. and H., as manufac- "turers of lubricating oils and grease at St. Cath- "arine's, Ontario, Canada, of the one part, and T. H., "of Saint Clement's House, Saint Clement's Lane, in "the City of London, of the other part, witnesseth:

"Whereas the said H. and H. have applied, by letter "to the said T. H., to form a Company for the pur- "pose of purchasing their patents, processes and in- "ventions for and in the manufacture of lubricating "oils and grease upon the following terms and con- "ditions, to wit: The capital stock of the said Com- "pany to be £100,000 or £150,000 sterling as the "said T. H. may deem expedient. The said Com- "pany to pay the said H. and H. from the said capi- "tal stock of said Company the sum of £12,000 ster- "ling in cash and the further sum of £38,000 sterling "in paid-up shares in said Company, the same to be "paid to said H. and H. upon their transfer to the "said Company for the said Company's sole use and "benefit of all their patents, processes and inventions "for the manufacture of carbon, paratine and lubri- "cating oils and grease. The said H. and H. hereby "agree upon such payment as above specified to assign "and transfer and sell to the said Company all their "patents, processes and inventions for the manufac- "ture of the oils and grease aforesaid for their the "said Company's sole use and benefit. And the said "H. and H. give to the said T. H. full power and "authority to form such Company as aforesaid upon "the terms and conditions above named, and to do all "that may be necessary in their name for the perfect- "ing and establishing such Company. And they do "further agree to execute any documents, agreements "or deed which may be necessary for the purpose of "carrying out this agreement or any of the details "thereof. The said H. and H. further agree to pay "to the said T. H. for his services and expenditure "the sum of £5,000 sterling cash and further sum of "£10,000 sterling in paid-up shares in the said Com- "pany. The £5,000 sterling to be so paid to said "T. H., to be taken from the cash bonus of £12,000 "sterling paid by the said Company to said H. and "H. The £10,000 sterling in paid-up shares of the "said Company to be so paid to the said T. H., to be "taken from the £38,000 sterling of paid-up shares "paid to the said H. and H. by the said Company "for the bonus in the sale to the said Company "of their patents, processes and inventions. But in "case the said T. H. shall fail in his undertaking, and "shall not form such Company upon the terms and in "manner hereinbefore mentioned, and within the "time hereinafter specified, then and in that case the

"said H. and H. shall not pay the said T. H. any-
"thing for his services and expenditure. The said
"T. H. upon his part hereby agrees to organize and
"form such Company upon the terms and conditions
"herein mentioned, and he the said T. H. further
"agrees to pay all the expenses thereby incurred and
"do all that is necessary to be done in bringing the
"enterprise promptly before the public, and use his
"utmost endeavours to bring the negotiations to a
"speedy issue. The said T. H. further agrees that
"the said H. and H. are to incur no liability of any
"kind or nature in the formation of the said Com-
"pany except in the payment of the said T. H. of
"said bonus as hereinbefore specified. And it is fur-
"ther agreed by the said H. and H. and by the said
"T. H. that this contract shall remain in full force
"and effect until the first of April A. D. 1871, and no
"longer."

3. The said agreement was duly signed and sealed by the defendants on their own behalf and by one J. J. H., a son of the said T. H., on behalf of the said T. H.

4. In pursuance of the said agreement the said T. H. induced several persons of standing and respectability to undertake to become directors of the Company so to be formed by him, and early in the year 1871 a prospectus of the proposed Company, with a capital of £150,000, in 30,000 shares of £5 each fully paid up, of which 13,000 only were to be offered to the public at par, was prepared and issued by the said T. H. and the defendant H. F. H. The names of the directors as set forth in the prospectus were as follows :—

Colonel J. A. C., late Governor of New Brunswick.

C. J. F., Esquire (Messieurs F. Brothers), Great Saint Helens, E.C.

T. H., Esquire, Saint Clement's House, Clement's Lane E.C.

F. L., Esquire, Bournemouth, and Athenæum Club, Pall Mall.

W. T., Esquire, 106 Upper Thames Street, E.C., Director of the Great Laxey Mining Company.

5. The prospectus, after setting forth the valuable character of the improvements purported to have been effected by the processes of the defendants in the manufacture of carbon and lubricating oils, proceeded as follows :—

"Messrs. H. and H., requiring additional capital to
"erect the necessary works and machinery and pur-

"chase the surplus stock of crude oil to enable them "to meet the rapidly increasing demand for their "lubricating and other oils, have agreed to assign to "this Company all their plant, patents, processes and "inventions for the manufacture of Canadian and "other oils for the sum of £50,000, of which amount "they have stipulated to retain an interest in the "Company in paid-up shares to the extent of £38,000 "and to continue in the management of the works, "receiving in cash the sum of £12,000 only.

"As the Company intend to continue the purchase "of crude oil and residuum, and not to become in- "terested in oil wells or land, it will be manifest that "this is not in any respect a speculation, but the mere "extension of a certain and highly profitable business."

The prospectus further states (among other things) that—

"The Royal Mail Line of steamers, the Ottawa "Steamboat Company, the Quebec and the Allan "Line of steamers have offered to take the straw- "coloured oils (being some of the oils alleged to be "manufactured by the defendants) for all their vessels, "and other orders from Railway and Steamboat Com- "panies have been declined from the mere inability "at present to manufacture to the extent required."

And further:—

"The manufacture of the black oil under a separate "patent, for which there is an enormous demand for "railways in America, will be continued under the "superintendence of Messrs H. and H. from the re- "siduum, while the new works are being erected for "the distillation of crude oil."

6. On the faith of the statements contained in the said prospectus, which is to be treated as if herein set forth at length, shares were applied for by the general public, and on or about the 23rd February, 1871, the Plaintiff Company was duly registered and incorporated under the Companies' Acts 1862 and 1867, having its registered office in England. The objects for which the Company was established, as defined in its Memorandum of Association, were to purchase the patents processes and inventions or other rights of the defendant H. F. H. for improvements in continuous distilling apparatus for distilling petroleum and other kinds of oil to work such patents, processes and inventions and to carry on business therein, to take out or purchase patents, to grant licences to work patents in the United Kingdom and colonies and in other countries,

to employ machinery, to purchase or lease or otherwise acquire and hold land and premises, to purchase or lease or otherwise acquire machinery; to purchase or hire or construct vessels, roads, railways, wharves, landing-stages and other adjuncts for shipping; to purchase the business of any other Company carrying on business similar to that of the Plaintiff Company, to buy and sell produce and materials; to sell or lease the Company's patent rights, business, land and premises, or a part or portion thereof; to employ agents and labour, and to do all such other things as are incident or conducive to the attainment of the above objects.

7. The said agreement of the 28th March, 1870, was not noticed or referred to in the said prospectus, pursuant to the provisions of the Companies' Act, 1867, and was in fact concealed from the applicants for shares in the Plaintiff Company and from the public generally.

8. The said prospectus sets out certain letters addressed to the defendants in the nature of testimonials, to which credit was given by the applicants for shares, but at least one of such letters, viz. that dated 1st June, 1870, and signed "E. E.," was obtained by collusion with the writer thereof, with a view of inducing the belief that the business of the defendants was much more extensive than in fact it was and that they had a very considerable market for their oils. The said E. E., who by the said letter purports to give an order to the defendants for a supply of oil at the rate of 500 barrels a week, was never in a position to enter upon any such transaction, and was in fact one of the persons subsequently employed by the defendant H. F. H. to assist in constructing a wharf on the Plaintiff Company's land at Sarnia, in the Dominion of Canada.

9. Notwithstanding the statements contained in the said prospectus as to the manufacture by the defendants of carbon oils from crude oil, and the reference to samples therein made, such oils were never in fact manufactured by them in the ordinary course of their business or in any large quantity, and the Plaintiff Company charges that the samples, if made by them at all, were merely made by way of experiment only and with the view of entrapping the public into the belief that they were samples of a commodity which the defendants had for some time been regularly producing for sale in the market. The Plaintiff Company do not believe that such offers as in the said prospectus are alleged to have been made by the said Railway and Steamboat Companies had in fact been made

by such Companies to anything like the extent which the said prospectus implies.

10. At the time of the formation of the Plaintiff Company no apparatus requisite for the manufacture of carbon oils according to the said patent existed upon the defendants' premises at St. Catharines aforesaid, as is shown by the fact that the inventory of the plant used by the defendants for the purposes of their business makes no mention of any tank, stills, metal tanks, coils of steam piping or other apparatus corresponding to the apparatus described in the specification filed in the Patent Office. The statements in the said prospectus that there was a rapidly increasing demand for the defendants' oils; and that the defendants' business was a certain and highly profitable business, were also wholly untrue and designed to mislead, the fact being that the defendants' business was, as the Plaintiff Company has since ascertained, of a very meagre and limited description.

11. The number of shares which have been applied for on the faith of the said prospectus on the 24th March, 1871, when the first allotments took place, was 3,376, representing a nominal capital of £16,880, and all these were allotted. Fresh shares have since from time to time been issued, and the total amount subscribed for has now reached the sum of £29,000, the greater part of which has been fully paid up.

12. On the 12th of September, 1870, letters patent for "Improvements in Continuous Distilling Apparatus for "Distilling Petroleum and other Kinds of Oils, and in the "Apparatus for performing the same," were granted by Her Majesty to the said T. H. as a "communication" from the defendant H. F. H., and on the 6th of April, 1871, the Plaintiff Company entered into an agreement with the defendants for the purchase from them of (amongst other things) the patent so granted. Such agreement was duly signed by the defendant H. F. H. on behalf of himself and the defendant E. H., and was duly sealed with the common seal of the Plaintiff Company, and was in the words and figures following:—

> "An agreement made and entered into this 6th "day of April, 1871, between E. H. and H. F. H., of "St. Catharines, Ontario, in the Dominion of Canada, "copartners and manufacturers of oils and grease, "hereinafter called the vendors, of the one part, and "the C. O. R. Company Limited, of the other part. "Whereas the said H. F. H. is the legal owner or "patentee of divers inventions for improvements in

"the manufacture and distillation of petroleum and "other oils and grease, which or most of which have "been patented in the Dominion of Canada in his "name, and of patents which or most of which have "been or are about to be applied for and taken out "in Great Britain, France, Belgium, Austria, Hun-"gary, Bavaria, Sweden, Italy, India, Cuba, Barba-"does, Brazil, Trinidad, New South Wales and other "countries. And whereas the said Company has been "recently formed under the Joint Stock Companies' "Acts 1862 and 1867, for the purpose amongst other "things of purchasing the said inventions, patents "and patent rights, and working the same, and such "purchase has been agreed on, on the terms and in "manner herein appearing. Now it is hereby agreed "by and between the said vendors and the said Com-"pany as follows (that is to say):—

"1. The vendors sell to the Company and the "Company purchase, as from the 25th day of Feb-"ruary, 1871, all inventions, improvements pro-"cesses, whether the subjects or capable of becom-"ing the subjects of a patent or not, patents and "patent rights and privileges whether in Canada, "Great Britain or elsewhere, of or belonging to or "obtainable by the vendors or either of them, or "in which they or either of them have or has any "right or interest whatever (including certain "patents granted to the said H. F. H. in the Do-"minion of Canada, dated the 5th day of May, "1870, and numbered 397, and their right or in-"terest in a certain patent taken out in and for "Great Britain by Mr. T. H., as a communication "from the said H. F. H., dated the 12th day of "September, 1870, and numbered 2,458, and such "special privileges as are granted in countries "where no patents are obtainable), for or relating "to the distillation or manufacture of petroleum "or other oils or grease or any like products, and "all future inventions, improvements, processes "(whether the subjects or capable of becoming the "subjects of a patent or not), patents and patent "rights and privileges which may be invented or "discovered by or belong to or be obtainable by "the vendors or either of them, including such "special privileges as are granted in countries "where no patents are obtainable. The vendors

"also sell to the Company all their right or the "right of either of them to apply or obtain exten- "sions or renewals of any of the patents and patent "rights the subjects of the purchase, and also all "their plant, stock-in-trade, tools, utensils and chat- "tels in or about their works in Canada, or used "in their business on the 25th day of February, "1871.

"2. The vendors hereby agree and declare that "those of the said patents which have already been "obtained by them or either of them are good, "valid and effectual in law for the purposes there- "in expressed; and that all conditions in the same "contained have been duly performed and complied "with; and that the said vendors now have in "themselves good right and absolute authority to "sell and to assign the same and all other the sub- "jects of the purchase to the Company; and that "the said subjects of the purchase shall henceforth "be used, exercised and enjoyed by the Company "without any interruption, claim or demand by or "from the said vendors or either of them, their or "his heirs, executors or administrators and assigns "or any other person or persons; and the said ven- "dors hereby undertake to indemnify the Company "therefrom.

"3. The vendors and each of them will execute "and do all such assurances and things at the cost "of the Company for transferring, assigning, mak- "ing over and assuring to the Company and put- "ting the Company in full possession of and secur- "ing the Company's right to, and use of, the pre- "sent and future subjects of the purchase and the "full benefit and advantage thereof, as may be "reasonably required; such assurances to contain "all proper and reasonable covenants on the part "of the vendors. The said H. F. H. will forthwith "write out and verify by a statutory declaration a "full statement and description of the working of "the patents, processes, inventions and manufac- "tures, the subjects of the purchase; such state- "ments to be so full and clear as will enable a prac- "tical workman to use the processes and carry on "the manufactures and make the articles, the sub- "jects of the purchase, without oral, practical or "experimental instruction; the same to be placed in "the hands of the Managing Director, sealed and

"so retained until the completion of the purchase, "and then to become the property of the Company.

"4. For these purposes aforesaid or any of them, "the vendors and each of them will, at the request "and expense of the Company, permit their and his "name to be used by the Company in any instru- "ments, acts, applications and proceedings, legal or "equitable or otherwise, including actions, suits and "proceedings to prevent infringement, and proceed- "ings to obtain extension or renewal of patent "rights or obtain amounts and profits; and the ven- "dors and each of them will at the request and "expense of the Company, to the best of their and "his power, support by all requisite evidence, draw- "ings, descriptions, specifications, declarations and "otherwise, any applications for patent rights or "privileges or renewals or extensions of the same "in any country, including special privileges grant- "ed in countries where patents are not obtainable "as aforesaid, in respect of any of the subjects of "the purchase, and will at the like expense con- "duct and make any experiments and conduct any "processes with the view of developing, support- "ing or improving any of the subjects of the pur- "chase."

"5. The consideration for the purchase is "twelve thousand pounds in cash, which is to be "paid by the Company to the vendors on the exe- "cution of the necessary assignments and assur- "ances for vesting the then existing property com- "prised in the purchase, in the Company and also "7,600 fully paid-up shares of £5 each in the Com- "pany which are to be allotted to the vendors "jointly or as they may in writing direct on the "execution of the said assignments and assurances."

"6. Mr. H. F. H. has been appointed Manufac- "turing Manager of the Company's proposed works "in Canada, the United States, and elsewhere at a "salary of £1,200 sterling a year. He is (subject "to the proviso hereinafter contained) to continue "to be such manager at that salary for a period of "fifteen years from the date of his appointment, "the 25th day of February, 1871, if he shall so "long live, provided that after the expiration of "the first five years from the date of his said ap- "pointment the Company may dismiss and remove "him from the same with or without notice, in

" which case his salary shall be apportioned. And " if with less than one year's notice, he shall be " entitled to one year's salary extra by way of " bonus. But subject hereto the said H. F. H. is, if " so required by the Company, to continue to be " such manager for the said period of fifteen years " from the date of his said appointment. While " continuing to be such manager, he is to devote " his whole time and skill and attention to the " management, improvement and development of " the Company's manufacturing business in Cana- " da and the United States of America, and such " other place or places as the Company may select, " whether according to the process invented by him " or any other processes as the Company may de- " termine from time to time, and to such other du- " ties as the Company may impose upon him as such " manager, and is not to carry on or be engaged in " or interested in any business; but this provision " is not to prevent his holding shares in, though he " must not be a director or servant of any other " Company, and especially neither he nor the said " E. H. is to be in any way connected with any " person or Company engaged in oil or grease busi- " ness, or in any way competing in trade with the " Company. In case any dispute or difference shall " arise between the said vendors or either of them " and the Company, either with respect to any ques- " tion as to the due performance by the said H. F. " H. of his duties as such Manager of the Com- " pany as aforesaid, or any other matters whatso- " ever, the same shall upon the request in writing " of either of the parties in difference be referred " to the arbitration of two indifferent persons and to " be chosen by each party in difference within one " month after such request shall have been made " in England. And in case either of the parties in " difference shall neglect or refuse to nominate an " arbitrator, then the arbitrator named by the other " party shall nominate another arbitrator and the " two arbitrators shall, before proceeding in, the " said reference, nominate another indifferent per- " son to be umpire. And the said arbitrators shall " make their award in writing within 30 days next " after such reference shall be made; and in case " they shall not agree to and make their award " within the time last mentioned, then the said mat-

"ters in difference shall be referred to the said um-
"pire who shall make his award in writing 30 days
"next after the same shall have been so referred
"to him; and such arbitrators and umpire shall have
"full power to examine the said parties and their
"respective witnesses on oath and call for and re-
"quire the production of all books, papers, deeds,
"letters, vouchers, documents and writings, which
"they or he shall think necessary, and shall have
"all the powers and authorities given by the sta-
"tute made in that behalf; and the award of the
"said two arbitrators or of the said umpire (as the
"case may be) shall be final and conclusive between
"the parties; and to that end it is agreed that any
"submission or reference to arbitration, under or by
"virtue of these presents, shall and may from time
"to time be made a rule of any of Her Majesty's
"Superior Courts at Westminster, pursuant to the
"statute in that case made and provided.

"7. Neither of the vendors is to communicate
"to any person or Company, other than the Com-
"pany and their aforesaid agents or nominees, any
"of the secret inventions, processes or methods,
"the subjects of the purchase, which may belong
"to or be used by the Company.

"8. Each of the vendors is forthwith, or as soon
"as may be, to communicate, disclose and teach to
"the Company, their aforesaid agents and nominees,
"all secrets, inventions, processes and methods pre-
"sent or future, the subjects of the purchase or re-
"lating to the manufactures or distillation of oils
"or grease.

"9. Each of the vendors will, at the request and
"expense of the Company, take any journeys which
"may reasonably be required for the purpose of
"this agreement.

"10. This agreement may be made a rule of the
"High Court of Chancery in England, on the ap-
"plication of either party."

13. It was stated in the said prospectus of the Plaintiff Company that the manufacture from residuum of black (or lubricating) oil under a separate patent would be continued under the superintendence of the defendants while new works were being erected for the distillation of the crude oil. The separate patent thus referred to had not then been granted, and was not in fact granted until the 16th of March, 1872; but in the meantime the Directors

of the Plaintiff Company determined to commence operations by the manufacturing process intended to be protected by that patent. With that view they ordered the construction of two sets of machinery requisite for such manufacture, intending that the same should be erected, the one at Sarnia, on the Canadian bank of the St. Clair river, and the other at Port Huron on the United States bank of the same river. A Mr. C. S. whose testimony as to the value of the said inventions and processes was part of the evidence on the faith of which the shares in the Plaintiff Company were subscribed for was appointed "General Superintendent" with a salary of £800 a year and the defendant H. F. H. was appointed "Manufacturing Manager" at a salary of £1,200 a year.

14. The said machinery was all constructed under the personal supervision of the defendant H. F. H. in order to secure its perfect accordance with his plans, and to adapt it to the purposes of his patent; and in June, 1871, the same was despatched for Sarnia, and the greater part of it was disembarked there in the following month of September.

15. Shortly after the arrival of the said C. S. and the defendant H. F. H. at Sarnia, the said C. S. suggested to the Plaintiff Company through the said T. H. who was the Managing Director of the Company, that he should purchase a large quantity of residuum or tar which was then in the market and well adapted to the manufacture of lubricating oil, but the said T. H. wrote back that he was not to do so until the works should be ready for operation.

16. The completion of the said works did not, however, depend upon the said T. H. but upon the defendant H. F. H. and much unnecessary delay took place in reference thereto, considerable time and money being wasted on the construction of a wharf which was said to be requisite, (although it was not so in fact) in order to have a convenient landing place for the machinery upon its arrival. While the works were in progress, the defendant E. H. received very considerable sums for superintending them, whereas no such superintendence was required, or if required, could have been given by the said C. S. or by a Mr. M. who had been engaged by the Plaintiff Company at the request of the defendant, H. F. H. at a salary of £300 per annum, and was principally occupied during the construction of the works in keeping a tavern or bar saloon in Sarnia.

17. On the 3rd of July, 1872, the said C. S. by the di-

rections of the defendant, H. F. H. sent a telegram to the said T. H. as follows:—"Ready. Funds required for crude oil;" meaning thereby that the works were completed and ready for immediate use, and that money was required for the purchase of the material on which to operate. In point of fact, however, at the date of such telegram the works were not completed, as the defendant H. F. H. well knew, nor was all the machinery necessary for the manufacture of oil then fixed.

18. The request of the said telegram for funds to purchase "crude oil" appeared unreasonable and unaccountable to the then Directors of the Plaintiff Company, as the defendant H. F. H. had undertaken with the machinery so sent out as aforesaid to manufacture oil from the tar only, and not from crude oil. This was pointed out to the defendant, H F. H. and with the view of explaining the same he wrote and sent a letter dated the 22nd of July, 1872, and which was delivered at the Company's offices on the 9th of August, 1872. Such letter, so far as material, was as follows:—

"Colonel A. J. C., Chairman of the Board of Directors,
C. O. R. Company.

"Dear Sir

"I am again forced to call the attention of the "Board to the position of your executive in Canada. "On the 3rd July, the Superintendent telegraphed to "the Managing Director 'Ready. Funds required for "'crude oil' this should have been 'Residuum' but "my letter would set that matter right as I advised "the Board that on the 8th I would be prepared to "manufacture 100 barrels per day of the dark oils "for railway purposes and on that day I was ready.

"Changes are constantly taking place in a country "like this, and many great changes have taken place "in the large refineries in London. They have "adopted what is termed the Boiler Still which is "30 feet long, and six feet in diameter, and they now "run about 65 per cent. of oil off, and use the resi- "duum for fuel by some patent process. At all events "this substance would not answer our purpose at all, "as by open fire distillation the heat necessary to "carry over the amount they now take off, chars the "residue, leaving it unfit for anything but fuel."

19. On the 20th of August, 1872, the then Directors of the Plaintiff Company, feeling dissatisfied with the conduct of the defendant, H. F. H. and being desirous of testing the truth of the statement contained in his said letter

as to the residuum then obtainable, being unsuitable for the manufacture of lubricating oil by his process, and so charred as to be unfit for anything but fuel, commissioned a Mr. B. C. to proceed to Canada to investigate and report upon the Plaintiff Company's affairs. The said B. C. arrived in Canada on the 7th of September, 1873, and, as the result of his investigations, discovered (as the fact is) that the funds of the Plaintiff Company had been culpably wasted by the defendant H. F. H. and that residuum or tar could be had in any quantity of equal quality to that made at the time when the defendant, H. F. H. left England, and that a large part of 10,000 barrels of tar which the said C. S. by the advice of the defendant, H. F. H. proposed to purchase for the Plaintiff Company in June, 1871, was still on hand in tanks at Petrolia, and could be purchased by the Plaintiff Company at the same price at which it was in that month proposed to be purchased by the said C. S.

20. The said B. C. further discovered (as the fact is) that if any alteration had taken place at all in the quality of the residuum resulting from the processes used in Canada, it was an alteration for the better, and that such residuum was less charred than was formerly the case, and more adapted for manufacture into oil than was the residuum left by the processes commonly in use during the time that the defendants carried on business at St. Catharines. And he further ascertained that there would be no difficulty in inducing the oil refiners of Canada so to modify their processes as to leave the residuum of a quality such as the defendant H. F. H. alleged that he required, inasmuch as they could then utilize and make saleable all the products of the raw material employed by them, instead of wasting the residuum or using it, if at all, only for fuel, as is the usual practice.

21. In ignorance of the said agreement of the 28th of March, 1870, and of the untruth of the aforesaid representations on the part of the defendants as to the value of their business and otherwise, the Plaintiff Company early in the month of May, 1871, paid the sum of £5,100 cash, part of the sum of £12,000 specified in the said agreement of the 6th of April, 1871, to the defendant H. F. H. on account of himself and the defendant E. H., and allotted to the said defendants, or to their nominees 1,800 fully paid-up shares in the Plaintiff Company, and of such shares, certificates of which were duly issued, 1,500 now stand in the joint names of the defendants in the register of the Plaintiff Company. On the 13th of the said month

of May, £2,125, being part of the said sum of £5,100 and certificates of 200 shares, being part of the said 1,800 shares, were paid and given to the said T. H. in part pursuance of the said agreement of the 28th of March, 1870.

22. Of the 200 shares so as aforesaid given to the said T. H., 50 were registered in his name and have been retained by him, but the remaining 150 were distributed by him amongst his co-directors in manner following (that is to say):—50 were given to the said Colonel J. A. C., 50 to the said C. J. F., and 50 to the said W. T., who died in September, 1871. The said Colonel C. and C. J. F. have since abandoned all claim to any beneficial interest in their said respective 50 shares in favour of the Plaintiff Company, but the executor of the said W. T. has not thought himself at liberty to take a similar step in respect of his testator's shares. Accordingly on the 14th February, 1872, the Plaintiff Company filed a Bill in this Honourable Court (a print of which is referred to) against the said T. H., and the executor of the said W. T., for the purpose (amongst other things) of recovering as well the said 50 shares retained by the said T. H., and the 50 shares retained by the said executor of the said W. T., as the sum of £2,125, part of the said sum of £5,100 so as aforesaid paid to the said T. H., on the ground that the same shares and cash respectively were improperly received and in fraud of the Plaintiff Company. Sufficient time has not elapsed since the institution of the said suit to enable it to be brought to a hearing.

23. The shareholders in the Plaintiff Company, other than the said T. H., were induced by the representations of the defendants or one of them, made in the said prospectus, to believe that the whole of the cash and shares which constituted the purchase-money for the said patents and processes was to be paid and delivered to the defendants for their absolute use; and if such shareholders had known that any part of such purchase money was to belong to the said T. H., the common seal of the Company would not have been affixed to the said agreement of the 8th of April, 1871.

24. Under the circumstances aforesaid, the Plaintiff Company charge that the said agreement of the 6th of April, 1871, was obtained by fraud and improper concealment on the part of the defendants or one of them, and that the same ought to be set aside by this Honourable Court, and that any moneys or shares paid or delivered thereunder to the defendants or either of them ought to be restored by them, the Plaintiff Company being willing

and hereby offering to do all such acts or things as this Court may think proper to direct for the purpose of restoring to the defendants any property, rights or interests of the defendants that may be vested in the Plaintiff Company under the said agreement.

25. The machinery erected on the premises of the said Plaintiff Company at Sarnia cannot be made available for the carrying out of the said processes of distillation except under the personal superintendence of the defendants or one of them, or with the aid of the instructions referred to in the 3rd clause of the said agreement of the 6th of April, 1871, which instructions, as the defendants allege, are contained in a certain sealed packet deposited by them with the said T. H., as trustee for the Plaintiff Company. Such packet still remains unopened in the possession of the said T. H., and in pursuance of the said offer the Plaintiff Company are willing to give all necessary directions for the same being redelivered by the said T. H. to the defendants or either of them.

26. The defendants threaten and intend to bring an action or commence some other proceeding against the Plaintiff Company in respect of the unpaid balance of the £12,000 cash and the said 7,600 shares of £5 each respectively mentioned in the said agreement of the 6th of April, 1871, and they ought to be restrained from so doing.

27. Both the defendants allege that they are entitled to certain moneys in respect of services rendered or disbursements made by them to or on behalf of the Plaintiff Company, and the defendant H. F. H., alleges that he is entitled to some salary as manufacturing manager, but the Plaintiff Company charge that no such moneys or salary are due, and that at all events none can be recovered until the claims of the Plaintiff Company upon the defendants in respect of the other matters herein mentioned shall have been ascertained and settled.

The Plaintiff Company prays as follows:—

1. That it may be declared that the said agreement of the 6th of April, 1871, was fraudulent and void as against the Plaintiff Company, and that the same may be set aside and delivered up to be cancelled, and that the defendants may be ordered to repay to the Plaintiff Company the sum of £5,100 so paid to them as aforesaid, or so much thereof as shall not be recovered from the said T. H. in the said suit instituted against him, with interest from the date of such payment.

2. That the defendants may be ordered to redeliver to the Plaintiff Company the certificates of the said 1,800 shares so handed to them as aforesaid, or so many of them as are now in their possession or control, and that the Plaintiff Company may be at liberty to cancel the 1,500 shares now registered in the names of the defendants, and to remove their names from the Company's share register in respect of such shares.

3. That in the meantime the defendants may be restrained by the order and injunction of this Honourable Court from commencing or instituting any action or other proceeding for the purpose of obtaining payment of the unpaid balance of the said £12,000 cash, or an allotment to them of any part of the residue of the said 7,600 shares, or of enforcing any claim against the Plaintiff Company in respect of services, disbursements or otherwise.

4. That the defendants may pay the costs of this suit.

5. That the Plaintiff Company may have such further or other relief as the nature of the case may require.

78. Bill to set aside deed obtained by undue influence and to establish prior will.

78. *Bill to set aside deed obtained by undue influence and to establish prior will.*

In Chancery.

Between—A. W.....Plaintiff,

and

H. H. W. and D. L. W....Defendants.

City of Toronto.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of A. W. of the Township of Markham, in the County of York, yeoman, the above named plaintiff,

Sheweth as follows:

1. One A. W. the elder, the father of the plaintiff, was in his lifetime the owner in fee simple of or otherwise well entitled to that certain parcel or tract of land and premises, situate lying and being in the Township of M.—in the County of Y.—being composed of the west half of lot No. 15, in the 7th concession of the said Township, containing 100 acres: and while he was the owner thereof as aforesaid, he duly made and published his last

will and testament in writing, executed so as to pass real estate by devise in this Province; whereby he devised the said lands and premises to the plaintiff in fee.

2. The said A. W. departed this life in the month of September, 1869.

3. At the time when the said A. W. made his said will, and for some years before, the defendant H. H. W. who is a brother of the plaintiff, was residing with his father, the said A. W., and was managing his business and affairs, and the said defendant had thus acquired great influence and control over the mind of his said father who reposed the greatest confidence in him.

4. Some years after the making of the said will the mind of the said A. W. became impaired, and he became and was imbecile and incapable of understanding or comprehending the most ordinary business matters, and the said defendant continued to manage and control all his affairs, and the said defendant's influence over his said father, and his said father's reliance upon and confidence in him, increased to such an extent that the said A. W. had no independent will of his own, and he was wholly guided and controlled in everything by the said defendant H. H. W.

5. In or about the year 1864, the said defendant H. H. W. formed the fraudulent design of depriving the plaintiff of the benefits of the devise to him contained in the will hereinbefore mentioned, and in order to accomplish his said design, the said defendant, fraudulently making use of the influence he had acquired over his said father, induced and prevailed upon his said father to convey the hereinbefore described lands to him, and accordingly by deeds bearing date the 30th day of May, 1864, and purporting to be made between the said A. W., of the 1st part, and the said defendant, of the 2nd part, the said A. W. purported to convey the said lands in fee to the said defendant H. H. W.

6. The said deed purports to be made in consideration of certain moneys then paid by the said defendant H. H. W. to the said A. W., but the plaintiff charges and the fact is that no money or other consideration was paid to or received by the said A. W., for the said conveyance.

7. The plaintiff further charges, and the fact is that, at the time of the making of the said deed, the said A. W. was imbecile and wholly incapable of understanding the nature and effect of the same, and that he did not in fact understand the nature and effect thereof.

8. The plaintiff further charges, and the fact is that, at

the time of making the said deed, the said A. W. was, and acted, wholly under the influence of the said defendant H. H. W., and the said defendant, fraudulently exercising his influence and control over the said A. W., induced the said A. W. to make the said deeds in order to deprive the plaintiff of the benefit of the devise to him contained in the said will, and to obtain the said lands for himself, and that, in the making of the said deed, the said A. W. exercised no will of his own, but, in truth and in fact, acted as he was instructed by the said defendant.

9. The said A. W. acted in making the said deed wholly without professional or other independent advice, and the said defendant H. H. W. prevented him from obtaining such advice before making the said deed.

10. At the time of making the said deed, the defendant H. H. W. was living with the said A. W. and although other members of the family of the said A. W. resided in the neighbourhood of, and were in the habit of visiting, the said A. W., the said defendant H. H. W. prevailed upon the said A. W. to conceal from them that he was about to convey, or had conveyed, the said lands to the said defendant H. H. W., and the said defendant kept the making of the said deed concealed from the other members of the family until after the death of the said A. W.

11. The mind of the said A. W. continued impaired and he remained and was imbecile and incapable of understanding or managing business matters up to the time of his death hereinbefore mentioned.

12. The said A. W. died without having altered or revoked the said will save in so far as the same was affected by the making of the said deed.

13. Immediately after the death of the said A. W., the said defendant H. H. W. took possession of the said will and he has ever since retained and kept possession thereof, and he alleges and pretends that no such will was ever made, or that if such a will was made it is not now in existence.

14. The defendant D. L. W. is also interested under the said will; but, in consequence of the said will being in the possession of the defendant H. H. W., the plaintiff is unable to set forth the nature and particulars of the interest of the said D. L. W. thereunder, and the said D. L. W. declines to join with the plaintiff and become a party plaintiff hereto.

15. The defendant H. H. W., has been in the possession of the said lands and premises, and in receipt of the rents and profits thereof, ever since the death of the said A. W.

16. The defendant H. H. W. threatens and intends and will, unless restrained by the order and injunction of this Court, sell and convey the said lands and premises to some innocent purchaser for value without notice of the plaintiff's rights.

The plaintiff therefore prays :—

1. That the defendant H. H. W. may be ordered to make a full and true discovery of the contents of the said will, and of the matters hereinbefore set forth, and that the said will may be established by this Court.

2. That the said deed to the said defendant H. H. W. may be declared to be fraudulent and void, and may be set aside, and that the defendant H.H.W. may be ordered to convey the hereinbefore described lands and premises to the plaintiff and may be ordered to account to the plaintiff for the rents and profits thereof.

3. That the defendant H. H. W. may be restrained by the order and injunction of this Court from selling, alienating, or otherwise disposing of or dealing with the said lands and premises.

4. That the plaintiff may be paid his costs of this suit and may have such further and other relief as may appear just.

C. M.

79. *Bill by infant wards of Court for "habeas corpus" against persons improperly detaining them from their father.*

79. Bill by infant wards of Court for *habeas corpus* against person improperly detaining them from their father.

In Chancery.

Between—J. K., W. K., and L. K., infants under the age of twenty-one years, by W. K. their next friend.....Plaintiffs.

and

J. J. L., J. F. J., D. S. K., and J. E. K., his wife.....Defendants.

City of Toronto,

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of J. K., W. K. and L. K., of the City of Toronto, infants, under the age of twenty-one years, by W. K. of the said City of Toronto, lumber merchant, their next friend,

Sheweth as follows :

1. The plaintiffs are the infant children of the defen-

dants, D. S. K. and J. E. K. his wife, and are of the respective ages following, that is to say, J. K. of the age of eleven years, W. K. of the age of six years, and L. K. of the age of four years.

2. The plaintiffs are entitled to, or interested in, a sum of $400 of lawful money of Canada, which has been settled upon them by their father, the defendant, D. S. K. and which is now in his hands, and it is necessary to the welfare of the plaintiffs that the said sum of money should be secured and applied from time to time, for the plaintiffs' benefit, under the direction of this Honourable Court.

3. The defendant, D. S. K. the plaintiffs' father, is, and always has been a Protestant, but the defendant, J. E. K.; the plaintiffs' mother, is, and always has been a Roman Catholic, in religion, and has always desired and endeavoured to instruct and bring up the plaintiffs as Roman Catholics, contrary to the wish and desire, and against the will, of the plaintiffs' father.

4. In the month of April, 1871, the defendant, J. E. K., in order to effect her object in bringing the plaintiffs up as Roman Catholics, applied to the defendant, J. J. L. who is the Roman Catholic Bishop of Toronto, and the defendant J. F. J. who is the Vicar-General of the Roman Catholic Church or Denomination in Toronto, to aid her in so doing, and thereupon the defendants, L., J. and J. E. K. conspired together and formed the plan of carrying the plaintiffs away from the lawful care and custody of their father, at his house in the City of Toronto, without his knowledge, and against his will, and of concealing them in some Roman Catholic establishment or house, in, or in the neighbourhood of, the City of Toronto, there to be detained and secretly instructed and educated, and brought up in the Roman Catholic religion against the will of their said father.

5. The defendants, L., J. and J. E. K. accordingly afterwards, in pursuance of the said plan and conspiracy aforesaid, in the said month of April, caused the plaintiffs to be carried away from their said father's house without his knowledge or consent and against his will, and caused them to be placed in some Roman Catholic Institution or house in, or in the neighbourhood of, Toronto, as aforesaid, and they have there ever since been and still are secretly kept and detained, and have been thence hitherto and still are being instructed and brought up in the Roman Catholic religion, by and with the consent and knowledge and by and with the aid and assistance, and at the ex-

pense of the defendants, L., J. and J., E. K., and their place of concealment as aforesaid is by the same defendants kept hidden from the plaintiffs' father and the same defendants refuse to disclose the same, or to deliver the plaintiffs up to their father.

6. The defendants, L., J. and J. E. K., are determined at all hazards to carry out their design hereinbefore stated of causing the plaintiffs to be instructed and brought up in the Roman Catholic religion, and intend if necessary to carry the plaintiffs out of the jurisdiction of this Honourable Court.

7. The plaintiffs', father and mother have not ceased to live and cohabit together, but the plaintiffs', mother although frequently requested by the plaintiffs' father to disclose the place of the plaintiffs', concealment refuses so to do.

8. The defendants J. and L. in like manner, have been frequently applied to by the plaintiffs' father to deliver the plaintiffs up to him or to disclose the place of their detention and concealment; but they have always refused and still refuse so to do and they will not do so unless compelled by this Honourable Court.

The plaintiffs therefore pray as follows:

1. That proper directions may be given by this Honourable Court for the maintenance, support and education of the plaintiffs, and for that purpose that an account may be taken of the money belonging to the plaintiffs as aforesaid, and that the same may be secured and applied for the benefits of the plaintiffs from time to time as the interests of the plaintiffs may require.

2. That the defendants L., J. and J. E. K. may be ordered to deliver the plaintiffs up to their father to be maintained and supported by him and to be instructed and educated in the Protestant religion or as their said father may from time to time determine.

3. That the defendants L., J. and J. E. K. and all other persons under their orders or control, their servants and agents, may be restrained by the order and injunction of this Honourable Court from detaining or concealing the plaintiffs from their said father, and from counselling, aiding or assisting in any such detention or concealment, and from removing the plaintiffs or either of them from the jurisdiction of this Honourable Court,

and from counselling, aiding or assisting in any such removal, and from instructing or educating the plaintiffs or any or either of them in the Roman Catholic religion, without the consent of their said father, and from counselling, aiding or assisting any such instruction or education.

4. That a writ or writs of *Habeas Corpus ad subjiciendum* may be issued under the Seal of this Honourable Court, directed to the same defendants, commanding them to produce before this Honourable Court the bodies of the plaintiffs, that they may be delivered into the lawful custody of their father.

5. That for the purposes aforesaid all proper directions may be given and accounts taken.

6. That the plaintiffs may have such further and other relief as to this Honourable Court may seem meet and the plaintiffs will ever pray &c.

J. M.

80. Bill for construction of Will.

80. *Bill for construction of Will*

In Chancery.

Between—H. N. R. and D. Mc. L.....Plaintiffs,
and
A. M. E. and L. A. S., and F. E. S. his wife, and A. W. E., S. S. E. and F. A. E., infants under the age of twenty-one years.....Defendants.

City of Toronto.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of H. N. R. of the Town of Port Hope, in the County of Durham, gentleman, and D. Mc. L., of the same place, merchant,

Shews as follows:

1. One S. E., late of the Town of Port Hope aforesaid, duly made his last will and testament in writing, bearing date the 2nd day of November, 1859, and duly executed in a manner sufficient according to the laws of this Province for the effectual disposition of personal estate.

2. The said last will and testament is in the words and figures following, that is to say:

"Know all men by this Instrument, that I, S. E., of the "Township of Hope, Canada West, being at this time of "sound body and mind, and having a lively sense of the "shortness of life, and that I should be always prepared

"to die, and being further aware that my business is at-
"tended with much danger in the way of accidents, feel
"that I should, in all that belongs to me in worldly goods,
"have them so arranged as to be made at once available
"for my beloved family, in case of premature death or
"otherwise. I therefore will unto my beloved wife,
"Anna Maria, for the benefit of herself and children jointly,
"two Life Policies for each ($1000) one thousand dollars,
"and their premium dividends (said Life Policies are ef-
"fected with the N. Y. Mutual Life In. Co., N. Y. City),
"to have and to hold for their joint and mutual benefit,
"and to be by her spent in the most judicious and bene-
"ficial manner for all; also, whatever interest I may have
"in the business of E. and W., and in the arranging of it I
"trust much to my long and well-tried partner, A. W., in
"giving a just return of it to my heirs, for long and faith-
"ful services rendered by me in the business, there being
"no written agreement of partnership. The schooner
"*Enterprise* is a partnership property, altho' deeded in
"A. W.'s name; so also Lot 19, in 5th Con. Hope, deeded
"in the same way; so also Lot 14, in 4th Hope, deeded
"the same way—all these are a joint interest, and were
"deeded by understood wishes. I being an alien, the
"joint earnings have been invested for the purchase of all
"these properties, and the capital, when furnished for any
"purchase, has been passed to A. W.'s credit. In the
"Book account as it stands the business shows the singu-
"lar look of the monies being used of A. W.'s for the pur-
"chase of these properties, passed to his credit, and also
"holding deeds of the properties too, in order to have it
"correct; the deeds are of no account in showing the
"amount of capital invested; his account on the Ledger
"shows the just and correct account, and the dues, monies,
"properties, personal and real, must be converted into
"money or its equivalent, and return the amount of said
"account unto A. W.; if there be a surplus over and above
"his account, then A. W. has one-half and S. E. or his
"heirs one-half. Lot No. 1 North Street, Rochester, was
"likewise purchased as a joint interest, and deeded like
"the other properties, as letters show. This lot has since
"been sold, and no account as yet given of the proceeds to
"E. and W. They went to the expense of filling in, fenc-
"ing, and otherwise improving said lot; paying all taxes,
"including the tax of $275 for straightening Main Street;
"they also, before purchasing, leased it at $60 (sixty dol-
"lars) per year for three years. To sum up, all deeds be-
"long to E. and W., but are in A. W.'s name, to secure the

"return of the capital invested in the business; said cap-
"ital is represented in his account on the Ledger correctly
"and if there be personal effects and monies enough to
"return such capital to A. W., then half of all lands, vessels,
"bank stock, &c., belong equally to A. W. and S. E. and
"their heirs. It is necessary to be somewhat explicit in
"these statements of a partnership of twelve years' stand-
"ing, verbally made, known only to themselves; but be-
"ing bosom friends, the partnership was entered into with
"the understanding that A. W. furnish the capital, and
"S. E. do the work, and in this way it has continued up
"to this date. I therefore, for well adjusting of all these
"matters herein written, and all other affairs that I may
"have interest in, nominate and appoint H. N. R. and
"D. Mc. L. my executors to this my last Will and Testa-
"ment."

3. The said S. E. departed this life, at the Town of Port Hope aforesaid, on the 17th day of May, A. D. 1871, without having in any matter revoked or altered his said will; and the plaintiffs, who are the executors named therein, duly proved the said will on the 17th day of June afterwards, and took upon themselves the burthen of the trusts thereof.

4. The said S. E. left him surviving his widow, the defendant A. M. E., and four lawful children, namely, the defendants F. E. S., the wife of the defendant L. A. S., and A. W. E., S. S. E., and F. A. E., the last three being still infants within the age of twenty-one years, and the said S. E. never had any other children.

5. The said S. E. was not possessed of or entitled to, or interested in any real estate at the time of his death, except his interest in so much of the partnership assets hereinafter mentioned as consisted of real estate.

6. The personal property of the said S. E., at the time of his death, consisted almost entirely of his interest in the partnership assets of a certain partnership firm of E. & W., composed of the said S. E. and one A. W.

7. The said partnership business was a timber and lumber business, which had been carried on for about twenty years before the death of the said S. E., and which was dissolved by the death of the said S. E., and the said partnership assets consisted chiefly of a large quantity of land, situate partly in Ontario and partly in the State of Michigan, one of the United States of America, acquired and held for the purposes of the said partnership business, and of a large quantity of timber manufactured and unmanufactured, and the stock and plant of the said business.

8. The said partnership business has not yet been wound up or settled, nor have the assets thereof been converted or realized, but the winding up thereof is now in progress, and considerable sums of money will soon be available for the purposes of the will of the said S. E.

9. The value of the interest of the said S. E. in the said partnership assets is expected, when realized, to exceed the sum of $50,000, and there are no debts of the said testator's estate of any magnitude.

10. The plaintiffs are advised that the said will is of doubtful construction, and that they could not, with safety, distribute the personal estate of the testator between his widow and children without the aid and sanction of this Honourable Court.

11. The said A. M. E., the widow of the testator, claims to be entitled to the whole of the testator's personal estate, with power to apply the same according to her absolute discretion, for her own benefit and that of her children, but the plaintiffs are advised that it is doubtful whether the said A. M. E. has an absolute interest in any part thereof, or if she has, whether such absolute interest extends to more than an undivided fifth part thereof, the rest belonging absolutely to the children.

The plaintiffs therefore pray as follows:

1. That the rights and interests of the said parties in the personal estate of the testator may be declared by the order and decree of this Honourable Court.

2. That the personal estate of the testator may be administered, and the trusts of the said will may be carried into effect and execution under the direction of this Honourable Court.

3. That the plaintiffs may be paid their costs of this suit.

4. That for the purposes aforesaid, all proper directions may be given and accounts taken.

5. That the plaintiffs may have such further and other relief as to this Honourable Court may seem meet.

And the plaintiffs will ever pray, &c.

J. M

81. Bill for construction of will.

81. *Bill for construction of will.*

In Chancery.

Between—The Reverend J. W. M.,.....Plaintiff,

and

J. W. and R. W. W. (her husband), M. W. and The Reverend W. W. (her husband), E. F. and J. F. (her husband), J. K. W., R. W. G. W., M. M. and H. B. M. (her husband), M. W., S. B. W., J. W., and M. G. M. (the last three being infants under the age of twenty-one years),.....Defendants.

City of Toronto.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of the Reverend J. W. M., of the Village of Mitchell, in the County of Perth, Presbyterian Minister,

Sheweth, as follows:

1. The late E. M. was, in the year of our Lord 1869, married to the plaintiff, without any ante-nuptial settlement.

2. The said E. M. departed this life on the 9th day of June, 1870, having first duly made and published her last will and testament, executed in manner and form sufficient for the purposes therein mentioned, which said will is in the words following, that is to say:

"I give all my real and personal estate unto my brother, J. W., my husband, J. W. M., and R. H. D., of York, in the County of Haldimand, physician, their heirs, executors and administrators upon trust: To sell and convert into money such real and personal estate, and to invest the sum of $10,000, thus arising, in the name of my said trustees, in such manner and in such securities as they may deem advisable, and to pay the annual income thereof to my child, M. G. M., or expend the same or a sufficient portion thereof in or towards the maintenance and education of my said child, during her minority; and upon her attaining her majority, to pay the said $10,000, together with any accumulations, to her; but in the event of the death of my said child before the said legacy shall have been paid to her, I direct the same be paid to my said husband.

"It is my will, that out of the remainder of my estate, the sum of $10,000 be paid by my said trustees to my husband, also above named, for his own use absolutely.

"I further direct my said trustees to pay to my cousins, J. I. and M. D., the sum of $1,000 each, and to E. F., wife of J. F., of the Town of Brantford, engineer, the sum of $2,000.

"It is my wish and desire that my sister-in-law, A. M., shall have the care of my said child while she continues to live with my said husband, or so long as may be mutually agreeable to her and my said husband, and during such period shall receive from my said trustees the sum of $200 each year for her trouble.

"I direct my said trustees to divide the residue of my estate, thus coming into their hands, among my brothers and sisters, share and share alike; and I appoint my said trustees executors for this my will; and I hereby declare, that if the said trustees hereby appointed, or any of them, shall die in my lifetime; or if they or any of them shall, after my death, die, then and so often the said trustees or trustee (and for this purpose every retiring or refusing trustee shall be considered a trustee) may appoint a new trustee or new trustees in the place of the trustee or trustees so dying, or desiring to be discharged, or refusing, or becoming incapable to act; and upon every such appointment, the trust property shall be transferred to and vested in the new trustee or trustees, either solely or with a continuing trustee or trustees, as the case may require."

3. At the time of her death, the said E. M. was possessed of and entitled to considerable personal estate, which had been bequeathed to her by the will of her father, G. W., who died on or about the 5th day of October, A.D. 1865.

4. Probate of the said will of the said E. M. was duly granted to the plaintiff by the proper Court in that behalf; the other executors named therein having renounced and disclaimed.

5. J. I., in the said will named, has since intermarried with and is now the wife of the defendant R. W. W.

6. M. D., in the said will named, has since intermarried with and is now the wife of the defendant the Reverend W. W.

7. A. M., in the said will named, is no longer residing with the plaintiff, and now claims no benefit under the said will.

8. The defendants, J. K. W., R. W., G. W., M. M., M. W., S. B. W., and J. W. are the brothers and sisters of the said E. M.

9. The defendant, M. M., is the wife of the defendant H. B. M.

10. The defendants, S. B. W. and J. W., are infants under the age of twenty-one years.

11. The defendant, M. G. M., who is the only child of the said testatrix, is an infant of tender years.

12. The plaintiff has been advised that it is doubtful whether the said E. M. had, by law, the power to make the dispositions of her estate in the said will contained, and that it is proper to seek the direction of this Honourable Court.

13. It is doubtful whether, under the Act respecting certain separate rights of property of married women, the legacies to the plaintiff and to the defendants, J. W., M. W. and E. F. are valid.

14. It is doubtful whether the residuary bequest in favour of the defendants, the brothers and sisters of the said testatrix, is valid.

15. It is doubtful whether the bequest to the infant defendant, M. G. M., is entitled to priority, and to be paid in full, and whether it must abate in the event of a deficiency.

16. It is doubtful whether the said legacies mentioned in the thirteenth paragraph hereof, if valid, should abate proportionably in the event of a deficiency.

The plaintiff therefore prays:

1. That the said will may be interpreted and the trusts thereof declared by this Honourable Court, and the rights and interests of all the parties hereto ascertained and declared.

2. That the plaintiff may have such further and other relief as may seem meet.

T. M.

82. Bill by principal against agent for account, and discovery, charging fraud.

82. *Bill by principal against agent for account, and discovery, charging fraud.*

In Chancery.

Between—A. B.,.. .....Plaintiff,

and

A. McL.....Defendant.

Town of Owen Sound.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of A. ~~B.~~, of the Township of Sullivan, in the County of Grey, yeoman, humbly complaining,

Sheweth as follows:

1. The defendant having been for several years a stu-

dent of law with a professional gentleman practising in the Town of Durham, in the County of Grey, and having recently opened an office of his own there, is generally looked upon by the farmers and others as a legally qualified attorney and land agent, which in fact he holds himself out as being, and thereby secures and does a considerable amount of business of a legal character.

2. The plaintiff, believing him to be a legally qualified lawyer, some months ago applied to the defendant to have him transact certain legal business for him, the plaintiff, and for such purposes appointed him his agent, such business being the obtaining of the patent from the Crown to lots numbers 224 and 225 (*describing them*), and the sale of lot number 220 in the said Concession; and for the services of the defendant in respect of such business it was agreed between the plaintiff and the defendant that the latter should be entitled, out of the proceeds of the sale of lot number 220, to retain one-half, and should pay over the other half to the plaintiff.

3. Previous to this, and on or about the 13th day of October, in the year 1871, the plaintiff had paid up to the Crown in full the purchase money of the said two lots for which the patent was to be obtained, being the sum of $433.

4. About a month ago, the plaintiff having been advised that the patent for the said two lots, 224 and 225, was in the hands of the defendant ready for him, and that the defendant had sold the said other lot, called on the defendant for the purpose of obtaining the patent and receiving the half of the purchase money of the lot sold, when the defendant handed the plaintiff the patent and ten dollars, which he alleged was the full amount of the purchase money of the lot sold.

5. The plaintiff was surprised on examining the patent to find that the consideration money therein expressed was only $232, instead of the sum he expected to find it, and which he had paid the Crown Lands Department, namely, $433.

6. On calling the defendant's attention to this, he stated that only the principal money was expressed in a patent, and that the difference between the two sums must be interest; but finally, on the date of the original purchase being pointed out to him, namely, the year 1859, he admitted the absurdity of that and stated that probably a reduction in the price had been made by the Government.

7. The Government of the Province of Ontario have recently caused the Crown Lands in the said Township of

——— to be revalued, and where the original price was manifestly too high, have reduced the same to what they considered right, and to this it was the defendant referred.

8. The defendant then informed the plaintiff that even if the price had been so reduced it was very unlikely that the surplus, or any part of it could ever be got back from the Government; and having convinced the plaintiff that such was the case, induced him, in consideration of $40, to assign to him the defendant, by a written instrument, all the right of the plaintiff thereto.

9. The plaintiff has just learned that the said lots to which said patent relates, consisting of 116 acres, and originally sold for $3 per acre, were in the manner aforesaid, under the said revalution, reduced to the price of $2 per acre.

10. The plaintiff has further just learned that nearly two months previous to the said conversation between the plaintiff and the defendant, the latter, as the plaintiff's agent, and for the plaintiff's benefit, had received from the Government the sum of $206 20, being the reduction made as aforesaid, and that at the very time of such conversation the defendant held the said sum in his hands.

11. And as to the said lot number 220, sold by the defendant for the plaintiff on the terms aforesaid, the plaintiff says that he has applied to the defendant to account for the money received by him in respect thereof, but the defendant refuses to give any particulars whatever in respect thereof; and the plaintiff charges, as the fact is, that the defendant sold the said lot number 220 for a much larger sum than $20, the amount for which he asserts he sold the same.

12. The plaintiff submits that by the means and under the circumstances aforesaid the defendant has perpetrated on the plaintiff a gross fraud, any profit from which that he may have derived or may now be attempting to derive this Honourable Court will not permit him to retain.

The plaintiff therefore prays:

1. That the defendant may make a full and true discovery and disclosure of and concerning the matters hereinbefore stated.

2. That the assignment mentioned in the eighth paragraph of this Bill may be declared to be fraudulent and void, and may be ordered to be delivered up to be cancelled.

3. That it may be declared that the said sum of $206.20 received by the defendant in manner

aforesaid belongs to the plaintiff, and that the defendant may be ordered to pay the same, and whatever may be found due to the plaintiff in respect of the said lot number 220, to the plaintiff with interest.

4. That for such purposes all proper directions may be given, accounts taken, and enquiries made.

5. That the defendant may be ordered to pay the costs of this suit.

6. That the plaintiff may have such further and other relief as the nature of the case may require, and to this Honourable Court may seem meet.

7. And the plaintiff will ever pray.

83. *Bill to wind up partnership and for receiver, alleging misconduct of partner, &c.*

83. Bill to wind up partnership and for receiver, alleging misconduct.

In Chancery.

Between—A. H. .....Plaintiff,

and

W. H. J. .....Defendant.

City of Toronto.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of A.H., of the Town of Barrie, in the County of Simcoe, physician,

Sheweth as follows:

1. In the month of September, 1871, the plaintiff and the defendant agreed to enter into partnership in the business of Brokers, to be carried on in the City of Toronto, under the name of H. and J., on the terms following: The defendant, who was a bookkeeper and accountant, skilled in the business, but without capital, was to conduct the business and keep the books and receive one-fourth of the profits; while the plaintiff, who was a physician practising at Barrie, unskilled in the business, was not to be bound to attend thereto, and was to advance to the firm capital for the purposes of the business, and was to receive three-fourths of the profits, but no written articles of partnership were executed.

2. The plaintiff, in pursuance of the said agreement, in the said month of September advanced to the defendant, on behalf of the partnership, the sum of $4,884 for the purposes of the said business.

3. The plaintiff had, prior to the said partnership, ad-

vanced to the defendant the sum of $500 for the purposes of a joint speculation in stocks, which was still going on at the date of the said partnership.

4. The defendant neglected to keep proper or any books of the said business, or to make proper or any statements to the plaintiff in respect thereof, although the plaintiff frequently applied to him so to do.

5. The defendant was married to a sister of the plaintiff, and this connexion rendered the plaintiff unwilling to proceed to extremities against the defendant, notwithstanding his default aforesaid.

6. In the month of March last the plaintiff's said sister died, and immediately thereafter the plaintiff pressed the defendant for a statement of the said business, which the defendant promised to give, but he failed to do so; though he informed the plaintiff, as he had previously informed him, that the said business had made between $600 and $1,000 profit, which had been sufficient to pay the running expenses of the business, so that in effect the capital was intact.

7. Within a few days after the said last-mentioned request, the defendant telegraphed the plaintiff to come to Toronto, and on his arrival the defendant informed him that he had made a loss in Canadian Bank of Commerce stock amounting to about $700, but he gave no further statement, whereupon the plaintiff determined forthwith to dissolve the said partnership, and so informed the defendant, and the defendant agreed to such dissolution, and the same was effected and duly registered in or about the end of April, 1872.

8. The plaintiff thereupon insisted on the defendant furnishing him with books and statements of the said business, and the defendant admitted that there were none; but some time thereafter the defendant presented to the plaintiff certain books which he had in the meantime prepared, and which he alleged contained the accounts of the said business.

9. In the month of January, 1872, the defendant had paid to the plaintiff $500 in United States silver, equal to about $480, which, with a small sum of about $10, was the only sum received by the plaintiff for the said business during the said partnership.

10. Since the dissolution the said defendant has paid to the plaintiff the sum of $480 in respect of the said business, and the plaintiff has collected from the assets of the said business about $995; and save these moneys the plaintiff has received nothing in respect of the said business,

and the plaintiff has been obliged to pay $150 for a partnership debt.

11. The plaintiff has no assets of the said partnership, and the defendant alleges that he has no assets thereof, and that he handed over to the plaintiff all the assets thereof, and that the balance of the plaintiff's capital has been lost.

12. The plaintiff put the said books into the hands of an accountant, and has ascertained from him that, as the fact is, the said books are imperfect and do not disclose the transactions of the said business, many of which are entirely omitted therefrom; and even from the said books there would appear to be a balance unaccounted for in the hands of the defendant; and it further appears that the defendant took and used for his own purposes a sum of $1,180, with which he does not charge himself.

13. Recently the plaintiff has ascertained, as the facts are, that the defendant in the month of December last realized an asset of the said business, consisting of stock in the Bank of Hamilton, of which he had given no account to the plaintiff in the said books, or otherwise, and the proceeds of which he has converted to his own use.

14. Recently the plaintiff has ascertained that, as the fact is, the defendant during the said partnership invested part of the funds of the said business in a loan to one W. H., and the said W. H. is in respect of such advance a debtor to the amount of $4,000; but the said advance, though made in the course of the partnership business, and with the capital aforesaid, was made in the defendant's name, and the defendant threatens and intends, and will unless restrained, collect the same and place it beyond the reach of the plaintiff.

15. The plaintiff cannot, without the assistance of this Honourable Court, discover the assets of the said business or the true condition thereof; and the defendant, who is without means, will deprive the plaintiff of the large balance due to him unless he is restrained by this Honourable Court.

16. The plaintiff charges that the defendant has in his hands or under his control divers assets of the said partnership, and that if the same were collected the balance due to the plaintiff would be paid.

17. The plaintiff prays as follows:

1. That the defendant may be restrained by the order and injunction of this Honourable Court from collecting and getting in any part

of the said partnership assets, and particularly the said sum due by the said W. H., and that a receiver may be appointed of the said assets of the said partnership.

2. And that the accounts of the said partnership may be taken, and the balance due the plaintiff ascertained and paid over, the plaintiff submitting and hereby offering to account and do in the premises as shall be right, and as he may be ordered.

3. And for the purposes aforesaid, that all proper directions may be given and accounts taken.

4. And that the plaintiff may have such other and further relief as shall be just.

5. And the plaintiff will ever pray.

84. Bill by tenants in common against co-tenants for sale or partition.

84. *Bill by tenants in common against co-tenants for sale or partition.*

In Chancery.

Between—H. E. M., O. W. K., C. E. K. and E. J. L.....Plaintiffs,

and

E. P., E. K., R. J. K., and I. L. P., and M. P., two infants under the age of twenty-one years.....Defendants.

City of Toronto.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of H. E. M., of the Town of Erie, in the State of Pennsylvania, one of the United States of America, wife of W. H. M., of the same place, farmer; O. W. K., of the Town of Jamestown, in the State of New York, one of the United States of America, Dentist; C. E. K., of the Town of Youngstown, in the State of Ohio, one of the United States of America, gentleman; and E. J. L., of the village of Newmarket, in the County of York, wife of C. H. L., of the same place, merchant, the above named plaintiffs, (*a*)

Sheweth as follows:

1. W. K., in his life-time of the Township of King, in the County of York, Yeoman, was in his lifetime and at

(*a*) See 35 Vic., c. 17, ss. 1 and 9, (O) *Dingman* v. *Austin*, 33 U. C. Q. B. 190; *Adams* v. *Loomis*, 22 Grt. 99, since affirmed on rehearing. If the suit relate to lands not affected by C. S. U. C., c. 73, or 35 Vic., c. 17, a next friend would have to be named for the married women plaintiffs; and where the husband's right to courtesy is not taken away by 35 Vic., c. 17, s. 1, the latter would be a necessary party defendant.

the time of his death hereinafter mentioned, seized of or otherwise well and sufficiently entitled to the following lands and premises, that is to say: That certain parcel or tract of land and premises, situate, lying and being in the Township of King, in the County of York, being composed of (*describing lands*), containing 105 acres more or less, save and except 19½ acres sold off the said half Lot, and described in the several conveyances thereof to the various purchasers.

2. On or about the 24th day of February, A.D. 1873, and while he was so seized of the said lands and premises, the said W. K. departed this life, intestate.

3. The said W. K. left him surviving his widow the defendant E. K. and ten children, namely, the plaintiffs, the defendants E. P. and R. J. K. and M. A. P., wife of one J. J. P., G. W. K., A. E. K., and S. K., his sole heirs and heiresses at law.

4. The said M. A. P. departed this life shortly after the said W. K., leaving her said husband, J. J. P., and the infant defendants I. L. P. and M.P., her only children and heiresses at law, her surviving.

5. By Indenture bearing date the 17th day of February, A.D. 1874, made between the above named G. W. K. of the first part, and the defendant R. J. K. of the second part, the said G. W. K. did grant, convey and transfer to the said defendant R. J. K. all his undivided share and right, title and interest in and to the real estate of, or to which the said W. K. died possessed or entitled.

6. By Indenture bearing date the 24th day of January, A.D. 1875, made between the above named A. E. K. and S. K. of the first part, and the defendant R. J. K. of the second part, the said A. E. K. and S. K. did grant, convey and transfer to the said defendant R. J. K. all their undivided share and right, title or interest in or to the real estate of, or to which the said W. K. died possessed or entitled

7. The plaintiffs and the defendant E. P. are each entitled to a tenth share in the said lands and premises, the defendant R. J. K. is entitled to four-tenths of the said lands, and the defendants I. L. P. and M. P. are entitled in equal shares to one-tenth of the said lands.

8. The defendant E. K., as the widow of the said W. K., is entitled to dower in the whole of the said lands and premises.

9. The plaintiffs submit that they are entitled to a partition or sale of the said lands, and to a division of the same or the proceeds thereof amongst the parties entitled thereto.

10. The said parcels of land have always been used together as a farm, and are chiefly available as farming lands, and the plaintiffs show that having regard to the nature and circumstances of the said lands and premises, and to the number of persons entitled to share therein, it would be much more advantageous for all parties that the same should be sold, and the proceeds divided amongst the parties entitled thereto.

The plaintiffs therefore pray:

1. That the said lands may be sold, and the proceeds thereof divided amongst the parties entitled thereto, according to their several shares or proportions.

2. Or that the said lands may be partitioned and divided amongst the said parties.

3. That for the purposes aforesaid, all proper directions may be given and accounts taken, and that the plaintiffs may be paid their costs of this suit, and may have such further and other relief as may be just.

85. Bill by personal representative of deceased mortgagee to enforce mortgage given to secure maintenance of mortgagee and his wife

85. *Bill by personal representative of deceased mortgagee to enforce mortgage given to secure maintenance of mortgagee and his wife.*

In Chancery.

Between—S. E.,.....Plaintiff,

and

C. E., J. E., F. E., D. E., S. E. and A. E.,.....Defendants.

Town of Owen Sound.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of S. E., of the Township of Euphrasia, in the County of Grey, the above named Plaintiff, Widow of R. E., late of the Township of Euphrasia, deceased,

Sheweth as follows:

1. Under and by virtue of an Indenture of Bargain and Sale bearing date the 11th day of February, in the year 1857, and duly registered in the Registry Office of the County of Grey on the 8th day of February, in the year 1858, made between R. E., since deceased, of the first part, the Plaintiff his wife of the second part, and the said Defendant C. E. of the third part, the said R. E., for the expressed consideration of ten shillings and other considera-

tions mentioned in the second paragraph hereof, granted to the said defendant C. E., in fee, and the Plaintiff released her dower in the lands and premises therein mentioned, being composed of the (*describe lands*).

2. The object of the said R. E., and the plaintiff was to secure to themselves and to each of them a comfortable support and maintenance during their natural lives and the life of the survivor of them, and it was agreed between the said R. E, the plaintiff, and the said C. E., as the consideration for the conveyance of the said land by the said R. E., and the release of her dower therein by the plaintiff, that the said C. E., his heirs and assigns, should pay, furnish and deliver to the said R. E. and the plaintiff in each year during their natural lives, £7.10s., currency, five barrels of flower, one barrel of salt pork, thirty bushels of potatoes, fodder for two cows and six sheep every winter, and provide pasturage for two sheep during the ensuing summer, haul and chop firewood, allow to the said R. E., and the plaintiff four acres including the dwelling house and garden on said Lot twenty-three, put in, cut crop and barn all produce thereof and therefrom on the 1st day of January in each and every year, and chop firewood for the use of the said house during both winter and summer, and in the event of the plaintiff surviving her said husband, the said C. E. agreed to furnish her during her natural life with the said house, land, and firewood for the use of the house, and half the above provision, that is to say, £3.15s, two and a half barrels of flour, half a barrel of salt pork, fifteen bushels of potatoes, fodder one cow and three sheep every winter with hay and provide pasturage for one sheep during the summer.

3. With the object and intention of carrying out the said agreement and securing the performance thereof, the said defendant, C. E., by indenture of bargain and sale by way of mortgage, bearing date the 11th day of February, 1857, and duly registered in the Registry Office for the County of Grey, on the 8th day of February, in the year 1858, granted and conveyed to the said R. E. the elder in fee, the said lands and premises for securing payment annually of the said sum of £7.10s, and the performance annually of the other acts and conditions set forth in the second paragraph of this Bill, to and for the benefit of the said R. E. the elder and the plaintiff, as by the said Indenture, reference being thereunto had, will more fully appear.

4. Upon payment annually of the said sum of £7.10s, to the said R. E. and the plaintiff, or in case of the

death of the said R. E. one half thereof to the plaintiff, and upon performance of the acts and the furnishing of the said goods and chattels mentioned in the second paragraph hereof, the said mortgage was to become void; and the said C. E. covenanted with the said R. E. to pay the said sum of £7.10s, and to furnish and provide the plaintiff with the said goods and chattels, house and land, fodder, pasturage and firewood, and to put in, cut crop, and barn the produce thereof and therefrom on the 1st of January in each and every year, and chop firewood for the use of the said house during both winter and summer, or in case of the death of either of them the said R. E. or S. E., one half of the said sum and produce to the survivor.

5. The plaintiff was not made a party to the said mortgage, nor did the said C. E. enter into any covenant with her, although it was intended and agreed that her support and maintenance in lieu of dower should be as the plaintiff submits that it in fact is, charged upon the said lands.

6. The plaintiff shews that but for the purpose of obtaining and securing such maintenance and support, she would not have released her dower in the said lands.

7. On or about the 19th day of June, in the year 1857 the said R. E. died intestate, leaving him surviving the plaintiff, his widow, and the said defendants C. E., J. E., F. E., D. E., S. E. and A. E., his only children and heirs-at-law; and letters of administration of the estate of the said R. E. were duly granted by the proper Court to the plaintiff, and she is now the administratrix of his estate.

8. Under and by virtue of an Indenture of Bargain and Sale made in or about the year 1861, and duly registered in the Registry office, of the County of Grey, the defendant C. E. conveyed to the said defendant, J. E. the equity of redemption in said lands, in consideration of $1,000 and subject to said mortgage.

9. No payment was ever made by the said C. E. on account of the said annual sum of £7,10s. to the said R. E., or to the plaintiff during the lifetime of the said R. E., nor has it been paid to the plaintiff, as his administratrix, since his death.

10. The defendant, C. E. continued to reside with the plaintiff on the said farm, after the death of the said R. E., until the spring of the year 1861, and the plaintiff during that time was furnished with the provisions required by the said mortgage to be supplied to her.

11. Since the spring of the year 1861, the plaintiff has received neither money nor provisions from the said

C. E., or J. E., or from any other person on their or either of their accounts, but therein they have wholly failed and made default, by reason whereof the plaintiff submits that upon the true construction of the proviso hereinbefore set forth, she is entitled to call in and have paid to her the said annual sum of money and the value of the goods and chattels agreed to be furnished and supplied for her maintenance.

12. The plaintiff further submits that she is entitled to have an account taken of the value of the said annual maintenance, and to have the same paid to her.

13. The said R. E. has not, nor has the plaintiff since his death, been in the occupation or possession of the said lands and premises or any part thereof, except the four acres mentioned in the second paragraph of this Bill.

14. There is now due on the said mortgage for principal and interest, the sum of $400, besides the value of the said annual maintenance.

15. The defendants, some or one of them, are entitled to the equity of redemption of the said mortgaged premises.

The plaintiff therefore prays as follows:

1. That an account may be taken of the value of the said annual maintenance, and of the amount due and payable to the plaintiff upon the said mortgage, and that the said defendants C. E. and J. E. may be ordered to pay the same and the costs of this suit, and in default thereof, that the said lands or a competent part or parts thereof may be sold; and the proceeds applied in or towards payment of the plaintiff's said claim, and that the defendant C. E. may be ordered to pay the deficiency (if any) after the said sale.

2. That for the purposes aforesaid, all proper directions may be given and accounts taken, and that the plaintiff may have such further and other relief in the premises as to this Honourable Court may seem meet.

And the plaintiff will ever pray, &c.

86. Bill by personal representative of deceased mortgagee to enforce mortgage given to secure payment of a sum of money or for maintenance of mortgagee and wife at mortgagor's election.

86. *Bill by personal representative of deceased mortgagee to enforce mortgage given to secure payment of a sum of money or for maintenance of mortgagee and wife at mortgagor's election.*

In Chancery.

Between—S. M. by J. R., her next friend, Plaintiff,

and

P. E., M. C., and S. C. E., P. E., and P. E. infants under the age of twenty-one years, and B. F., T. M., and Her Majesty's Attorney-General for the Province of Ontario. ..... Defendants.

Town of Owen Sound.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of S. M., of the Township of St. Vincent, in the County of Grey, the above named plaintiff, wife of the defendant T. M., by J. R., of the said Township, farmer, her next friend,

Sheweth as follows:

1. Under and by virtue of an indenture of bargain and sale, bearing date the 9th day of September, A.D. 1852, and duly registered in the Registry Office of the then United Counties of Wellington and Grey, on the 26th day of September, A.D. 1855, made between W. T., since deceased, of the first part, the plaintiff, his wife, of the second part, and the said defendant P. E., of the third part, the said W. T., for the expressed consideration of £200, granted to the said defendant P. E., in fee, and the plaintiff released her dower in the lands and premises therein mentioned, being composed of the north-east corner of lot 38 in the 9th concession of the Township of St. Vincent, containing by admeasurement 60 acres, more or less.

2. No part of the said consideration was ever paid in money, but the object of the said W. T. and the plaintiff was to secure to themselves and each of them a comfortable support and maintenance during their natural lives, and the life of the survivor of them, and it was agreed between the said W. T., the plaintiff, and the said P. E., as the consideration for the conveyance of the said land by the said W. T., and the release of her dower therein by the plaintiff, that the said P. E., his heirs and assigns, should furnish and deliver to the said W. T., in each year, during the term of his natural life, four barrels of mer-

chantable flour, one of which should be delivered every three months, commencing on the 1st day of October, 1852, and also one barrel of merchantable pork, to be delivered on the 1st day of January in each year; that he should also give the said W. T. the use and occupation of a house and an acre of land adjoining it, and plough the said land yearly for him, and should also yearly furnish and deliver to the said W. T. sufficient firewood for his use at the said house, and should cut the same if the said W. T. from age or sickness should be unable to do so; and the said P. E. further agreed to keep for said W. T. yearly two cows, and to furnish him yearly with six yards of flannel, all wool, and six yards mixed with cotton, and in the event of the plaintiff surviving her said husband, the said P. E. agreed to furnish her with the said house, land, keep of cows, firewood and flannel, and to deliver to her two barrels of flour and half a barrel of pork during each year of her natural life.

3. With the object and intention of carrying out the said agreement, and securing the performance thereof, the said defendant, P. E., by indenture of bargain and sale, by way of mortgage, bearing date the 9th day of September, A.D. 1852, and duly registered in the then United Counties of Wellington and Grey, on the 3rd day of February, A.D. 1853, granted and conveyed to the said W. T., in fee, the said lands and premises for securing payment of £200 and interest by the said P. E. to the said W. T., on the 1st day of January next ensuing the date thereof.

4. In lieu of payment of the said sum of £200 and interest, and as an alternative condition, upon the fulfilment of which the said mortgage should become void, it was expressed in the proviso for repayment that the said P. E. might substitute the performance of the acts and the furnishing of the said goods and chattels mentioned in the second paragraph hereof, and the said P. E. covenanted with the said W. T. to pay the sum of £200, or to perform the said acts and furnish the said provisions to the said W. T. and to the plaintiff.

5. The plaintiff was not made a party to the said mortgage, nor did the said P. E. enter into any covenant with her, although it was intended and agreed that her support and maintenance in lieu of dower should be, as the plaintiff submits that it in fact is, charged and secured upon the said lands.

6. The plaintiff shows that but for the purpose of obtaining and securing such maintenance and support, she would not have released her dower in the said land.

7. On or about the 14th day of February, A.D. 1865, the said W. T. died intestate, leaving him surviving the plaintiff, his widow, who is the S. T. mentioned in the proviso in the said mortgage contained, and letters of administration to the estate of the said W. T. were duly granted by the proper Court to the plaintiff, and she is now the administratrix of his estate.

8. Subsequently to the death of the said W. T., the plaintiff intermarried with and became the wife of the said defendant T. M.

9. No part of the said sum of £200 and interest was ever paid by the said defendant P. E. to the said W. T. in his lifetime, nor has it been paid to the plaintiff, as the administratrix of his estate, since his death.

10. The defendant P. E. did, during the lifetime of the said W. T., deliver to him the goods, provisions and chattels, and perform the work and labour in the said proviso mentioned.

11. Upon and after the decease of the said W. T., the said P. E. did not furnish, and has not furnished or provided the plaintiff with the goods and chattels, or the house and land, agreed to be furnished and provided during the term of the plaintiff's life, but therein has wholly failed and made default, by reason whereof the plaintiff submits that upon the true construction of the proviso hereinbefore set forth, she is entitled to call in and have paid to her the whole of the money and interest secured by the said mortgage.

12. The plaintiff further submits, that even if this Honourable Court should not be of opinion that she is entitled to call in and have paid to her the whole of said principal money and interest secured by said mortgage, yet she is nevertheless entitled to have an account taken of the value of the said annual maintenance, and to have the same paid to her by the said defendants, or that she is entitled to have the value of her dower in the said lands ascertained and paid to her by the said defendants.

13. The said W. T. has not, nor has the plaintiff since his death, been in the occupation or possession of the said lands and premises or any part thereof.

14. There is now due upon the said mortgage for principal $800, and for interest $500.

15. The defendant P. E. granted and released his Equity of Redemption in the said lands to his son, J. E., but the conveyance thereof has not been registered. The said J. E. afterwards, and on or about the 19th day of July, A.D. 1862, died intestate, leaving his widow, and the above

named defendant M. C. (who has since intermarried with and become the wife of the defendant B. F. C.), and the defendants S. C. E., P. E. and C. E., his children and heirs-at-law, infants within the age of twenty-one years, him surviving.

16. The said W. T. was pressed into the navy at a very early age, and deserted therefrom at Quebec, upwards of fifty-nine years before his death. He has resided in this country ever since, and has no relatives or connections here except the plaintiff, and the plaintiff has been unable to ascertain or discover his heirs-at-law or next of kin.

17. The defendants, or some of them, are entitled to the Equity of Redemption of the said mortgaged premises.

The plaintiff therefore prays as follows :—

1. That an account may be taken of the principal money and interest due upon the said mortgage, and that the defendants may be ordered to pay the same, and in default thereof that the Equity of Redemption in the said lands and premises may be foreclosed.

2. Or that an account may be taken of the value of the said annual maintenance, or that the value of the dower of the plaintiff in the said lands at the time of the death of her said husband, may be ascertained, and that the said defendants may be ordered to pay the same, and in default thereof that the Equity of Redemption in the said lands may be foreclosed.

3. That the plaintiff may be paid her costs of this suit.

4. That for the purposes aforesaid all proper directions may be given and accounts taken, and that the plaintiff may have such further and other relief in the premises as to your Lordships may seem meet.

And the plaintiff will ever pray, &c.

F. O.

87. Bill against representatives of deceased mortgagor for sale of mortgaged premises and for administration of his estate in the event of a deficiency.

87. *Bill against representatives of deceased mortgagor for sale of mortgaged premises and for administration of his estate in the event of a deficiency.*

In Chancery.

Between C. B..... Plaintiff,

and

M. S. and W. S. her husband, M. M. and R. M. her husband, J. W., G. W. and S. W. and D. M., Infants, respectively under the age of twenty-one years, and A. W., C. A. S. and J. G., Executrix and Executors of the last will and testament of D. W., deceased.....Defendants.

City of Hamilton.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of C. B., of the Township of Toronto, in the County of Peel, yeoman, the above named plaintiff,

Sheweth:

1. Under and by virtue of an indenture dated the 10th day of November, A.D. 1857, and duly registered in the Registry Office of the County of Wentworth, on the 11th day of the same month, made between one D. W., therein described, of the first part; A. W., wife of the said D. W., who joined in the said indenture for the purpose of barring her dower only, of the second part; and your complainant of the third part. Your complainant is a mortgagee of all and singular those certain parcels or tracts of land and premises situate, lying and being in the City of Hamilton, in the said County of Wentworth, being composed of village lots numbers 7, 9 and 10, according to a plan or survey thereof by John W. Downs, and being part of lot 17 in the 1st, otherwise called the 2nd concession of the Township of Barton aforesaid, as described in the deed of said lots from H. J. L. to the said D. W., dated the 12th day of May, 1852, and registered in the Registry Office of the County of Wentworth on the 22nd day of the same month for securing the sum of $1,000 and interest at the rate of six per cent. per annum, which the said D. W. by the said indenture covenanted to pay as follows, that is to say, the said principal sum at the end of eight years from the 17th day of January, 1857, and the interest yearly at the rate aforesaid on the 27th day of the month of January in each year so long as the principal sum should remain unpaid, the first of such payments to be made on the 27th day of January, 1858.

2. The sum of $210 has been paid on account of interest and nothing on account of principal.

3. Your complainant has not been in the occupation of the said premises or any part thereof.

4. There is now justly due upon the said security for principal $1,000 and for interest $258 34.

5. On or about the 24th day of November, A.D. 1863, the said D. W. departed this life, having first duly made and published his last will and testament in writing, duly executed so as to pass real estate according to the laws of this Province, and thereby, after making his debts a charge upon all his real and personal estate, he devised the said lot number 9 to his daughter the said defendant, M. S., wife of the said defendant W. S.; the said lot number 10 to his son, the said defendant, J. W.; and the said lot number 7 to his daughter, the said defendant, M. M., wife of the said defendant R. M., during her natural life, and after her decease to the said defendant D. M. and his heirs.

6. The said defendants, in the last paragraph mentioned, or some of them, are entitled to the Equity of Redemption of the said mortgaged premises

7. The said testator appointed his wife, the said defendant, A W., and the defendants C. A. S. and J. G., executrix and executors of his said will, and on or about the 12th day of December, 1863, the said three defendants last named obtained letters Probate from the proper court in that behalf of the said will, and have taken upon themselves the execution thereof.

8. Your complainant charges that the said mortgaged premises are a scanty security for the principal and interest due upon the said mortgage, and that he is entitled, sueing as he does in this respect on behalf of himself and all the other creditors of the said D. W., deceased, to rank as a specialty creditor upon the general estate of the said D. W., and to have the same administered and the proceeds applied in payment of his debts, including that of your complainant, under the order and direction of this Honourable Court.

9. The said defendants, A. W., S. W. and G. W., are devisees under the said will of all the lands of the said testator other than those comprised in the said mortgage.

Your complainant therefore prays as follows:

1. That he may be paid the said mortgage debt and interest and the costs of this suit.

2. Or in default thereof that the said mortgaged premises may be sold and the proceeds

thereof applied in or towards such payment as aforesaid.

3. That if necessary this suit may be taken as being on behalf of the plaintiff and all other the unsatisfied creditors of the said D. W., and that the real and personal estate of the said D. W. may be administered by the decree and under the direction of this Honourable Court for the benefit of your complainant and the other creditors of the said D. W., deceased, and the proceeds applied in a due course of administration in or towards the payment of his debts, including that of your complainant, and that your complainant may be admitted as a specialty creditor in respect of the said debt.

4. That for the purposes aforesaid all proper directions may be given and accounts taken, and that your complainant may have such further and other relief in the premises as the circumstances of the case may require, and to your Lordships may seem meet.

T. M.

88. Bill to restrain diversion of Water Course.

88. *Bill to restrain diversion of Water Course.*

In Chancery.

Between T. M.....Plaintiff,

and

A. G. and J. G.....Defendants.

City of Toronto.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of T. M., of the Township of York, in the County of York, Farmer,

Sheweth as follows:

1. That prior to the 15th day of June, in the year 1856, the plaintiff was the owner of all and singular those certain lands and premises situate, lying and being in the Township of York aforesaid, containing by admeasurement 30 acres, being composed of the north-west half of Lot No. 12, on the west side of Yonge Street, in the said Township.

2. That by an Indenture bearing date the said 15th day of June, in the year 1856, made between the plaintiff of the first part; M. A. M., his wife, for the purpose of barring dower, of the second part; and one J. R., of the third part, the plaintiff did grant and convey the said lands

and premises to the said J. R., his heirs and assigns, reserving, however, to himself by the said Indenture the right to enter upon the said lands and premises, and lay down a pipe or drain to a spring thereon in front of G.'s gate from the road, and the right to lead and use the water of the said spring to the road for the use of the public at all times.

3. That by an Indenture bearing date the 4th day of November, in the year 1868, the said J. R. sold and conveyed the said lands and premises to the defendant A. G., who now claims to be the owner thereof.

4. The defendant J. G. is or claims to be in possession of the said lands and premises as tenant of the said defendant A. G.

5. The spring hereinbefore referred to as being upon the said lands and premises is a valuable one, affording a never-failing supply of water.

6. That, in accordance with the rights reserved by the said deed, and the intention with which the same were reserved, the plaintiff, in or about the month of June in the year 1872, at a considerable expense to himself, caused and procured a pipe to be laid from the said spring to the only road on which the said lands and premises abut, whereby the waters of the said spring were brought therefrom to the said road and allowed to fall into a large wooden trough for the use of the plaintiff and his cattle and that of the public at large.

7. That the defendants were well aware of the reservations contained in the said Indenture firstly mentioned, and of the plaintiff's rights thereunder.

8. That the said defendants were well aware of the plaintiff having caused and procured such pipe to be placed upon the said lands as aforesaid, and were present at the time the said work or a portion thereof was being done, and offered no objection thereto; but acquiesced in the said work being done, and recognized and admitted the plaintiff's right to lay the said pipe and to the use of the water as aforesaid.

9. That lately the defendant J. G., at the suggestion and with the knowledge and concurrence of the other defendant, with the view and intention of cutting off the supply of water through the said pipe from the said spring, has caused a pipe or drain to be laid or made, intersecting the pipe placed upon the said lands by the plaintiff as aforesaid, whereby the supply of water from the said spring through the said pipe to the road is interfered with and wholly diverted and caused to flow through the pipe or

drain so laid by the defendant J. G.; and the defendants have also, by placing other obstructions in the flow of the said water, diverted the same from the pipe placed upon the said lands by the plaintiff as aforesaid.

10. That by means of the said pipe or drain of the defendants, the supply of water which the plaintiff is entitled to by virtue of the reservation in the Indenture aforesaid is wholly withdrawn, and the plaintiff's rights under the said reservation have been injured and damnified.

11. The plaintiff submits that the defendants ought to be restrained from diverting or continuing to divert the water of the said spring from flowing through the pipe so placed by the plaintiff upon the said lands, and from further interfering with the plaintiff's rights reserved by the said Indenture, and ought to be ordered to remove any obstructions placed by them or either of them preventing or hindering the flow of water from the said spring to the road through the pipe so placed upon the said lands by the plaintiff.

12. The plaintiff further submits that an account ought to be taken of the damage sustained by the plaintiff by the diversion of the said water, and that the defendants ought to be ordered to make good such damage.

The plaintiff therefore prays:

1. That his rights under the said Indenture to the said J. R. may be declared by this Honourable Court.

2. And that the defendants may be restrained by the order and injunction of this Honourable Court from diverting and continuing to divert the water of the said spring from flowing through the pipe so placed upon the said lands and premises by the plaintiff, and from further interfering with the plaintiff's rights under the said Indenture to the said J. R., and may be ordered and directed to remove any obstruction placed or caused to be placed by them, or either of them, whereby the waters of the said spring are prevented or hindered from flowing through or by the said pipe to the road as aforesaid.

3. And that an account may be taken of the damage sustained by the plaintiff by reason of the diversion of the said water by the defendants as aforesaid.

4. And that the defendants may be ordered to pay and make good such damage.

5. And that the defendants may be ordered to pay the costs of this suit.

6. And that for these purposes all necessary and proper directions may be given and accounts taken as the nature and circumstances of the case require, and as to this Honourable Court shall seem meet.

And the plaintiff will ever pray.

J. B.

89. Bill for conveyance of legal estate, against infants in whom it is vested as bare trustees.

89. *Bill for conveyance of legal estate, against infants in whom it is vested as bare trustees.*

Between J. S. S..... Plaintiff,
and
F. B. and H. B. and E. B., infants under the age of twenty-one years.....Defendants.

Town of Goderich.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of J. S. S., of the Town of Goderich, in the County of Huron, Esquire,

Sheweth as follows:

1. Under and by virtue of an Indenture of Lease bearing date on or about the 25th day of March, A.D. 1852, the Canada Company, who were then seized in fee simple of the lands and premises hereinafter described, leased to one M. H., in the said Indenture mentioned, for and during the term of 10 years from the date thereof, the following lands and premises, that is to say—Lots numbers 799, 800, 801, 825, 826 and 827 in the Town of Goderich, in said County, together containing by admeasurement 1½ acres of land, be the same more or less; and by said Indenture there was also reserved to the said lessee M. H., the right to purchase, and the said Canada Company covenanted to sell the said premises at any time during the continuance of said lease, at the price of £225; and the said lease, together with all rights thereunder, was subsequently and before the expiration of the term by it demised, and before the date of the will hereinafter set forth, duly assigned by the said M. H. for valuable consideration to one G. B., of the said Town of Goderich, since deceased, which assignment was duly registered in the office of the Canada Company on or about the 25th day of March, A.D. 1854, and the said Canada Company thereupon accepted the said G. B. as lessee of the said premises, and recognized his right to exercise the right of purchase hereinbe-

fore referred to; and the said G. B., before the date of the said will, made divers payments to the said Canada Company under the said lease.

2. On or about the 20th day of August, A.D. 1857, the said G. B. made and published his last will and testament, duly executed so as to pass real estate by devise in Ontario, in the words following, that is to say:

"This is the last will and testament of me, G. B., of "the Township of Goderich, County of Huron, Canada "West.

"I direct that all my just debts and funeral expenses, be "paid and satisfied by my executrix hereinafter named, "as soon as conveniently may be after my decease.

"I give, devise and bequeath all and every my real es- "tate, houses, barns, town lots, together with my personal "property, household furniture, linen, plate, pictures, "horses, carriages, waggons, cattle, sheep, farming imple- "ments, and all and every sum and sums of money which "may be in my possession at the time of my decease, and "also all my stocks, funds, mortgages, shares and securi- "ties for money, debts, bonds, bills, notes or other securi- "ties, and all and every other my estate and effects what- "soever and wheresoever, both real and personal, whether "in possession or reversion, remainder or expectancy, unto "my dear wife, M. C. B., to and for her own use and bene- "fit absolutely; and I nominate, constitute and appoint "my dear wife, M. C. B., to be executrix of this my will, "I hereby revoking all former wills.

"In witness whereof, I the said G. B. have to this my "last will and testament set my hand the 20th day of "August, in the year 1857."

3. Subsequently, on or about the 30th day of January, A.D. 1862, the said G. B. having paid the said Canada Company the balance due in respect of the purchase money of the said premises, procured a deed of the said premises in fee simple from the said Canada Company, and afterwards died, seized thereof in fee simple, leaving him surviving his said widow, M. J., wife of J. J., Esquire, A. B., G. B., and the defendants, his co-heirs and co-heiresses-at-law.

4. On or about the 15th day of October, A.D. 1868, the said M. C. B., as devisee under the last will and testament of her husband as aforesaid; conveyed to the plaintiff the lands in question in fee simple for valuable consideration.

5. On the decease of the said testator, the legal estate in said premises descended to his said heirs-at-law, but at the

time of the above mentioned devise there was subsisting a contract for the purchase of said lands, binding upon the said Canada Company; and the plaintiff submits that the subsequent enlargement by said testator of his equitable interest into a legal estate by procuring the said deed from the said Canada Company did not in any way act as a revocation of the devise thereof to the said M. C. B., and the plaintiff alleges that the said testator did not make any devise or disposition of the said lands save in and by the said will as aforesaid.

6. The plaintiff submits that although at law the legal estate in said premises did not pass by the said will, but descended to the heirs-at-law of the said testator on his decease, yet the said heirs-at-law became thereby and were trustees thereof for the said M. C. B., and that the same is now vested in them upon trust for the plaintiff (*a*).

7. The adult heirs of the said testator have already conveyed to the plaintiff, as grantee of the said M. C. B., their interest in the said lands as trustees as aforesaid; but the defendants being infants under the age of 21 years, are incapable of making a valid conveyance of their interest in the said premises without the direction of this Honourable Court.

8. The said defendants are of the ages following, that is to say, the said F. B. of the age of 18 years, the said H. B. of the age of 16 years, and the said E. B. of the age of 12 years.

The plaintiff therefore prays:

1. That the said infant defendants may be declared to be trustees of the legal estate in said lands and premises for the plaintiff, as aforesaid.

2. That they may be ordered to convey the same forthwith to the plaintiff, if necessary; that some proper person may be appointed to execute a deed thereof in their name and in their behalf; or that the said premises may, by the order of this Court, be vested in fee simple in the plaintiff.

3. That for the purposes aforesaid all necessary directions may be given.

4. That the plaintiff may have such further and other relief as may seem just.

And the plaintiff will ever pray.

(*a*) But see *Yardley* v. *Holland*, L. R. 20 Eq. 428; *Whately* v. *Whately*, 14 Grt. 430.

90. Bill for specific performance of parol agreement alleging part performance.

90. *Bill for specific performance of parol agreement for conveyance of land alleging part performance.*

In Chancery.

Between S. O..... .....Plaintiff,

and

W. O., J. F., and S. F., his wife; J. W. O., W. G., and M. A. G., his wife.....Defendants.

Town of Belleville.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of S. O., of the Township of Sidney, in the County of Hastings, Yeoman, the above-named Plaintiff,

Sheweth as follows:

1. Prior to the date of the agreement hereinafter mentioned, one C. O., of the Township of Sidney, in the County of Hastings, Widow, the mother of the plaintiff and the defendants, W. O., S. F., formerly S. O.; M. A. G., formerly M. A. O.; and J. W. O., was the owner in fee simple of or otherwise well entitled in her own right to the east half of lot number 14, in the 2nd concession of the said Township of Sidney, and was residing thereon, and working and cultivating the same as a farm, with the assistance of the plaintiff.

2. The plaintiff was the eldest son of the said C. O., then living and residing at home with his mother, and his said mother entrusted him with the full management and control of the business of the said farm, and relied upon his labour and prudent management thereof for the support of herself and the rest of her children then residing with her; and without the assistance of the plaintiff the said C. O. would have been wholly unable, by herself and her other children, to carry on and work the said farm, and would have been obliged to employ assistance and to incur large outlay and expense in carrying on and working the same.

3. The plaintiff so continued to manage and work the said farm, and to control the business thereof, until after he had attained the age of twenty-one years, and during the whole of the said time the proceeds of his labour, and the whole produce and profits of said farm, were applied for the benefit of the said C. O., and the maintenance and support of herself and her said children.

4. After the plaintiff had continued so to work and manage the said farm for a number of years, and in the year 1847, the plaintiff, who had then arrived at the age

of twenty-one years, became desirous of and formed the intention of setting up in business for himself, and for that purpose desired and intended to leave the said farm and the management and control thereof, and he communicated to the said C. O., his said desire and intention.

5. The said C. O. then requested the plaintiff to desist from his said intention, and to remain upon and continue to work and control the said farm for the benefit of herself and her family; and in order to induce the plaintiff to remain, she then agreed with him, that if he remained and continued as theretofore to manage and control the said farm, and devote his time and labour to the cultivation and working thereof, the front or south fifty acres thereof should belong to him, the plaintiff, and that she would give him the same.

6. The plaintiff accepted the said offer of the said C. O., and in pursuance, and upon the faith of the said agreement then entered into between the plaintiff and the said C. O., the plaintiff remained on the said farm, and continued to work and manage the same, and devoted the whole of his time and labour to the cultivation and control thereof, and the produce and profits thereof were applied for the benefit of the said C. O., and towards the support and maintenance of herself and her family, until the death of the said C. O., hereinafter mentioned.

7. The said C. O. departed this life intestate, in the month of October, 1854, leaving her surviving the following persons, her sole heirs and heiresses-at-law—namely, the plaintiff, the defendant S. F., then S. O.; E. F., then E. O.; the defendant J. W. O., the defendant W. O., and the defendant M. A. G., then M. A. O.; C. T., then C. O., and T. B. O., her children, and J. A. H., then J. A. L., a daughter of another child of the said C. O.; and without having made any deed of the said 50 acres to the plaintiff in pursuance of the said agreement, or otherwise disposed of the same.

8. Immediately upon the death of the said C. O., the plaintiff, in pursuance of the said agreement, and with the knowledge, acquiescence and consent of the defendants, who were all well aware of the making of the said agreement, entered into the exclusive possession of the said front 50 acres hereinbefore described, and made large and valuable improvements thereon, and he has ever since continued to reside thereon, and he has, in addition to the other improvements, erected a brick dwelling-house thereon, at a cost of $1,000 or thereabouts.

9. The said heirs and heiresses-at-law of the said C. O.,

in the 7th paragraph hereof named, and each of them had, at the time of the making thereof, full notice and knowledge of the said agreement between the plaintiff and the said C. O., and of the plaintiff's right to the said 50 acres, under and by virtue thereof.

10. By divers deeds, the said J. A. L., the said E. F. and S. F. her husband; the said C. T. and G. T. her husband, and the said T. B. O. respectively, granted to the defendant, W. O., all their respective estates and interests in all the estate of which the said C. O. died seized or possessed, and the said defendant, W. O., now claims under and by virtue of the said deeds, and his own heirship to said C. O., to be the owner of, and he is seized of the legal estate in five undivided ninths of said lands of said C. O., and the defendants, J. F. and S. his wife, in right of the said S.; the defendant, W. G., and M. A. his wife, in right of the said M. A.; and the said J. W. O. respectively, claim to be entitled to an undivided one-ninth share of said lands.

11. The defendant J. F. is the husband of the defendant S. F., and the defendant W. G. is the husband of the defendant M. A. G.

12. In the year 1858 the plaintiff became desirous of procuring a loan of moneys, and one T. B. having offered to advance to the plaintiff the amount he required, upon receiving a mortgage upon one-ninth share of said front 50 acres, executed to the said T. B. a deed of such share of said 50 acres in fee, and the said T. B. then executed and delivered to the plaintiff a bond or writing, whereby he agreed to re-convey the said lands to the plaintiff, upon being paid the sum of $139, and interest thereon.

13. Afterwards, the said T. B. assigned and conveyed the said lands to the said defendant, W. O., and the said defendant claims to be entitled to another one-ninth share of said lands by virtue thereof, but the plaintiff charges, and the fact is that the said defendant, W. O., had, at and before the time of such assignment and conveyance to him by said T. B., full notice and knowledge of the said bond or writing, and that the said B. was nothing more than a mortgagee of said share in said 50 acres, and the plaintiff further charges that the said defendant, W. O., had, at and before the making of the deeds to him in the 10th paragraph hereof set forth, full notice and knowledge of the agreement hereinbefore set forth between the plaintiff and the said C. O., and of the plaintiff's rights thereunder.

14. Lately the defendant W. O. commenced an action of ejectment against the plaintiff in Her Majesty's Court

of Queen's Bench for Ontario, and therein claimed to be entitled under and by virtue of the said conveyances to him hereinbefore set forth, and his own heirship as aforesaid to five undivided ninth shares of said 50 acres, and the plaintiff endeavoured to defend the said action, and such proceedings were had thereon; that at the trial of said action a verdict was entered for the said W. O. for five undivided ninths of said 50 acres, and the said plaintiff having afterwards moved to set aside the said verdict, the said Court of Queen's Bench declared that the plaintiff had no defence at law to the said action or to the said five-ninths, and affirmed the said verdict.

15. The defendant, W. O., has entered up judgment in said action, and issued a writ of *habere facias possessionem* thereon, and placed the same in the hands of the Sheriff of the County of Hastings for execution, and intends to turn the plaintiff out of possession of said lands, and will do so unless restrained.

16. The plaintiff submits that under the circumstances hereinbefore set forth he is the owner of and entitled to the said 50 acres, subject to said mortgage to the said B., and that the defendants are bound to re-convey the same to him, but if this Court should be of opinion that he is not entitled thereto, then he submits that he is entitled to a partition of the lands in the first paragraph hereof described, and to have a one-ninth share thereof set apart and conveyed to him, and in such case he submits that he ought to be allowed for the value of the said improvements and buildings put and erected upon the said front 50 acres, and the amount and situation thereof ought to be considered in making a partition and division of the said lands between the plaintiff and defendants.

17. That in pursuance of said agreement the plaintiff has been assessed in his own name for the said front 50 acres as owner thereof for municipal and all other taxes, and has paid the same for the last 25 years.

18. That the judgment of the said Court of Queen's Bench only gives judgment in the plaintiff's favour therein, for the undivided five-ninths of said 50 acres, whereas judgment has been entered up, and the said writ of *habere facias possessionem* issued thereon to the said sheriff to give possession to the plaintiff therein, of the whole of the said front 50 acres absolutely, namely, the south half of the east half of said lot.

The plaintiff therefore prays:—

1. That it may be declared that the said agreement between the said C. O. and the

plaintiff ought to be specifically performed and carried into execution by the defendants, the plaintiff having performed his part of said agreement; and that the same may be decreed accordingly.

2. That the defendants may be ordered to convey the said front 50 acres to the plaintiff subject only to the mortgage held by the defendant W. O.

3. That the said defendant, W. O., may be restrained by the order and injunction of this Court, from further prosecuting his said action of ejectment against the plaintiff and taking any further proceedings towards turning the plaintiff out of possession of said 50 acres.

4. Or if this Court should be of opinion that the said agreement ought not to be specifically performed; that the said land may be partitioned, and divided amongst the plaintiff and defendants according to their several proportions.

5. That in the event of such partition, the value of the improvements and buildings put and erected by the plaintiff upon the said front 50 acres and the amounts expended by him in the administration of the said estate, over and above the value of the personalty received by him, may be ascertained and the amount thereof taken into consideration, and allowed to the plaintiff.

6. That in any event the defendant, W. O., may be restrained from executing the said writ of *habere facias possesionem* as to the four-ninths of said front 50 acres: the judgment of the said Court of Queen's Bench not affecting those portions.

7. That the plaintiff may be paid his costs of this suit.

8. That for the purposes aforesaid, all proper directions may be given and accounts taken.

9. That the plaintiff may have such further and other relief as to the Court may seem just.

91. *Bill for specific performance of contract for sale of stock in Railway Company.*

91. Bill for specific performance of contract for sale of stock in Railway Company.

In Chancery.

Between.....E. W. H., Plaintiff.

and

The Corporation of the County of E., Defendants.

City of London.

To the Honourable the Judges of the Court of Chancery.

The Bill of Complaint of E. W. H., of the City of London, in the County of Middlesex, Esquire.

Sheweth as follows :—

1. The defendants are a municipal corporation under the statutes in that behalf.

2. On the 5th day of December, 1871, the defendants were lawfully possessed of certain shares in the capital stock of the London and Port Stanley Railway Company, to the amount of $80,000.

3. The said stock had long been and at the date aforesaid was of very trifling value, and the marketable value thereof was vastly inferior to its nominal amount.

4. The municipal council of the said corporation, being desirous of selling the said stock on the date aforesaid, duly entered into an agreement with the plaintiff for the sale thereof to him at the price of $5000, and empowered the Warden of the said County upon payment of the said price to transfer and assign the same to the plaintiff, and the plaintiff agreed to purchase the same at the price aforesaid.

5. The plaintiff immediately thereafter tendered and offered to pay the said sum of $5,000, but the defendants through their municipal council refused to accept the said price or to carry out the sale of the said stock to the plaintiff.

6. The said stock is of peculiar value to the plaintiff, and only a limited quantity thereof is upon the market, and the plaintiff cannot otherwise obtain the said amount of stock save from the defendants.

7. The plaintiff has always been ready and willing and hereby offers to carry out the said agreement on his part.

8. The defendants threaten and intend to and will, unless restrained by the order and injunction of this Court, sell and dispose of the said stock or shares to some innocent purchaser for value without notice of the plaintiff's rights, or otherwise negotiate or deal with the said stock or shares to the prejudice of the plaintiff.

The plaintiff therefore prays.

1. That the said agreement may be specifically performed, the plaintiff hereby submitting to perform the same on his part.

2. That the defendants may be restrained by the order and injunction of this Court from selling or disposing of, or attempting to sell or dispose of, or otherwise negotiate or deal with, the said stock or shares.

3. And that the plaintiff may be paid the costs of his suit, and may have such further and other relief as may seem meet.

T. M.

Ordinary Forms of Prayer.

92. Admission of assets, or account.

That the defendants A. B., and C. D., (*executors of deceased executor*) may admit assets of the said W. W., (*deceased executor*) sufficient to answer what (if anything) may be found due from his estate, upon taking any such accounts as aforesaid: or that the necessary accounts may be taken of the estate of the said W. W.

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93. Adoption of proceedings had in another suit.

That in making the inquiries, and taking the accounts, required for the purpose of this suit, any of the proceedings had in the said suit of A. *v.* B. which can properly or usefully be adopted, may be adopted accordingly; and that the costs of the said suit of A. *v.* B., remaining unpaid (if any) may be provided for in this suit.

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94. Boundaries to be ascertained.

That the boundaries of the said real estate of the said J. T. may be defined and set out, under the decree of this Honorable Court; and that all necessary directions may be given for that purpose.

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95. Declaration of rights.

That the rights and interests of all parties in the said real and personal estate may be ascertained and declared.

96. Partition.

1. That a partition may be made of the said lands under the direction of this Honorable Court, according to the respective interests of the parties entitled thereto.

2. That all proper and necessary conveyances and assurances may be executed for carrying such partition into effect, and all proper directions given for that purpose, and as to the custody of the title deeds and writings relating to the said tenements and hereditaments.

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97. Principal against agent: account.

1. That an account may be taken of all sums of money received by, or come to the hands of, the defendant, as such agent of the plaintiff as aforesaid, for or on account, or for the use of the plaintiff, and of the application thereof; and of all dealings and transactions of the defendant, as the plaintiff's agent; and that the defendant may be decreed to pay to the plaintiff what, on taking such accounts, shall be found due from the defendant to the plaintiff; and to deliver up to the plaintiff all documents in the defendant's possession or power, belonging to the plaintiff.

2. That the defendant may pay the costs of this suit.

Bills for Discovery (a).

98. Form of a bill of discovery.

The formal parts of a bill of discovery are the same as those of an original bill. The bill must state the matter touching which discovery is sought; the interest of the plaintiff and defendant in the subject; and the facts and circumstances upon which the right of the plaintiff to require the discovery from the defendant is founded. The bill should pray that the defendant may make a full discovery of the matters therein stated. It may also pray any equitable assistance of the Court which is merely consequential upon the discovery; but it should not pray general relief: for then it is a bill for relief.

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99. Affidavit by sole plaintiff: to be annexed to a bill for discovery of documents, and for relief thereon.

In Chancery.

(*Title of the cause.*)

I, A. B., of (*residence and addition*), the above-named plaintiff, make oath and say, as follows:

(a) No Bill is to be filed for discovery merely, except in aid of the prosecution or defence of an action at law: *Ord.* 85.

1. I have not, and, to the best of my knowledge, remembrance, and belief, I never had, in my custody or power, the (*describe the document; as thus:* indenture dated the——day of ——, 18 —, mentioned in the first paragraph of the bill in this cause hereunto annexed—*or*, now produced and shown to me, and marked A.).

2. I do not know where the said indenture [*or as may be*] now is: unless it is in the custody or power of the above-named defendant [*or*, defendants, or some or one of them].

Sworn *&c.*

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100. The like, by several plaintiffs.

In Chancery.

(*Title of the cause.*)

We, A. B., of (*residence and addition*), C. D., of *&c.*, and E. F., of *&c.*, the above-named plaintiffs, each speaking positively for himself, and to the best of his knowledge, information, and belief as to other persons, severally make oath and say, as follows:

1. We have not, nor have nor hath any or either of us, and, to the best of our knowledge, information, and belief, we, or any or either of us, never had, in our, or any or either of our custody, possession, or power, the (*describe the document; as thus:* deed of gift mentioned in the second paragraph of the bill in this cause hereunto annexed—*Or*, produced and shown to us respectively at the time of swearing this affidavit and marked B.).

2. We do not, nor do or doth any or either of us, know where the said deed [*or as may be*] now is: unless it is in the custody or power of the above-named defendant [*Or*, defendants, or some or one of them].

Sworn *&c.*

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101. Notice of motion by defendant, for payment of his costs of the suit.

Formal parts: see post, No. 384.

on behalf of the defendant A. B., for an order for payment by the plaintiff of his costs of this suit: the bill being for discovery only.

The defendant's answer was filed on ——, 18 —.

And take notice that in support, &c., *as in No.* 382.

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102. Forms of bills to perpetuate testimony.

Bills to Perpetuate Testimony.

The formal parts of a bill to perpetuate the testimony of witnesses are the same as those of an original bill. The

bill must state the matter touching which the plaintiff is desirous of taking evidence: and must show that he has some interest in the subject; and pray for leave to examine witnesses touching the matter so stated: to the end that their testimony may be preserved and perpetuated.

Formal parts: *see post*, No. 384.

103. Notice of motion by defendant, for payment of his costs of the suit.

on behalf of the defendant A. B., for an order for the payment by the plaintiff of his costs of this suit: which is instituted to perpetuate the testimony of witnesses only.

The plaintiff has examined his witnesses, but the defendant has not examined any witness.

And take notice that in support, &c., *as in No.* 382.

Section II.—DEMURRERS.

Forms of Demurrers.

104. General form of a demurrer.

In Chancery.

Between (*set forth the full style of the cause or shortened style*), *e. g.*:

(1.) Title.

Between—John Smith and others.....Plaintiffs,
and
Richard Roe and others.....Defendants (*a*).

(2.) Heading

The demurrer of A.B., the above named defendant [*Or*, one of the above named defendants], to the bill of complaint [*Or*, amended bill of complaint] of the above named plaintiff.

Or,

The demurrer of John Jones (in the bill by mistake called William Jones), the above named defendant [*Or* one of the above named defendants], to the, *&c.*

Or,

The joint and several demurrer of A. B. and C. D., the [*Or*, two of the] above named defendants, to the, *&c.*

Or,

The joint demurrer of A. B., and C. his wife, the [*Or*, two of the] above named defendants, to the, *&c.*—*Or*, *if*

(*a*) See *Gen. Ord.* 597. The title of the demurrer must agree with that of the cause, at the time the demurrer is filed.

they have married since she was made a defendant, say: The joint demurrer of A. B., and C. his wife, lately, and in the bill called, C. D., Spinster—*Or*, widow—to the, *&c.*

(3.) Protestation.

This defendant [*Or*, these defendants], by protestation, not confessing or acknowledging all or any of the matters and things in the said bill contained to be true, in such manner and form as the same are therein set forth and alleged,

(4.) Extent.

doth [*Or*, do] demur in law to the said bill [*Or, if the demurrer is to part of the bill only, say, after* alleged: as to so much of the said bill as seeks (*State what*), this defendant doth [*Or*, these defendants do] demur in law thereto]:

(5.) Causes of demurrer

And for cause of demurrer showeth [*Or*, show] that (*Set forth the causes of demurrer*).

(6.) Demand of judgment.

Wherefore, and for divers other imperfections and good causes of demurrer appearing in the said bill, this defendant doth [*Or*, these defendants do] demur thereto; and he prays [*Or*, they pray] the judgment of this Honourable Court whether he [*Or*, whether they, or either of them] ought to be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained; and he prays [*Or*, they pray] to be hence dismissed with his [*Or*, their] costs and charges in this behalf sustained.

(*Name of counsel*)

Statement of causes of demurrer.

105. Demurrer for want of equity.

That the plaintiff has not by his said bill made such a case as entitles him in a Court of Equity to any discovery from this defendant [*Or*, these defendants, or either (any) of them], or to any relief against him [*Or*, them, or either (any) of them], as to the matters contained in the said bill, or any of such matters.

Wherefore, &c. (*as in No.* 104).

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106. Demurrer for want of equity.

That the said bill doth not contain any matter of equity whereon this Court can ground any decree, or give to the plaintiff any relief against this defendant [*Or*, these defendants, or either (any) of them].

Wherefore, &c. (*as in No.* 104).

107. Demurrer for want of parties.

That it appears by the said bill that it is necessary that the estate of the plaintiff's late wife, M. N., in the said bill named, should be represented in this suit; but no legal personal representative of the said M. N. is named a party thereto.

Wherefore, &c. (*as in No.* 104).

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108. Demurrer for multifariousness. (a)

That it appears by the said bill that the same is exhibited against this defendant [*Or*, these defendants] and A. B., C. D., &c., for several and distinct matters and causes, in many whereof, as appears by the said bill, this defendant is not [*Or*, these defendants are not, nor is either of them,] in any manner interested or concerned; and that the said bill is multifarious.

Wherefore, &c. (*as in No.* 104).

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109. Demurrer, on the ground of the Statute of Frauds.

That it appears by the said bill that neither the promise or contract which is alleged by the said bill, and of which the plaintiff by the said bill seeks to have the benefit, nor any memorandum or note thereof, was ever reduced into writing or signed by this defendant [*Or*, these defendants, or either (any) of them], or any person lawfully authorized thereunto, within the meaning of the statute passed in the 29th year of King Charles the Second, for the prevention of frauds and perjuries.

Wherefore, &c. (*as in No.* 104).

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110. That plaintiff only proceeding for part of his claim, and that defendant vexed by multiplicity of suits.

That the said plaintiff by his said bill seeks only to recover part of an entire debt thereby stated to be due to him by this defendant, and in respect of other parts of the said debt has, as appears by his said bill, filed two other several bills of complaint in this Honourable Court against this defendant.

Wherefore, &c. (*as in No.* 104.)

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111. To a bill of interpleader for want of necessary affidavit.

That the plaintiff has not annexed an affidavit to his said bill that he does not collude concerning the matters or any of them therein contained with this defendant and the other defendants.

Wherefore, &c. (*as in No.* 104).

(a) See *Brown* v. *Capron*, 20 Grant, 574 in note.

112. Answer and demurrer.

(Set forth demurrer as above, and proceed.) And this defendant not waiving the aforesaid demurrer, but wholly relying thereon as to the residue of the said bill, or such part thereof as he is advised it is material or necessary for him to make answer to, doth answer and say (*here follows the answer*).

See post Nos. 163 *et seq.*

Section III.—Disclaimers.

113. General Form of Disclaimer.

In Chancery.

Between (*set out full style of cause, or shortened style, as in No.* 104.)

The answer and disclaimer of A. B., the above-named defendant (*Or* one of the above-named defendants) to the bill of complaint of the above-named plaintiff, *Or* the joint and several answer and disclaimer of A. B. and C. D., the [*Or*, two of the] above-named defendants, to the bill of complaint of the above-named plaintiff.

In answer to the said bill, I, A. B., [*Or*, we, A. B., and C. D.] say as follows:

I [*Or*, we] have not, and do not claim, and never had or claimed to have, any right or interest in any of the matters in question in this suit; and I [*Or*, we] disclaim all right, title and interest, legal and equitable, in any of the said matters; and I [*Or*, we] say that if I [*Or*, we] had been applied to by the plaintiff before the filing of this bill, I [*Or*, we] should have disclaimed all such right, title and interest; and I [*Or*, we] submit that the bill ought to be dismissed as against me [*Or*, us] with costs.

(*Name of Counsel.*)

Sworn before me at the City of Hamilton, this day of A. D. 1875,
A commissioner, &c. (*a*).

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114. The like.

Proceed as in last Form, to as follows:

Before the institution of this suit, I [*Or*, we] offered to the plaintiff to disclaim any right or interest that I [*Or*, we, or either of us] had in any of the matters in question in

(*a*.) The answer and disclaimer must be sworn unless an order or consent be obtained to file it without oath or signature. See Smith's Pr. 495. (7th Ed.)

Where it is a joint answer and disclaimer the names of both deponents should be stated in the jurat, as in affidavits.

this suit; and I [*Or*, we] do not now claim any right, title or interest, legal or equitable, in any of the said matters; and I [*Or*, we] submit that I [*Or*, we] ought to be paid my [*Or*, our] costs of this suit.

(*Name of Counsel.*)
(*Jurat as above.*)

Section IV.—ANSWERS.

FORMS OF ANSWERS (*a.*)

1. *Model Form* (*b.*)

In Chancery.

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

115. Answer referred to in Order 112, being Schedule F. mentioned in that Order, with jurat also referred to in that Order.

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:

1. I admit (*Or*, For the purposes of this suit I admit), the truth of the allegations contained in the plaintiff's bill, or the allegations contained in the ——— paragraph of ——, *Or* so much of the allegations contained in the ——— as commence with the words "——— ———," and end with the words, "——— ——," *Or* I admit &c., save and except that I say (stating qualifications of admission, if any).

2. 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.

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

(*a.*) The answer must be intituled in the full style of cause, or shortened style as in No. 104, ante, so as to agree with the names of the parties as they appear in the bill at the time the answer is filed.

(*b.*) The engrossment or print of the answer must be signed and sworn to by the defendant putting it in, unless an order or consent has been obtained to its being filed without oath or signature. Where an answer is put in by guardian or committee, his signature is alone required; and though he is also a defendant, and puts in the answer in both characters, he need only affix his signature to the answer once. It is prudent, but not essential, to sign each sheet of the answer. Each schedule, if any, should also be signed. If the answer is put in upon oath, or affirmation, the signature must be affixed or acknowledged in the presence of the person before whom it is sworn, etc.; and he must sign each schedule, as well as the jurat or affirmat.

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

[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 Order 126, the answer is to ask the special relief to which he thinks himself entitled.]

Form of Jurat, referred to in Order 122.

116. (1) Jurat to answer under Ord. 122.

Sworn before me at ———, in the County of ———, on the ——— day of ———, A.D. ——

A Commissioner, &c.

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(2) Form of Jurat where more than one deponent.

Sworn by A. B. and C. D. before me at, &c., as above. *Or* if sworn by different defendants at different times, there should be a separate jurat for each, and each jurat should state the name of the deponent making the oath (*b*).

Forms of Headings.

117. Sole defendant, or co-defendant, to original bill, or bill amended before answer.

The answer of A. B., the above named defendant [*Or*, one of the above named defendants], to the bill of complaint (*c*) of the above named plaintiff—[*Or*, to the original bill of complaint], and also to the amended bill of complaint, of the above named plaintiff.

In answer to the said bill, I, A. B., say as follows :—

(*a*.) The statements in an answer need not necessarily be possitive because it has to be sworn. See *Yarrington* v. *Lyon*, 12 Grt. 310, per Mowat, V. C. The positive denial of a material fact by the defendant in his answer or in his examination by the plaintiff, after answer, renders it necessary for the plaintiff to prove such fact by at least two witnesses in order to obtain a decree. *Powell* v. *Lea*, 20 Grt. 621. The silence of the answer as to any statement of the bill is not any admission of its truth. *Ord*. 123.

(*b*) See Gen. Ord. 130. For forms of oaths see post No. 287 et seq, which may be adapted by substituting the word "answer" for "affidavit."

The answer of a corporation is not sworn, but must be sealed with the corporate seal, unless there be a consent or order obtained to dispense with it.

The answer of a corporation concludes thus :—"In testimony whereof, the common seal of the said defendants, the ——— Company, has been hereunto affixed this —— day of———, A.D. 18—.

J. B., [L. S.]
President or Secretary.

(*Or otherwise, according to the usual mode of the Corporation affixing their seal.*)

(*c*) This form is sufficient, where the answer is put into a bill amended before answer.

118. Co-defendants.

The joint and several answer of A. B., and C. D., the [*Or*, two of the] above named defendants, to the bill, &c.

In answer to the said bill, we, A. B. and C. D., say as follows :—

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119. Attorney-General.

The answer of J. R., Her Majesty's Attorney-General for the Province of Ontario, one of the above named defendants to the bill, &c.

In answer to the said bill, I, J. R., say as follows :—

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120. Joint-Stock Company, Limited.

The answer of the above named defendants, the Great Western Railway Company, to the bill, &c.

In answer to the said bill, we, the Great Western Railway Company, say as follows :—

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121. Adult, and infant, or person of unsound or weak mind.

The joint and several answer of A. B. and of C. D., an infant—*Or*, a person of unsound [*Or*, weak] mind not so found [*or as may be*]—by the said A. B. [*Or*, by E. F.] his guardian, the [*Or*, two of the] above named defendants to the bill, *&c.*

In answer to the said bill, we, the said A. B. and C. D., say as follows :—

---

122. Infant, or person of unsound or weak mind, by guardian.

The answer of A. B., an infant—*Or*, a person of unsound [*Or*, weak] mind not so found [*or as may be*]—by C. D., his guardian, one of the above named defendants to the bill, *&c.*

In answer to the said bill, I, A. B., say as follows :—

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123. Answer to information.

The answer of A. B. to the information of the Honourable Oliver Mowat, Her Majesty's Attorney-General for Ontario (*if there be a relator add*, at and by the relation of C. D., of &c.), *and if it be an information and bill, add*, and to the bill of complaint of the said C. D.

In answer to the said information (and bill), I, the said A. B., say as follows :—

124. Husband and wife jointly.

The joint answer of A. B. and C. his wife, the [*Or*, two of the] above named defendants, to the bill, *&c.* [*Or*, *if they have married since she was made a defendant, say:* The joint answer of A. B. and C. his wife, lately, and in the bill called C. D., spinster—*Or*, widow—to the bill, *&c.*]

In answer to the said bill, we, A. B., and C. his wife, say as follows:—

---

125. Wife separately.

The answer of C. B., one of the above named defendants, and the wife of (the defendant) A. B., to the bill, *&c.*

In answer to the said bill, I, C. B., answering separately from my husband, say as follows:—

---

126. Misnomer.

The answer of John Jones (in the bill by mistake called William Jones), the above named defendant [*Or*, one of the above named defendants], to the bill, *&c.*

In answer to the said bill, I, John Jones, say as follows:—

---

127. Answer of Executors of deceased defendant, added by order of revivor before answer.

In Chancery.

(*Title as in bill; but add:* since deceased: *after name of deceased defendant, and title of suit as revived.*)

The joint and several answer of A. B. and C. D. (the executors of the above named defendant, E. F., and against which executors this suit has been revived by order, dated the —— day of ——, 18—), to the bill of complaint of the above named plaintiff.

In answer, *&c.*

Further Answers—Answers to amended Bills.

128. Title and heading of a further answer to original bill.

In Chancery.

Between (*Set out the title of the cause—See No.* 115.)

The further answer—*Or*, second further answer—of A. B., the above named defendant [*Or*, one of the above named defendants], to the bill of complaint of the above named plaintiff.

In answer, *&c.*

Title, &c., as in No. 115.

129. The like, of an answer to a bill amended before answer.

The answer of A. B., the above, &c., to the amended bill [*Or*, to the secondly—*Or* thirdly—amended bill] of complaint of the above named plaintiff.

In answer, *&c.*

Title, &c., as in No. 115.

130. Title and heading of an answer to amendments.

The further answer of A. B., the above, *&c.*, to the bill of complaint of the above named plaintiff, and the answer of the same defendant to the amended bill of complaint of the said plaintiff.

In answer, *&c.*

Title, &c., as in No. 115.

131. The like, of a further answer to original and first amended bill, and of answer to secondly amended bill.

The further answer of A. B., the above, *&c.*, to the original and first amended bill of complaint of the above named plaintiff, and the answer of the same defendant to the secondly amended bill of complaint of the said plaintiff.

In answer, *&c.*

Forms of Answers.

Formal parts, See ante, No. 115 *et seq.*

132. Precedent of an answer.

In answer to the said bill, I, T. E., say as follows:—

1. I have for several years been well acquainted with the defendant E. V., who was and is a solicitor practising at R., in the bill mentioned, and who has for some time been, and still is, secretary to the R. Union Gas Company, and owner of the leasehold messuages and premises in the said bill respectively mentioned or referred to; and on or before the 30th day of June, 1854, I was informed that legal proceedings against the defendant E. V. were contemplated by or on behalf of the family or representatives of Mr. G. C., in the bill named, for the purpose of compelling payment by the defendant E. V. of a sum of money due, or alleged to be due, from him to the estate of the said G. C., and charged by him upon certain shares in the said Gas company, and upon the said leasehold messuages and premises, and on the policy of assurance, and rent charge, in the said bill respectively mentioned: and that with a view to such proceedings it was intended to give notices of such charge to the said Gas company, and to the several tenants of the said leasehold messuages and pre-

mises, and to the P. Insurance Company, in the bill mentioned; and being of opinion that such notices, and the notoriety which would be thereby occasioned of his affairs being embarrassed, and other probable consequences from the same, would be highly prejudicial to the defendant E. V., and his family, I was very desirous of protecting him from such notices being given, and also to save him from proceedings or pressure to compel payment; and consequently I wrote and sent, on the said 30th day of June, to the defendant E. V., a letter informing him of my willingness to redeem the security given by him within a month, if, by so doing, I could protect him from such notices being given: which letter was in the words and figures following; that is to say: (*Setting out letter*). The said letter did not satisfy the plaintiffs: being the parties therein referred to; and the offer which I thereby expressed myself willing to make, upon condition of such protection as aforesaid being granted, was declined by the said parties, and such protection was not granted.

2. On or about the 4th day of July, 1854, Messrs. S., solicitors, as I believe, for the plaintiffs, and to whom, as I believe, my letter above stated had been forwarded by the defendant E. V., wrote and sent to me a letter in the words and figures following: (*Setting out letter from solicitors, to E. T., inquiring whether he will undertake to pay debt, and take transfer of securities, within a month*).

3. The last hereinbefore stated letter having been sent to the E. hotel, which place I had previously left, was not received by me till several days afterwards.

4. On or about the 7th day of July aforesaid, the said Messrs. S. wrote and sent to me a letter in the words and figures following: (*Setttng out letter stating that no answer had been received by Messrs. S. to their last letter, and requesting an answer*).

5. The above stated letters of the 4th and 7th days of July were forwarded to me at my then and present residence, S. House, H.; and upon the receipt thereof, I wrote and sent to the said Messrs. S. a letter in the words, or to the purport and effect following: (*Setting out letter agreeing to take a transfer of the equitable mortgage in a month.*)

6. In answer to the said last mentioned letter the said Messrs. S. wrote and sent to me a letter in the words and figures following: (*Setting out letter enclosing memorandum of agreement for transfer, to be signed by T. E.*)

7. The writing in the said last stated letter described as a memorandum of agreement and enclosed therein was

in the words and figures following: (*Setting out agreement to take a transfer within two months.*)

8. After receiving the last stated letter and writing, I consulted my solicitor, Mr. J. V., of *&c.*, respecting the same; and he was of opinion that it would be prudent on my part that a clause should be inserted in such writing, before the same should be signed by me, to bind the plaintiffs to give, during the said two months, any such notice or notices as I should require; and he wished to consult counsel respecting the same, and which accordingly I requested him to do; but in order to avoid delay, I signed the said writing without such additional clause, and placed the same in the hands of the said J. V., to be delivered in case counsel should be of opinion that no such clause was necessary, and in case the proposed agreement was to be carried into effect without any variation; and the said J. V. thereupon, and on Saturday, the 15th day of July, 1854, called upon the said Messrs. S., and saw Mr. F., of the said firm, and explained to him the nature of the additional clause desired; and Mr. F. thereupon said that unless such an agreement, with or without the additional clause, was delivered at or before one o'clock on the following Monday, they should consider the treaty ended, and that the notices would be forthwith served. The said Mr. J. V. endeavoured without delay to consult counsel on the subject; and in consequence, as I believe, of the temporary absence from L. of the counsel whose opinion he wished to obtain, he was unable to get such opinion within the time stipulated by the said Mr. F.; and consequently no such agreement as required was delivered at or before one o'clock on the said Monday, the 17th day of July, 1854; and shortly after the said hour, the said Mr. J. V. was informed by a friend of the plaintiff's, that the notices had been actually sent, and in fact a person was sent, by the said Messrs. S. to R., on behalf of the plaintiffs, to deliver, and he did deliver, on the evening of the same Monday, the 17th day of July aforesaid, such notices to the said R. Union Gas Company, and to the said tenants of the said leasehold messuages and premises; and a like notice was on the following day served on the said insurance office.

9. The said negotiation and treaty between the plaintiffs and myself was thereby broken off; and no agreement was made respecting the matters aforesaid, or the matters in the said bill mentioned, or any of them; and the document so signed by me was not, nor was any memorandum of agreement by me, delivered to the plaintiffs, or their said

solicitors, or other person on their behalf, at any time; and the said document is now in the possession of my solicitor on my behalf.

10. No letter, or writing, or communication, save as aforesaid, passed between me and the plaintiffs, or any person on their behalf; and for my greater certainty as to the said several letters and writings, I crave leave to refer to the same when produced; and I deny it to be true that I did, by letters or letter, or other writing signed by me, or otherwise, agree with the plaintiffs, or any or either of them, that if they would postpone giving notice of the agreement in the bill mentioned to the tenants of the property, and to the gas and insurance offices, therein respectively mentioned, or any or either of them, I would take a transfer of the security in the said bill mentioned, or of any other security, or that I at any time, or in any manner, entered into any such agreement as in the said bill mentioned. And I deny it to be true that the plaintiffs relied on any such agreement as in the said bill stated; or that they forbore to give such notice as in the said bill stated; and on the contrary, I say that the plaintiffs did, on the said 17th day of July, 1854, give such notices, and on the 20th of the same month of July aforesaid, they filed their bill in this suit, and that on the 24th day of the same month they applied for and obtained an order of this honourable Court for the appointment of a receiver to collect, get in, and receive the rents and profits of the leasehold premises, and the dividends of the shares and rent charges, respectively mentioned in the plaintiff's bill; and the tenants of the said leasehold estates were thereby ordered to attorn, and pay their rents in arrear, and growing rents, to such receiver, who was to be at liberty to manage, set, and let the said estates with the approbation of the Judge to whose Court the cause is attached, as there should be occasion. And I say that the said letters and writings were and are no more than parts of a negotiation or treaty into which I entered, as the plaintiffs knew, only with the desire, and for the purposes hereinbefore in that behalf mentioned, and not otherwise; which desire and purposes were entirely frustrated by the said plaintiffs breaking off and abandoning the said treaty in manner aforesaid, and by their serving such notices, and by instituting this suit, and taking the said proceedings therein. And I deny it to be true that I acted in the manner in the said bill mentioned, or in any other matter, in concert with the defendant, E. V., for the purpose of delaying the plaintiffs' proceedings against him, and enabling him to dispose of

portions of his property; and I deny it to be true that the defendant E. V. accordingly realised portions of his property, and placed the same out of the reach of his creditors.

11. I submit that the plaintiffs have not, on their bill, shown any case in equity, or case entitling them to proceed against me in this honourable Court; and I pray all such benefit as if I had demurred to the said bill.

Sworn, &c. (see *ante*, No. 116.)

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133 *Answer to Bill to restrain use of trade mark.*

133. Answer to the Bill (ante No. 50) filed to prevent the use of a trade mark.

In Chancery.

E. D. and S. D. D.....Plaintiffs,
and
J. K.....Defendant.

The answer of J. K., the above named defendant, to the bill of complaint of E. D. and S. D. D., the above named plaintiffs.

In answer to the said bill, I, J. K., say as follows:—

1. I have been informed and believe that P. D. in the bill mentioned was not the original and first inventor of the word "Pain Killer," nor was he the first person who used the name of "Pain Killer," as applied to a medicine or article of commerce, as alleged in the first and second paragraphs of the said bill.

2. I have been informed and believe that none of the medicine manufactured by the said P. D., and distinguished or labelled with the said trade mark of "Pain Killer," was introduced into or known in Canada so early as the year 1841, nor was it, or that manufactured by P. D. and Son, or by the plaintiffs, known to the trade and the general public in Canada West and elsewhere by the name of "Pain Killer;" nor whenever "Pain Killer" was asked for in shops and elsewhere was the said medicine so alleged to be invented by the said P. D. intended or supplied by that name.

3. I have been informed and believe that the said trade mark of "Pain Killer" has not been registered duly and properly or in strict accordance or compliance with the statute of Canada, called "An Act to amend the Act respecting Trade-Marks, and to provide for the Registration of Designs," and the certificate of such registration has not been duly obtained or procured, and is void and of no value or effect.

4. I further say that the words "Pain Killer" have never been used alone to designate the medicine manufactured by the plaintiffs or by the said P. D. or P. D. and Son; but the said medicine is and always has been designated by the words "P. D.'s Vegetable Pain Killer," nor is the medicine generally known by the name of "Pain Killer" alone; and whenever "Pain Killer" is asked for in shops or elsewhere the medicine manufactured by the plaintiffs is not intended or supplied without further specific directions.

5. I have been informed and believe that for many years medicine professing to be remedies for some or all of the diseases to which the plaintiffs direct their medicine to be applied, and put up in bottles of a somewhat similar size and general appearance to the plaintiffs' have been manufactured and sold in Upper Canada under the name of "Pain Killer" with the addition of the maker's name, and the manufacture and sale of some of these medicines was of a date anterior to the alleged invention and appropriation of the word "Pain Killer" by the said P.D., and among the medicines referred to in the paragraph, I do not include that alleged in the said bill to have been manufactured and sold by me.

And I pray to be hence dismissed with my reasonable costs.

Sworn, etc.

134. Answer to the Bill ante No. 82 by principal against agent for account, &c., charging fraud.

134. *Answer of agent to bill, of principal for account, &c. See bill, ante No.* 82.

In Chancery.

Between—A. B.....Plaintiff,

and

A. McL.....Defendant.

The answer of the above named defendant to the bill of complaint of the above named plaintiff.

In answer to the said bill I the said defendant say as follows:

1. All admissions herein made are so made for the purposes of this suit only.

2. I am a land agent and conveyancer, doing business as such in the Town of Durham, in the County of Grey, but I deny that I have ever held myself out to the public as, or endeavoured to induce any person to believe that I was or am a legally qualified attorney, and I further say that the plaintiff, from his first acquaintance

with me, well knew the nature of my business, and was perfectly well aware that I was not and did not pretend to be or practise as a solicitor or attorney.

3. I first became acquainted with the plaintiff in the autumn of the year 1871, and shortly after my acquaintance began he stated to me that he was the holder of the interest of the purchaser or locatee of the Crown lot number 220, in the 3rd range south-west of the Toronto and Sydenham road, in the Township of Proton, in the County of Grey, under a tax sale, but that there were large arrears of taxes again accumulating thereon, and that there was a large sum due to the Crown in respect thereof, and he expressed his willingness to sell his interest in the said lot to me.

4. I was not desirious of becoming the purchaser of the plaintiff's interest in the said lot, but being pressed by him to do so, I became the purchaser thereof for the sum of $25, and thereupon, by Indenture of Assignment duly executed by the plaintiff, he assigned and transferred to me absolutely all his right, title and interest in and to the said lot in consideration of the sum of $25, which I then paid to him.

5. I afterwards deposited the said assignment in the Department of Crown Lands for the Province, and paid to the said Department the amount required in order to entitle me to the issue of the patent therefor, and some time afterwards the patent for the said lot was issued to my assignee by the said Department.

6. I also satisfied all the arrears of taxes which had accrued upon the said lot.

7. I deny that I ever agreed with the plaintiff to sell the said lot for him, and divide the proceeds of the said sale with him, or that I ever agreed with the plaintiff in respect of the said lot except as hereinbefore set forth; and I insist upon the said sale and assignment by the plaintiff to me of his interest in the said lot, and plead the same in bar to the relief sought by him in respect thereof.

8. The plaintiff engaged me in my capacity of a land agent to assist him in procuring the issue to him of a patent from the Crown of lots numbers 224 and 225 in the 3rd range south of the Toronto and Sydenham road, in the said Township of Proton, and I undertook, as I submit I was justified in doing, to aid the plaintiff in procuring the issue of the said patent.

9. At the time the plaintiff so applied to me, he informed me that he derised his title to the issue of the said

patent through a purchase, at a tax sale of the interest of the original locatee of the Crown; that the Department of Crown Lands had hitherto declined to act upon the said title; that he feared other persons might apply to the said Department to purchase the said lots, and that he was very anxious to procure the issue of a patent to himself.

10. In order to prevent any other application for the said lots, the plaintiff, under my advice, applied to the local Crown Lands Agent of the County of Grey for, and procured from him a statement showing the amount required to be paid in order to entitle the plaintiff to the issue of a patent for the said lots, and upon receipt of the said statement the plaintiff deposited the amount shown thereby to the credit of the said Department; the required amount shown by the said statement was $433, and was, as I believe, made up by putting the price of the said lands at $3 per acre, and computing interest on the said price from the date of the application of the original purchaser, and giving credit for the deposit paid to the Department by the said original purchaser.

11. At the time the plaintiff deposited the sum of $433 as aforesaid, I informed him that I thought the said Department could be induced to accept $2 per acre for the said lands, and I said that I would use my best endeavours with the said Department to procure it to sell the said lands to the plaintiff for the said sum of $2 per acre; but the plaintiff said he would be perfectly satisfied if he got the said lots for the said sum of $433, and that any rebate which I could get upon the price of the said lands I might keep for myself; and sometime afterwards the plaintiff executed and delivered to me a power of attorney, authorizing me to receive from the said Department all overplus moneys paid by him to the said Department on account of the said lots, and I crave leave to refer to the said power of attorney on the hearing of this cause.

12. In pursuance of my said engagement with the plaintiff, I corresponded with the said defendant and with my agents at Toronto, and made two journeys to Toronto in and about the procuring of the issue of the said patent to the plaintiff, and by my exertions and those of my agents I was enabled to procure the issue of a patent to the plaintiff for the said lots, and I also procured the said Department to make a rebate upon the price of the said lands amounting to the sum of $206.20, which was paid to me by the said Department, and I received the same under the authority of the said power of attorney.

13. The said patent was issued on or about the 1st day of December, 1871, and immediately after I received the same I wrote to the plaintiff informing him of the issue thereof, and that I had received the said sum of $206.20, and requesting him to call upon me and receive his said patent and have a settlement; but the plaintiff never called upon me nor asked me for the said patent, nor for a settlement in respect of the said moneys until the month of March, 1873.

14. In the said month of March the plaintiff called upon me, and I then fully explained to him what had been done as hereinbefore set forth, and the plaintiff fully understood the same.

15. I then paid to the plaintiff the sum of $140 out of the said sum of $206.20 received by me from the said Department, proposing to retain the balance as a remuneration for my services, loss of time and disbursements in and about the procuring of the issue of the said patent and the said rebate from the said Department. The plaintiff assented to the said settlement; and in order to evidence the said settlement, and in order to ratify and confirm the power of attorney formerly given to me, the plaintiff, by an instrument under his hand and seal dated the 30th day of March, 1873, in consideration of the said sum of $140, authorized me to obtain any refund that was then or had been due from the said Department on account of the said lots, and also to keep and use for ever all moneys which I had obtained or might obtain on account of said lots, as overpaid money from the said Department, and I crave leave to refer to the said instrument on the hearing of this cause.

16. I have not obtained and do not expect to obtain any further sums of money from the said Department on account of the said lots.

17. After the execution of the said instrument, and on the same day, the plaintiff represented that he was much in need of money, and asked me to reduce my said charges, which I agreed to do, and thereupon I gave to the plaintiff the further sum of $10, and he gave me a receipt therefor expressed to be in full of all demands, and I crave leave to refer to the same on the hearing of this cause.

18. At the time of the said settlement, and the payment by me to the plaintiff of the said sums of $140 and $10, he fully understood the nature of the said settlement, and he was fully and fairly informed of the nature and particulars of the whole transaction, and he agreed thereto and executed the said instrument under seal and the said

receipt deliberately, and with full knowledge of all the circumstances, and without the exercise of any improper influence on my part; and I claim that the said settlement was a fair and just one, and that the amount retained by me as a remuneration for my said services, loss of time and disbursements, was very reasonable under the circumstances, and I submit that the plaintiff is bound by the said settlement, and ought not to be allowed to re-open the same.

19. I deny the allegations contained in the 6th and 8th paragraphs of the said bill.

20. I say that this suit has been instituted for the purpose of depriving me, if possible, of the said sum of $56.20 retained by me for my services on the plaintiff's behalf, hereinbefore set forth, and I submit that the plaintiff, having obtained the benefit of my said services, is bound to remunerate me therefor, and that his proceedings herein are harsh, inequitable and unjust.

21. I submit that the plaintiff has, by his laches and acquiescence, deprived himself of all right to relief in this court in respect of the matters aforesaid.

22. I deny all charges of fraud and improper conduct on my part in the said bill contained.

23. I pray to be hence dismissed with my costs of suit.

Sworn, &c.

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2. *Common Forms of Statements and Allegations in Answers.*

135. Accounts; reference to book containing them.

The dealings and transactions in respect of the said trade are entered in a large book, or ledger, kept on the premises at ————; and the items in respect thereof are contained in 164 pages, with double columns, of the said book and to set out such items in detail would occasion very great expense; but we are willing, if the Court should think proper so to direct, that the plaintiff or his solicitor should inspect the said book, and take extracts therefrom, at all reasonable times of the day.

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136. The like.

The book debts of the said testator appear by the said ledger; and we have not, nor have either of us, had or made any other account thereof; and we are wholly unable to set forth any other account thereof, according to our respective knowledge, remembrance, information or belief.

137. Accounts: reference to schedules thereof to Answer.

1. I have in the first schedule hereto, and which I pray may be taken as part of this my answer, set forth, to the best of my knowledge, information, remembrance and belief, a full, true and particular list and account of all the personal estate and effects of, or to which, the said testator was possessed or entitled at the time of his death. And I say, that I have possessed myself of all such personal estate and effects. And as to such articles of personal effects as were as aforesaid specifically bequeathed by the said will, I say, that I have delivered the same to the several legatees to whom the same respectively were bequeathed.

2. And I say, that my dealings with the rest of the said personal estate and effects appear by the second and third schedules to this my answer.

3. And in the second schedule hereto, and which I pray may be taken as part of this my answer, I have, to the best of my knowledge, information, remembrance and belief, set forth a full, true and particular account of all monies received or paid by me on account or in respect of the personal estate of the said testator, and by an inspection of which it will be seen what from time to time were the balances in my hands.

4. And in the third schedule hereto, and which I pray may be taken as part of this my answer, I have, to the best of my knowledge, information, remembrance and belief, set forth a full, true and particular account of the government and other stocks forming part of the said testator's estate, and of my dealings with the same.

5. And save as aforesaid I am unable, as to my belief or otherwise, to set forth any account of the personal estate of the said testator at the time of his decease, or of the particulars whereof the same consisted, or of such parts thereof as have come to my hands, or the hands of any other person by my order, or for my use, or of my application thereof respectively, or of such parts of the said personal estate as are outstanding, or of the balances which have from time to time been in my hands or power in respect of the said personal estate.

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138. Particulars of property; reference to schedule thereof to answer.

We have in the schedule hereto set forth, according to the best of our knowledge, information and belief, a short but complete statement of the several particulars of the said testator's freehold and personal estate, and what parts or portions thereof have been sold, called in, or con-

verted into money, and the several particulars of which the said testator's estate now consists, and upon what securities, and in whose names or name, and in what manner the same and every part thereof is invested.

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139. Accounts refused as being useless before decree.

And we say and submit that it would only occasion great and useless expense were we, in this our answer, to set forth any further or fuller account of the rents and profits aforesaid; and that the same ought to be taken, if at all, by and under the directions and decree of this honourable Court.

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140. Admission.

We admit that, *&c.*

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141. Admission for purposes of the suit.

We have no personal knowledge of the fact, but, for the purposes of this suit, we admit that, *&c.*

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142. Claims made by defendant.

I claim to be interested in the matters of this suit by virtue of, *&c.*

The short particulars of the mortgage now vested in us, and of our title thereto, are as follows, *&c.*

We claim to be equitable mortgagees of the hereditaments mentioned in the said bill, together with other hereditaments, under a memorandum in the words and figures following, that is to say, *&c.*

We claim a lien on the shares of, *&c.*, for so much of the said debts as arises from the unpaid purchase money of the same shares respectively, and the interest thereof.

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143. Craving leave for greater certainty (*a*).

We admit that, *&c.*—*Or*, We believe that, *&c.*—but for greater certainty we crave leave to refer to the said, *&c.*, when produced.

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144. Craving leave to refer to co-defendant's answer.

I know little or nothing respecting the deeds, dealings and transactions stated in the said amended bill; but I have seen a copy of the answer proposed to be forthwith

(*a*) As to effect of this, see Lewis, Eq. Pleading, 226.

put in to the amended bill by the defendants J. L. and G. W. F.; and I have no doubt that the statements contained in such answer are correct. However, for my greater certainty as to the contents of deeds and other written documents, I crave leave to refer to such deeds or documents.

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145. Offer to deliver documents, instead of scheduling.

I have in my possession certain papers and old rate books, which I am willing to hand over to the plaintiffs if they desire it. No application for any of the said papers or books was ever made to me prior to the filing of the bill in this cause. I have, under these circumstances, set out no list or schedule of such papers and books; and I submit that to do so would have been a useless expense.

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146. Inability to discover contents of documents.

The said settlement, and other deeds and documents hereinbefore mentioned, have been for some time and are now in the custody, possession or power of the plaintiff W. S.; but he refuses to produce the same, or to give me any information with respect to their contents; and I am, therefore, unable to set forth the same, or any of them, with greater certainty or particularity than hereinbefore appears.

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147. Information and belief.

I have been informed and believe that, *&c.*

I believe that, *&c.*

We have no reason to doubt, and therefore we believe that, *&c.*

We believe that the statements contained in the paragraphs numbered respectively from 1 to 8, both inclusive, of the plaintiffs' bill of complaint are true, except in the particulars or respect hereinafter mentioned; that is to say: *&c.*

I, this defendant W. R., say, and we, these other defendants, believe it to be true, that, *&c.*

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148. Ignorance.

I [*Or*, we] do not know, and cannot set forth as to my [*Or*, as to either of our] belief or otherwise whether or not it is alleged or is the fact that, *&c.*

149. Qualified denial.

Save as herein appears, it is not the fact, *&c.*

Save as herein appears [*Or*, save as by the said schedule appears], I do not know, *&c.*

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150. Reference to a schedule.

I have in the —— schedule hereto, and which I pray may be taken as part of this my answer, set forth, to the best of my knowledge, information, and belief, a description of, *&c.*

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151. Release.

We submit, and humbly insist, that the said release so executed as aforesaid, and the payment of the said sum of $——, and the receipt given for the same, is a full discharge. Nevertheless, we are willing and hereby submit to account as this honourable Court may think fit.

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152. Statute of limitations of 21 James I. c. 16.

I insist on the statute made in the 21st year of His late Majesty James the 1st, for the limitation of actions, as a bar to the plaintiffs' said bill, and to the relief sought thereby.

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153. The like, C. S. U. C., c. 88.

We severally claim the benefit of the provisions made in and by the Consolidated Statutes of Upper Canada, chapter 88, and of all other statutes of limitation, in bar to the relief sought by the plaintiff in this suit.

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154. Settled accounts, claim of.

The account so stated and settled was in fact stated and settled by the said A. B. and myself, as it purports to be, on the day of the date thereof; and I claim the benefit thereof as a settled account.

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155. Submission of fact.

We submit to the judgment of this honourable Court whether it is, or is not the fact, *&c.*

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156. Submission by trustees to act.

We submit in all things to act as this honourable Court shall direct; and we claim to have our costs, charges, and expenses properly incurred, paid out of the estate of the said testator.

157. Traverse.

The said J. S. died on the —— day of ——, and not on the —— day of ——, as in the 2nd paragraph of the said bill erroneously stated; but save as aforesaid, we do not know, and are unable, as to our belief or otherwise, to set forth whether or not the statements, or some or one or which of the statements, contained in the paragraphs numbered respectively from 1 to 8, both inclusive, of the plaintiff's bill of complaint are or is true, or which of them are or is, or in what respect untrue, or how otherwise.

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158. Trustee; desire to be discharged

I have never in any manner intermeddled with the said trust estate, nor received any of the rents and profits thereof; and I am very desirous to be discharged from the trusts in the bill mentioned, and I am ready and willing to convey and release the trust premises to such persons, or to do such other acts, as this honourable Court shall direct for that purpose, upon being indemnified in so doing, and having my costs and expenses.

---

159. Vexatious suit; setted accounts; claim of benefit of defence as if raised by plea or demurrer.

We submit to the judgment of this honourable Court, and humbly insist that this suit is altogether unnecessary and vexatious; and that even if the plaintiff had been entitled to any such relief as is prayed by the said bill, the same might have been obtained by proceedings at law with less expense; but we say that a large sum of money has been for a long time, and now is, justly due and owing to us from the plaintiff; and that during the whole of the transactions in the said bill mentioned we were in advance with creditors of the plaintiff; and that the plaintiff has repeatedly, and partly in the letters hereinbefore set forth, acknowledged the accuracy of the accounts rendered by us to him, and has treated the same as being, as in fact they were, settled accounts.

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160. Want of interest in plaintiff; craving same benefit as if defence by demurrer.

I am advised, and humbly submit, that the plaintiff has not any interest in the estate of the said testator, or in the matters in question in this suit, nor any such estate or interest in the said testator's estate, or the matters aforesaid, as to entitle the plaintiff to sustain this suit; and I crave the same benefit from this defence as if I had demurred to the said bill.

161. Cross relief.(a) *The allegations upon which the defendant claims to be entitled to cross relief are set forth in the answer with the same particularity as in a bill, so far as it is practicable, and the claim for cross relief is made thus,* and the defendant prays by way of cross relief that in the taking of the accounts the plaintiff may be charged, &c., or that the plaintiff may be ordered to, *&c.*

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162. Claim of benefit of same defence, to amended as to original bill. We submit that the plaintiff has not, by his said amended bill, entitled himself to any equitable relief as against us; and we accordingly claim the benefit of the same objections to the said amended bill as are claimed by our said answer to the said original bill.

JOINDER OF SEVERAL DEFENCES.

163. Title, and heading of joint demurrers, and answers.

In Chancery.

Between (*Set forth the title of the cause. See ante No.* 104).

(1.) Demurrer and answer. The demurrer and answer of A. B., the above named defendant [*Or*, one of the above named defendants], to the bill of complaint [*Or*, amended bill of complaint] of the above named plaintiff.

(2.) Demurrer to part, and answer to rest. The demurrer of A. B., the above named defendant [*Or*, one of the above named defendants], to part of the bill, and the answer of the said defendant to the remainder of the bill, *&c.*

(3.) Joint and several demurrer and answer. The joint and several demurrer and answer of A. B. and C. D., the [*Or*, two of the] above named defendants, to the bill, *&c.*

4.) Husband. and wife. The joint demurrer and answer of A. B. and C. his wife, the [*Or*, two of the] above named defendants, to the bill *&c.—Or, if they have married since she was made a defendant, say:* The joint demurrer, *&c.*, of A. B. and C. his wife, lately, and in the bill called, C. D., spinster—*Or*, widow—to the bill, *&c.*

(a) Order 126.

In Chancery.

Between (*Set forth the full style of the cause, or as ante* 104).

164. General form of a demurrer and answer.

The demurrer and answer of A. B., the above named defendant [*Or*, one of the above named defendants], to the bill of complaint [*Or*, amended bill of complaint] of the above named plaintiff.

1. I, the defendant A. B., by protestation, not confessing or acknowledging all or any of the matters and things in the said bill contained to be true, in such manner and form as the same are therein set forth and alleged, as to so much of the said bill as seeks (*State what*), and also as to so much of the said bill as seeks, *&c.*, do demur thereto. 1.) Demurrer.

2. And as to the discovery and relief sought by the said bill, save so much thereof as relates to the premises therein mentioned to be situate at S., in the county of D., for cause of demurrer I show that, *&c.*

3. And as to so much of the said discovery and relief as relates to the said premises at S. aforesaid, for cause of demurrer I show that, *&c.*

4. Wherefore, and for divers other good causes of demurrer appearing in the said bill, I pray the judgment of this Honourable Court whether I shall be compelled to make any answer to such parts of the said bill as I have hereinbefore demurred to.

5. And I, the defendant A. B., not waiving my said several demurrers, but wholly relying and insisting thereon, for answer to so much of the said bill as I am advised it is material or necessary for me to make answer unto, say as follows, &c. (2.) Answer.

(*Name of Counsel.*)
Sworn, &c.

In Chancery.

Between (*Set forth the full style of the cause, or as ante* 104).

165. General form of a joint and several demurrer, and joint and several answer.

The joint demurrer of the above named defendants A. B. and C. his wife to part, and the joint and several answer of the said A. B. and C. his wife to the other part, of the bill of complaint of the above named plaintiff. (1.) Demurrer.

1. We, the defendants A. B. and C. his wife by protestation (*Continue as in* No. 164, *ante*, to and alleged), as to so much of the said bill as seeks, *&c.*, do demur thereto; and for cause of demurrer show that, *&c.*, and for further cause of demurrer show that, *&c.*

2. For which reason, and for divers other causes, we

do demur to so much of the said bill as aforesaid; and humbly pray the judgment of this Honourable Court whether we shall make any further or other answer thereto.

(2.) Answer.

3. And as to so much of the said bill as we have not before respectively demurred to, we, the defendants A. B., and C. his wife, in no sort waiving the benefit of the said demurrer, but wholly relying and insisting thereon in answer to the residue of the plaintiff's said bill, or to so much thereof as we are advised it is material or necessary for us, or either of us to answer, severally say as follows, &c. (*here follows the answer*).

(*Name of Counsel.*)
Sworn, &c.

166. (1) Disputing note in mortgage suit. (a).

166. *Disputing note, and note for sale in mortgage suit.*

In Chancery.

(*Full style of cause, or as ante* 104.)

(*I*) dispute the amount claimed by the plaintiff in this cause.

Dated this day of 1875.

A. B. (Defendant in person) (*or* Solicitor for Defendant C. D.)

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(2) Note for sale.

Formal parts: as above.

(*I*) desire a sale of the mortgaged premises in the plaintiff's bill mentioned, or a competent part thereof instead of a foreclosure. (*Conclude as above*).

REPLICATION.

167. Replication according to Sched. I., Ord. 149.

In Chancery.

(*Full style of cause, or shortened style, as ante No.* 104.)

I admit, *&c.* (*state allegations in answer which are intended to be admitted*), and I join issue with the answer of the defendant C. D., except in so far as I have herein made admissions in regard to allegations contained in such answer [and I will hear the cause upon bill and answer against the defendant E. F., and *pro confesso* against the defendant G. H., *as the case may be.*]

(a) As to defences available under disputing note, see *Cattanach* v. *Urquhart*, 6 P. C. 28.

CHAPTER II.

ENDORSEMENTS REQUIRED ON PLEADINGS, WRITS AND OTHER PROCEEDINGS.

SECTION I.—*Endorsement of name and address on pleadings, writs, &c.*

168. Endorsement on writs and other proceedings, of name and address of solicitor suing out or filing same at Record and Writ clerks' office or office of a Dep. Reg'r (*a*).

This bill is filed by John Jones—*Or*, Jones & Styles, of No. 6 King Street, city of Hamilton.

(*If the Solicitor is only agent for another Solicitor, add the name or firm and place of business of the principal Solicitor; as:*) Agent for Thomas Smith—*Or*, Smith & Brown—of Simcoe, in the county of Norfolk:

Conclude with name of client; as: Solicitor for the plaintiff [*Or*, defendant George Bruce—*Or*, George Bruce, above named—*Or*, George Bruce, within named—*or as may be*].

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169. Notice to be endorsed on answer filed (*b*).

This answer is filed by John Jones—*Or*, Jones & Styles, of No. 6, King Street, city of Hamilton.

Agent for Thomas Smith—*Or*, Smith & Brown—of Simcoe, Norfolk.

Solicitor for the defendant A. B. [*or as may be*].

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170. Notice to be endorsed on demurrer filed (*b*).

This demurrer is filed by John Jones, of No. 6 King Street, city of Hamilton, [Agent for Thomas Smith, of Simcoe, Norfolk,] Solicitor for the defendant A. B. [*or as may be*].

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171. Notices to be endorsed on writs (*c*).

This writ is issued by John Jones, of No. 6 King Street, city of Hamilton, and Charles Robinson and Edward Williams (firm, Robinson and Williams), of No.

(*a*) Upon every writ sued out and upon every pleading or proceeding filed there must 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 proceeding has been filed, and when such Solicitors are agents, then the name and place of business of the principal Solicitor also; but where the name and address of a Solicitor have been indorsed upon any pleading or proceeding filed, it is not necessary to make such endorsement on any proceeding subsequently filed or served upon any person who has been served with the former proceeding. See Ord. 40, 41. Throughout these forms the Clerk of Records and Writs or his office only will be mentioned, but it is to be understood that these expressions will refer to the Deputy Registrar and his office, where the pleadings are filed in an outer county.

(*b*) See Ord. 40, 41.

(*c*) Order 40, 41. An agent cannot act as such in filing a bill, or defending a suit, for a solicitor resident out of the jurisdiction. Two solicitors, though not in partnership, or two distinct firms of solicitors, may act for the same party; but if they act as prin-

4 Dundas Street, London, joint Solicitors for the plaintiff, *&c.*: [*Or*, John Jones, of No. 6 King Street, city of Hamilton, Agent for Smith and Brown, of Simcoe, Norfolk, and for Jones and Robinson, of Simcoe, Norfolk, joint Solicitors for the plaintiff, *&c.*]

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172. The like endorsement, of a party acting in person (*a*).

This petition is filed by James Williams, the plaintiff (*Or* the within named defendant or petitioner) in person: of the town of Dundas, in the county of Wentworth:

(*If the residence is more than three miles from the Record and Writ Clerks' office, add an address for service within that distance; as:*) and whose address for service is at the office of Mr. Daniel Hughes, No. 4 John Street, in the city of Hamilton.

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173. The like.

This disputing note is filed by the defendant James Williams, [*or as may be*] in person, of the town of Dundas, in the county of Wentworth—Address for service, at office of Mr. Daniel Hughes, No. 4 John Street, in the city of Hamilton.

(*Short title.*)

174. Notice of change of place of business or residence, or of address for service.

Take notice, that my place of business [*Or*, place of residence—*Or*, address for service] is now at (*State where; as:* No. 2 Blank Street, in the city of Toronto), instead of at (*State where; as:* No. 6 King Street, in the city of Hamilton.)

Dated this —— day of ——, 18—.

(Signed) A. B., Solicitor [*Or*, Agent] for the plaintiff, *&c.*—*Or*, the plaintiff, in person.

To the Clerk of Records and Writs;
and to Mr. C. D., Solicitor [*Or*, Agent] for the defendant E. F. [*or as may be*].

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cipal solicitors, they must unite in giving one common address for service, in addition to their own respective addresses; and if they act by an agent, they must unite in employing the same agent. Where separate solicitors or firms of solicitors have appeared separately for several defendants, they cannot unite in filing a joint answer for such defendants collectively: as the endorsement of the name, &c., of one solicitor, or firm of solicitors, only, is allowed on the answer. Where it is desired to file such joint answer, an order must first be obtained to change solicitors; so as to entitle one solicitor, or firm, to represent all the defendants included in the answer; see Braithwaite's Pr. 9.

(*a*) See Ord. 44. Where the plaintiff, a married woman, suing by her next friend, obtained an order to sue in person by her next friend, instead of acting by a solicitor, the subsequent proceedings were endorsed or subscribed: "A. B., the plaintiff, and

175. Endorsement of place where bill filed.

Where the bill is filed in an outer county all papers filed in the suit in the office of the Clerk of Records and Writs should be also endorsed near the top with the name of the place where the bill is filed; e. g. London (*or as may be*). *Ord.* 73.

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176. Endorsement on office copy of bill of complaint, referred to in Order 86.

176. *Notices to be endorsed on office copy of bill for service in suits other than for foreclosure or sale.*

NOTICE TO THE DEFENDANT(S) WITHIN NAMED.

Your answer is to be filed at the office of the Clerk of Records and Writs, at Osgoode Hall, in the city of Toronto (*or where 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 Order* 620).

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 showing; 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 (*a*).

NOTE.—This bill is filed by A. B., of the city of Toronto, in the county of York, Solicitor for the within named plaintiff (*or where the party who files the bill is agent, say* Agent of E. F., of ————, Solicitor for the within named plaintiff).

———, *Plaintiff's Solicitor.*

177. Endorsement on office copy bill for sale under order 436, being part of Schedule S referred to in that order.

177. *Notice to be endorsed on office copy of Bill for service in suits for sale.*

NOTICE TO THE DEFENDANT WITHIN NAMED.

Your answer is to be filed at the office of the [Clerk of Records and Writs], at ———, in the ——— of———.

You are to answer or demur within ——— weeks from the service hereof.

If you fail to answer or demur within the time above

C.D., her next friend. In person—Address for service at," &c.: *Moye* v. *Bateman*, cited Braithwaite's Pr. 10. Where three defendants appeared in person, the Court directed that one set of notices for all the defendants, instead of one set for each, should in future be left at their common address for service; *Waggett* v. *Cutbush*, M. R. 2nd May, 1863; *Ex. rel.* Mr. King (Registrar.)

(*a*) But see *Robinson* v. *Whitcomb*, 20 Grant, 415.

limited, or if you answer admitting the execution of the mortgage and other facts stated in the bill as entitling the plaintiff to a decree, you are to be subject to have a decree or order made against you forthwith thereafter; 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 ———, of ———, in the County of ———, solicitor for the above named plaintiff.

AND TAKE NOTICE, that the plaintiff claims that there is now due by you for principal money and interest the sum of ———, and that you are liable to be charged with this sum, with subsequent interest and costs, in and by the decree to be drawn up; and that in default of payment thereof within six calendar months from the time of drawing up the decree, your interest in the property may be sold unless before the time allowed you as by this notice for answering, you file in the office above named a memorandum in writing signed by yourself or your solicitor to the following effect:(*I dispute the amount claimed by the plaintiff in this cause*), in which case you will be notified of the time fixed for settling the amount due by you at least four days before the time to be so fixed.

———, *Plaintiff's Solicitor.*

178. [Endorsement on office copy bill for foreclosure under order 436, being part of Schedule S referred to in that order.]

178. *Notice to be endorsed on office copy of bill for service in suits for foreclosure.*

NOTICE TO THE DEFENDANT WITHIN NAMED.

Your answer is to be filed at the office of the [Clerk of Records and Writs], at ———, in the ——— of ———.

You are to answer or demur within ——— weeks from the service hereof.

If you fail to answer or demur within the time above limited, or if you answer admitting the execution of the mortgage and other facts stated in the bill as entitling the plaintiff to a decree, you are to be subject to have a decree or order made against you forthwith thereafter; 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 ———, of ———, in the County of ———, solicitor for the above named plaintiff.

AND TAKE NOTICE, that the plaintiff claims that there is now due by you for principal money and interest the sum of ———, and that you are liable to be charged with

this sum, with subsequent interest and costs, in and by the decree to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the decree, your interest in the property may be foreclosed, unless before the time allowed you as by this notice for answering, you file in the office above named a memorandum in writing signed by yourself or your solicitor to the following effect: (*I dispute the amount claimed by the plaintiff in this cause*), in which case you will be notified of the time fixed for settling the amount due by you at least four days before the time to be so fixed. If you desire a sale of the mortgaged premises instead of a foreclosure, you must, within the time allowed you to answer, file in the office above named a note or memorandum in writing, signed by yourself or your solicitor to the following effect: "*I desire a sale of the mortgaged premises in the plaintiff's bill mentioned, or a competent part thereof instead of a foreclosure,*" and deposit the sum of $80 to meet the expenses of such sale.

A. B.,
Plaintiff's Solicitor.

179. *Notice to be endorsed on office copy of bill for alimony.*

179. Notice of claim for interim alimony, &c., under order 488. (a).

To S. A., the within defendant.

Take notice that the plaintiff demands as interim alimony, until the hearing of this cause, the weekly sum of $4 (*or as may be*), to be paid to her on the Monday of each week at the residence of ———, near the Village of ———, in the Township of ———, and disbursements, according to the rules of this Court.

Yours, &c., A. B.,
Plaintiff's Solicitor.

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180. Notice to be endorsed on mandatory order

See form, post No. 357.

180a. Notice to be endorsed on office copy of order of revivor.

See form, post No. 564.

(a) As to effect of omitting this endorsement, see *Peterson* v. *Peterson* 6 Pr. C. 150.

Section II.—*Notices of filing pleadings, affidavits, &c.* (a).

181. Notice of filing answer.

In Chancery.

Brown v. *Jones.*

Take notice that I have this day filed the answer of the defendant A. B. (*Or* the answers of the defendants A. B. and C. D., *or* the joint and several answers of the defendants A. B. and C. D., *as the case may be*).

Dated this day of , 18 .

A. B.,
Deft.'s Solr.

To C. D., Esq.,
Plt.'s Solr.

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182. Notice of filing demurrer.

See form No. 181, *substituting* "demurrer" *for* "answer."

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183. Notice of filing answer and demurrer.

See form No. 181, *adding the words* "and demurrer" *after* "answer."

In Chancery.

Brown v. *Jones.*

184. Notice of filing replication.

Take notice that I have this day filed a replication in this cause.

Dated this———day of———, 18—.

A. B.,
Plt.'s Solr.

To C. D., Esq.,
Solr. for Deft. B. J.

Messrs. Y. & Z.,
Solrs. for Defts. B., K. & L.

In Chancery.

Brown v. *Jones.*

185. Notice of filing affidavits in answer to a motion. (b.)

Take notice that I have this day filed the affidavits of G. H. and R. T. in answer to the motion (*state shortly purport of motion*) now pending in this cause.

Dated, &c.

A. B.,
Plt.'s Solr.

To C. D., Esq.,
Deft.'s Solr.

(a) Notice of filing answer, demurrer or replication must be served the same day the pleading is filed. *Ord.* 46.

(b) Affidavits in answer to a motion must, as a general rule, be filed at least the day before the motion is returnable. *Ord.* 261.

CHAPTER III.

SERVICE OF BILLS.

186. Affidavit of service of bill referred to in order 103, being Schedul D in that order mentioned

In Chancery.

Between—A. B..... Plaintiff,

and

C. D..... .....Defendant.

I, ——, of ——, in the County of —— [Sheriff's Officer *or as may be*], make oath and say:

1. I did, on the —— day of ——, personally serve C. D., the above named defendant —— with a paper which purported to be an office copy of the bill filed in this cause, by delivering to and leaving the said office copy 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 C. D.), at ——, (*a*) in the County of ——.

2. I FURTHER SAY, that the said office copy purported to be authenticated by the signature of the Clerk of Records and Writs of this Court (*Or*, Deputy Registrar at ——) at the foot thereof; and that each page of the said office copy was stamped with a stamp similar to the one which I now look upon in the margin of this affidavit (*b*).

3. I FURTHER SAY, that upon the said office copy, at the time of the service thereof, there was endorsed the following memorandum:

> "Your answer is to be filed at the office of the Clerk of Records and Writs, at Osgoode Hall, in the City of Toronto (*Or*, Deputy Registrar at ——).
>
> "You are to answer or demur within [four weeks] (*or as may be* (*c*)) from the service hereof.
>
> "If you fail to answer or demur within the time 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 showing; 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 A. B., of the City of Toronto, in the County of York, Solicitor for the above named plaintiff.*"

(*a*) Where service is effected on the president or other officer of a corporation aggregate other than a municipal corporation, the service must be effected at the Head Office, or at some branch or agency in Ontario, and must be so stated in the affidavit.—*Ord.* 91.

(*b*) Affidavits of the service of a bill must, before being sworn, be stamped by the officer with whom the bill is filed.

(*c*) See *Ord.* 620.

4. AND I FURTHER SAY, that to effect the said service I necessarily travelled —— miles.

Sworn before me, at this day of in the year of our Lord 18
A Commissioner, &c.

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187. Affidavit of service on defendant out of jurisdiction.

Where a Defendant is served out of the jurisdiction, in addition to the ordinary statements in the affidavit, there must also be a clause added proving the identity of the party served with the Defendant in the suit (*a*).

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188. Affidavit of service of a bill for *foreclosure*, under order 436—the notice being Schedule S, referred to in that order.

In Chancery.

Between—A. B.....Plaintiff,
and
C. D..... .... Defendant.

I, —— of ——, in the County of ——, [Sheriff's officer, *Or as may be*] make oath and say:

1. I did, on the —— day of ——, personally serve C. D., the above named defendant —— with a paper which purported to be an office copy of the bill filed in this cause, by delivering to and leaving the said office copy 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 C. D.), at ——, in the County of ——.

2. I FURTHER SAY, that the said office copy purported to be authenticated by the signature of the Clerk of Records and Writs of this Court (*Or*, Deputy Registrar at ——) at the foot thereof; and that each page of the said office copy was stamped with a stamp similar to the one which I now look upon in the margin of this affidavit.

3. I FURTHER SAY, that upon the said office copy, at the time of the service thereof, there was endorsed the following memorandum:

"Your answer is to be filed at the office of the Clerk of Records and Writs, at Osgoode Hall, in the City of Toronto (*Or*, Deputy Registrar at ——).

"You are to answer or demur within [four weeks] (*or as may be* (*b*)) from the service hereof.

(*a*) A statement that the deponent served "the above named defendant" is not sufficient, *Armour* v. *Robertson*, 1 Ch. R. 252, or that the person served admitted himself to be the Defendant, *Stilson* v. *Kennedy*, 1 Ch. R. 236. The allegations should be explicit, and should show the deponent's means of knowledge, *Euston* v. *Chisholm*, 6 Pr. C.

(*b*) See *Ord.* 620.

"If you fail to answer or demur within the time above limited, or if you answer admitting the execution of the mortgage and other facts stated in the bill as entitling the plaintiff to a decree, you are to be subject to have a decree or order made against you forthwith thereafter; 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* ——, *of* ——, *in the County of* ——, *Solicitor for the above named plaintiff.*

"AND TAKE NOTICE, that the plaintiff claims that there is now due by you for principal money and interest the sum of ——, and that you are liable to be charged with this sum, with subsequent interest and costs, in and by the decree to be drawn up; and that in default of payment thereof within six calendar months from the time of drawing up the decree, your interest in the property may be foreclosed unless before the time allowed you, as by this notice for answering, you file in the office above named a memorandum in writing signed by yourself or your solicitor to the following effect:—"*I dispute the amount claimed by the plaintiff in this cause,*" in which case you will be notified of the time fixed for settling the amount due by you at least four days before the time to be so fixed. If you desire a sale of the mortgaged premises instead of a foreclosure, you must, within the time allowed you to answer, file in the office above named a note or memorandum in writing, signed by yourself or your solicitor, to the following effect:—("*I desire a sale of the mortgaged premises in the plaintiff's bill mentioned, or a competent part thereof, instead of a foreclosure,*") and deposit the sum of $80 to meet the expenses of such sale."

4. AND I FURTHER SAY, that to effect the said service I necessarily travelled —— miles.

Sworn, &c.

189. Affidavit of service of a bill for *sale*, under order 436—the notice being Schedule S, referred to in that order.

In Chancery.

Between—A. B .....Plaintiff,
and
C. D.....Defendant.

I, ——, of ——, in the County of ——, [Sheriff's officer, *Or as may be*] make oath and say:

1. I did, on the —— day of ——, personally serve the above named defendant —— with a paper which purported to be an office-copy of the bill filed in this cause, by delivering to and leaving the said office copy 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 C. D.), at ——, in the County of ——.

2. I FURTHER SAY, that the said office copy purported to be authenticated by the signature of the Clerk of Records and Writs of this Court (*Or*, Deputy Registrar at ——) at the foot thereof; and that each page of the said office copy was stamped with a stamp similar to the one which I now look upon in the margin of this affidavit.

3. I FURTHER SAY, that upon the said office copy, at the time of the service thereof, there was endorsed the following memorandum:—

"Your answer is to be filed at the office of the Clerk of Records and Writs, at Osgoode Hall, in the City of Toronto (*Or*, Deputy Registrar at ——).

"You are to answer or demur within [four weeks] from the service hereof.

"If you fail to answer or demur within the time above limited, or if you answer admitting the execution of the mortgage and other facts stated in the bill as entitling the plaintiff to a decree, you are to be subject to have a decree or order made against you forthwith thereafter; 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 ——, of ——, in the County of ——, Solicitor for the above-named plaintiff.*

"AND TAKE NOTICE, that the plaintiff claims that there is now due by you for principal money and interest the sum of ——, and that you are liable to be charged with this sum, with subsequent interest and costs, in and by the decree to be drawn up; and that in default of payment thereof within six calendar

months from the time of drawing up the decree, your interest in the property may be sold, unless before the time allowed you, as by this notice of answering, you file in the office above named a memorandum in writing, signed by yourself or your solicitor, to the following effect:—"—— *dispute the amount claimed by the plaintiff in this cause*," in which case you will be notified of the time fixed for settling the amount due by you at least four days before the time to be so fixed."

4. AND I FURTHER SAY, that to effect the said service I necessarily travelled —— miles.

Sworn before me at
this day of
in the year of our Lord 18

A Commissioner, &c.

(*Formal parts: as in Form No.* 186.)

I, ——, of——, in the County of ——— [Sheriff's officer] (*Or as may be*), make oath and say:

190. Affidavit of service of bill on Corporation.

1. I did on the —— day of ————, 18—, serve the defendants [The Ontario Screw Company, Limited] with a paper which purported to be an office copy of the bill filed in this cause, by delivering to and leaving the said office copy personally with Mr. A. B., the President (*Or as may be*), of the said The Ontario Screw Company, Limited, at the head office (*a*) of the said Company, at the Town of ———, in the County of ———.

(*Continue as in Form* 186, 188 *or* 189, *according to the circumstances.*)

Service on Solicitor.

In Chancery.

Between—A. B..... .....Plaintiff,
and
C. D. and others.....Defendants.

I accept service this day of an office copy of the plaintiff's bill of complaint in this cause, duly endorsed with a notice to answer or demur thereto within [four weeks] (*Or as may be*) from the service thereof, as solicitor

191. Acceptance of service of bill by Solicitor.

(*a*) See *Ord.* 91. Where the Company intended to be served is defunct, or has ceased to carry on business, or has no head office, an application should be made in Chambers for an order directing the mode in which service is to be effected.

for the defendants C. D. and G. H. [and I undertake to file an answer or demurrer to the said bill within four weeks (*Or as may be*) from this date on behalf of the said defendants C. D. and G. H. (*a*)].

Dated this day of 18—.

Y. Z.,
Solicitor for Defendants
C. D. and G. H.

Substitutional Service.

In Chancery.

Between—A. B..... Plaintiff,
and
C. D..... Defendant

192. Affidavit proving substitutional service of bills.

I——, of——, in the County of——[yeoman] (*Or as may be*), make oath and say:

1. That I did, on the —— day of ——, 18—, personally serve [John Brown, Esquire, of the City of ——, Attorney-at-Law] (*Or other person on whom service is directed to be effected*), with a paper which purported to be an office copy of the bill filed in this cause, by delivering to and leaving the said office copy with the said [John Brown], at the office of the said John Brown, in the said City of ——, and at the same time and place I did also personally serve the said [John Brown] with the order now shown to me, and marked as Exhibit A. (*b*), by delivering to and leaving with him a true copy of the said order.

2. I further say, that the said office copy of the said bill purported to be authenticated, &c. (*proceed as in Forms* 186, 188 *or* 189, *according to the circumstances.*)

Service by Mailing.

193. Affidavit proving service of bill by mailing.

(*Formal parts: as in No.* 192.)

1. That I did on the fifteenth day of June, 1874, serve the Defendant C. D., with a paper which purported to be an office copy of the bill filed in this cause by mailing the

(*a*) If this undertaking be omitted, it will be necessary to give the solicitor the usual two days' notice of motion to take the bill *pro confesso* in the event of no answer or demurrer being filed; *Ross* v. *Hayes*, 6 Grt 277; but where the undertaking is given the service is equivalent to personal service, and on default of answer the bill may be noted *pro con.* on *præcipe.*—*Ord.* 47.

(*b*) The Exhibit is the order directing the service to be effected in the manner sworn to.

same, together with a true copy of the order now produced and shown to me marked A. (*a*), through the General Post Office, in a pre-paid registered letter addressed to the Defendant, C. D., as follows :—

"Mr. C. D.,
"Bay City Post Office,
"Michigan,
"U. S. A."

2. I further say, that the said office copy purported to be authenticated, &c. (*proceed as in Forms* 186, 188, *or* 189, *according to the circumstances, except that the notice limiting the time to answer should be made to conform to the order authorising the service ; e. g.*)

"You are to answer or demur within ten weeks from the fifteenth day of June, 1874, being the day on which this office copy was mailed to you."

Service by Publication.

(*Formal parts : as in No.* 192.)

194. Affidavit proving publication of advertisement.

1. A true copy of the advertisement now produced and shown to me, marked as Exhibit A (*b*), appeared and was published in each issue of the newspaper, published at on the and days of .

2. I have examined copies of the said newspaper issued at on each of the said days.

Sworn, &c.

CHAPTER IV.

BRIEFS.

Forms of Briefs.

195. Briefs on the hearing. Contents.

The brief for the plaintiff at the hearing will consist of a copy of the bill, of each answer, and of all the evidence. The brief for each defendant will consist of a copy of the bill, of his own answer only, and of all the evidence. The brief, in either case, should include copies of exhibits, when material, and of any admissions. Each brief should be accompanied by such observations as may be deemed advisable, and by such copies of, or extracts

(*a*) The Exhibit is the order authorising the service by mailing.
(*b*) The exhibit is the copy of the order for publication, with the notice in Schedule C to *Ord.* 100, as printed in the newspaper.

from, other documents as may be necessary, and on the fold of the brief is usually endorsed a list or index of the documents briefed; according to the following sketch.

In Chancery.

(*Short title of the cause.*)

INDEX.

196. Index.

1. Amended bill, fo. 1.
2. Answer of the defendant A. B. to the original bill, fo. 3.
3. His answer to the amended bill, fo. 5.
4. Answer of the defendant C. D. to the amended bill, fo. 6.
5. Admissions between the parties, fo. 7.
6. Depositions and affidavits filed on the part of the plaintiff, viz.:
   (*a*) Deposition of E. F., filed ——, 18—, fo. 8.
   (*b*) Affidavit of G. H., filed ——, 18—, fo. 9.
   (*c*) His cross-examination thereon, fo. 11.
   (*d*) Joint affidavit of L. M. and N. O. filed ——, 18—, fo. 12.
7. Depositions and affidavits filed on the part of the defendant A. B.
   (*e*) Deposition (*&c., as above*).
8. Affidavit of the defendant C. D., fo. 13.
9. Observations, fo. 14.

The brief should be written on brief paper, in a plain legible hand; the words may be abbreviated, but unusual abbreviations should be avoided. Where the pleadings are printed, the printed copy should be delivered as a brief.

Form of Brief for Plaintiff.

In Chancery.

(*Full style of cause.*)

Brief for plaintiff.

197. Brief for plaintiff at hearing.

Venue.—Bill filed 12th January, 1875.
Amended 20th January, 1875.

States (*set out bill, omitting style of cause and formal parts, and showing various amendments either by different coloured ink or underscoring.*)

Answer of defendant John Jones, sworn 27th February, 1875, filed 1st March, 1875.

States (*set out answer of John Jones, commencing at paragraph one.*)

Answer of defendant Wm. Smith, without oath or signature, filed 5th March, 1875.

States (*set out answer of Wm. Smith, commencing at paragraph one.*)

Replication filed 10th March, 1875. (*Set out replication, omitting the style of cause.*)

(*Add statement of case if necessary, and statement of evidence for plaintiff, including copies of all depositions, where evidence has been taken, also of such exhibits and admissions as are material and such observations on either law or evidence as may be deemed advisable.*)

Form of Brief for Defendant.

In Chancery.

(*Full style of cause.*)

Brief for defendant, John Jones.

198. Brief for defendant at hearing.

Venue.—Bill filed 12th January, 1875.
Amended 20th January, 1875.

States (*set out bill, commencing at first paragraph, showing amendments as above.*)

Answer of defendant John Jones, filed 1st March, 1875.

States (*set out answer as above.*)

Replication filed 10th March, 1875. (*Set out replication, omitting style of cause; add statement of defendant's case, and evidence in support, &c., as in brief for plaintiff.*)

---

199. Endorsement on brief.

The brief is folded lengthwise and endorsed thus:—

In Chancery.

Brown
v.
Jones.

Brief on the hearing at Woodstock.

For the plaintiff
(*Or* defendant John Jones.)

Mr. B., Q. C.....$100
Consultation 20

$120

With you,
Mr. C.

Consultation fixed for ———, at —— o'clock.

The cause is No. 2 on the list.

Name of solicitor delivering brief at the foot.

Brief on further directions.

200. Brief on further directions.

(*Style of cause in half margin, as it appears in the Masters' report.*)

Brief for plaintiff *or* defendant, *as may be*, on further directions.

By a decree dated 20th May, 1875.

It is ordered, *or* the following accounts and enquiries are directed (*copy the ordering part, or so much as relates to the further directions*).

Master's Report, dated, &c.

" filed, &c.

(*Set out body of report ; observations if any.*)

CHAPTER V.

HEARINGS.

In Chancery.

(*Short style of cause, e. g.*)

Brown v. *Jones.*

201. Præcipe to set cause down for examination of witnesses and hearing.

Set this cause down for examination of witnesses and hearing at the next sittings of this Court, to be holden at [the City of Toronto] on ———, the —— day of ———, 18—.

Dated this ——— day of ———, 18—.

A. B.,
Plt.'s Solr.

To the Clerk of Records and Writs.

In Chancery.

(*Style of cause, e. g.*)

Between John Brown and others.....Plaintiffs,
and
William Jones and another..Defendants.

202. Notice of examination of witnesses and hearing (*a*).

Take notice that this cause has been set down for examination of witnesses and hearing at the next sittings of this Court, to be holden at [Osgoode Hall, in the City of Toronto] on ———, the —— day of ————, 18 , at which time and place the witnesses for all parties must be examined and the cause heard, and unless you then

(*a*) Causes must be set down and notice of hearing must be served fourteen clear days before day of hearing. See *Ord.* 163, *Beard* v. *Gray*, 3 Ch. R. 104.

and there attend, a decree may be pronounced in your absence.

Dated this ——— day of ————, 18—.

A. B.,
Solicitor for the Plaintiff.

To (*Defendant's Solicitors.*)

In Chancery.

(*Short style of cause as in No.* 201.)

203. Præcipe to set cause down for hearing on bill and answer or by way of motion for decree or *pro con.* (*a*)

Set this cause down to be heard [on bill and answer against the defendant A. B.] [*and* by way of motion for decree against the defendant C. D.] [*and pro confesso* against the defendant E. F.] on Wednesday (*b*), the —— day of ———, 18—.

Dated this ——— day of ——— —, 18—.

A. B., *Plaintiff's Solicitor.*

To the Clerk of Records and Writs.

In Chancery.

Between—John Brown and others.....Plaintiffs,
and
William Jones and others...Defendants.

204. Notice of hearing on bill and answer, or by way of motion for decree or *pro con.*

Take notice, that this cause has been set down to be heard at Osgoode Hall, in the City of Toronto, on Wednesday (*b*), the —— day of ——, 18—, at ten o'clock in the forenoon, on bill and answer, as against the defendant A. B., and by way of motion for decree against the defendant C. D., and *pro confesso* against the defendant W. J., when all parties are to attend, and unless you then and there attend, a decree may be pronounced in your absence; and take notice, that in support of such motion will be read the plaintiff's bill, the answers of the defendants, or so much thereof as the plaintiff may be advised, and the affidavits of X. Y. Z. and W. this day filed, and the exhibits therein referred to.

Dated this ——— day of ——, 18—.

A. B., *Plaintiff's Solicitor.*

To Messrs. B. & C., Solicitors for the defendant A. B.
and J. S., Esq., Solicitor for the defendant C. D.

(*a*) See *Ord.* 418. Cause must be set down and notice served seven days before day of hearing, *Semble* these should be clear days: *Beard* v. *Gray*, *supra.*

(*b*) See *Ord.* 593.

In Chancery.

(*Style of cause as in No.* 204).

205. Notice of motion for decree. Another form.

Take notice, that this Honourable Court will be moved at Osgoode Hall, in the City of Toronto, on ——, the —— day of ——, at ten of the clock in the forenoon, or so soon after as Counsel can be heard on behalf of the plaintiff for a decree or decretal order, in accordance with the prayer of the plaintiff's bill; or, that such other decree or order may be made as to this Honourable Court shall seem meet. And take notice, that in support of such motion will be read the plaintiff's bill, the answer of the said defendant, or such parts thereof as the plaintiff shall be advised to read; and the affidavits mentioned below, this day filed, and the exhibits therein referred to.

Dated this —— day of ——, 18—.

——, *Plaintiff's Solicitor.*

To ——, Defendant's Solicitor.

The following affidavits will be read:

Affidavit of

Affidavit of

In Chancery.

(*Short title.*)

206. Certificate of Counsel to be endorsed on præcipe to set down a cause in the month of June under Ord. 420.

I certify that no point is involved in this cause, on which it may be necessary for the Court to reserve judgment.

A. B.,

(*Of Counsel for Plaintiff.*)

In Chancery.

(*Short title.*)

207. Consent to notice of motion for decree being served, before time to answer has expired.

We consent to this cause being set down to be heard by way of motion for a decree in this cause, notwithstanding the time allowed to answer the plaintiff's bill has not expired.

Dated this —— day of —— , 18—.

(Signed) C. D., Solicitor for defendant E. F.

(Signed) G. H., Solicitor for all the other defendants.

---

208. Notice of motion for further time to serve notice of motion for decree, or to file replication, &c.

(*Formal parts: see post, No.* 384.)

on the part of the plaintiff, that the time within which he may serve notice of motion for a decree or decretal order (*If so:* or file replication, or set down this cause to be heard on bill and answer, or obtain and serve an order

for leave to amend the bill), may be enlarged to the ——— of ———, 18—; and that the costs of this application may be costs in the cause. And take notice (*as in No.* 382.)

(*Formal parts: see post, No.* 384.)

209. Notice of motion by plaintiff for leave to use affidavit filed after notice of motion served.

on the part of the plaintiff, that he may be at liberty to read and use, in support of his motion for a decree, the affidavit of W. D., filed [*Or*, sworn] the ——— of ———, 18—, as if the said affidavit had been included in the list of affidavits set forth at the foot of the notice of such motion which has been served [*Or as may be*]. And take notice (*as in No.* 382.)

(*Formal parts : see post, No.* 384.)

210. Notice of motion for time to file affidavits in answer to the motion for decree.

on the part of the defendant A. B., that the time limited by the Consolidated Orders for the applicant to file affidavits in answer to the plaintiff's motion for a decree, may be (further) enlarged to the ——— day of ———, 18—, and that the costs of this application may be costs in the cause. And take notice (*as in No.* 382.)

In Chancery.

(*Short style of cause, see ante No.* 181.)

211. Notice of filing defendant's affidavits (and intention to read answer.)

Take notice, that I have this day filed on behalf of the defendant A. B., affidavits of the following persons in answer to the plaintiff's motion for a decree, namely: C. D., E. F., G. H., *&c.—If so:* and that the said defendant also intends to read, on the said motion, his answer filed the ——— of ———, 18—, and the answer of the defendant W. D. filed the ——— of ———, 18—[*Or as may be*], to the plaintiff's bill.

(*Formal parts : see No.* 384.)

212. Notice of motion, by defendant, for leave to use additional affidavit in answer to the motion.

on the part of the defendant A. B., that notwithstanding the time limited for filing affidavits in answer to the plaintiff's motion for a decree has expired, the applicant may be at liberty to read and use, in answer to the said motion, the affidavit of C. D., filed the ——— of ———, 18— (*Or as may be*), in addition to the affidavits already filed by the said defendant—*If the time allowed has ex-*

pired, add: and that the plaintiff may have ——— days to file an affidavit or affidavits in reply. And take notice (*as in No.* 382.)

---

213. Notice of motion, for time to file affidavits in reply (*a*).

(*Formal parts: see No.* 384.)

on the part of the plaintiff, that the time limited by the order made herein, and dated, &c., for the applicant to file affidavits in reply to the affidavits filed by the defendants (*If not all, name the particular defendants*), in answer to the plaintiff's motion for a decree, may be (further) extended to the ——— day of ———, 18—; and that the costs of this application may be costs in the cause. And take notice (*as in No.* 382.)

---

214. Notice of filing affidavits in reply.

(*Formal parts: see ante, No.* 181.)

Take notice, that I have this day filed, on behalf of the plaintiff, the affidavits of A. B., C. D., *&c.*, in reply to the affidavits filed in answer to the plaintiff's motion for a decree.

---

215. Notice of motion, to use additional affidavit in reply.

(*Formal parts: see No.* 384.)

on the part of the plaintiff, that notwithstanding the time limited for filing affidavits in reply has expired, he may be at liberty to read and use, in support of his motion for a decree, the affidavit of E. F., filed (*Or,* sworn) the ——— of ———, 18—, in addition to the affidavits in reply already filed by the plaintiff (*Or as may be*). And take notice (*as in No.* 382.)

---

216. Notice of motion, for enlargement of time to file replication.

(*Formal parts, as in No.* 384.)

on the part of the plaintiff, that the time within which he may file replication, or serve notice of motion for a decree or decretal order, or set down this cause to be heard on bill and answer, or obtain and serve an order for leave to amend the bill, may be enlarged to the ——— of ———, 18—; and that the costs of this application may be costs in the cause. And take notice (*as in No.* 382).

(*a*) See *Ord.* 271.

In Chancery.

(*Short style of cause, as in No.* 201.)

217. Præcipe to set cause down for hearing on further directions and costs (*b*).

Set this cause down to be heard on Wednesday (*a*), the ——— day of ———, 18—, on further directions (and as to the matter of costs).

A. B.,

Dated this, &c. *Plaintiff's Solicitor.*

To the Clerk of Records and Writs.

In Chancery.

(*Style of cause as in No.* 204.)

218. Notice of hearing on further directions (*b*).

Take notice, that this cause has been set down to be heard on further directions (*and* as to the matter of costs) on Wednesday (*a*), the ——— day of ———, 18—, at Osgoode Hall, and unless you attend at the time and place appointed, a decree may be pronounced in your absence.

A. B.,

Dated this &c. *Plaintiff's Solicitor.*

To Defendant's Solicitor.

Appeals and Rehearings.

(*Short style of cause as in No.* 201.)

219. Præcipe to set cause down by way of appeal from Master's report.

Set this cause down to be heard by way of appeal from the Report of the Master of this Court, (at ———,) dated the ——— day of ———, 18—, on Thursday (*a*), the —— day of ———, 18—.

A. B.,

Dated, &c. Plaintiff's Solicitor,

(*Or party appealing.*)

To the Clerk of Records and Writs.

(*Style of cause as in No.* 204, *ante.*)

220. Notice of hearing of appeal from Master's report (*b*).

Take notice, that this Honourable Court will be moved on Thursday (*a*), the ——— day of ———, 18—, at ten o'clock in the forenoon, or so soon thereafter as Counsel can be heard by way of appeal from the Report of the Master of this Court, (at ———,) made in this cause on the ——— day of ———, 18—, for the following amongst other reasons:

(*a*) See *Ord.* 593.

(*b*) See *Ord.* 418.—Cause must be set down and notice served seven days before day of hearing. *Semble*, these should be clear days. See *Beard* v. *Gray*, 3 Ch. R. 104.

1. Because the said Master, in and by his said Report, has, &c. Whereas, &c.

2. And because the said Master, &c. (*stating clearly and concisely the several grounds of appeal.*)

And take notice, that upon and in support of such motion will be read the pleadings, decree, Master's reports, and the affidavits, depositions and other proceedings filed and taken in the office of the said Master, upon the reference to him in this cause.

Yours, &c., A. B.,
Solicitor for Plaintiffs,
(*Or other party appealing.*)

Dated, &c.
To

---

221. Præcipe to set down appeal from order of the Referee in Chambers, (*a*) or from order of local Master, made under *Ord.* 36, or under the Act for Quieting Titles.

(*Short style of cause as in No.* 201.)

Set this cause down to be heard before the presiding Judge in Chambers, on Monday (*b*), the —— day of ———, 18—, by way of appeal from the order of the [Referee in Chambers, *Or* Referee of Titles, *Or* Master of this Court at ——— *Or* Referee of Titles at ———], dated the —— day of ———, 18—.

Dated, *&c.* A. B.,
Solicitor for (*party appealing*).

To the Clerk of Records and Writs.

---

222. Notice of hearing of appeal from order of Referee in Chambers, or local Master, &c. (*c*)

(*Style of cause, as in No.* 202.)

Take notice, that this cause has been set down to be heard before the presiding Judge in Chambers, on Monday, the —— day of ———, 18—, at eleven o'clock in the forenoon, or so soon thereafter as Counsel can be heard, by way of appeal from the order of the [Referee in Chambers, *Or* Referee of Titles, *Or* Master of this Court at ———, *Or* Referee of Titles at———], dated the —— day of ———, 18—.

Dated, *&c.* A. B.,
Solicitor for (*party appealing*).

To (*Respondent or his Solicitor*).

(*a*) Appeals from orders of the Referee in Chambers are to be made within fourteen days. The appeal must be brought on to be heard, as well as set down, within the fourteen days: *Jackson* v. *Gardiner*, 2 Ch. R. 285. An appeal will not lie until the order appealed from is signed and entered: *Gibb* v. *Murphy*, 2 Ch. R. 132; except by leave of a Judge.

(*b*) See *Ord.* 590. Appeals from the Referee in Chambers, or from a local Master when acting under *Ord.* 36, or under the Quieting Titles Act, are to be heard in Chambers, and are to be set down on or before the Saturday preceding the hearing of the appeal.—*Ord.* 591.

(*c*) Seven clear days' notice must be served of all appeals under the Quieting Titles Act, and two clear days' notice of other appeals from the Referee in Chambers.—*Ord.* 591.

(*Short style of cause as in No.* 201.)

223. Præcipe to set cause down for re-hearing (*a*).

Set this cause down for the next sittings of this Honourable Court, to be held for the re-hearing of causes on ———, the —— day of ———, 18—, in order that the order (*Or* Decree *Or* Decretal Order) made herein by the Honourable the Chancellor (*Or* the Vice-Chancellor B.), dated on the —— day of ———, 18—, may be re-heard.

Dated, *&c.*

A. B.,
Plaintiff's Solicitor.

To the Clerk of Records and Writs.

———

(*Style of cause as in No.* 202).

224. Notice of re-hearing (*b*).

Take notice, that this cause has been set down for re-hearing at the next sittings of this Honourable Court, for the re-hearing of causes, to be holden at Osgoode Hall, in the City of Toronto, on ——, the —— day of ———, 18—, in order that the Order (*Or* Decree *Or* Decretal Order) made by the Honourable the Chancellor (*Or* the Vice-Chancellor P.) may be discharged or varied (*If a variation in part only is sought, add*) in the following particulars, that is to say (*stating shortly, variation sought*) (*c*); and unless you attend at the time and place appointed, a decree may be pronounced in your absence.

Dated, *&c.*

A. B.,
Plt.'s (or Deft.'s) Solicitor.

To

———

In Chancery.

(*Short style of cause.*)

225. Request that hearing of cause may stand adjourned.

We request and consent that this cause, which is set down to be heard, be not placed in the paper of causes for hearing until the —— day of ———, 18—; and that it be marked in the Registrar's book of causes as standing over to that day.

Dated, *&c.*

(*Signatures of Solicitors.*)

To the Registrar of the Court of Chancery.

(*a*) The certificate of the Accountant must be produced of the payment into Court of the deposit of $40 required under *Ord.* 326. Rehearing of decrees or decretal orders are to be within six months after the decree or order has been passed and entered.—*Ord.* 324. And applications to re-hear orders made in Court, not being decrees or decretal orders, must be within four months of passing and entering.—*Ib.* But further time may be allowed on special application.

(*b*) The cause must be set down, and notice of hearing served seven days before day of hearing.—*Ord.* 418. *Semble*, these should be *clear days*. *Beard v. Gray*, 3 Ch. R. 104.

(*c*) *Ord.* 327.

Exhibits produced at hearing.

226. Mode of marking Exhibits produced at hearing (*a*).

In Chancery.

(*Short style of cause.*)

This Exhibit (the property of ———) is produced by the plaintiff (*Or* defendant C., *as the case may be*), this ——— day of ———, 187—.

A. B.,
Registrar or Deputy Registrar.

---

227. Schedule of Exhibits produced at hearing where judgment reserved (*b*).

In Chancery.

(*Short style of cause.*)

Schedule of Exhibits put in by plaintiff (or defendant C. D.), at the hearing of this cause at ———, on the —— day of ———, 18—.

1. Deed dated 5th January, 1864, John Jones and Wife to William Brown.
2. Letter dated 8th March, 1870, from William Brown to John Jones.
3. Telegram dated 15th April, 1872, William Brown to Alfred Smith.

CHAPTER VI.

EVIDENCE.

Section I.—*Admissions.*

228. Admission by agreement.

In Chancery.

(*Shortened style of cause.*)

Admissions on the part of the plaintiff and defendant.

It is hereby agreed, on behalf of the plaintiff and defendant respectively, to make the following admissions; and that these admissions, and the documents mentioned or referred to therein, may be used and read in evidence upon the hearing of this cause, and for all the purposes thereof; save and except all just causes of exception to the admissibility of the same as evidence; that is to say:—

(*a*) *Ord.* 177.

(*b*) *Ord.*, 179. This Schedule must be in duplicate, one copy of which is signed by Registrar or Deputy Registrar, and is retained by the Solicitor, and the other is retained in Court. When Exhibits are put in by several parties to the suit, each party must schedule his own Exhibits.

1. That the several deeds specified in the first schedule hereto, and identified by our respective initials thereon, are the deeds of the like respective dates mentioned in the pleadings of this cause; and that the said deeds were respectively executed as they respectively purport to have been.

2. That the several letters specified in the first part of the second schedule hereto, and identified by our respective initials thereon, were respectively signed as they purport to have been; and were received, in due course, by the respective persons to whom such letters respectively purport to be addressed, with the enclosures in such letters referred to, from the persons by whom such letters respectively purport to have been written.

3. That the paper writing marked A., identified by our respective signatures at the foot thereof, contains true copies of the several letters specified in the second part of the second schedule hereto; and that the originals of such letters respectively were duly signed as they purport to have been, and were received in due course (*Continue as in par.* 2, *to the end*).

4. That the copies of letters contained in the said paper writing marked A., or any of them, may be read in evidence as primary and the best evidence, and not as secondary evidence, and shall have the same force as if they were the originals of such letters; and that the said original letters shall not be required to be produced, or any evidence required as to the same, or of the proper custody thereof, or as to the non-production thereof.

5. That A.B., in the bill named, died on the —— of ——, 18—, intestate, and without having been married.

6. That the defendant C. D. is the eldest son and heir at law of E. F., in the said bill named.

7. That the defendant C. D. is the heir of the said E. F.,

We also undertake to produce, for the purposes aforesaid, or any of them, on the hearing of this cause, and otherwise as occasion may require, such of the documents specified in the schedules hereto as are in our possession respectively.

Dated this —— day of ——, 18—.

T. B., plaintiff's solicitor [*Or*, agent.]
J. F., defendant's solicitor [*Or*, agent].

THE FIRST SCHEDULE ABOVE REFERRED TO.

Deeds.

Serial Number.	Dates.	Description.	Parties.
1	1854. January 1	Lease . . .	A. B. one part, and C. D. other part.
2	1861. December 31	Conveyance	E. F. first part, G. H. second part, and J. L. third part.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Letters.

Serial Number.	Dates.	By whom written.	To whom sent.
		First part.	
3	1863. April 1 . .	Defendant . . .	Plaintiff.
4	" May 10 . .	J. F., defendant's solicitor . . .	T. B., plaintiff's solicitor.
		Second part.	
5	1863. April 12 . .	L. M.	N. O.
6	" May 18 . .	P. R.	S. T.

---

229. Another form of admissions.

In Chancery.

(*Shortened style of cause.*)

We the undersigned, solicitors for the plaintiff and defendants respectively, hereby agree to admit upon the hearing of this cause, and for all the other purposes of this suit, that such of the documents mentioned in the schedule hereto as are therein specified to be originals were respectively written, signed or executed as they purport respectively to have been; that such of the said documents as are therein specified as copies are true copies; and that such of the said documents as are therein stated to have been served, sent or delivered were so served, sent or de-

livered respectively: saving all just exceptions to the admissibility of all such documents as evidence in this suit.

(*Dated and signed as in last Form.*)

(*For form of Schedule, see ante, No.* 228, *distinguishing which documents are original and which copies.*)

SECTION II.—*Documentary evidence which proves itself.*

DOMINION OF CANADA.

230. Certificate verifying extract from a public record, &c., under C. S. C. c. 80, s. 5.

PROVINCE OF ONTARIO, } I, ——, of the City of Toronto
To WIT: } [Registrar of the Court of Chancery, for Ontario, formerly Upper Canada], do hereby certify that the annexed [copy of decree is] truly taken from the Records of [said Court in the cause therein pending wherein A. B. is plaintiff and C. D. is defendant], and that the same [is a true copy] of the [decree made] in said [cause] bearing date, &c., as compared with the Records in the Books of my office as such [Registrar], and that I am the officer of said [Court] having the legal custody of said Records.

In witness whereof I have hereunto set my hand and the seal of the said Court this —— day of ——, A.D. 18—.

——, *Registrar.*

In Chancery.

(*Shortened style of cause.*)

231. Notice of intention to use proceedings in another cause as evidence at the hearing (*a*).

Take notice that the plaintiff (*Or*, defendant) intends to read and use at the hearing of this cause, and in all subsequent proceedings therein, all or any of the affidavits filed or to be filed, and depositions or cross-examinations, if any, taken, or to be taken, in a cause wherein the W. & C. of M. are plaintiffs, and the above named defendant is defendant, as if the same had been filed or taken in this cause: saving all just exceptions to the admissibility of the whole or any of such affidavits, depositions or cross-examinations, if any, as evidence at the hearing of this cause, and the subsequent proceedings therein.

Dated, &c. Yours, &c.,

A. B.,

To —— *Solicitor.*

(*a*) See *Ord.* 175.—Where it is intended to read the pleadings in another suit, it would appear that an order must still be first obtained.

232. Notice of intention to use letters probate as evidence of original will (*a*).

(*Formal parts: as in No.* 231.)

That the plaintiff (*Or* defendant) intends at the hearing (*Or other proceeding at which the evidence is required to be adduced*) of this cause, to give in evidence as proof of the devise of the lands and premises in question in this cause (*or other testamentary disposition*) by A. B. (*the testator*), to C. D., the probate of the will of the said A.B. (*Or*, the letters of administration with the will of the said A. B. annexed), or a copy thereof stamped with the seal of the Surrogate Court of the county [*Or* united counties] of——.

Dated, &c. Yours, &c.,

To C. D., A. B.,

——, Solicitor. —— *Solicitor.*

---

233. Notice to compel production of original will (*b*).

(*Formal parts: as in No.* 231.)

That defendant (*Or* plaintiff) disputes the validity of the alleged devise of the lands and premises in question in this (*Or other alleged testamentary disposition*) by A. B. (*the alleged testator*), to C. D., referred to in your notice to me dated the ——— day of ———, 18—.

Dated, &c. (*Conclude as in Form No.* 231.)

---

234. Notice of intention to prove a registered instrument by production of a certified copy (*c*).

(*Formal parts: as in No.* 231.)

That the plaintiff (*Or* defendant) intends, at the hearing (*Or other proceeding of which the evidence is required*) of this cause, to give in evidence as proof of the deed of conveyance of the lands in question in this cause from A. B. and C. D. to W. J., dated the —— day of ——, 18—, and also of an agreement between W. J. and E. F. relating to the said lands, dated the ——— day of ———, 18—, copies of the said deed and agreement, certified by the Registrar of the county (*Or* united counties, *or as may be*) of ———, under his hand and seal of office.

Dated, &c. Yours, &c.,

To C. D., Esq., A. B.,

—— Solicitor. —— *Solicitor.*

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235. Notice to compel production of original instrument (*d*).

(*Formal parts: as in No.* 231.)

That defendant (*Or* plaintiff) disputes the validity of the alleged conveyance of the lands in question in this cause from A. B. and C. D. to W. J., dated the ——— day

(*a*) This notice must be served ten days before the hearing. C. S. U. C. cap. 16, s. 51. *Semble*, they should be *clear days*; *Beard* v. *Gray*, 3 Ch. R. 104. As to effect of notice, see *Barraclough* v. *Greenhough*, 2 L. R. Q. B. 612.

(*b*) This notice must be served within four days after receipt of notice No. 232. C. S. U. C. cap. 16, s. 51.

(*c*) See 31 Vic. cap. 20, s. 51 (O). This notice must be served at least ten days before day of hearing. *Semble*, these should be clear days; see *Beard* v. *Gray*, 3 Ch. R. 104.

(*d*) This notice must be served within four days after the receipt of notice No. 234.

of ———, 18—, and the alleged agreement between W. J. and E. F. relating to the said lands, dated the ——— day of ———, 18—.

Dated, &c. Yours, &c.,

To A. B., Esq., C. D.,

—— Solicitor. —— *Solicitor.*

(*Formal parts: as in No.* 300.)

236. Affidavit on application for order for subpœna to County Registrar to produce an original instrument, under 31 Vic. c. 20, sec. 21 (O.)

1. The replication has been filed herein, and this cause is now at issue, and the same has been set down for hearing at the next sittings of this Court to be holden at ———, on the —— day of ———.

2. It is material and necessary for me (*Or* the *applicant*) to give in evidence at the hearing of this cause, a certain will of A. B., dated the —— day of ———, 18— (*Or other instrument of which the production is sought*), that the said will is now filed of record in the Registry Office of the County of ———.

3. [*If notice of intention to prove same by means of a certified copy according to Form No.* 234 *has been served, that fact should be stated also, that the opposite party has served notice to effect of Form No.* 235, *if such is the case; or state reasons why a certified copy of the original instrument sought to be produced would not be sufficient evidence; e. g.:*]

4. The (*defendant*) disputes the validity of the said will, and alleges in his answer that the same is a forgery.

(*Formal parts: as in No.* 300.)

237. Another form.

1. The bill of complaint in this cause has been duly served on the defendants, and they have been noted in default for want of answer (*Or*, an order *pro confesso* has been obtained against them; *Or*, they on the —— day of ——— filed their answers thereto.)

2. An appointment has been obtained for the examination of the said defendants before ———, Esq., (Master of this Court at ———, *Or* a Special Examiner of this Court at ———, on the —— day of ——, pursuant to the provisions of the Consolidated General Orders in that behalf.

3. Upon such examination it is material and necessary for the plaintiff to be able to produce to the said defendants a certain will of A. B. (*proceed as in the preceding form.*)

238. Order for subpœna to issue to County Registrar to produce original instrument.

(*Formal parts as: in Nos.* 338–9.)

It is ordered, that a writ of subpœna, *ad testificandum et duces tecum* do issue out of and under the seal of this Court, directed to the Registrar of the County of ———, requiring him to attend before ——— (at the hearing of this cause at the next sittings of this Court to be holden at ———, *Or as the case may require*), and produce (the original will of A. B., dated the —— day of ———), now filed of record in his office (*Or other instrument required to be produced.*)

———

(*See Form, post No.* 250.)

239. Subpœna to County Registrar.

The officer issuing the subpœna must note in the margin thereof, "Issued pursuant to order made in Chambers, dated —— day of ———.

"A. H.,
Clerk of Record and Writs."

———

SECTION III.—*Documentary evidence which does not prove itself.*

240. Notice to admit documents referred to in Order 157, being Schedule I. mentioned in that order.

In Chancery.

Between—A. B. [and another] .....Plaintiffs,
and
C. D. [and others] .....Defendants.

Take notice, that the plaintiff (*Or* defendant) proposes to adduce in evidence the documents hereunder specified, and that the same may be inspected by the defendant (*Or* plaintiff), his solicitor or agent, at ———, &c., on ———, &c., between the hours of ———, &c.; and the defendant (*Or* plaintiff) is hereby required, within four days from the said day inclusive, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and that such documents as are stated to have been served, sent or delivered, were so served, sent or delivered respectively; saving all just exceptions to the admitting of such documents as evidence in this cause.

Dated this —— day of ———, 18—.

Yours &c.

To S. ———, &c.
&c., &c.,———.

Here describe the documents: the description may be as follows:—

ORIGINALS.

Serial Number.	Description of the Documents.	Dates.
1	Deed of Covenant between A. B. & C. D., first part, and E. F., 2nd part	1st January, 1848.
2	Indenture of Lease from A. B. to C. D.	1st February, 1848.
3	Indenture of Release between A. B. & C. D., 1st part, &c. . . .	2nd February, 1848.
4	Letter from defendant to plaintiff .	1st March, 1848.
5	Policy of Insurance on goods . .	3rd December, 1848.
6	Bill of Exchange for $1000 at 3 months, drawn by A. B. on and accepted by C. D., endorsed by E. F. and G. H.	1st May, 1840.

COPIES.

Serial Number.	Description of Documents.	Dates.	Original or Duplicate served, sent or delivered, when, how, and by whom.
7	Register of baptism of A. B., in the parish of X. . . .	1st January, 1808 .	
8	Letter from plaintiff to defendant. .	1st February, 1848.	Sent by General Post, 2nd February, 1848.

241. Admission thereupon.

I hereby make the admissions required to be made by the within notice (*If part only of the documents are admitted, qualify the admission; as thus:* so far as relates to the documents distinguished therein by the numbers 1, 2, 3, *&c.*; and I decline to make any other of the admissions required by the said notice). Dated this ——— day of ———, 18—.

E. F., solicitor [*Or*, agent] for the defendant [*Or as may be*].

242. Affidavit of service of the notice, and of refusal to admit.

(*Formal parts: see post, No.* 300.)

1. On the ——— day of ———, 18—, I served Mr. E. F., the solicitor [*Or*, agent] in this cause for the defendant A. B. [*Or as may be*], with the notice in writing dated the ——— of ———, 18—, to admit documents now produced and shown to me, and marked A., and addressed to (*State whom*), by delivering a true copy of the said notice to, and leaving the same with—*If personally, say:* the said E. F. at (*state where*)—*Or, if not personally, say:* the clerk [*Or* servant—*or as may be*] of the said E. F., at his office [*Or*, address for service] situate at (*State where*).

2. The said E. F. inspected the documents specified in the said notice, at the time and place mentioned in such notice [*Or*, the said E. F. has inspected the documents specified in the said notice since the aforesaid service thereof—*Or*, the said E. F. has not nor has the said defendant (*Or as may be*), or any other person on his behalf, inspected the documents specified in the said notice or any of them since the aforesaid service of the said notice].

3. The said defendant (*Or as may be*) and his solicitor (and agent) in this cause, have refused or neglected to admit the said documents, or any of them, as required by the said notice; and no admission of the said documents or any of them hath in fact been made by the said defendant [*Or as may be*], or by any person on his behalf.

Show means of knowledge.

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243. Notice to produce documents.

(*Formal parts: see ante, No.* 240.)

Take notice, that you are hereby required to produce to the Court, at the hearing of this cause [*Or as may be*], the following documents, that is to say: (*Describe the documents: For forms of description, see ante, No.* 240, *and, if necessary, add:* and all other deeds, documents, letters, books, papers and writings whatsoever containing any entry, memorandum, or minute, or other matter, in any wise relating to the matters in question in this cause.)

---

244. Affidavit of service thereof.

The same as ante, No. 242, *to the end of par.* 1; *but substitute* "produce" *for* "admit."

(*Formal parts: see post, No.* 300.)

245. Affidavit of execution of a deed, and proving handwriting of other documents.

1. I saw (*Describe the party; as thus:* the plaintiff A. B.—*Or*, the defendant C. D.—*Or*, E. F., the testator in the pleadings of this cause named—*or as may be*) sign, seal, and as his act and deed deliver the indenture [*Or*, deed poll], dated the ——— day of ———, 18—, and marked A., now produced and shown to me, and purporting to be (*Describe shortly, what; as thus:* a settlement on the intended marriage of the said plaintiff).

2. The signature "———," set and subscribed to the said indenture [*Or*, deed poll], as the party [*Or*, one of the parties] executing the same, is of the proper handwriting of the said plaintiff (*or as may be*).

3. The signature "———," set and subscribed to the attestation to [*Or* endorsed on] the said indenture [*Or*, deed poll], of the execution thereof by the said plaintiff (*or as may be*), is of my proper handwriting.

4. I am well acquainted with the handwriting of the plaintiff A. B. (*Or as may be*): having seen him write.

5. The (sixteen) several letters marked respectively A. B., C. D., *&c.*, now produced and shown to me, and dated respectively the ———, 18—, *&c.*, are of the proper handwriting of the said A. B., and are respectively signed by him (*Or as may be*).

6. The signature "———" to the agreement dated the ———, 18—, marked G, now produced and shown to me, is also of the proper handwriting of the said A. B.

———

(*Formal parts: see post, No.* 300.)

246. Affidavit, verifying copy of correspondence, and loss of a document.

1. The document marked C, now produced and shown to me, is a copy of a correspondence (*Describe it; as thus:* between me and Messrs. A. B. & Co., the plaintiff's solicitors in this cause), having reference to the subject matter of this suit: omitting signatures and other formal parts of such correspondence.

2. On or about the ——— of ———, 18—, I received a letter from the defendant A. B. I have lately made diligent search for the said letter, but I have been unable to find it, and I do not know what has become thereof.

3. The paper writing marked A, now produced and shown to me, is a true copy of the said letter: as I know from (*Show means of knowledge.*)

247. Affidavit by a shorthand writer, verifying transcript of his notes.

(*Formal parts: see post, No.* 300.)

1. In pursuance of instructions received by me from Messrs. A. & B., of ——, the solicitors in this cause for (the plaintiff), I attended, on the —— of ——, 18—, at the office of C. O., Esquire, one of the examiners of this Honourable Court, situate in —— [*Or as may be*], and I then and there took shorthand notes of (*State what; as thus:* the cross-examination of the defendant S. T., on his affidavit filed in this cause the —— day of ——, 18—).

2. The paper writing marked A, now produced and shown to me, is a transcript of my said notes; and is a true and correct statement of the proceedings before the said examiner on the said cross-examination [*Or as may be*].

SECTION IV.—*Proving Exhibits at the Hearing under an Order.—Procuring attendance of Witnesses in Court.*

248. Notice of motion for leave to prove exhibits at the hearing by affidavit.

(*Formal parts; see post, No.* 384.)

on behalf of the plaintiff [*Or as may be*], for leave, at the hearing of this cause [*Or as may be*], to prove by affidavit, or *viva voce*, the (*Describe what; as thus:* execution of the deeds specified in the first part of the annexed Schedule; and the handwriting of the letters specified in the second part thereof): saving all just exceptions. And take notice, &c., (*as in No.* 382). (*a*)

The Schedule.

First part.

(*Describe the documents as in No.* 240, *ante.*)

Second part.

(*Describe the documents as in No.* 240, *ante.*)

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249. *Præcipe* for the *subpœna.* (*b*)

In Chancery.

A. v. B. } Seal a *subpœna ad test.* (*If so:* and *duces tecum*), on behalf of the plaintiff [*Or as may be*], directed to (*Insert names of the witness or witnesses*).

If sealed under an order, add: Order dated the — day of ——, 18—.

(*Name, &c., of solicitor or party issuing the writ.*)

(*a*) For forms of affidavits proving exhibits, see ante, No. 245 and 246.

(*b*) A subpœna should not be dated prior to the time at which the party issuing the same is entitled to examine the party subpœnaed: *McMurray* v. *G.T.R.*, 3 Ch. R. 130.

In Chancery.

ONTARIO.

250. Subpœna *ad test* (a).

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith. GREETING:

To ———

We command you, ———, that, laying all other matters aside, and notwithstanding any excuse, you personally be and appear before ——— to testify the truth, according to your knowledge, in a certain suit now pending in our Court of Chancery, wherein ——, plaintiff, and ——, defendant, on the part of the ——— (*In the case of a subpœna duces tecum, add:* and that you then and there bring with you and produce—*Specify the documents to be produced*). And herein fail not at your peril.

Witness the Honourable ——, our Chancellor, this —— day of ——, 18—, in the —— year of our reign.

———, Clerk of Records and Writs.

———

251. Endorsement on the writ.

The same as *ante, No.* 171.

———

SECTION V.—*Oaths, Affirmations and Declarations of Witnesses examined vivâ voce.*

1. *Before the Court.*

252. Ordinary form of oath.

To the witness: The evidence you shall give to the Court touching the matters in question shall be the truth, the whole truth, and nothing but the truth—So help you God.

———

253. Oath of a Scotch Covenanter.

To be uttered by the witness: I, A. B., do solemnly and sincerely declare, that (*State in what form, and with what ceremony, an oath will be binding; as:* holding up my right hand, and declaring to the truth, as I shall answer to God at the great day of judgment), is a form of oath that is most binding on my conscience; and I do solemnly and sincerely declare, that the evidence I shall give to the Court touching the matters in question shall be the truth, the whole truth, and nothing but the truth (*Repeat the binding form; as:* as I shall answer to God at the great day of judgment).

(a) For affidavit of service, see post, No. 274.

254. Affirmation by a Quaker, or Moravian.

To be uttered by the witness: I, A. B., being one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers—*Or*, of the United Brethren called Moravians—[*as the case may be*], do solemnly, sincerely, and truly affirm and declare that the evidence I shall give to the Court touching the matters in question shall be the truth, the whole truth, and nothing but the truth.

---

255. Affirmation by an ex-Quaker, or ex-Moravian.

To be uttered by the witness: I, A.B., having been one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers—*Or*, of the United Brethren called Moravians—*as the case may be*], and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly declare and affirm that the evidence I shall give to the Court touching the matters in question shall be the truth, the whole truth, and nothing but the truth.

---

256. Affirmation by a Separatist.

To be uttered by the witness: I, A. B., do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect. And I do also, in the same solemn manner, affirm and declare that the evidence I shall give to the Court touching the matters in question shall be the truth, the whole truth, and nothing but the truth.

---

2. *Forms of Oaths before an examiner, or Commissioner to examine witnesses.*

257. Ordinary form of oath.

You swear that you shall true answer make to all such questions as shall be asked you [without favour or affection to either party (*a*)], and therein you shall speak the truth, the whole truth, and nothing but the truth.—So help you God.

---

258. Oath of a Scotch Covenanter, &c.

To be uttered by the witness: I, A. B., do solemnly and sincerely declare that (*State in what form, and with what ceremony, an oath will be binding; as:* holding up my

(*a*) These words are omitted where a party to the suit is sworn.

right hand, and declaring to the truth, as I shall answer to God at the great day of judgment), is a form of oath that is most binding on my conscience; and I do solemnly and sincerely declare that I shall true answer make to all such questions as shall be asked me [without favour or affection to either party (*a*)], and therein I shall speak the truth, the whole truth, and nothing but the truth (*Repeat the binding form; as:* as I shall answer to God at the great day of judgment).

---

259. Affirmation by a Quaker, or Moravian.

To be uttered by the witness: I, A. B., being one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers—*Or*, of the United Brethren called Moravians—*as the case may be*], do solemnly, sincerely, and truly affirm and declare that I shall true answer make to all such questions as shall be asked me [without favour or affection to either party (*a*)], and therein I shall speak the truth, the whole truth, and nothing but the truth.

---

260. Affirmation by an ex-Quaker, or ex-Moravian.

To be uttered by the witness: I, A. B., having been one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers—*Or*, of the United Brethren called Moravians—*as the case may be*], and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly declare and affirm that I shall true answer make to all such questions as shall be asked me, [without favour or affection to either party, (*a*)] and therein I shall speak the truth, the whole truth, and nothing but the truth.

---

261. Affirmation by a Separatist.

To be uttered by the witness: I, A. B., do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare, that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect. And I do also, in the same solemn manner, affirm and declare that I shall true answer make to all such questions as shall be asked me, [without favour or affection to either party, (*a*)] and therein I shall speak the truth, the whole truth, and nothing but the truth.

(*a*) These words are omitted where a party to the suit is sworn.

SECTION VI.—*Notice of reading affidavit, &c.—Enlarging time for taking Evidence.*

262. Notice of intention to read affidavits or depositions.

(*Formal parts: see ante, No.* 240.)

Take notice, that the plaintiff [*Or*, defendant A. B.] intends to read, at the hearing of this cause, the following affidavits and depositions; that is to say:—

The affidavit of C. D., filed ———, 18—.

The joint affidavit of E. F. and G. H., filed ———, 18—.

And the depositions of L. M. and N. O., filed ———, 18— [*Or as may be*].

---

263. Notice of motion to enlarge time for taking evidence.

(*Formal parts: see post, No.* 384.)

on the part of the plaintiff, that the time for setting down this cause for the examination of witnesses and hearing may be enlarged until the ——— day of ———, 18—; and that the costs of this application may be costs in the cause. And take notice, that in support of such motion will be read (*as in No.* 382).

And see ante, Nos. 209–213, 215, 216.

SECTION VII.—*Ex parte Examinations before an Examiner.*

264. Notice of intention to examine or cross-examine a witness before an examiner (*a*).

(*Formal parts: see ante, No.* 240.)

Take notice, that the plaintiff [*Or*, defendant A. B.] intends to [examine C. D., of (*Description of witness*), *ex parte* as a witness on behalf of the said plaintiff—*Or*, defendant A. B., *Or*, cross-examine A. B. upon his affidavit made], in this cause, before E. F., Esquire, one of the special examiners of this Court [*Or*, before G. H., the examiner specially appointed for the examination of witnesses in this cause], at (*State where; as thus:* the office of the said examiner in ———), on ———, the —— day of ——, 18—, at —— of the clock in the —— noon.

Dated, &c.

A. B.,
Plaintiff's Solicitor.

To

(*a*) This notice must be served forty-eight hours before the examination takes place.—See *Ord.* 267. *Semble*, notice should be given to opposite party, even though it be intented to take the examination *ex parte*. See *Ford* v. *Tennant*, 11 W. R. 275. *Sed quære.*

In Chancery.

(*Short style of cause.*)

I hereby appoint ——, the ——— day of ———, at the hour of ——, for the examination of the plaintiff (*Or*, defendant, after answer in this cause, *Or as the case may be*), at my chambers on King Street, in the Town of ——.

Dated, &c.

E. F., Special Examiner (*Or*, Examiner —*as the case may be*).

265. Appointment by an examiner, or local Master, for the examination of a plaintiff or defendant under Order 140.

Same as No. 265, *to* "for the examination of" [*When add:*] witnesses on the part of the —— whose depositions are to be read on a motion (for an injunction—*Or, as the case may be*) now pending before the Court (*Or*, for (*state nature of motion*) now pending before A.B., Esquire, Master of this Court at ———, *as the case may be*), at my Chambers (*&c., as in No.* 265.)

266. Appointment for the examination of witnesses on a motion pending before the Court or a Local Master.

In Chancery.

Between (*Set out the full or shortened title of the cause*).

Deposition of a witness taken *ex parte* in the above cause.

Sworn the —— day of ——, 18——. } A. B., of (*residence and addition*), called on behalf of the plaintiff [*Or as may be*], to be examined *ex parte*, and being duly sworn, saith as follows:

I have had, *&c.*

(Signed) A. B.

I certify that the evidence contained in this and the —— preceding sheets of paper was taken before me *ex parte*, and was read over to the deponent, who signed the same in my presence.

C. D., Examiner [*Or*, Special Examiner appointed by order in this cause, dated the —— of ——, 18—].

267. Formal parts of an *ex parte* examination, before an examiner.

SECTION VIII.—*Vivâ voce Evidence.*

(*Formal parts*: *see post, No.* 384.)

on the part of the plaintiff [*Or*, defendant A. B.], that B.A., of (*address*), barrister at law [*Or*, one of the solicitors of this Court—*Or as may be*], may be appointed examiner for the purpose of taking (*State what; as thus:*

268. Notice of motion for the appointment of a special examiner.

the examination of witnesses in this cause—*Or*, the cross-examination of C. D. on his affidavit filed in this cause on the —— day of ———, 18—; *Or*, the examination of E. F. in support of the motion for, &c., now pending, *Or* about to be made in this cause).

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269. Notice of motion for the appointment of a special examiner of witnesses abroad.

(*Formal parts: see post, No.* 384.)

on the part of the plaintiff [*Or*, defendant A. B.]:

1. That in case the defendant J. B. shall be resident at or near M., in the colony of V., or in case the examination of the said defendant can be conveniently taken at M. aforesaid, or in the said colony, J. G. F., of M. aforesaid, Esquire, barrister at law, may be appointed an examiner for the examination of the defendant J. B. in this cause, on behalf of the plaintiff.

2. That in case the said J. G. F. shall die or cease to reside within the said colony of V., before the taking or completion of the evidence of the defendant J. B., or shall decline or be unable to take the same, G. M. S., of M. aforesaid, gentleman, may be appointed an examiner for the examination of the said defendant.

3. That in case the defendant J. B. shall be resident at or near A., in the colony of S., or in case the examination of the said defendant can be conveniently taken at A. aforesaid, or within the said colony of S., J. M. S., of A. aforesaid, gentleman, may be appointed an examiner for the examination of the said defendant.

4. That in case the said J. M. S. shall die, or cease to reside within the said colony of S., before the taking or completion of the evidence of the said defendant, or shall decline or be unable to take the same, W. J. W., of A. aforesaid, gentleman, may be appointed examiner for the examination of the said defendant.

5. That in case the evidence of the said defendant is taken at M. aforesaid, notice thereof is to be given to J. T. and G. H., both of M. aforesaid, or to one of them, as the agent there of the defendants S. M. the elder, and S. M. the younger.

6. And that in case the evidence of the said defendant is taken at A. aforesaid, notice thereof is to be given to W. S. and E. G., both of A. aforesaid, or to one of them, as the agent there of the said defendants S. M. the elder, and S. M. the younger.

(*Formal parts; see post, No.* 300.)

270. The like.

on the part of the plaintiff, that G. W. A. and T. K. B., both of S., in the colony of N. S. W., solicitors, may be appointed examiners for the purpose of taking the examination of witnesses in this cause (as to the claims of Sir C. D. and T. F. J.); and that the said G. W. A. shall alone act as such examiner: unless he shall refuse to act, or is by illness or other sufficient cause incapacitated from acting: in which case, the said T. K. B. shall alone act as such examiner.

(*Formal parts; see post, No.* 300.)

271. Affidavit in support of application to appoint a special examiner.

1. *Show the necessity for the appointment of a special examiner.*

2. *Prove fitness of person proposed; as thus:* A. B., of, *&c.*, the person proposed to be appointed special examiner as aforesaid, has no interest in the matters in question in this cause; and in my judgment he is a fit and proper person to be appointed such special examiner.

3. *Show means of knowledge.*

(*Formal parts: see ante, No.* 240.)

272. Notice of intention to cross-examine witnesses before an examiner, and for their production (*a*).

Take notice, that the plaintiff [*Or*, defendant A. B.], intends to cross-examine the several deponents and witnesses named and described in the Schedule hereto, upon their respective affidavits therein specified, before C. D., Esquire, one of the examiners of this Court [*Or*, before E. F., the examiner specially appointed for the examination of witnesses in this cause], at (*State where; as thus:* the office of the said examiner in ——, on the —— day of ——, 18—, at —— of the clock in the —— noon).

Add, where applicable: And take also notice, that you are hereby required to produce the said witnesses [*Or*, to produce E. W., *&c.*, in the said Schedule named], for such cross-examination, at the time and place aforesaid, pursuant to your undertaking in that behalf.

THE SCHEDULE ABOVE REFERRED TO.

Name of witness.	Description.	When affidavit filed.
Edward Williams. James Noakes.....	Of Haleman Gentleman, Township of Erin, Farmer.	8th December, 1866.

(*a*) For forms of appointment by Examiner, see ante, No. 265-6.

273. Notice of motion, for order for attendance or committal of a witness refusing to obey *subpœna*.

(*Formal parts: see post, No.* 384.) on behalf of the plaintiff [*Or*, defendant A. B.], that E. F.: who has been served with a *subpœna* to attend and be examined as a witness for the plaintiff [*Or*, said defendant] before C. D., Esquire, an examiner of this Court [*Or*, before C. D., the special examiner appointed in this cause], but has refused to attend: may be ordered to attend at his own expense, and be sworn and examined as such witness, at such time and place as the examiner shall appoint; or, in default thereof, stand committed to the gaol of ———. And that the said E. F. may be ordered to pay the costs of this application. And take notice that in support (*&c., continue as in form No.* 382).

An affidavit in support, and the examiner's certificate of default accompany.

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274. Affidavit in support.

(*Formal parts: see post, No.* 300.)

1. On the ——— of ———, 18—, I served E. F., the person named in the *subpœna* now produced and shown to me and marked A., issued out of, and under the seal of this Honourable Court, by delivering to, and leaving with, the said E. F., at (*State where*), in the (county) of———, a true copy of the said *subpœna*, and of the endorsement thereon; and I at the same time showed to the said E. F. the said *subpœna* so under seal as aforesaid.

2. By the said *subpœna* the said E. F. was commanded personally to be and appear before (*Recite subpœna, to* knowledge), in this cause, on the part of (*State whom, as in subpœna—And if a subpœna duces tecum, continue thus*): and the said E. F. was thereby also commanded to bring with him and produce certain documents therein specified.

3. At the time of such service I did pay to the said E. F. the sum of $—.

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275. Notice of motion, for like attendance or committal.

(*Formal parts: see post, No.* 384.) on the part of the plaintiff [*Or*, defendant A. B.], that E. F., of (*residence and addition*): who has been served with a *subpœna* to attend and be examined as a witness for the plaintiff [*Or*, said defendant], before C. D., Esquire, an examiner of this Court [*Or*, before C. D., the examiner specially appointed for the examination of witnesses in this cause], but has neglected or refused to attend and be examined: may be ordered to attend at his own expense,

and be sworn and examined as such witness, at such time and place as the said examiner shall appoint; and that the said E. F. may be ordered to pay the costs of this application. And take notice that in support (*&c., as in form* 382).

(*Formal parts: see post, No.* 384.)

276. Notice of motion, that a witness refusing to produce documents on a *subpœna* may be ordered to produce same.

on the part of the plaintiff [*Or*, defendant A. B.], that E. F., of (*residence and addition*), in obedience to the *subpœna* served upon him in this cause, may be ordered to attend C. D., Esquire, one of the examiners of this Court [*Or*, C. D., the examiner specially appointed for the examination of witnesses in this cause], at his own expense, at such time and place as the said examiner shall appoint, and then and there produce the several documents in the said *subpœna* specified [*Or, as may be*]; and that the said E. F. may be ordered to pay the costs occasioned by his refusal to produce the said documents, and of this application. And take notice that in support (*&c., as in form* 382).

In Chancery.

Between (*Set out the title of the cause.*)

277. Formal parts of deposition of a deponent cross-examined on his affidavit, before an examiner.

Deposition of a witness cross-examined in the above cause, before me, B. A., examiner [*Or*, special examiner appointed by order in this cause, dated the ——— of ———, 18—].

Sworn the —— day of ——, 18—. } E. F., cross-examined on behalf of the plaintiff [*Or*, defendant A. B.], on his affidavit filed the ——— day of ———, 18—, in this cause, and being duly sworn, saith as follows:

I was lately, *&c.*

Re-examined on behalf of the defendant A. B. [*Or*, plaintiff]:—

I think it was, *&c.*

Cross-examined on behalf of the plaintiff [*Or*, defendant A. B.], upon new matter in the re-examination:—

Having now seen, *&c.*

Re-examined on behalf of the defendant A. B. [*Or*, plaintiff]:—

My impression is, *&c.*

E. F.

I hereby certify that the evidence contained in this and the ——— preceding sheets of paper was taken by me, and was afterwards read over to the witness [*Or*, respective witnesses], and signed by him [*Or*, them], in the presence of the parties attending.

B. A.

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278. The like, where the examination is at different places.

In Chancery.

Between (*Set out the title of the cause.*)

Depositions of witnesses examined in the above cause, at the times and places hereinafter mentioned, before me, B. A., examiner [*Or*, special examiner appointed by order in this cause, dated the —— of ——, 18—].

I. At the Red Lion Inn, Wells, in the County of Somerset.

Sworn the —— day of ——, 18—. } E. F. (*&c.: as in last Form.*)

II. At the Crown Hotel, Bath, in the County of Somerset.

Sworn the —— day of ——, 18—. } G. H. (*&c.: as in last Form.*)

I hereby certify (*&c.: as in last Form.*)

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279. Notice of motion for a commission to examine witnesses abroad, and for letters rogatory.

(*Formal parts: see post, No.* 384.) on the part of the plaintiff [*Or*, defendant A. B.], that he may be at liberty to sue out a commission to examine witnesses [*Or*, C. D. and E. F., as witnesses] in this cause, at (*State where*), and that letters rogatory may issue out of this Court directed to (*Stating Court*), requesting such Court to issue the necessary process to compel the attendance of A. B. and C. D. before such Court, or such person or persons as the said Court may appoint, to be examined as witnesses under oath on the part of the plaintiff (*Or*, defendant A. B.), and upon and in support of such motion will be read, *&c.* (*as in No.* 382).

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280. Affidavit in support, by applicant or his solicitor.

(*Formal parts: as in No.* 300.)

1. That replication was filed in this cause on ———, &c., and this cause is now at issue.

2. A. B., C. D., and E. F. are material and necessary witnesses for me (*Or* the) (*applicant*), and I (*Or* he) cannot safely proceed to a hearing of this cause without the evidence of the said A. B., C. D., and E. F.

3. The said A. B., C. D. and E. F. reside *(State places of residences)* out of the jurisdiction of this Honourable Court.

4. The said A. B. and C. D. are adverse witnesses, and will not voluntarily attend to give evidence unless compelled so to do by legal process.

5. The said A. B. and C. D. are both resident within the jurisdiction of the —— Court (*name of Court to which the letters rogatory are to be addressed*).

(*Formal parts: see post, Nos.* 338–9.)

281. Order for commission.

1. It is ordered that a commission do issue for the examination of witnesses on behalf of the ——— at ———, returnable forthwith.

2. And it is ordered that the ——— do, within four days after notice thereof, attend at the office of the Clerk of Records and Writs, to strike Commissioners' names, and in default of the said ——— so attending, the ——— is to be at liberty to take out the said commission addressed to his own Commissioners only.

3. And it is ordered that the ——— do, within — days after service upon him of the interrogatories in chief, deliver to the ——— his cross interrogatories, and in default of his doing so, the ——— is to be at liberty to send the said commission without cross interrogatories.

4. And it is ordered, in case the ——— shall join in such commission, that —— days' notice of the execution of such commission shall be deemed good notice to the ——.

(*Add to preceding Form.*)

282. Order for letters rogatory (*a*).

5. And it is further ordered that letters rogatory do issue out of and under the seal of this Court, addressed to (*naming foreign Court*), requesting such Court to issue process for the purpose of compelling the attendance of the witnesses intended to be examined in this cause at ——— aforesaid, before such person as the said Court shall appoint.

(*Style of cause*).

283. Master's certificate for commission under *Ord.* 221.

I certify that it is necessary that a commission should issue in this cause to (*naming Commissioners*), of ——— (*stating residence*), to take the evidence of witnesses on the part of the plaintiff and defendant (*Or as may be*), to be used on the reference now pending before me herein.

(*a*) For Form of letters rogatory, see post, No. 287.

284. Commission to examine witnesses abroad.

In Chancery.

ONTARIO.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith.

To

Know ye, that We, having full faith in your prudence and competency, have appointed you Commissioners, and by these presents do authorize you to examine ——— as witness in a cause pending in our said Court of Chancery, wherein ——— plaintiff and ——— defendant ——— on oath, to be by you administered ———, and to take, and certify in writing, the depositions of the said witness, and return the same, together with this Writ, without delay, to our said Court, there to be filed of record, according to the directions hereto annexed.

Witness, the Honourable ———, our Chancellor, this ——— day of ———, in the ——— year of our reign.

———, *Clerk of Records & Writs.*

284a. Return.

The execution of this commission appears in certain Schedules hereunto annexed.

A. B.,
C. D.,
Commissioners.

INSTRUCTIONS TO COMMISSIONERS.

285. Instructions to commissioners.

I.—The commission shall not be opened until the time of attendance, as next hereinafter provided for.

II.—The Commissioner to whom the commission is delivered shall cause a written notice to be given to the other Commissioners named, of a day, hour and place for its execution, the service of which notice must be not less than (eight) days prior to such time.

III.—No oath shall be taken by the Commissioners.

IV.—On the day, and at the hour and place appointed, those who attend shall proceed to execute the commission; and in case any of the Commissioners do not attend, a minute must be made at the head of the depositions, to the following effect:—"We certify, that on this ——— day "of ———, at the house of T. W., situate at ———, being "the day and place appointed for executing the commis- "sion to us with others directed, we attended to execute

"the same, and that [*Here insert the names of non-attend-*
"*ing Commissioners*] named in such commission, neglected
"to attend, due notice of the said time and place having
"been given them, as appears by the affidavit of E. F.,
"hereto annexed." If such Commissioners are ill, the fact must be certified under the hands of the attending Commissioners, and annexed to the commission when returned.

V.—Two Commissioners may act, if the rest do not attend—one of whom must, in all cases, be of the legal profession. Where parties join in commission, a notice to the following effect must be subscribed by at least two of the Commissioners, and served on such parties *eight days* (*or as may be provided in the order directing the issue of the commission*) previous to the day appointed for executing the commission :—

"We, whose names are hereunto subscribed, having re-
"ceived a commission, issuing out of and under the seal
"of the Court of Chancery of the Province of Ontario, to
"us and others directed, for the examination of witnesses
"in a certain cause there depending, between A. B., plain-
"tiff, and C. D., defendant—this is to give you notice, that
"we will execute the said commission (on the part of the
"said plaintiff, *Or* on the part of the said defendant, *as the*
"*case may be ; or in case of a joint commission*, 'as well
"on the part of the said plaintiff as on the part of the said
"defendant'), at the house of T. W., situate at ——, on
"the —— day of ——, at the hour of —— o'clock in the
"forenoon of the same day, when and where you and your
"Commissioners may be present, if you please.

"Dated this —— day of ——, 18—.

"A. B.,
"C. D.,
Commissioners."

VI.—The oath to be administered to witnesses is as follows—the witness laying his hand upon and kissing the Gospels :

1. "You do solemnly swear, that the answers given by you to the interrogatories" (if any be filed ; or if the examination be oral, the words will be "to the several questions which shall be put to you") "shall be the truth, the whole truth, and nothing but the truth—So help you God."

Or if the witness desire it—

2. "You do swear, in the presence of the ever living God, that the answers, &c."—While taking this oath, the witness may or may not hold up his hand, in his discretion.

3. If the witness shall declare that he has conscientious scruples against taking any oath, or swearing in any form, it will be as follows: "You solemnly, sincerely and truly declare and affirm that the answers, &c."

4. If the witness have any peculiar mode of swearing, connected with or in addition to the laying his hand upon the Gospels and kissing the same, which in his opinion is more solemn and obligatory, such mode of swearing him may be adopted.

5. If a witness believe in any other than the Christian religion, he shall be sworn according to the peculiar ceremonies of his religion, if there be any such ceremonies, instead of the modes above prescribed. In such case, the acting Commissioners must certify the manner in which the oath has been administered, the religion of the witness, and that the mode pursued is the usual and most solemn form in which oaths are most usually administered to witnesses professing such religion.

VII.—The Commissioners shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the Commissioners as are present at the taking of the same.

VIII.—The heading or title of the depositions shall be in the following form:—

"Depositions of witnesses produced, sworn (*Or* affirmed) "and examined, the —— day of —— 18—, at the "house of T. W., situate at ——, under and by virtue "of a commission issued out of the Court of Chancery "of the Province of Ontario, in a certain cause there-"in depending, and at issue, between A. B., plaintiff, "and C. D., defendant.

"E. F., of, &c. (residence and profession to be stated) "aged —— years, being duly and publicly sworn (or af-"firmed) and examined, on the part of the (plaintiff *or* "defendant, *as the case may be*), doth depose and say as "follows: (*Where interrogatories are filed, proceed thus*):—

"First—To the first interrogatory, I say," &c.

"Second—To the second interrogatory, I say," &c. (and so on through all the interrogatories to which the witness may be called upon to depose; and when cross-interrogatories are filed, proceed thus):—"To the first cross-interrogatory, I say," &c.

When the examination is oral, after setting out the heading of the depositions, and the name, residence, profession and age of the witness, the swearing, and on whose part he is examined as above—proceed to set forth the examination, and at the beginning of every question put

the letter Q, and of every answer the letter A. When the deposition is finished, it must be subscribed by the witness, and certified by the acting commissioners, as follows:—

"Examination taken, reduced to writing, and "sworn to (or affirmed to) this —— day of "——, 18—, before

"A. B., "C. D., } Commissioners."

In the case of an illiterate witness, who cannot write, he must affix his mark, and the certificate of the acting commissioners will be as follows:—

"Examination, &c. (as before), the contents "having been first carefully read over to "the witness, who appeared perfectly to "understand the same, and affixed his mark "thereto, before

"A. B., "C. D., } Commissioners."

When no interrogatatories are filed, and the examination is oral, the questions and answers put and given upon cross-examination shall be distinguished from those put and given in chief, thus—"Upon the said witness, E. F.'s cross-examination, the following questions and answers were put and given, namely:"—and so upon every subsequent re-examination and cross-examination of a witness.

IX.—If any exhibits are produced and proved before the commissioners, they shall be annexed to the depositions to which they relate, and shall in like manner be subscribed by the witness proving the same, and be certified by the acting commissioners, in the following manner:—

"At the execution of a commission for the ex- "amination of witnesses, between A. B., com- "plainant, and C. D., defendant, this paper- "writing was produced and shown to E. F., "a witness, and by him deposed to, before

"A. B., "C. D., } Commissioners."

X.—The acting commissioners shall subscribe their names to each sheet of the depositions taken by them.

XI.—If an interpreter be employed, one of the acting commissioners shall administer to him the following oath:

"You do solemnly swear, that you will truly and faith- "fully interpret the oath and interrogatories to be ad- "ministered to E. F., a witness now to be examined, out "of the English language into the Spanish language (*as*

"*the case may be*), and that you will truly and faithfully "interpret the answers of the said E. F. thereto, out of "the Spanish language into the English language."

XII.—The acting commissioners shall sign the following Return, as above set forth:—

"The execution of this commission appears in certain "Schedules hereunto annexed.

} Commissioners."

And transmit the commission, &c., to the Clerk of Records and Writs of the Court, in the manner next hereinafter provided for, within three days after the execution of the commission.

XIII.—The acting commissioners shall fold the depositions, commission and exhibits, with the interrogatories, if any be filed, in a packet, and bind it with tape. They shall set their seals at the several meetings or crossings of the tape, endorse their names on the outside, and direct it thus—"Commission to be returned to ————, Esquire, Clerk of Records and Writs of the Court of Chancery, Toronto, Ontario." They shall then, within the time limited by the last instruction, deposit the packet so directed in the nearest post office, and endorse thereupon—"Deposited in the post office at ———, this —— day of ——, 18—, by me ———, commissioner." The postage must be paid by the party having the carriage of the commission, or in the case of a joint commission by all parties equally.

XIV.—The acting commissioners may employ a clerk to copy the depositions if they think proper. If a copy of the original draft be made, the witnesses must sign such copy. One of the acting commissioners, however (such commissioner must be of the legal profession), shall in all cases take down the testimony, and the original draft, or the copy thereof which shall be transmitted to the Clerk of Records and Writs of the Court, shall be written in a plain and legible manner.

XV.—By the terms of the commission, it must be executed by the commissioners without delay; and if any of the instructions hereinbefore given are neglected in the execution of the same, the depositions taken under it will be liable to be suppressed by the Court for irregularity.

XVI.—The reasonable expenses of the acting commissioners, and their clerk (if one be employed), attending the execution of the commission, shall be borne by the party having the carriage of it; and in the case of a joint commission, by all the parties equally—the expenses of witnesses,

by the parties producing them—and the expense attending their cross-examination, by the party detaining them.

By order of the Court.

———Clerk of Record and Writs.

In Chancery.

286. Interrogatories for the examination of witnesses abroad.

Interrogatories to be exhibited to witnesses to be produced, sworn, and examined in a certain cause now depending and at issue in the Court of Chancery for Ontario, wherein A. B. is plaintiff, and C. D. and E. F. are defendants, on the part and behalf of the above named plaintiff [*Or*, defendant—*or as may be.*]

FIRST INTERROGATORY.—Do you know the parties, plaintiff and defendants, in the title of these interrogatories named, or any, or either and which of them, and how long have you known them respectively, or such of them as you do know?

(*Then follow distinct interrogatories, according to the subject matter, or the witnesses to be examined; and each interrogatory concludes thus:*—Declare the truth of the several matters in this interrogatory inquired after, according to the best of your knowledge, remembrance and belief.)

LAST INTERROGATORY.—Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or to the matters in question in this cause? If yea, set forth the same, and all the circumstances and particulars thereof, fully and at large, according to the best of your knowledge, remembrance and belief, as if you had been thereto particularly interrogated, together with your reasons at large.

ONTARIO.

In Chancery.

THE COURT OF CHANCERY FOR ONTARIO.

287. Letters Rogator to a foreign Court.

To the (United States Circuit Court, having jurisdiction at Muskegon, in the State of Michigan, one of the United States of America) (*Or as may be*), or to any Court, Judge or tribunal having competent jurisdiction in the said State of (Michigan), GREETING:

Whereas a certain suit is pending in the said Court of Chancery, wherein the E. L. Company and another are

plaintiffs, and V. A. and others are defendants, and it has been suggested to the said Court that there is a witness residing within your jurisdiction without whose testimony justice cannot be completely done between the said parties. YOU ARE THEREFORE REQUESTED that in furtherance of justice you will, by the proper and usual process of your Court, cause such witness or witnesses as shall be named or pointed out to you by the said parties or either of them to appear before you, or some competent person by you for that purpose to be appointed and authorized, at a precise time and place by you to be fixed, and there to answer on oath or affirmation to the several questions that may be put to such witness by the parties to the said cause or either of them, and that you will cause his depositions to be committed to writing and returned to this Court, under cover duly closed and sealed up, together with these presents. AND we shall be ready and willing to do the same by you in a similar case when required (*a*).

Witness the Honourable John Godfrey Spragge, the Chancellor of Ontario, this —— day of ————, A.D. 18—.

A. H.,
Clerk of Records and Writs.

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288. Notice of motion for order for subpœna to Quebec, under C. S. C. c. 70, sec. 4.

(*Formal parts: as in No.* 384.)

for an order that a subpœna may issue in this cause, directed to A. B., C. D. and E. F., of the ——— of ———, in the ——— of ———, in the Province of Quebec, requiring the said A. B., C. D. and E. F. to attend at the next sittings of this Court to be holden at ——, on ——, the day——of ——, for the examination of witnesses and hearing of causes, as witnesses on the part of the plaintiff (*Or*, defendant A. W.) [*Or* to attend before Y. Z., Esq., the Master of this Court (*Or* special examiner), at the ——— of ———, at such time and place as the said Y. Z., Esq., shall appoint for taking the said examination of the said defendants A. B. and C. D. in this cause] ; and take notice, &c. (*Conclude as in form No.* 382.)

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289. Affidavit in support of application by applicant or his solicitor.

(*Formal parts: see post, No.* 300.)

1. The replication was filed in this cause on the ——— day of ———, and this cause is now at issue, and notice of hearing has been given for the next sittings of this Court to be holden at ———, on the ——— day of ——— (*Where*

(*a*) See 31 Vic. c. 76 (c).

the evidence is required on some interlocutory proceeding, the affidavit must be framed to suit that state of facts.)

2. A. B., C. D. and E. F. are material and necessary witnesses for me (*Or* for the *applicant*) in this cause, and I (*Or* he) cannot safely proceed to a hearing of this cause without their evidence.

3. The said A. B., C. D., and E. F. respectively reside at ——— (*State residence*), in the Province of Quebec.

4. There is no action or suit pending in the said Province of Quebec in respect of the matters in question in this suit (*a*).

Sworn, &c.

(*Formal parts as in No.* 338–9.)

290. Order for subpœna to issue to Quebec.

It is ordered that a subpœna do issue out of and under the seal of this Court, directed to A. B., C. D., and E. F., of ———, in the Province of Quebec, requiring them to attend at the hearing of this cause, at the next sittings of this Court, to be holden on the —— day of ——, at—— (*Or as the case may require.*)

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291. Subpœna to Province of Quebec.

The subpœna is in the same form as No. 250, but must bear at the foot or in the margin a memorandum to the following effect:

"Issued under special order made in Chambers this —— day of ———.

"A. H.,
Clerk of Records and Writs."

SECTION IV.—*Examination of Witnesses de bene esse.*

(*Formal parts: see post, No.* 384.)

292. Notice of motion for leave to examine a witness *de bene esse* (*b*).

on behalf of the plaintiff [*Or*, defendant A. B.], for leave to examine C. D., of (*residence and addition*), as a witness on his behalf in this cause, *de bene esse:* saving all just exceptions: the said C. D. being the only witness to prove a material fact. *If a special examiner is necessary, add:* and that E. F., of (*residence and addition*), may be appointed an examiner to take such examination. And take notice (*as in No.* 382).

An affidavit in support accompanies.

(*a*) See C. S. C. cap. 79, s. 6.

(*b*) When the witness is over seventy, or dangerously ill, or about to go abroad, the application is *ex parte*.—Dan. Pr. 5th Ed. 817.

When, however, the application is made by a defendant before answer, notice must be served (*Ib.*).

293. Affidavit in support of motion of cause.

In Chancery.

(*Shortened style of the cause.*)

I, G. H., of (*Place of business*), gentleman, the solicitor in this cause for the plaintiff [*Or*, defendant A. B.], make oath and say as follows:

1. C. D., of (*residence and addition*), is a material witness in this cause for the plaintiff [*Or*, defendant A. B.].

2. The said C. D. is upwards of seventy years of age—*Or*, in a dangerous state of health—*Or*, about to go out of the jurisdiction of this Honourable Court—*Or*, the said C. D. is the only witness to prove (*state facts as to which it is proposed to examine witness; for example*) the due execution of the will of A. W., the testator in the pleadings mentioned.

3. *If a special examiner is necessary, show his fitness to be appointed: see ante, No.* 271.

4. *Show means of knowledge.*

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294. Notice of intention to examine the witness.

In Chancery.

Brown v. *Smith.*

Take notice, that the plaintiff [*Or*, defendant A. B.] intends to examine C. D., of (*Insert description of the witness*), *de bene esse*, under the order in this cause dated the ——— day of ———, 18—, before E. F., Esquire (*Continue as in No.* 264, *ante, to the end.*)

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295. Formal parts of deposition of the witness.

In Chancery.

Between—(*Set out the shortened style of the cause.*)

Deposition of a witness examined *de bene esse*, pursuant to an order made in the above cause, dated the ——— day of ———, 18—, before me, E. F., examiner [*Or*, special examiner appointed by the said order—*Or*, by order in this cause dated the ———, 18—], at ———, this ——— day, &c.

C. D., of (*residence and addition*), being called on behalf of the plaintiff [*Or*, defendant A. B.], and being duly sworn, saith as follows:—

I know the plaintiff, &c.

(*The witness should sign the deposition, and the examiner also, at the foot.*)

(*Formal parts: see post, No.* 383.)

296. Notice of motion for leave to use deposition taken, *de bene esse* (*a*).

on the part of the plaintiff [*Or*, defendant A. B.], that he may be at liberty to read at the hearing of this cause the deposition of C. D., taken *de bene esse* on behalf of the said plaintiff [*Or*, defendant], filed on the ——— day of ———, 18—, and taken under the order in this cause dated the ——— day of ———, 18—. And take notice (*&c., as in No.* 382).

(*Formal parts: see post, No.* 300 *et seq.*)

297. Affidavit in support.

Show special grounds for the application; as thus: C. D., in the order in this cause, dated the ——— of ———, 18—, named, died on the ——— day of ——— last. He is the same person as C. D., named in the paper writing marked A, now produced and shown to me (*Exhibit certificate of death or burial*), and purporting to be a copy of an entry in the Register book of deaths [*Or*, burials] kept for (*Describe the Register book*).

Or show that due diligence was used to produce the witness for examination in the ordinary course; and why it could not be done.

Show means of knowledge.

Section X.—*Demurrers by Witnesses.*

298. Demurrer of objection by a witness.

Where a witness examined in a cause objects to answer any question put to him, the examiner should in the depositions set forth the question or questions put, and the demurrer or objection of the witness thereto.

(*Formal parts: see post, No.* 384.)

299. Notice of motion that an objecting witness may again attend the examiner.

on the part of the plaintiff [*Or*, defendant], that A. B., a witness sworn and examined in this cause on behalf of the plaintiff [*Or as may be*] on the ——— day of ———, 18—, before C. D., Esquire, one of the examiners of this Honourable Court [*Or*, the examiner specially appointed to take the examination of witnesses in this cause], may be ordered to attend at his own expense before the said examiner, at such time and place as the said examiner shall appoint, to be further examined as a witness for the

(*a*) When the evidence is to be used at the hearing of the cause, the application should be made to the Judge at the hearing.

plaintiff [*Or as may be*] in this cause; and that the said A. B. may be ordered then and there to answer the question which he demurred to, or objected to answer, upon his aforesaid examination on the ——— of ———, 18—, that is to say: (*State, or set out the question*); and that the said A. B. may be ordered to pay the costs of and occasioned by his said demurrer or objection, and of this application, and take notice that in support (*&c., as in No.* 382.)

SECTION XI.—*Affidavits, Oaths and Jurats.—Affirmations, Declarations and Affirmats.*

1. *Affidavits, and Oaths and Jurats thereto.*

300. Formal parts of an affidavit; one deponent.

In Chancery.

(*Title of cause or matter*) (*a*.)

I, A. B., of (*Place of residence, and description or addition*) make oath and say as follows: (*b*)

1.

2.

Sworn before me at ——, in the County of ——, on the —— day of ——, A. D. 18—.

A Commissioner, &c. (*c*)

---

301. Formal parts of an affidavit; two or more deponents.

In Chancery.

(*Title of cause or matter.*)

We, A. B., of (*Place of residence, and description or addition*), and C. D., of, *&c.*, severally make oath and say as follows:

1.

2.

Or, severally make oath and say as follows:

And first I the said A. B., for myself, say:

1.

2.

(*a*) Affidavits should be styled in the full style of cause, or in the shortened style as between A. B. and others, plaintiffs; and C. D. defendant—the short style C. *v.* D. is inadmissible, and an affidavit so styled will not be received.

(*b*) 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 an initial letter merely.—*Ord.* 258.—Every affidavit is to be divided into paragraphs, and every paragraph is to be numbered consecutively, and as nearly as may be is to be confined to a distinct portion of the subject.—*Ord.* 68.—No costs are to be allowed for affidavits not drawn in conformity with these rules.—*Ords.* 68 and 258.—Each statement must show the deponent's means of knowledge for making the same. *Ord.* 259.

(*c*) See *Babcock* v. *Bedford*, 8 C. P. 527; *Pawson* v. *Hall*, 1 U. C. Pr. R. 294. *Brett* v. *Smith*, *ib.* 309.

And I, the said C. D., for myself, say:

3.

4.

And we the said A. B. and C. D. further severally say:

5.

6.

Sworn (*&c.: see post, No.* 303.)

---

302. Ordinary forms of oath and jurat; one deponent.

To the deponent: Is that your name and handwriting? You swear that the contents of this affidavit by you subscribed are true—So help you God (*a*).

A. B. { Sworn (*b*) before me at the City of Hamilton, in the County of Wentworth (*as the case may be*), this —— day of ———, 18—.

C. D.,
A Commissioner, &c.

---

303. The like; two or more deponents sworn together (*c*).

To each deponent: Is that your handwriting?

To both or all: You do severally swear that the contents of this your affidavit by you subscribed are true—So help you God.

A. B. { Sworn by the deponents A. B. and C. D. [*Or as may be*], at (*Continue as in last form to the end.*)

(*a*) See Braithwaite's Pr. 379; Braithwaite's Oaths in Chan. 26, 32. The like form is used in the case of a peer: *ib.* 33. A Christian swears on the Holy Evangelists; a Jew upon the Pentateuch. A complete Testament need not be used in either case. A Christian, in making oath, stands erect, holds the book in his or her right hand; the hand being uncovered, and in the case of a male person, the head being uncovered also. A Jew, in making oath, holds the book in his right hand, the hand being uncovered, but the head covered. If, however, the Jew wishes to make oath with his head uncovered, the officer cannot object to it: Braithwaite's Oaths in Chan. 25. Oaths are to be administered in a reverent manner.—*Ord. April*, 1676.

(*b*) The jurat should be written at the end of the affidavit. It is usually placed at the right hand corner; but may be written on either side of the page, or, if necessary, in the margin; but not on a page upon which no part of the statements of the affidavit appears. It must also express the time when, and the place where, the affidavit is sworn, including the name of the city, borough, or county. An affidavit, or any other document sworn to, may be re-sworn at any time before it is filed. If, on re-swearing, a second jurat is given, commencing with the word "Re-sworn," then the first jurat should not be struck out, or in any manner interfered with: but if the second jurat commences with the word "Sworn": in other words, if the jurat on the re-swearing is such as is used when a document is first sworn to: then the first jurat must be struck out, and such striking out must be authenticated by the initials of the Commissioner before whom the affidavit is last sworn: Braithwaite's Pr. 342-5.

(*c*) Where all the deponents are not sworn at the same time, a separate jurat must be written for each occasion on which the oath is administered; Braithwaite's Pr. 379, n. (*a*); Braithwaite's Oaths in Chan. 32, n. (*b*).

304. Oath of a blind deponent, and jurat, where the officer reads to him the affidavit (*a*)

To the deponent: You do swear that the contents of this your affidavit are true—So help you God.

A. B.
[*Or*,
The mark of
+
A. B.]

Sworn by the deponent A. B., at (*State where and when, as in No.* 302, *ante*), before me: I having first truly, distinctly and audibly read over to him the contents of this affidavit (*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to): he being blind; and he appeared to understand the same.

(*Signature and style of office: see ante, No.* 302.)

---

305. Oaths and jurat, where a witness reads the affidavit to a blind deponent.

To the witness: Is that your name and handwriting?

You do swear that you have truly, distinctly and audibly read over the contents of this affidavit to the deponent A. B. (*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to); and that he appeared to understand the same, and signed his name [*Or*, made his mark] to this affidavit in your presence—So help you God.

To the blind man: You do swear that the contents of this your affidavit are true—So help you God.

A. B.
[*Or*,
The mark of
×
A. B.]
—
Witness to the signature [*Or*, mark] of the deponent A. B.:
C. D.,
of (*Residence and addition.*)

Sworn by the deponent A. B., at (*State where and when, as in No.* 302, *ante:*) C. D., the witness to the signature [*Or*, mark] of the deponent A. B., having been first sworn that he had truly, distinctly, and audibly read over the contents of this affidavit to the deponent A. B. (*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to): he being blind; and that the deponent A. B. appeared to understand the same, and signed his name [*Or*, made his mark] to this affidavit, in the presence of the deponent C. D.:

Before me (*&c.: see ante, No.* 302.)

(*a*) In the case of a blind man or marksman, the affidavit must first be read over to him, either by the person before whom the affidavit is sworn, or by some other person. In the latter case, such person must first be sworn that he has read over the affidavit, and any exhibits thereto, to the deponent, and must attest his signature or mark: Braithwaite's Pr. 382, and see next Form.

306. Ordinary form of oath by a deaf and dumb deponent and jurat (a).

To the deponent: Is that your name and handwriting?
You swear that the contents of this affidavit by you subscribed are true—So help you God.

A. B. { Sworn at (*State where, and when, as in* No. 302, *ante*,)
Before me (*&c.: see ante, No.* 302.)

---

307. Oaths and jurat, where a foreigner deposes in English, through an interpreter.

To the interpreter: Is that your name and handwriting (*b*)?
You swear that you well understand the French language [*or other language of the foreigner*], and that you have truly, distinctly and audibly interpreted the contents of this affidavit to the deponent A. B.; and that you will truly and faithfully interpret to him the oath about to be administered to him—So help you God.
To the foreigner, through the interpreter: Is that your name and handwriting?
You swear that the contents of this affidavit by you subscribed are true—So help you God.

A. B.
C. D.
of (*Residence, and addition* (*c*). { Sworn at (*State where, and when, as in No.* 302, *ante*), by the deponent A. B., through the interpretation of C. D.: the said C. D. having been first sworn that he had truly, distinctly and audibly interpreted the contents of this affidavit to the deponent A. B.; and that he would truly and faithfully interpret to the said A. B. the oath about to be administered to him:
Before me (*&c.: see ante, No.* 302.)

---

308. Oaths and jurat, where the affidavit is in a foreign language; the oath being interpreted to the deponent

To the interpreter: Is that your name and handwriting?
You do swear that you well understand the French language [*or other language of the foreigner*], and that you will truly and faithfully interpret to the deponent A.

(*a*) Braithwaite's Pr. 383. Braithwaite's Oaths in Chan. 37. The procedure in this case is as follows, where the deponent is able to read and write; the officer before whom the affidavit is to be sworn should question the deponent, in writing, whether the signature placed beside the jurat is his name and handwriting, and give him the ordinary form of oath to read; he should then hand him the book, and administer the oath; pointing to the words of the oath as he proceeds; the deponent must then kiss the book, and the ceremony is complete: *ib.* As to the course where the deponent is not able to read and write, see *ib.*

(*b*) It seems desirable, but is not, in practice, considered essential, that the interpreter should sign the affidavit: Braithwaite's Pr. 381, n. (*a*); Braithwaite's Oaths in Chan. 35, n. (*k*).

(*c*) *Ibid.* If the interpreter does not sign the jurat, his place of residence and addition must be stated in the jurat, immediately after the first occurrence of his name.

B. the oath about to be administered to him—So help you God.

To the foreigner, through the interpreter : Is that your name and handwriting ?

You swear that the contents of this affidavit by you subscribed are true—So help you God.

A. B.
C. D.
of (*Residence and addition.*)

Sworn at (*State where, and when, as in No.* 302, *ante*, by the deponent A. B., through the interpretation of C. D. : the said C. D. having been first sworn that he would truly and faithfully interpret to the said A. B. the oath about to be administered to him :

Before me (*&c. : see ante, No.* 302.)

---

309. Verification of a translation of the affidavit into English, in like case (*a*).

To the translator : Is that your name and handwriting?

You do swear that you well understand the French language [*or other language in which the affidavit is written*] ; and that the above written is a true translation into the English language of the affidavit of A. B. in the French [*Or as may be*] language thereunto annexed—So help you God.

C. D.

C. D., of (*Residence and addition ; as :* No. 90 King Street, in the City of Hamilton, notary public), was sworn at (*State where and when, as in* No. 302, *ante*), that the above written is a true translation into the English language of the affidavit of A. B. in the French [*Or as may be*] language thereunto annexed ; and affixed together at the top thereof, under the (notarial) seal of the said C. D., with his name thereto subscribed :

Before me (*&c. : see ante, No.* 302).

---

310. Jurat to affidavit of a Hindoo, interpreted to him in English.

Subscribed with a seal, and sworn to by the above-named A. B., at (*State where and when, as in No.* 312, *ante*), through the interpretation of C. D. : the said C. D. having been previously sworn that he had first translated and explained to the said A. B., in the Hindoostanee language, the contents of this affidavit ; that the said A. B. perfectly understood the contents of this affidavit ; that he the said C. D. would truly interpret the oath about to

(*a*) Where an affidavit is written in a foreign language, a translation into English, verified by a competent person, must be filed with the original : see Braithwaite's Oaths in Chan. 35, n. (*h*).

be administered to the said A. B.; and that the seal used by the said A. B. was his own signet, wherewith he always signed documents, according to the custom of his own country:

Before me (*&c.: see ante, No.* 302).

---

311. Oath of a marksman and jurat, where the officer reads to him the affidavit.

To the deponent: Is that your mark?

You swear that the contents of this affidavit unto which you have affixed your mark are true—So help you God.

The mark of × A. B.

Sworn by the deponent A. B., at (*State where and when, as in No.* 302, *ante*), before me: I having first truly, distinctly and audibly read over to him the contents of this affidavit (*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to); and he appeared to understand the same: and made his mark thereto in my presence.

(*Signature and style of office: see ante, No.* 302.)

---

312. Oaths and jurat, where a witness reads the affidavit to a marksman.

To the witness: Is that your name and handwriting?

You do swear that you have truly, distinctly and audibly read over the contents of this affidavit to the deponent A. B. (*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to); and that he appeared to understand the same, and made his mark to this affidavit in your presence—So help you God.

To the marksman: Is that your mark?

You do swear that the contents of this your affidavit are true—So help you God.

The mark of × A. B.

Witness to the mark of the said A. B.: C. D., of (*Residence and addition*).

Sworn by the deponent A. B., at (*State where and when, as in No.* 302, *ante*): C. D., the witness to the mark of the said A. B., having been first sworn that he had truly, distinctly and audibly read over the contents of this affidavit to the deponent A. B. (*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to), and that the deponent A. B. appeared to understand the same, and made his mark to this affidavit in the presence of the deponent C. D.:

Before me (*&c.: ante, No.* 302).

313. Oath with uplifted hand.

To the deponent: Is that your name and handwriting?

To be uttered by him: I, A. B., do solemnly and sincerely declare that (*State in what form and with what ceremony an oath will be binding; as:* holding up my right hand, and declaring to the truth of this my affidavit, as I shall answer to God at the great day of judgment), is a form of oath that is most binding on my conscience; and I do solemnly and sincerely declare that the contents of this my affidavit are true (*Repeat the binding form; as:* as I shall answer to God at the great day of judgment).

A. B. { Sworn before me (*&c.: see ante, No.* 302).

---

314. Jurat of affidavit sworn out of jurisdiction under 34 Vic., c. 14 (O). (*a*).

1. Sworn, &c. (*as in No.* 302).

A. B.,
A Commissioner for taking Affidavits in and for the Courts of Ontario.

2. *Or,*

A. B.,
A Commissioner authorized by the Lord Chancellor to administer oaths in Chancery in England at (*Place where affidavit sworn*).

3. *Or,* Sworn at ———, this —— day of ——, before me, A. B., one of the Justices of the Court of ———, having supreme jurisdiction in the Colony of ———. In testimony whereof I have hereunto set my hand and affixed my seal (*b*).

4. *Or,* Sworn before me, A. B., the Mayor (*Or other Chief Magistrate*) of the City (*Or Borough, or Town Corporate*) of ———, at the said City (or Borough, *&c.*,) of ———, this —— day of ——, 18—. In testimony whereof I have hereunto set my hand, and caused the common seal of the said City (*Or Borough, &c.*) to be hereunto affixed.

[L.S.] A. B.,
Mayor (*Or as may be*) *of* ——.

5. *Or,* Sworn before me, A. B., a Notary Public in and for the [State of Michigan, *Or as may be*], at ———, in the said State of Michigan, this —— day of ———, 18—. In testimony whereof I have hereunto set my hand and affixed the seal of my office.

[L.S.] A. B.,
Notary Public in and for State of Michigan.

(*a*) Where the deponent is illiterate, &c., the jurats should be altered to suit the case, as in preceding forms.
(*b*) See sect. 5 of Act.

6. *Or*, Sworn before me, A. B., Her Britannic Majesty's Consul [*Or* Vice Consul, *or* Acting Consul, *or* Pro Consul, *or* Consular Agent] at [the City of ——], at the said [City of ——], this —— day of ———, &c.

A B.,
Her Britannic Majesty's Consul,
(Or as may be) at ———.

---

2. *Affirmations, Declarations and Affirmats thereto.*

In Chancery.

(*Title of cause or matter.*)

315. Affirmation under 33 Vic., c.14 (O), by any person according to whose religious belief the taking of an oath is unlawful.

I, A. B., of (*Place of residence and description or addition*), do solemnly, sincerely and truly affirm and declare that the taking of an oath is, according to my religious belief, unlawful, and I do also solemnly, sincerely and truly affirm and declare as follows:

1.
2.

Affirmed (*&c.: see post, No.* 316).

---

316. Declaration and affirmat to affirmation (a).

To the affirmant: Is that your name and handwriting?

To be uttered by him: I, A. B., do solemnly, sincerely and truly affirm and declare that the contents of this affirmation by me subscribed are true.

A. B. { Affirmed before me, at (*State where, and when, &c., as in No.* 302 *or* 303, *ante*).

In Chancery.

(*Title of cause or matter.*)

317. Joint affidavit and affirmation.

I, A. B., of, *&c.*, make oath and say, and I, C. D., of, *&c.*, do solemnly, sincerely and truly affirm and declare that the taking of an oath, &c. (*as in form No.* 315), and I, the said C. D., do also solemnly, sincerely and truly affirm and declare as follows:

And first I, the said A. B., for myself, say:

1.
2.

(a) Where the affirmant is an illiterate person, or blind, deaf, dumb, or a foreigner unable to speak English, &c., the affirmation should be altered to suit the circumstances in accordance with the preceding forms of jurats.

And I, the said C. D., for myself, say:

3.

4.

A. B.
C. D. } Sworn by the said A. B., and affirmed by the said C. D. (*&c.; see preceding Forms*), at (*State where, and when, as in No. 302, ante*).

---

318. Memorandum of identity of exhibit.

In Chancery.

(*Short title of cause or matter.*)

This is the exhibit, marked A, referred to in the affidavit [*Or*, affirmation] of A. B. (and C. D.), sworn [*Or*, affirmed] in this cause [*Or*, matter] before me (*If not by all the deponents or affirmants, add:* by the said A. B.), this —— day of ——, 18—.

E. F., A Commissioner, &c.

---

319. Consent to affidavit or affirmation being filed, notwithstanding omissions or unauthenticated alterations.

We consent to this affidavit [*Or*, affirmation] being filed, notwithstanding (*Describe the defect; as thus:* the omission of "John" before "Jones" among the defendants' names in the title thereof—*Or*, the officer before whom the same has been sworn has not authenticated the interlineation of the words "as I know," between the 8th and 9th lines of page 2 thereof).

A. B., solicitor for the plaintiff [*Or*, defendant C.D. —*Or*, petitioner—*Or*, respondent—*Or as may be*].

E. F., solicitor for the defendant G. H., *&c.*

---

320. Notice of filing affidavit or affirmation.

In Chancery.

(*Short style of cause.*)

Take notice that I have this day filed an affidavit [*Or*, affirmation] herein of A. B. [*Or*, an affidavit of each of the following persons, namely: A.B., C. D. and E. F., *&c.—or as may be*].

Dated, &c.

Yours, &c.,

A. B.,
Solicitor.

To——

---

321. Notice of intention to read an affidavit, or affirmation, already filed.

(*Formal parts: see No.* 320.)

Take notice that the plaintiff [*Or as may be*] intends to read, on the hearing of the petition presented by him in this cause [*Or*, matter] on the ——, 18— [*Or*, of the motion to be made in this cause [*Or*, matter] pursuant to the notice

given on his behalf on the ——, 18—, *or as may be*], the affidavit [*Or*, affirmation] of A. B., filed in this cause [*Or*, matter] on the ——, 18—. (*Conclude as in No.* 320.)

(*Formal parts: see ante, No.* 300.)

322. Affidavit of service of a notice of motion (a).

1. On ——, the —— day of ——, 18—, [before four o'clock in the afternoon—*Or as may be*—of that day], I served (*Describe the person or persons required to be served; as thus:*

A. B., the defendant—*Or*, one of the defendants—in this cause,

Or, A. B., who, by an order dated the —— day of ——, 18—, has liberty to attend the proceedings in this cause [*Or*, matter],

Or, A. B., in the order made in this cause [*Or*, matter], dated the —— day of ——, 18—, named,

Or, A. B., of (*Residence and addition*),

Or, Mr. C. D., who acts as solicitor [*Or*, agent] in this cause [*Or*, matter] for the plaintiff, *&c.*,

Or, each of the following persons, that is to say: (1) A. B., one of the defendants in this cause; (2) Mr. C. D., who acts as solicitor in this cause for the plaintiff; and (3) Mr. G. H., who acts as agent in this cause for L. M., who, by an order dated, *&c.*, has liberty to attend the proceedings therein,

or as may be), with the notice of motion now shown to me and marked A, by delivering a true copy of the said notice to, and leaving the same with (*Describe the person or persons on whom, and where, service was effected; as thus:*

the said A. B., personally, at (*State where*), in the (county) of ——,

Or, the said A. B., personally, at (*State where*), in the (county) of ——, and the said C. D., personally, at, *&c.*,

Or, each of the following persons, that is to say: (1) the wife of the said A. B., at his dwelling-house, situate at (*State where*), in the (county) of ——; (2) the clerk of the said C. D., at the office of the said C. D., situate at, *&c.*; and (3) the servant of the said G. H., at the address for service of the said G. H., situate at, *&c.*)

(a) Where service is effected on a solicitor, the service is usually proved by his admission of service endorsed on the notice of motion (see *Ord.* 48). If for any reason he decline to give such admission, then an affidavit of service is necessary.

(*Where service effected on a solicitor in the cause who has refused to give an admission, add*:) at the time of effecting such service as aforesaid, I demanded of the said A.B. an admission of such service, but he refused to give any such admission.

---

323. Affidavit of service of a decree or order.

(*Formal parts: see ante, No.* 300.)

1. On ——, the —— day of — , 18— [before four o'clock in the afternoon—*Or as may be*—of that day], I served (*Describe the person or persons required to be served; as thus:*

A. B., the defendant—*Or*, one of the defendants—in this cause,

Or, A. B., who, by an order dated the —— day of ——, 18—, has liberty to attend the proceedings in this cause [*Or*, matter],

Or, A. B., who is named in the order dated the —— day of —— (*order served*), hereinafter mentioned,

Or, Mr. C. D., who acts as solicitor [*Or*, agent] in this cause [*Or*, matter] for the plaintiff, *&c.*,

Or, each of the following persons, that is to say: (1) A. B., one of the defendants in this cause; (2) Mr. C. D., who acts as solicitor in this cause for the plaintiff; and (3) Mr. G. H., who acts as agent in this cause for L. M., who, by an order dated, *&c.*, has liberty to attend the proceedings therein,

(*or as may be*), with a decreee [*Or*, an order] made in this cause [*Or*, matter], dated the —— day of ——, 18—, and now produced and shown to me and marked A, by delivering a (true) [*Or* an office] copy of the said decree [*Or*, order] to, and leaving the same with (*Describe the person or persons on whom, and the place where, service was effected, as in No.* 322, *ante*).

2. At the time of the aforesaid service thereof, I showed to the person [*Or*, to each of the persons] to whom such true [*Or* office] copy of the said decree [*Or*, order] was delivered, as aforesaid, the said original decree [*Or*, order] duly passed and entered.

(*If order endorsed with notice under Order* 293 *or Order* 341, *add*:)

3. I further say that upon the copy [*Or*, upon each of the several copies] of the said decree [*Or* order] so served by me on the said ——— as aforesaid was endorsed a true copy of the notice endorsed on the said original decree [*Or*, order], in the words following ["If you the within named," *&c.*, *Or*, Take notice that if you desire, *&c.*]

(*If the copy served was an office copy, add* :)

4. I further say that the said office copy [*Or*, each of the said office copies] so served as aforesaid purported to be authenticated by the signature of the Clerk of Records and Writs of this Court [*Or*, Deputy Registrar of this Court at ————] at the foot thereof, and that each page of the said office copy [*Or*, copies] was stamped with a stamp similar to the one which I now look upon in the margin of this affidavit.

(*Formal parts : see ante, No.* 300.)

324. Affidavit of service of a petition.

1. On ——, the —— day of ——, 18— [before four o'clock in the afternoon—*or as may be*—of that day], I served (*Describe the person or persons required to be served ; as thus :*)

A. B., the defendant—*Or*, one of the defendants—in this cause.

Or, A. B., who, by an order dated the —— day of ——, 18—, has liberty to attend the proceedings in this cause [*Or*, matter],

Or, A. B., in the order made in this cause [*Or*, matter], dated the —— day of ——, 18—, named,

Or, A. B., who is named in the note at the foot of the petition hereinafter mentioned,

Or, Mr. C. D., who acts as solicitor [*Or*, agent] in this cause [*Or*, matter] for the plaintiff, *&c.*,

Or, each of the following persons, that is to say : (1) A. B., one of the defendants in this cause ; (2) Mr. C. D., who acts as solicitor in this cause for the plaintiff ; and (3) Mr. G. H., who acts as agent in this cause for L. M., who, by an order dated, *&c.*, has liberty to attend the proceedings therein,

or as may be), with the petition now produced and shown to me, marked A, by delivering a true copy of the said petition to, and leaving the same with (*Describe the person or persons on whom, and where, service was effected, as in No.* 322, *ante*).

2. I further say that upon the said copy [*Or*, upon each of the said copies] of the said petition so delivered by me to the said ——— as aforesaid was endorsed a true copy of the notice endorsed on the said exhibit A, addressed to (*Name the parties*), whereby they were informed that the said petition would be heard on (*State the time*) at (*State the place*), and that if they did not appear on the said petition, at the said time and place, the Court might make such order, on the petitioner's own showing, as should appear just.

3. At the time of the aforesaid service thereof, I showed to the person [*Or*, to each of the persons] to whom such true copy thereof was delivered as aforesaid, the said original petition, with the said notice thereon.

---

325. Affidavit of service of a notice, notice of motion, or order, on a substitute.

(*Formal parts: see ante, No.* 300.)

1. On——, the—— day of——, 18—[before four o'clock in the afternoon—*or as may be*—of that day], I served (*Describe the person or persons required to be served, as in No.* 322, *ante*), with a (*Describe the notice or other document served, as in No.* 322 *or* 323, *ante*), by delivering to, and leaving with (*Name of substitute*), personally, at (*State where*), in the (county) of——, a true copy of the said notice [*Or as may be—see ante, Nos.* 322, 323.]

2. *State production of original order, as in par.* 2 *of No.* 323, *when applicable.*

3. The said (*substitute*) is the person of that name who is mentioned in the order made in this cause [*Or*, matter], dated the—— day of——, 18—, now shown to me and marked B, and at the time of the aforesaid service on the said (*substitute*), I also served him with the last mentioned order, by delivering to and leaving with him a true copy of such order, and I at the same time produced and showed to him such original order duly passed and entered. (*If order served was endorsed under Orders* 293 *or* 341, *add paragraph* 3 *of Form* 323.)

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326. Affidavit of service where it is necessary to exhibit original of paper served.

(*Formal parts: see ante, No* 300.)

1. I,——, did on the—— day of——, personally serve the above named—— with a true copy of the—— now shown to me, marked with the letter——, by delivering to and leaving with the said——, on the day last aforesaid, at——, in the County of——, the said copy.

2. At the time of effecting such service I did produce and show unto the said—— the original of the said paper—— so served as aforesaid, and which said original is marked as aforesaid with the said letter——.

3. To effect such service I necessarily travelled——

Sworn before me, &c.

In Chancery.

Between—A. B. and another .....Plaintiffs,
and
C. D. and others .....By Bill,
and
E. F., made a party in the Master's office.....Defendants.

327. Affidavit of service of *Notice T* under Order 444 (a).

I, ——, of ——, in the County of —— (*addition*), make oath and say as follows:

1. That I did on the —— day of ——, one thousand eight hundred and ——, personally serve the above-named E. F. with a true copy of the notice to encumbrancers in this cause, now shown to me, and marked Exhibit A, by delivering a true copy of the same to and leaving the same with the said E. F., at ——, in the County of ——.

2. That I necessarily travelled —— miles to effect such service as aforesaid.

Sworn, &c.

(*Formal parts: see ante, No.* 300.)

328. Affidavit of service of decree under Order 293, and of Schedule N, referred to in that order.

I, ——, of ——, in the County of ——, (*addition*), make oath and say:

That I did, on the ——— day of ———, personally serve the above named ——— with the decree (*Or* order) of this Honourable Court, made in this cause, bearing date the ——— day of ———, under the seal of this Honourable Court, whereby it was ordered, that (*set out ordering part of decree or order*), by delivering to and leaving with the said ——— a true copy of the said decree, and at the same time producing and showing to him the said original decree duly passed and entered, on which copy, when so served as aforesaid, was endorsed a memorandum in the words following: "If you, the within named ———, neglect to obey this decree (*Or* order) 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 decree, without further notice."

Sworn, &c.

(*When an office copy is served, see ante, No.* 323.)

(a) Where service of the *Appointment* under Order 446—being the second part of Schedule T—is required to be proven, the affidavit must be varied accordingly.

329. Affidavit of service of Injunction.

(*Formal parts: see ante, No.* 300.)

I, A. B., &c.

1. I did, on the ——— day of ———, serve personally the above named ——— with a true copy of the writ of injunction in this cause hereunto annexed, by delivering to and leaving the said copy with the said ——— at ———, in the County of ———.

2. At the time of such service I exhibited to the said —— the original writ of injunction in the cause, under the seal of this Honourable Court.

3. To effect such service I necessarily travelled —— miles.

Sworn, &c.

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330. Affidavit of service of Subpœna.

(*Formal parts: see ante, No.* 300.)

1. I did, on the ——— day of ———, at———, serve personally R. S. and F. G., named in the annexed writ of subpœna now shown to me and marked A, with the said annexed writ of subpœna in this cause, by delivering to and leaving with each of them, the said R. S. and F. G., a true copy of the said subpœna, and I at the same time exhibited to each of them the original writ of subpœna, under the seal of this Honourable Court.

2. At the time of such service I paid to the said R. S. and F. G. the sum of ——— each as and for their witness fees in this cause.

3. That to effect such services I necessarily travelled —— miles.

Sworn, &c.

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331. Affidavit of the execution of a deed by an attesting witness.

(*Formal parts: see ante, No.* 300.)

1. I was present on the ——— day of ———, and saw ——— sign, seal and deliver the paper-writing or deed dated, &c., produced and shown to me at the time of swearing this my affidavit, and marked with the letter ——

2. The name or signature "———" thereto set and subscribed as the party executing the said deed, is of the proper handwriting of the said ———, and the name "———" set and subscribed as the person witnessing the execution thereof by the said ——— is of the proper handwriting of me, this deponent.

3. The said ——— was at the time of the execution of the said deed well known to me.

Sworn, &c.

(*Formal parts: see ante, No.* 300.)

332. Affidavit of execution of a deed by a person not a witness.

1. I am well acquainted with the handwriting of the defendant *John Smith*, having often seen him write.

2. The indenture dated, &c., and purporting to be made between the said *John Smith*, &c., produced to me at the time of making this my affidavit, marked with the letter ——, was, as I believe, duly executed by the said defendant *John Smith*, and the name "*John Smith*," set and subscribed at the foot of the said indenture, is of the proper handwriting of the defendant *John Smith*.

3. I am also well acquainted with the handwriting of *John Roe*, of, &c., and I say that the name "*John Roe*," set and subscribed to the said indenture as the attesting witness to the execution thereof by the said *John Smith*, is of the proper handwriting of the said *John Roe*.

Sworn, &c.

(*Formal parts: see ante, No.* 300.)

333. Affidavit of Disbursements.

1. That the several persons whose names are set forth in the first column of the said Schedule hereunder written, were served with a Subpœna ad Testificandum in this cause, and in obedience to such subpœna they severally attended and were examined before ——, at ——.

2. That at the time they were so subpœnaed, they severally resided at the places set forth in the second column of the said Schedule, which places are distant from —— aforesaid, the number of miles set forth in the third column of said Schedule. That they were respectively of the profession, business, or occupation mentioned in the fourth column of said Schedule. That they were necessarily absent from their respective places of residence, in going to, staying at, and returning from —— aforesaid, the number of days set forth in the fifth column of said Schedule: And that I paid to each of the said witnesses, for their travelling expenses and loss of time, the respective sums set forth in the sixth column of the said Schedule.

3. That all the said witnesses were material and necessary witnesses on behalf of the ——, and attended as witnesses in no other cause.

(*If fees are claimed for professional witness, add:*)

4. That A. B., named in the said schedule, so attended to give, and did give, evidence as to matters in which he had been engaged in his professional character as a [solicitor] *Or* to give, and did give, his professional opinion as a [physician] upon certain matters in question in the said cause.

(*If fees are claimed for a party to the cause, add:*)

5. I did also attend and was examined in the said cause, at ——— aforesaid, as a witness on my own behalf, and I was a material and necessary witness on my own behalf, and I did not attend for the purpose of superintending the conduct of the said cause, or for any other purpose except to give evidence as a witness on my own behalf, and I would not have so attended but for that purpose. (*State number of days absent, and amount of travelling expenses.*)

NAME.	RESIDENCE.	No. of Miles distant from Place of Examination.	Profession, Business, or Occupation.	No. of Days Absent.	Amount paid each Witness for Travelling Expenses and Loss of Time.

CHAPTER VII.

DECREES AND ORDERS—ISSUING AND ENFORCING, &C.

SECTION I.—*Formal parts of Decrees and Orders.*

334. Formal parts of Decree at hearing:

In Chancery.

[The Chancellor, } Tuesday, the ——— day of ———,
or V. C. B———.] } A.D. 18—.

(*Full style of cause.*)

This cause coming on to be heard on the ——— day of ———, at the sittings of this Court, holden at the Town of ———, for the examination of witnesses and hearing of causes in presence of counsel for [all parties] or for the plaintiffs and the defendants C. and D., no one appearing for the defendant F. [against whom the plaintiff's bill has been taken *pro confesso, Or* although duly notified]. Upon opening of the matter, and upon hearing read the pleadings, and upon hearing the evidence adduced on the part of the plaintiffs and defendants [other than the said F.], and what was alleged by counsel aforesaid, [this Court did order that this cause should stand over for judgment, and the same coming on this present day for judgment,]

This Court doth, &c.

(*Style of cause as in No.* 334.)

335. Formal parts of Decree or Decretal order.

This cause coming on to be heard this day (*Or as may be*) [on bill and answer against the defendant C. D., and by way of motion for decree as against the defendant E. F., *Or* by way of appeal from the report of the Master of this Court at ———], in presence of counsel (*&c. as in Form* 334). Upon opening of the matter and upon hearing read the pleadings [and the affidavits of ———, and the exhibits therein referred to, *Or as may be*], and upon hearing what was alleged by counsel aforesaid,

This Court doth, &c.

(*Style of cause as in No.* 334.)

336. Formal parts of order made in Court, on motion.

Upon motion made unto this Court (this day, *Or as may be*) by Mr. Y. Z., of counsel for the defendant C. D., in presence of counsel for the plaintiffs, no one appearing for the defendant S. P., though duly notified. Upon opening of the matter, and upon hearing read, &c., and upon hearing what was alleged by counsel aforesaid.

This Court doth, &c.

(*Style of cause as in No.* 334.)

337. Formal parts of order made in Court on petition.

Upon the humble petition of [A. B., *Or* the plaintiffs, *Or as may be*] presented unto this Court [this day, *Or as may be*] by Mr. Y. Z., of counsel for the said petitioner, &c. (*Proceed as in Form* 336.)

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338. Formal parts of orders made in Chambers when opposite party appears.

In Chancery.
In Chambers. } ——day, the ——— day of ———,
V. C. P——. (*a*). } A.D. 18—.

(*Full style of cause.*)

[*Or, shortened style of cause, as the case may require.*]

1. Upon the application of the above-named ——— (in presence of the solicitor for the above-named ———), and upon hearing read (the affidavits of ———, *Or as may be*), and upon hearing the solicitors for the applicant and the said ———,

2. It is ordered, &c.

3. And it is further ordered, &c.

(a) Where the order is made by a Judge.

339. The like where opposite party does not appear.

(*Formal parts: as in No.* 338.)

1. Upon the application of the above-named ———, and upon hearing read the notice of motion and the admission (*Or* affidavit) of service thereof, and [the affidavits, &c., *Or as may be*], and upon hearing the solicitor for the applicant,

2. It is ordered, &c.

340. Præcipe decree for sale or foreclosure with reference (*a*).

In Chancery.

——, the —— day of ——, in the —— year of the reign of Her Majesty Queen Victoria, and in the year of our Lord 18—.

Between—(*Full style of cause.*)

Whereas the above named plaintiff filed a bill in this Court for the payment and satisfaction of the mortgage security in the said Bill mentioned, and thereupon served ——, the said defendant, as by —— of service now produced appears, with an office copy of the said bill, on which was endorsed the notice required by the General Orders of this Court in that behalf; whereby the defendant [was] informed, amongst other things, that the plaintiff claimed that there was then due by the defendant for principal money and interest, the sum of ——, and that the defendant [was] liable to be charged with that sum, with subsequent interest and costs in and by the decree to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the decree, [his] interest in the property might be [sold *Or* foreclosed], and [no answer or demurrer or note disputing such claim of the plaintiff having been filed by the said defendant within the time limited for that purpose by the said notice, *Or* a note disputing such claim of the plaintiff having been filed by the said defendant (*b*),] as by the —— appears; it is thereupon ordered and decreed that all necessary enquiries be made, accounts taken, costs taxed, and proceedings had for redemption or [sale *Or* foreclosure] (*as the case may be*), and that for these purposes the cause is referred to the Master at ——. (*In decree for sale, add:* and in case of a sale of the mortgaged premises in question, the same is to be by public auction, tender or private contract, as to the said Master shall seem best.)

(*a*) A præcipe decree can only be issued by a Deputy Registrar, where the suit is between the original mortgagee and mortgagor.—See *Ord.* 38. The Registrar, however, has more extended powers. See *Ord.* 435. *Kirkpatrick* v. *Howell*, 22 Grt. 94.

(*b*) When a disputing note is filed, the defendant is entitled to 4 days notice of the taking of the account.

In Chancery.

——the —— day of ———, in the thirty —— year of the reign of Her Majesty Queen Victoria, and in the year of our Lord 18—.

341. Decree for sale, issued by Deputy Registrar under Order 38. Account taken

Between (*Full style of cause.*)

Whereas the above-named plaintiff filed ——— bill in this Court for the payment and satisfaction of the mortgage security in the said bill mentioned, and thereupon served ——, the said defendant, as by —— of service now produced appears, with an office copy of the said bill, on which was endorsed the notice required by the General Orders of this Court in that behalf: whereby the defendant —— informed, amongst other things, that the plaintiff claimed that there was then due by the defendant, for principal money and interest, the sum of ———, and that the defendant —— liable to be charged with this sum, with subsequent interest and costs in and by the decree to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the decree, —— interest in the property might be sold, [and no answer or demurrer —— note disputing such claim of plaintiff having been filed by the said defendant within the time limited for that purpose by the said notice, *Or* a note disputing such claim of the plaintiff having been filed by the said defendant] as by the [books in the office of the Deputy Registrar of this Court at ———] appears: And this Court having caused an account of subsequent interest to be taken on the sum of ——— principal money secured by the indenture of mortgage in the said bill mentioned, up to the —— day of ——— next, being the time appointed for payment as hereinafter mentioned, [due notice of the taking of such account having been first served on the said defendant, as by —— appears], doth find the same amount to ——, and having caused the costs of the plaintiff to be taxed, doth find the same amount to ——, which said subsequent interest and costs being added to the sum of —— so claimed by the notice endorsed on the copy of the bill so served on the defendant ——, make together the sum of ——, and upon the said defendant paying the said sum of —— into the —— Bank —— at the —— in the ——, between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the —— day of —— next, to the joint credit of the plaintiff and the Accountant of this Court: It is ordered that the said plaintiff do assign and convey the said premises free and clear of all incumbrances done by ———, and deliver up all deeds and writ-

ings in —— custody or power relating thereto upon oath to the said defendant, or to whom he may appoint; but in default of the said defendant making such payment by the time aforesaid, it is ordered that the said premises be sold by public auction, private contract or tender, with the approbation of the Master of this Court at ——, who is to settle the conveyance or conveyances to the purchaser or purchasers, in case the parties differ about the same: And it is ordered, that the purchaser or purchasers do pay his, her or their purchase money into the —— Bank of ——, in the ——, to the credit of this cause, subject to the further order of this Court; and that the same, when so paid in, be applied in payment of what has been found due to the said plaintiff; together with subsequent interests and subsequent costs, to be computed and taxed by the said Master, and that the residue, if any, be paid to the defendant (*owner of equity of redemption.*)

Entd. page
Sale Book A.

A. B.,
Dep. Regr. at ——.

342. Decree forf ore closure, issued by Deputy Registrar, under Order 38.

In Chancery.

——, the —— day of ——, in the thirty—— year of the reign of Her Majesty Queen Victoria, and in the year of our Lord 18—.

Between (*Full style of cause.*)

Whereas the above-named plaintiff filed —— bill in this Court for the payment and satisfaction of the mortgage security in the said bill mentioned, and thereupon served ——, the said defendant, as by —— of service now produced appears, with an office copy of the said bill, on which was endorsed the notice required by the General Orders of this Court in that behalf; whereby the defendant —— informed, amongst other things, that the plaintiff claimed that there was then due by the defendant, for principal money and interest, the sum of ——, and that the defendant —— liable to be charged with this sum, with subsequent interest and costs in and by the decree to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the decree, —— interest in the property might be foreclosed, and no answer or demurrer —— note disputing such claim of the plaintiff having been filed (*a*) by the said defendant within the time limited for that purpose by the said notice, as by the [books in the office of the

(*a*) Where a disputing note is filed. See Form No. 341.

Deputy Registrar of this Court at ———] appears: And this Court having caused an account of subsequent interest to be taken on the sum of ——— principal money secured by the indenture of mortgage in the said bill mentioned, up to the —— day of ——— next, being the time appointed for payment as hereinafter mentioned, doth find the same amount to ———, and having caused the costs of the plaintiff to be taxed, doth find the same amount to ———, which said subsequent interest and costs being added to the sum of ——— so claimed by the notice endorsed on the copy of the bill so served on the defendant ———, make together the sum of ———, and upon the said defendant paying the said sum of ——— into the —— Bank ——— at the ——— in the ———, between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the ——— day of ——— next, to the joint credit of the plaintiff and the Accountant of this Court: It is ordered that the said plaintiff do assign and convey the said premises free and clear of all incumbrances done by ———, and deliver up all deeds and writings in —— custody or power relating thereto upon oath to the said defendant, or to whom he may appoint; but in default of the said defendant making such payment by the time aforesaid, it is ordered that the said defendant do stand absolutely debarred and foreclosed of and from all equity of redemption in and to the said premises.

Entd. page
Foreclosure Book A.

A. B.,
Dep. Regr. at ———.

———

In Chancery,
In Chambers.

——— the ——— day of ———, A. D. 18—.

Between (*Full style of cause.*)

343. Decree of foreclosure made in chambers where all defendants are infants; account taken.

Upon the application of the above named plaintiff, and upon hearing the solicitor for the applicant, and the guardian *ad litem* for the defendant, and upon reading the pleadings and affidavits of ———:

1. And an account of interest having been taken upon the principal sum of ———, up to the day hereinafter appointed for payment the same amounts to ———, and the plaintiff's costs having been taxed, including the costs of the guardian of the infant defendant, at ———, the said sums when added together make the sum of ———.

2. It is ordered that upon the said defendant paying the said sum into the ——— Bank ——— at ———, between the hours of ten o'clock in the forenoon of the ——— day of ——— next to the joint credit of the

plaintiff and the Accountant of this Court, the plaintiff do assign and convey the mortgaged premises in question in this cause to the defendant or to whom —— may appoint, free and clear of all incumbrances done by ———, and deliver up all deeds and writings in ——— custody or power relating thereto upon oath to the defendant or to whom —— may appoint.

3. And it is ordered that in default of the defendant making such payment by the time aforesaid, ——— do stand absolutely debarred and foreclosed of and from all right, title and equity of redemption of, in and to the said mortgaged premises.

4. And this order is to be binding upon the infant defendant unless ——— shall within six months after——— attain the age of twenty-one years, on being served with notice hereof show unto this Court good cause to the contrary.

---

344. Decree in Chambers for sale or foreclosure where all defendants are infants, with reference.

In Chancery, }
in Chambers. }

——, the ——— day of ———, A.D. 18—.

Between (*Full style of cause.*)

1. Upon the application of the above-named plaintiff, and upon hearing the solicitor for the applicant, and the guardian *ad litem* of the defendants (*Or as the case may be*), and upon reading the pleadings and affidavits of———,

2. It is ordered that the Master of this Court do enquire and state whether a sale or foreclosure of the mortgaged premises in question in this cause would be more beneficial for the infant defendant.

3. And it is ordered that all necessary enquiries be made, accounts taken, costs taxed and proceedings had for redemption, foreclosure or sale of the said premises, according as the said Master may find foreclosure or sale more beneficial.

4. And it is ordered that the said Master do allow to the guardian of the infant defendant his costs of this suit, pursuant to General Order 314, such costs to be paid by the plaintiff, and added to his own.

5. And in the event of foreclosure, this order is to be binding upon the infant defendant, unless ——— shall within six months after——— attain the age of twenty-one years, on being served with notice hereof, show unto this Court good cause to the contrary.

6. And in the event of a sale, it is ordered that the same is to be by public auction, tender or private contract, as to the said Master shall seem best.

345. Administration Order referred to in Order 187, being Schedule J, mentioned in that order.

(*Formal parts as in Nos.* 334, 335, 338 *or* 339.)

This Court doth order that the following accounts and enquiries be taken and made by the Master of this Court, that is to say:

(1) Personalty.

1st. An account of the personal estate [not specifically bqueathed (*a*)] of A.B., deceased, the testator in the pleadings mentioned, come to the hands of, &c.

2nd. An account of the said testator's debts.

3rd. An account of the said testator's funeral expenses.

[4th. An account of the said testator's legacies (*a*).]

5th. An enquiry, what parts, if any, of the said testator's personal estate are outstanding or undisposed of.

And it is ordered that the said testator's personal estate [not specifically bequeathed (*a*)] be applied in payment of his debts and funeral expenses, in a due course of administration [and then in payment of his legacies (*a*).]

(*If ordered.*)

(2) Realty.

And it is ordered that the following further accounts and enquiries be taken and made, that is to say:

6th. An enquiry what real estate the said testator was seized of or entitled to at the time of his death.

7th. An enquiry what incumbrances affect the said testator's real estate.

8th. An account of the rents and profits of the said testator's real estate received by, &c.

(*If sale ordered.*) (*b*)

(3) Sale of realty.

9th. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

10th. An enquiry what are the priorities of such last-mentioned incumbrances.

And it is ordered that the testator's real estate be sold by public auction, private contract or tender, with the approbation of ————.

(4) Enquiry as to residue, &c.

11th. And the said Master is to enquire and state who are the persons entitled to share in the said [real and] personal estate of the said testator, and in what proportions (*c*).

(*a*) These words are of course omitted in case of intestacy, and the word "intestate" must be substituted for "testator."

(*b*) A sale is not usually ordered in the first instance

(*c*) These clauses, though not in Schedule J, are now usually inserted in administration orders. If sale is not ordered, clauses 11, 12 and 13 follow 5th clause above, if administration of personalty alone ordered; or the 8th clause, if the order embrace the realty also.

12th. And it is ordered that the further directions and costs be reserved, until after the said Master shall have made his report.

13th. And it is ordered that the said Master do make his report within six months from the date hereof (*a*).

---

346. Proposed minutes of a decree or order.

In Chancery.

(*Short title.*)

Proposed minutes of decree [*Or*, order].

CUR.—Declare as follows:
1. That, *&c.*
Order as follows:
2. That, *&c.*

(*Set out the proposed declarations and directions: see the last Form.*)

Approved:

A. B., for the plaintiff, *&c.*

SECTION II.—*Drawing up, Passing, and Entering Decrees and Orders.*

347. Registrar's appointment to settle draft of, or to pass, a decree or order. (*b*)

In Chancery.

A. *v.* B.

(*Or*, In the matter of A.)

I appoint ——, the —— day of ——, 18—, at —— o'clock in the forenoon, to settle the minutes of [*Or*, to pass] the decree [*Or*, order] pronounced in this cause [*Or*, matter] on the —— day of ——.

C. D., Registrar.

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348. Notice of motion to vary minutes.

(*Formal parts: see post, No.* 382.)

on the part of the plaintiff [*Or*, defendant A. B.], that the minutes of the decree [*Or*, order] pronounced in this cause [*as may be*], on the —— day of ——, 18—, as settled by the Registrar, may be varied or altered in the respects following, namely: (*Specify the particular matter to be added, or altered*). And take notice (*as in No.* 382).

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349. Notice of motion to return engrossment of decree or order.

(*Formal parts: see post, No.* 384.)

on the part of the plaintiff, that Mr. A. B., the solicitor in this cause for the defendant C. D. [*Or as may be*], may be ordered, within —— days, to produce to, and leave with, E. F., Esquire, the Registrar of this Honourable Court, the en-

(*a*) The 11th and 13th clauses, though not in Schedule J, are now usually inserted in administration orders.

(*b*) See *Ords.* 10 and 596.

grossment prepared in the office of the said Registrar of the decree [*Or*, order] pronounced in this cause [*as may be*] on the —— day of ——, 18—, to the intent that the same may be duly passed and entered; and that the said A. B. may be ordered to pay the costs of this application. And take notice (*as in No.* 382).

(*Formal parts*: *see post, No.* 384.)

350. Notice of motion to enter decree or order *nunc pro tunc*.

on behalf of the plaintiff [*Or as may be*] that the decree [*Or*, order] made in this cause [*Or*, matter—*as may be*], dated the ——, 18—, and which has been passed by the Registrar, but not yet entered, may be entered *nunc pro tunc*. And take notice (*as in No.* 382.)

In Chancery.

(*Shortened style of cause.*)

351. Notice to bind infant after coming to age, under Order 536, being Schedule W, referred to in that order, to be endorsed on copy of decree.

Take notice, that unless you, within —— days after the service thereof upon you, show unto the Court of Chancery for Ontario, good cause why the within decree [*Or*, order] should not be binding upon you, you will be bound by the said decree [*Or*, order], and the same will stand and be absolute against you.

Dated, &c.

G. R.,
Solicitor for the Plaintiff.

Title—and address: *see post*, No. 387.

352. Petition of course by defendant, for leave to come in after decree; plaintiff consenting.

The humble petition of the defendant A. B.

Showeth as follows:

1. The plaintiff some time since filed his bill in this cause against your petitioner, and thereby stated, as the fact was, that your petitioner was then out of the jurisdiction of this Honourable Court.

2. Your petitioner has never answered the said bill.

3. A decree dated the —— day of ——, 18—, has been made on the hearing of this cause, and thereby certain accounts and enquiries have been directed to be taken and made; but the Master has not yet made his report of the result thereof [*Or as may be*].

4. Your petitioner is now resident within the jurisdiction of this Honourable Court, and is desirous to attend the proceedings under the said decree.

5. Your petitioner submits to be bound by the said decree, and the several proceedings already had in this cause.

Your petitioner therefore humbly prays, that he may be at liberty to appear in this cause; and that he may have the like benefit of the said decree, and be at liberty to attend all subsequent proceedings in this cause, as if he had appeared at the hearing thereof

And your petitioner will ever pray, &c.

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353. Notice of motion for leave to come in after decree.

(*Formal parts: see post, No.* 384.)

on the part of the defendant A. B., that: upon the said defendant submitting to be bound by the decree dated the —— day of ——, 18—, and the several proceedings already had in this cause: he may be at liberty (*Continue as in prayer of last Form to the end*), and take notice on, &c., *as in No.* 382.

SECTION III.—*Enrolment of Decrees and Orders.*

354. Præcipe to enrol proceedings.

In Chancery.

(*Short style of cause.*)

Enrol the decree made in this cause on the —— day of ——.

Dated, &c.

A. B.,
Plaintiff's Solicitor.

To the Clerk of Records and Writs.

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355. *Caveat* against the enrolment of a decree or order,

In Chancery.

(*Short title.*)

Enter a *caveat* against enrolling the decree [*Or*, order] made by his lordship the ——, dated the —— day of ——, 18—.

Dated this —— day of ——, 18—.

(*Name, &c., of solicitor or party applying.*)

To the Clerk of Records and Writs.

SECTION IV.—*Rectifying Decrees and Orders.*

Title—and address: see post, No. 387.

356. Special petition to amend decree (*a*).

The humble petition of the plaintiff [*Or as may be*] Showeth as follows:

1. By the decree [*Or*, by an order] made in this cause, dated the —— day of ——, 18—, it was decreed (*&c.: Set out so much of the decree or order as is material to the subject matter of the petition*).

2. The said decree [*Or*, order] has been duly entered in the Registrar's book.

3. Since such entry was made, your petitioner has discovered that the said decree [*Or*, order] omits to (*State omission required to be rectified*).

Your petitioner therefore humbly prays, that the said decree [*Or*, order] may be rectified or corrected by (*State in what respect*). (*Conclude as in No.* 388).

SECTION V.—*Enforcing the Execution of Decrees and Orders.*

1. *Service of the decree or order.*

In Chancery.

(*Short style of cause.*)

357. Memorandum, to be endorsed on the copy of a decree or order, for service in ordinary cases under Order 298, being Schedule *N*, referred to in that order.

If you, the within named A. B., neglect to obey this order 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 this order without further notice. If you wish to apply to the Court, to add to, vary, or set aside the said order, or to suspend the operation thereof, you must do so before the expiration of the time within limited.

To A. B., the within named Defendant.

W. B.,
Plaintiff's Solicitor.

In Chancery.

(*Short style of cause.*)

358. The like, on a corporation aggregate.

If you, the within named (*Insert name of corporation*), neglect to obey this order by the time therein limited, you will be liable to have your lands and tenements, goods

(*a*) If the decree or order is not drawn up in accordance with the judgment of the Court, or there be any clerical error or mistake arising from an accidental slip or omission, it may be amended in Chambers on petition. See *Ord.* 335.

and chattels, distrained upon, and to have your estate sequestered, for the purpose of compelling you to obey this order (*Conclude as in No.* 357).

To the W. X. Co., the within named Defendants.

A. B.,
Plaintiff's Solicitor.

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359. Notice of motion to enlarge the time limited by a decree or order to obey same.

(*Formal parts: see post, No.* 382.)

on the part of the plaintiff [*Or as may be*], that the time limited by the decree [*Or*, order] dated the ——— day of ———, 18—, for the defendant A. B. [*Or as may be*] to (*Describe the act directed to be done by the decree or order; as thus:* pay into the bank, with the privity of the Accountant General, to the credit of this cause, the sum of $1,000), pursuant to the decree [*Or*, order] dated the ——— day of ———, 18—, may be enlarged to the ——— day of ———, 18—, or ——— days after the service thereafter of the order to be made hereon [*Or as may be*]. And take notice that on, &c. (*Conclude as in No.* 382.)

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360. The like, to fix time, where none limited, or limited time expired.

(*Formal parts: see post, No.* 384.)

on the part of the plaintiff [*Or as may be*], that the defendant A. B. [*Or as may be*] may be ordered, on or before the ——— day of ———, 18—, or within ——— days after the service thereafter, to (*Describe the act to be done; see description in last Form*), pursuant to the decree [*Or*, order] dated the ——— day of ———, 18—. And take notice that on, &c. (*Conclude as in No.* 382.)

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361. Notice of motion for substituted service of a decree or order.

(*Formal parts: see post, No.* 384.)

on the part of the plaintiff [*Or as may be*], that service of the decree [*Or*, order] dated the ——— day of ———, 18—, together with a copy of the order to be made hereon, upon (*Describe the proposed substitute; as thus:* C. D., of (*Residence and addition—Or*, C. D. and E. F., members of the firm of D. & F., of (*Place of business and addition*), or upon either of them)—may be deemed good service on the defendant A.B. [*Or as may be*]. And take notice, *&c., as in No.* 382.)

(*Formal parts: see ante, No.* 300.)

362. Affidavit in support.

1. *Show what efforts have been made to effect personal service of the decree or order; and why it cannot be effected.*

2. *Show upon what person, or in what way, substituted service is proposed to be made; and the special grounds for selecting such person, &c.*

3. *Show means of knowledge.*

(*Formal parts: see ante, No.* 300.)

363. Affidavit of service of decree or order and Taxing Master or Master's certificate, and of default made.

1. On the ——— day of ———, 18—, I served, in manner hereinafter mentioned (*Describe the person served; as thus:* the defendant A. B.—*Or,* C. D., the person named in the order dated the ——— day of ———, 18—, hereinafter mentioned), with the decree [*Or,* order] made in this cause [*Or,* matter], dated the ——— day of ———, 18—, now shown to me, marked A. (*If more than one decree or order was served, add:* and also with the decree [*Or,* order] made) *&c.*, by, *&c.*, dated, *&c.*, now shown to me and marked B.—*If on a substitute, add:* and also with the order made in this cause dated the ——— day of ———, 18—, now shown to me marked C.—*Where the amount to be paid has been ascertained by the Taxing officer or Master's certificate, subsequently to the order directing payment, add:* and also with the certificate of G. H., Esquire, the Taxing officer of this Court [*Or,* of R. M., Esquire, Master], dated the ——— day of ———, 18—, now shown to me and marked D., by delivering a true copy thereof [*Or,* of each of them] to, and leaving the same with, the said defendant A. B. [*Or as may be*], at (*State where*), in the (County) of ———; and I at the same time showed to him [*Or,* her] the said original decree [*Or,* order—*or as may be*] duly passed and entered [*Or,* an office copy of the said decree (*or as may be*)—*If so:* and also the original [*Or* an office copy of] the said certificate duly signed by the Master or Taxing officer.

2. The copy [*Or,* each copy] served as aforesaid of the said decree [*Or,* order, *&c.*] had endorsed thereon, at the time of the aforesaid service thereof, a memorandum in the words following, that is to say: (*Set out a copy of the memorandum*).

Prove that the decree or order has not been obeyed.

364. Notice on office copy decree, referred to in Orders 206 and 245, being Schedule L, mentioned in these orders.

To A. B. (*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, vary, or set aside the decree, you must do so within fourteen days from the service hereof. (*Where the order fixes the 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 may seem 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.

---

365. Order made by Judge in Chambers under Order 205, or by a Master under Order 214.

In Chancery, } (*Date.*)
in Chambers. }

(*Shortened style of cause.*)

Whereas it appears in the prosecution of the decree made in this cause, bearing date the ——— day of ———, that E. J. and G. H., not already parties to this suit, ought to be made parties, and ought to attend, or be enabled to attend, the proceedings in the Judge's Chambers (*Or*, in the office of the Master at ———), under the said decree.

It is ordered that an office copy of the said decree, on which is to be endorsed a notice to the effect set forth in Schedule L, in the Consolidated General Orders of the Court of June, 1868, be served, together with a copy of this order, on each of the said E. J. and G. H.; and upon such service they are to be treated and named as parties to this suit, and will be bound by the said decree in the same manner as if they had been originally made parties to this suit. Dated, &c.

R. P. S.
R. C. C.
(*Or* K. S., Master at ——
—*as the case may be*).

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366. Notice to tenant to attorn to sequestrators.

In Chancery.

(*Title.*)

We, A. B. and C. D., the sequestrators acting under the sequestration issued in this cause on the —— day of ——, 18—, against (the defendant) E. F., hereby give you notice and require you to attorn and become tenant to us for (*Describe the property; as thus:* all that farm called The Bourne, situate at ——, in the county of ——), and

for such other part or parts of the real estate of the said E. F. as is or are in your occupation; and to pay to us your rent in arrear and growing rent for the said premises. Dated this —— day of ——, 18—.

A. B.
C. D.

To G. H., of (*Residence and addition*).

In Chancery.

(*Title.*)

367. Attornment thereon.

I, G. H., of (*Residence and addition*), attorn and become tenant to A. B. and C. D., the sequestrators acting under the sequestration issued in this cause on the —— day of ——, 18—, against (the defendant) E. F., for all that (*Describe the property; see description in last Form*), with the appurtenances, as the same are now in my occupation: to hold the same at and under the same rent, and subject to the same covenants and conditions, as I now hold the same. And I have this day paid to the said A. B. and C. D. the sum of (one dollar) for and on account, and in part payment of the said rent. Dated this —— day of ——, 18—.

Witness: G. H.
L. M., of (*Residence and addition*).

(*Formal parts: see post, No.* 384)

368. Notice of motion for tenant to attorn.

on the part of the plaintiff [*Or as may be*], that G. H., of (*Residence and addition*), may be ordered within (eight) days after service, to attorn and become tenant for the (*Describe the property: see ante*, No. 366), and pay his rent in arrear and growing rent for the same to A. B. and C. D., the sequestrators acting under the sequestration issued in this cause on the —— day of ——, 18—, against the defendant E. F. And take notice (*as in No.* 382).

(*Formal parts: see ante, No.* 300.)

369. Affidavit in support.

1. *Prove service of the notice to attorn: see ante, No.* 366.

If the service was personal, prove production of the sequestration; as thus: 2. At the time of the service aforesaid of the said notice, I showed to the said (*Tenant's name*) the writ of sequestration in the said notice mentioned or referred to, now shown to me and marked A.

If the service was not personal, prove service of the sequestration; as thus: 2. At the time of the service aforesaid of the said notice, I served the said (*Tenant's name*) with the writ of sequestration therein mentioned or referred to, and which is now shown to me and marked A, by delivering to, and leaving with, the said (*State whom*), a true copy of the said writ, and of the endorsement thereon; and I at the same time showed to the said (*State whom*), the said original writ.

3. *Prove service of the notice of motion to attorn: see ante, No.* 368.

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370. Notice of motion for sequestrators to account.

(*Formal parts: see post, No.* 384.) that A. B. and C. D., the sequestrators acting under the sequestration issued in this cause on the —— day of——, 18—, against the defendant E. F., may be ordered to leave their accounts in the chambers of the Master at —— [*Or as may be*], on or before the —— day of——, 18—, or within (eight) days after service, and at such other times as the Master shall appoint; and to pay the balances appearing due on their accounts, or such part thereof as the said Master shall certify as proper to be paid by them, into Court, to the credit of this cause, within ten days (exclusive of vacations) after the said Master's certificate of the result of such accounts respectively shall become absolute, or at such other periods as he may be directed. And take notice (*as in No.* 382.)

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371 Notice of motion for an examination, *pro interesse suo*, under Con. Ord. 398 *et seq.*

(*Formal parts: see post, No.* 384.) on the part of G. H., of (*Residence and addition*), that an enquiry may be made whether the said G. H. has any and what interest in the real and personal estate [*Or as may be*], sequestered by A. B. and C. D., the sequestrators acting under the sequestration issued in this cause on the —— day of ——, 18—, against (the defendant) E. F. or in any or what part thereof. And take notice that on, &c. (*Conclude as in No.* 382.)

Special Contempts.

372. Notice of motion, by an officer, suitor, or witness to be discharged from custody, where protected rom arrest.

(*Formal parts: see post, No.* 384.) on the partof A. B., of (*Residence and addition*), one of the solicitors of this Honourable Court [*Or as may be*], that, on the ground of privilege, he may be discharged out of the custody of the Sheriff of —— [*Or as may be*], in respect

of an attachment issued against him on the ——— day of ———, 18—, for breach of the order dated the ——— day of ———, 18—, in not (*describe act of disobedience for which attachment issued*), the said A. B. having been, at the time of the arrest, on his way to attend the hearing of this cause at, *&c.*, as solicitor on behalf of, *&c.* [*Or as may be*].

And that the said C. D. and E. F., Esquire, the said Sheriff, and G. H., his officer, may be ordered to pay to the said A. B. his costs occasioned by the execution of the said attachment, and of this application and consequent thereon. And take notice (*Conclude as in No.* 382).

SECTION VI.—*Decrees nisi—making absolute—and Motions to set aside.*

373. Notice to be endorsed on decree *nisi*.

Take notice, that if you the within named defendant, C. D., desire to move to set aside the within decree, or to obtain permission to answer the plaintiff's bill, application for that purpose must be made to the Court within [three weeks (*a*)] after the day of the service hereof on you, otherwise the plaintiff will be at liberty forthwith thereafter to move to make the within decree absolute against you without further notice.

Dated, &c.

A. B.,
Plaintiff's Solicitor.

(*Formal parts: see post*, 388.)

374. Petition by a defendant to vacate decree *nisi* and for leave to answer.

1. That the plaintiff filed his bill of complaint in this cause on the —— day of ——, for (*Stating shortly the object of the suit*).

2. At the time of the filing of the said bill, and from thence until the —— day of —— last, your petitioner was residing at ——, and your petitioner did not at any time during the said period knowingly or wilfully conceal his residence, or attempt to evade service upon him of the said bill.

3. Until the —— day of —— last your petitioner never had any knowledge of the filing of the said bill.

4. The plaintiff on or about the —— day of —— applied for and obtained an order in this cause, authorizing him

(*a*) See *Ord.* 115.

to effect service of the said bill on your petitioner by publication [*Or*, substitutionally by serving A. B., of ——], and afterwards effected service pursuant to the said order; but your petitioner never saw or heard of the advertisement published by the said plaintiff pursuant to the said order [*Or*, the said A. B. never informed your petitioner of his having been served], and the fact of such service having been made pursuant to the said order was unknown to your petitioner until the —— day of ——.

5. A decree *nisi* was afterwards pronounced by this Honourable Court in this cause, on the —— day of ——, whereby it was decreed (*State shortly effect of decree*).

6. *Here set out concisely the nature of the petitioner's defence to the suit, and conclude*: and your petitioner is advised and believes that he has a good defence on the merits to this suit—*Or*, your petitioner is advised and believes that he will be seriously prejudiced if the said decree be allowed to stand; and your petitioner submits that if he be allowed to set up and prove the facts hereinbefore alleged, the said decree will be materially varied and modified.

Your petitioner, therefore, humbly prays:

1. That the said decree may be vacated and set aside, and that your petitioner may be let in to answer the plaintiff's bill upon such terms as to costs and otherwise as to this Honourable Court shall seem just.

And your petitioner will ever pray.

An affidavit can be readily framed from the foregoing petition.

CHAPTER VIII.

Trials of Questions of Fact and Assessments of Damages.

Section I. — *Trials and Assessments before the Court itself, with or without a Jury.*

375. Order for the trial of questions of fact by a Jury, before the Court itself.

(*Formal parts: see ante* 334 *et seq.*)

1. It is ordered that the following questions of fact be tried by a jury, before His Honor the Vice-Chancellor S., at —— on the —— day of, &c., namely:—

1. Was the plaintiff, J. Y., the true and first inventor of the invention for which the letters patent of the 17th day of October, 1850, in the bill in this cause mentioned, were granted to the said J. Y.?

2. Was the said invention new within the Dominion of Canada, at the date of the said letters patent?

3. Did the specification, enrolled in pursuance of the said letters patent, particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed?

4. Have the defendants, or any or either of them, wrongfully, and in contravention of the said letters patent, used the said invention?

2. And it is ordered that such questions be tried by a special jury.

3. And it is ordered that the plaintiffs do, forthwith, deliver to the solicitors for the defendants, particulars in writing of the breaches on which they intend to rely on the trial of such questions; and that the defendants do, within five days of the delivery of the particulars of breaches, deliver to the solicitors for the plaintiffs particulars in writing of the objections on which the defendants intend to rely on the trial of the same questions.

4. And it is ordered that the parties be at liberty to read the depositions and examinations, made and taken in this cause, of such of the witnesses as, upon the trial of the said questions, shall be proved to be dead, or unable to attend to be examined: saving all just exceptions.

(*Formal parts: see ante, No.* 334 *et seq.*)

376. Further order, by consent, that the questions be tried before the Court itself, without a jury.

1. This Court doth (by consent) order, that the said order of the 21st day of December, 1863, be varied, so far as regards the direction that the questions in the said order mentioned should be tried by His Honor with a special jury; and, instead thereof, it is ordered that such questions be tried by His Honor without a jury at ——, on, &c.

2. And it is ordered that this cause be set down, and be in the paper for hearing on the same day as the said questions shall be appointed to be tried, after the trial of the said questions.

In Chancery.

(*Title of cause or matter.*)

377. Record for trial, of a question or questions of fact (a).

By an order made in this cause [*Or*, matter], dated the —— day of ——, 18—, the Court hath directed that the following question [*Or*, questions] of fact be tried by a jury

(a) Where the issue is tried in a Court of law, no record is necessary, but an office copy of the order is entered in the same way as a *nisi prius* record. See C. S. U. C., c. 12, s. 69.

before the Court itself [*Or*, before the Court itself without a jury], that is to say:—

Whether, &c.

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378. Record for trial as to amount of damages (*a*).

In Chancery.

(*Title of cause or matter.*)

Whereas, by an order made in this cause [*Or*, matter], dated the —— day of ——, 18—, the Court hath awarded damages to the plaintiff [*Or as may be*], in respect of the matters in the said order mentioned, and hath directed that the amount of such damages shall be assessed by a jury before the Court itself [*Or*, before the Court itself without a jury.]

The question is, what amount of damages the plaintiff [*Or as may be*] hath sustained by reason of the matters in the said order mentioned.

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379. Certificate that the record has been filed.

In Chancery.

(*Shortened style of cause.*)

These are to certify, that the record for trial of questions of fact [*Or*, as to the amount of damages] by [*Or*, without] a jury, in this cause [*Or*, matter], was regularly filed on the ——— day of ———, 18—, as appears by my book.

---

380. Notice of motion to fix a day for the hearing.

(*Formal parts: see post, No.* 384.)

on the part of the plaintiff [*Or as may be*], that a day may be fixed for the trial by a jury before the Court [*Or*, for the trial before the Court without a jury], directed by the order dated the ———, 18—. And take notice (*as in No.* 382).

Section II.—*New Trials.*

381. Notice of motion for a new trial.

(*Formal parts: see post, No.* 382 *et seq.*)

on the part of the plaintiff [*Or*, defendant A. B., *&c.*], that the issue [*Or*, the question of fact—*Or*, the question as to the amount of damages], which has been tried pursuant to the order in this cause [*Or*, matter], dated the —— day of ——, 18—, may be re-tried by a special [*Or*, common] jury before this Court [*Or*, before this Court without a jury—*or as may be*]. And take notice (*as in No.* 382).

(*a*) Where the issue is tried in a Court of law, no record is necessary, but an office copy of the order is entered in the same way as a *nisi prius* record. See C. S. U. C., c. 12, s. 69.

CHAPTER IX.

INTERLOCUTORY PROCEEDINGS IN SUITS, AND INCIDENTAL THERETO.

SECTION I.—*Notices of Motion—Petitions.*

382. Formal parts of notice of motion in Court.

In Chancery.

(*Full style of cause, or shortened style, thus:*)

Between A. B. and others .....Plaintiffs,
and
C. D. and others.....Defendants.

Take notice, that this Honourable Court will be moved on the ——— day of ———, at ——— o'clock in the forenoon, or so soon thereafter as counsel can be heard on the part of (*State on whose behalf the motion is to be made, as*): [the plaintiff, *Or*, the infant defendant C. D., by A. B. his guardian *ad litem*, or the plaintiff A. B. an infant, by C. D. his next friend, *or* by C. D., of the Town of ——, gentleman, his next freind, for the purpose of the said motion, *or as may be* (*a*)]; for (*State the precise object of the motion; as thus* (for an order that a writ of injunction do issue out of and under the seal of this Honourable Court, restraining the defendant A. B. from [*Stating act to be restrained*] (*b*).

And take notice, that on such motion will be read the affidavits of —— (*Or*, the depositions of —— taken—*Or*, to be taken before A. B., Special Examiner at ——. (*Mention specially the matter on which the motion is to be sustained, excepting certificates of officers of the Court, which may be read without being alluded to in the notice.*)

Dated this —— day of ——, 18—.

(*Name, &c., of solicitor or party giving the notice* (*c*).

To (*Insert names of the solicitors or parties to whom the notice is given*).

(*a*) If the motion is made by a sole plaintiff or by all the plaintiffs, or by a sole defendant or all the defendants, it is unnecessary to set out the names in full. If the motion is made by some of several plaintiffs or defendants, the names of the parties should be specified. If by a stranger to the suit, his christian and surname and place of residence and addition should be set out, whether he be moving on his own behalf or on behalf of some other person under disability.

(*b*) Where special leave has been obtained to serve the notice (as where the defendant has not appeared), or to give the notice for a non-motion day, or for a motion day short of the ordinary two clear days after service, or at a special hour or place, that fact should be here stated as thus: "And take also notice that special leave to serve you with this notice—*If so:* and to give this notice for the day (and hour and place) aforesaid—has been obtained from the Chancellor (*or as may be*)"—Or, "And take also notice that special leave to give this notice for the day and (hour and place) aforesaid has been obtained from the said Chancellor (*or as may be*)."

(*c*) A notice of motion by a party suing or defending *in forma pauperis* (except for the discharge of his solicitor), must be signed by his solicitor.

383. Formal parts of notice of motion to a judge at the sittings for examination of witnesses, etc.

(*Style of cause: ante, No.* 382.)

Take notice, that an application will be made to the presiding Judge at the next sittings of this Court to be holden at the town of ———, on the ——— (*Continue as in Form No.* 382.)

———

(*Style of cause: see ante, No.* 382.)

384. Notice of motion in Chambers.

Take notice, that this Honourable Court will be moved in Chambers, on ———, at —— o'clock in the forenoon, or so soon thereafter as the motion can be heard, for an order [dismissing the Plaintiff's bill with costs for want of prosecution, *or as may be*]. (*Proceed as in Form No.* 382).

———

(*Style of cause: see ante, No.* 382.)

385. Another form.

Take notice that an application will be made to the Referee in Chambers, at Osgoode Hall, &c., on ———, or if opposed then, to a Judge in Chambers, so soon thereafter as a Judge shall be sitting in Chambers. (*Proceed as in Form No.* 382.)

———

(*Style of cause: see ante, No.* 382.)

386. Notice of motion before local master.

Take notice, that an application will be made to A. B., Esq., Master of this Court, at ———, on the ——— day of ———, at —— o'clock in the forenoon, or so soon thereafter as the motion can be heard, on behalf of the [plaintiff] for an order, &c. (*Continue as in Form No.* 382.)

———

387. Formal parts of a petition of course.

In Chancery.

(*Style of cause or matter, as ante, No.* 382.)

To the Honourable the Judges of the Court of Chancery—*Or*, Deputy Registrar [*as the case may be*].

The humble petition of the plaintiff [*Or as may be* (*a*)]

Sheweth as follows:

1. By, &c.
2. On, &c.

State the material facts on which the application is founded; and divide the statements into paragraphs, numbered consecutively.

Your petitioner therefore humbly prays that (*State the precise object of the petition*).

And your petitioner will ever pray, &c. (*b*).

(*a*) The petitioner should be described in the manner explained, *ante*, No. 382 n (*a*).

(*b*) A petition by a party suing or defending *in forma pauperis* (except for the discharge of his solicitor) must be signed by his solicitor.

388. Formal parts of a special petition.

(*Full style of cause.*) (*a*)

Proceed as in last Form to the end of the stating part.

Your petitioner therefore humbly prays that (*State the precise object of the petition*).

Or that this Honourable Court will please to make such other order in the premises as shall seem meet.

And your petitioner will ever pray, &c.

---

389. Notice of hearing to be endorsed on a special petition. (*b*)

Take notice that the within petition will be presented to this Honourable Court [*If so*—in Chambers] at Osgoode Hall, in the City of Toronto, on ——, at —— o'clock in the forenoon, or so soon thereafter as Counsel [*Or*, the matter] can be heard. And if you do not attend, such order may be made in your absence as may seem just. And take notice, in support of such petition will be read (*&c., conclude as in No.* 382).

SECTION II.—*Interlocutory Motions and Proceedings in Suits, &c.*

MOTIONS FOR SECURITY FOR COSTS. (*c*)

390. Notice of motion for security for costs where residence is not correctly stated in bill or order.

(*Formal parts: see ante, No.* 384.)

on the part of the defendant A. B., that the plaintiff [*Or*, that C. D., the next friend of the plaintiff] may be ordered, within (ten) days, to give the usual security to answer costs, by reason of his place of residence or abode not being stated [*Or*, correctly stated] in the bill [*Or*, administration order] in this cause; and that, in the meantime, proceedings be stayed—*If there are other defendants, add:* as against the said defendant. And take notice, that on such motion will be read (*&c., as in No.* 382).

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391. Notice of motion for security for costs of a proceeding by petition.

(*Formal parts: see ante, No.* 384.)

on the part of the defendant A. B., who has been served with the petition preferred by C. D. in this cause [*Or*, matter] on the ——, 18—, that the said C. D. [*Or*, that

(*a*) See notes to last form. See *Ord.* 597.
(*b*) See notes *b* and *c* to form No. 382.
(*c*) Where it appears on the face of a bill that the plaintiff is permanently resident out of the jurisdiction, an order for security for costs may be obtained on præcipe from the Clerk of Records and Writs, or Deputy Registrar, in whose office the bill is filed, but if such residence is stated to be only temporary, a special application is necessary. See *Wilson* v. *Wilson*, 6 Pr. C. 152.

E. F., the next friend therein of the said C. D.] may be ordered to give the usual security to answer costs; and that the said petition may stand over till such security is given. And take notice, that on such motion will be read (*&c., as in No.* 382).

---

392. Order for security for costs.

(*Formal parts: see ante, No.* 338.)

Upon the application of the defendant ———, and it appearing by —— that the said plaintiff resides at —— out of the jurisdiction of this Court: It is ordered, that the plaintiff do procure some sufficient person or persons resident within the jurisdiction of this Court, to give security on [his] behalf, in the penal sum of not less than $400, to answer the costs of the said defendant ———, in case this Court shall think fit to award any, before the said defendant ——— shall be obliged to put in [his] answer to the ——— bill.

Entered.

———, Clerk of Records and Writs,
(*Or*, Dep. Registrar).

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393. Notice of motion for better security to be given within a limited time.

(*Formal parts: see ante, No.* 384.)

On the part of the defendant A. B. [*Or*, A. B., in the order dated the —— day of ——, 18— (*Order directing the security to be given*) named], that (*If the bond of an insufficient person has been given, say:* in lieu of, or in addition to, the bond of E. F., dated the ——, 18—), the plaintiff [*Or*, C. D., in the said order named], may be ordered within (fourteen) days (*a*), pursuant to the order dated the ——, 18— [*Or*, the said order], to procure some sufficient person on his behalf to give security by bond in the penalty of $400 [*Or as may be*], conditioned to answer costs; and that, in the meantime, proceedings be stayed —*If there are other defendants or respondents, add:* as against the said A. B.

And that in default of such security being given plaintiff's bill [*Or*, administration order—*Or*, notice of motion for an administration order—*Or*, petition—of the said C. D., in the said order mentioned] may stand dismissed out of Court, without further order—*If there are other defendants or respondents, add:* as against the said A. B. —with costs to be paid by the said C. D. to the said A. B. And take notice, that on such motion will be read (*&c., as in No.* 382).

(*a*) *Kennedy* v. *Edwards*, 11 Jur. N. S. 153, V. C. W.

(*Formal parts: see ante, No.* 384.)

394. The like, for a new security to be given on death or insolvency of obligor.

on the part of the defendant A. B. [*Or*, of A. B., in the order dated the —— of ——, 18— (*Order directing former security to be given*) named], that the plaintiff [*Or*, that C. D., in the said order named] may be ordered, within (fourteen) days, to procure some sufficient person on his behalf to give a new security to answer costs, in lieu of, or in addition to, the bond, dated the —— of ——, 18—, given pursuant to the said order by E. F., who has since died [*Or*, become insolvent—*or as may be*]; and that, in the meantime, proceedings be stayed—*If there are other defendants, add:* as against the said A. B.—*Or, in the case of a petition, say:* and that the said petition may stand over until such security is given. And take notice, that on such motion will be read (*&c., as in* No. 382).

(*Formal parts: see ante, No.* 300.)

395. Affidavit in support.

1. E. F., the obligor in the bond dated the —— of ——, 18—, which was given as security for costs, pursuant to the order in this cause [*Or*, matter], dated the —— of ——, 18—, has since died [*Or* has since become an insolvent].

2. The plaintiff [*Or*, A. B.], the person required by the said order to give security for costs, is still permanently resident at ——, out of the jurisdiction of this Honourable Court [*Or as may be*].

3. *Show means of knowledge.*

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(2) *Giving Security.*

396. Bond as security for costs.

KNOW all Men by these presents, that I, A. B., of (*Place of residence and addition*), am held and firmly bound [*Or, if two obligors, say:* that we, A. B., of, *&c.*, and C. D., of, *&c.*, are jointly and severally held and firmly bound] to E. F. (*Insert name of Registrar or Deputy Registrar* (*a*)), Esquire, Clerk of Records and Writs of the Court

(a) Where the order is issued by a Deputy Registrar, the bond will be to him. See *Ord.* 321. It is not necessary that the plaintiff should be a party to the bond—*Sm. Pr.* vol. ii. 257; and one surety is sufficient—*Beaton* v. *Boomer*, 1 U. C. L. J. N S. 108; except where the security is given on an appeal to the Court of Appeal, when the appellant must join in the bond with two sureties; or except in certain special cases where an additional surety in the place of the appellant may be received. See *Rule* 3 of Court of Appeal. The bond must be for the benefit of all the defendants. See *Ord.* 321.

of Chancery, in the penal sum of four hundred dollars [*Or other sum mentioned in the order,*] of good and lawful money of Canada, to be paid to the said E. F., his certain attorney, executors, administrators or assigns: For which payment to be well and faithfully made, I bind myself, and my [*Or*, we bind ourselves, and each of us, our and each of our] heirs, executors and administrators, firmly by these presents, sealed with my seal [*Or*, with our seals]. Dated this —— day of ——, 18—.

WHEREAS by an order of the Court of Chancery, dated the —— day of ——, 18—, and made in a cause wherein B. A. is plaintiff [*Or*, B. A. and another—*Or*, others—are plaintiffs], and D. C. is defendant [*Or*, D. C. and another—*Or*, others—are defendants—*Or*, in a matter intituled, *&c.*], on the application of (the defendant) G. H., It was ordered that (*Recite the mandatory part of the order directing the security to be given*): And whereas the above bounden A. B. hath [*Or*, the above bounden A. B. and C. D. have], at the request of the said (*Person required to give security*), agreed to enter into the above written obligation, subject to the condition hereinafter contained:

NOW THE CONDITION of the above written obligation is such, that if the above bounden A. B., his [*Or*, if the above bounden A. B. and C. D., or either of them, their or either of their] heirs, executors or administrators, do and shall well and truly pay, or cause to be paid, to all the defendants in the said cause, all such costs as the said Court shall think fit to award to the said defendants, or to any or either of them [*Or as may be*], in the said cause [*Or*, matter—*or as may be*]: then the above written obligation is to be void, or else to remain in full force and virtue (*a*).

A. B. (Seal).
C. D. (Seal).

Signed, sealed and delivered by the above bounden A. B. (and C. D.), in the presence of }

B. A., of —— (*Residence*).

(*a*) The above forms of recital and condition will suit almost every case in which a bond for costs can be ordered to be given; and are suggested as substitutes for Forms No. 397, which have long been in ordinary use but only apply, in terms, to a bill suit.

(*Formal parts: as in No.* 396.)

Whereas Y. Z. had lately exhibited his bill of complaint in the Court of Chancery against D. C. (and E. F.) defendant [*Or*, defendants], touching the matters therein contained:

397. Other forms of recital and condition (*a*).

Now the condition of the above written obligation is such, that if the above bounden A. B. and C. D., or either of them, their or either of their heirs, executors, or administrators, do and shall well and truly pay or cause to be paid to the defendants (*b*) in the said cause all such costs as the said Court shall think fit to award to the said—*If the bond is given to one, add:* defendant—*If to all or several of the defendants, add:* defendants, or to any or either of them—in the said cause, then the above written obligation is to be void; or else to remain in full force and virtue.

(*Signatures and attestation as in last Form.*)

In Chancery.

Brown v. *Jones.*

398. Notice of deposit of bond.

Take notice, that I have this day deposited with the Clerk of Records and Writs (*Or*, Deputy Registrar) the bond of A. B., of (*Residence and addition as in bond—If so*, and C. D., of, *&c.*), conditioned to answer costs, pursuant to the order dated the —— of ——, 18— (*Order directing bond to be given*).

Dated, &c.

Yours, &c.,
Y. Z.,
Plt.'s Solr.

To——————

(*Formal parts: see ante, No.* 398.)

399. Notice of name of proposed obligor.

Take notice, that the plaintiff [*Or*, E. F., in the order dated the —— of ——, 18—, named], proposes A. B., of (*Residence and addition—If so*, and C. D., of, *&c.*), as a sufficient person [*Or*, sufficient persons] on his behalf, to give security, by bond, for costs, pursuant to the order dated the—— of ——, 18— [*Or*, said order].

(*a*) See Braithwaite's Pr. 531, and *Beaton* v. *Boomer*, 1 U. C. L. J. N. S. 108.
(*b*) See *Ord.* 321.

400. Notice of objection to proposed obligor (*a*).

(*Formal parts: see ante, No.* 398.)

Take notice, that A. B., in the bond [*Or*, notice] of the —— of ——, 18—, named as surety for costs, is objected to by me, on the ground that he is not a sufficient person to give such security, in conformity with the order dated the —— of ——, 18—.

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401. Affidavit of proposed obligor, in justification (*b*).

(*Formal parts: see ante, No.* 300.)

1. I am the obligor named in the bond dated the —— of ——, 18— [*Or, if bond not yet given, say:* I am the person proposed by the plaintiff [*or as may be*] to give security on his behalf by bond] to the Registrar (*Or*, Deputy Registrar), in the penalty of $400 [*or as may be*], conditioned to answer costs in this cause [*Or*, matter], pursuant to the order of the ——, 18—.

2. I am a resident inhabitant of Ontario, and am a householder in (*Or* freeholder in ——) and I am well and truly worth the sum of $400 (*i. e., the amount of security directed*), of lawful money of Canada, over and above what is sufficient to pay all my just debts.

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402. Notice of motion for leave to pay fund into Court, in lieu of bond (*c*).

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff [*Or*, of A. B., in the order dated the —— of ——, 18— (*Order directing security to be given*) named], that in lieu of the usual security directed to be given by the order dated the —— of ——, 18— [*Or*, by the said order], he may be at liberty, within (ten) days, to pay $400 [*or as may be*] into Court, to the credit of (*Short title of suit—Or, Short title of matter*) as security for costs, to answer costs, in case any costs shall be awarded to be paid by him—*Add, if desired:* and that the interest thereof may be invested and accumulated. And take notice, that on such motion will be read (*&c., as in No.* 382.)

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403. Notice of motion to discharge order for security (*d*).

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff, that notwithstanding the order dated the —— of ——, 18—, directing security for costs to be given by him, he may be at liberty to amend

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(*a*) Braithwait's Pr. 35.

(*b*) *Ibid.*

(*c*) Braithwite Pr. 34. 1944. As to such payment by a limited company, see *Washoe Mining Co.* v. *Ferguson*, 2 Law Rep. Eq. 371, 377, V. C. W.

(*d*) *Mathews* v. *Chichester*, M. R. 25 July, 1861, Reg. Lib. B. 1797 ; 30 Beav. 135. At law, where security has been given under an order, by a plaintiff out of the jurisdiction, the security is not vacated by the return to the jurisdiction : see *Skeene* v. *Davies*, 14 W. R. 776, Q. B. Neither will the order be discharged in equity where the plaintiff falsely states on his bill that his residence is within the jurisdiction ; *Waldron* v. *McWalter*, 6 Pr. C. 145.

his bill by inserting his present residence: he being now resident at (*State where*), within the jurisdiction of this Honourable Court; and that thereupon the said order may be discharged. And take notice, that on such motion will be read (*&c., as in No.* 382.)

(*Formal parts: as in No.* 384.)

404. Notice of motion to discharge order for security on the grond that the plaintiff has property within the jurisdiction.

on the part of the plaintiff, that the order dated the —— day of ——, 18—, directing security for costs to be given by him, may be rescinded on the ground that the plaintiff is owner of property within the jurisdiction of this Honourable Court which is amply sufficient for the payment of any costs which may be awarded to the defendant in this cause, and take notice that on such motion will be read (*&c., as in No.* 382).

(*Formal parts: as ante, No.* 300.)

405. Affidavit in support by the plaintiff (*a*).

1. I am seized in fee simple of, and am solely and beneficially entitled in fee simple to, the following real estate situate within the jurisdiction of this Honourable Court, viz. (*Giving a specific description*).

2. The said lands are free from encumbrances, and are worth the sum of $ ——, and would I verily believe bring that amount if sold at a forced sale.

(*Formal parts: as ante,* 338 *or* 339.)

406. Order for Registrar or Deputy Registrar to assign Bond (*b*).

Ordered, that the Registrar [*Or*, Deputy Registrar at ——] do execute an assignment to the defendant A. B. of the bond for security for costs filed by the plaintiff in this cause, upon a proper assignment being tendered to him for execution and that the said bond be delivered by the proper officer to the said A. B., &c.

In Chancery.

(*Short title.*)

407. Receipt for the bond.

Received the ——of ——, 18—, pursuant to the (foregoing) order dated the —— of ——, 18— (*Order to deliver out bond*), of E. F., Esquire, the Clerk of Records and Writs, the bond as security for costs therein mentioned.

D. E., Solicitor for the said A. B.

(*a*) If the affidavit is made by some other person than the plaintiff, it should show the deponent's means of knowledge. The property must be of such a character as to be available in execution.

(*b*) See 35 Vic. c. 12 (O.)

PAUPERS.

408. Petition of course, for leave to prosecute a suit *in forma pauperis* (a)

Title—and address to the Judges: see ante, No. 387.

The humble petition of the plaintiff

Showeth as follows:

1. *In a suit by bill:* Your petitioner, on the —— of ——, 18—, filed his bill in this cause against the above-named defendant: thereby stating that (*Set forth succinctly the plaintiff's right to the matters in question, as it appears in the bill; as thus:* A. B. lately died intestate; that your petitioner claims to be one of his next of kin, and, as such, to be entitled to a distributive share of his personal estate; and that the defendant is his legal personal representative); and praying that (*State the substance of the prayer; as thus:* the usual accounts of the personal estate of the said A. B. may be taken; and that such estate may be administered under the direction of this Honourable Court).

1. *In a suit by administration order:* On the —— of ——, 18—, notice of motion was served in this cause on behalf of your petitioner, as claiming to be one of the next of kin [*Or as may be*] of the above-named A. B., on the above-named defendant, as his administrator, for the administration of the personal estate of the said A. B. [*Or as may be*].

2. *State, shortly, the subsequent proceedings; as thus:* The defendant has answered the said bill [*Or,* appeared on the said motion]; but no further proceeding in the said cause has been had.

3. Your petitioner is not worth five pounds: his wearing apparel and the subject matter of this suit only excepted.

Your petitioner therefore humbly prays, that he may be at liberty to prosecute this suit *in formâ pauperis;* and that C. D., Esquire, who has subscribed this petition, thereby certifying your petitioner's just cause of suit, may be assigned as his counsel and solicitor.

And your petitioner will ever pray, &c.

---

409. Certificate of counsel subscribed thereto.

I humbly conceive that this case is proper for relief in this Court.

——, 18—. (*Name of counsel.*)

(a) For order in like cases, see Seton, 1271, No. 6. The petition should be accompanied by an authentic copy of the bill or notice.

(*Formal parts: see ante, No.* 300.)

410. Affidavit in support.

I, A. B., of, *&c.*, the above-named plaintiff, make oath and say, that I am not worth the sum of five pounds: my wearing apparel and the subject matter of this suit only excepted.

(*Formal parts: see ante, No.* 384.)

411. Notice of motion for leave for a married woman to sue *in formâ pauperis*, without a next friend.

That the plaintiff A. B., the wife of (the defendant) C. D., may be at liberty to prosecute this suit [*Or, if suit not instituted, say:* to institute a suit against E. F. and others, for (*State object; as thus:* the administration of the personal estate of G. H.), and prosecute the same] *in formâ pauperis*, without a next friend; and that D. C., Esquire, may be assigned as her counsel and solicitor. And take notice that on such motion will be read (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 300.)

412. Affidavit in support (*a*).

1. I am advised and verily believe that I have a proper case for relief in this Honourable Court in respect of (*State object of proposed suit*).

2. The draft of the bill proposed to be filed by me to obtain such relief has been settled and signed by D. C., Esquire, barrister-at-law; and he has consented to act as my counsel and solicitor in such suit.

3. *Show inability to obtain a next friend; as thus:* I have applied to many of my friends and acquaintance, and made great exertions to induce some substantial person among them to act as my next friend in such suit; but I cannot prevail upon any person to consent to act as such next friend.

4. I am not worth the sum of five pounds: my wearing apparel and the subject matter of the said proposed suit excepted.

5. I am desirous to file the said bill, and prosecute the said suit *in forma pauperis*, without a next friend.

(*a*) The application must be accompanied by counsel's certificate of merits: *ante*, No. 409. If the bill has been filed, the statements must be varied accordingly. The counsel signing the certificate is usually assigned counsel for the pauper.

413. Petition of course for leave to defend *in formâ pauperis*.

Title—and address to the Judges: see ante, No. 387.

The humble petition of the above named defendant C. D.

Showeth as follows:

1. *In a suit by bill:* The plaintiff has filed his bill in this cause against your petitioner—*If so:* who has filed his answer thereto (*a*).

2. *In a suit by administration order:* An administration order in this cause has been taken out on behalf of the above named plaintiff, against your petitioner—*If so:* who has filed his answer thereto.

3. Your petitioner is not worth five pounds, his wearing apparel and the subject matter of this suit only excepted.

Your petitioner therefore humbly prays, that he may be at liberty to defend this suit *in formâ pauperis;* and that B. C., Esquire, may be assigned as his counsel and solicitor.

And your petitioner will ever pray, &c.

---

414. Notice of motion to discharge order to sue or defend *in formâ pauperis*.

(*Formal parts: see ante, No.* 384.)

on the part of (the defendant) A. B., that the order dated the ——, 18—, on the application of (the plaintiff), whereby it was ordered that (the plaintiff) should be at liberty to prosecute this suit [*Or as may be*] *in formâ pauperis*, may be discharged. And take notice, that on such motion will be read (*&c., as in No.* 382).

Infants.

1. *Next Friends.*

415. Notice of motion for removal of a next friend, and approval of another (*b*).

(*Formal parts: see ante, No.* 384.)

on the part of the infant plaintiff, by A. B., of (*Residence and addition*), his next friend for the purpose of this application, that C. D., the plaintiff's next friend in this suit, may be removed, and that the said A. B., or some other proper person, may be approved as, and deemed to be such next friend, in lieu of the said C. D.; and that—

(*a*) The defendant need not answer before applying for the order.

(*b*) The application must be supported by an affidavit of the grounds for the removal of the next friend, and of the fitness to act of the proposed substitute; and the consent of the latter to act must be shown.

If before decree: the plaintiff's bill may be amended by inserting the name of the said A. B., or other person, as the plaintiff's next friend, instead of the name of the said C. D.

Or, if after decree: the said A. B., or other person, may be named in all future proceedings in this suit, as the plaintiff's next friend, in lieu of the said C. D. And take notice, that on such motion will be read (*&c., as in No.* 382).

(*Formal parts: see ante, No.* 384.)

on the part of the infant plaintiff, by A. B., his next friend, that he may be at liberty—

416. Notice of motion to substitute a next friend for one desirous to retire.

If before decree: to amend his bill, by inserting the name of C. D., of (*Residence and addition*), as his next friend, in lieu of the said A. B., who is desirous to retire.

Or, if after decree: to name C. D., of (*Residence and addition*), as his next friend, in all future proceedings in this suit, in lieu of the said A. B., who is desirous to retire. And take notice, that on such motion will be read (*&c., as in No.* 382).

(*Formal parts: see ante, No.* 384.)

on behalf of the infant plaintiff, by A. B., of (*Residence and addition*), his next friend for the purpose of this application, that he may be at liberty—

417. Notice of motion, to appoint a next friend for one deceased.

If before decree: to amend his bill, by inserting the name of the said A. B. as his next friend, in lieu of C. D., now deceased.

Or, if after decree: to name the said A. B. as his next friend, in all future proceedings in this suit, in lieu of C. D., now deceased. And take notice, that on the said motion will be read (*&c., as in No.* 382).

An affidavit in support accompanies.

(*Formal parts: see ante, No.* 384.)

on the part of the infant plaintiff, by A. B., of (*Residence and addition*), his next friend for the purpose of this application, that he may be at liberty—

418. Notice of motion, to appoint a next friend for one incapacitated or removed.

If before decree: to amend his bill by inserting the name of the said A. B. as his next friend, in lieu of C. D., who is incapacitated from acting [*Or,* who by an order dated the —— of ——, 18—, has been removed].

Or, if after decree: to name the said A. B. as his next friend, in all future proceedings in this suit, in lieu of C. D., who is incapacitated (*&c., as above*). And take notice, that on the said motion will be read (*&c., as in No.* 382).

---

419. Notice of motion, by defendant, that a new next friend may be approved for plaintiff (*a*).

(*Formal parts; see ante, No.* 384.)

on the part of the defendant A. B., that a proper person may be approved as next friend of the plaintiff, in lieu of C. D., who has died [*Or*, become incapable of acting—*Or*, been removed]; and that ——

If before decree: the plaintiff's bill may be amended by inserting the name of such person as the plaintiff's next friend, in lieu of the said C. D.

Or if after decree: such person may be named as the plaintiff's next friend, in all future proceedings in this suit, in lieu of the said C. D. And take notice that on such motion will be read (*&c., as in No.* 382.)

---

420. Affidavit in support of motion or petition (*b*).

(*Formal parts: see ante, No.* 300.)

I, E. F., of (*Place of business*), gentleman, the solicitor in this suit for the defendant A. B., make oath and say as follows:

1. The plaintiff A. B. is under the age of twenty-one years; and the defendant has been served with a copy of the plaintiff's bill in this suit, and has filed his answer thereto.

2. I knew and was well acquainted with C. D., of (*Residence and addition, as in motion paper or petition*), the person named as the next friend of the said A. B.

3. The said C. D. departed this life on the —— day of ——, and no other person has been named as next friend of the said plaintiff, by whom he may further prosecute this suit (*Show means of knowledge*).

Sworn, &c.

---

421. Præcipe for order appointing a guardian *ad litem* to an infant defendant, under *Ord.* 610.

In Chancery.

(*Short style of cause.*)

Required an order appointing a guardian *ad litem* to the defendants A. B., C. D. and E. F., who are respectively

(*a*) Smith's Pr. 7th Ed. pp. 276–7.

(*b*) The solicitor must swear that the proposed guardian has no adverse interest; but where he is unable to depose to all or some of the other facts, another deponent can be joined, and the affidavit varied accordingly.

infants under the age of twenty-one years, by whom they may answer the plaintiff's bill and defend this suit.

Dated, &c.

A. B.,
Plaintiff's Solicitor.

To the Clerk of Records and Writs,
[*Or*, Deputy Registrar at ——.]

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422. Notice of motion, by defendant, for a guardian to be assigned him, in lieu of one deceased.

(*Formal parts : see ante, No.* 384.)

To move on behalf of the defendant A. B., an infant, by C. D., of (*Residence and addition*), his next friend, that the said C. D. may be assigned his guardian, by whom he may defend this suit, in lieu of G. H., now deceased. And take notice (*&c., as in No.* 382.)

---

423. Affidavit in support of motion or petition.

(*Formal parts: see ante, No.* 300.)

1. G. H., who, by an order, dated the —— of ——, 18—, was assigned the guardian *ad litem* of the defendant A. B. in this suit, died on the —— of ——, 18—; and no person has since been assigned such guardian.

2. The said A. B. is still under the age of twenty-one years.

3. I am the person proposed to be appointed guardian to the said A. B., and I have no interest whatever in the matters in question in this suit adverse to the interest therein of the said A. B.

4. I have been requested to apply to be appointed guardian of the said defendant A. B. by (*Stating name and showing relationship of such person to the infant*), and I say that the said —— has no interest whatever in the matter in question in this suit adverse to the interest of the said defendant A. B. therein, to the best of my knowledge and belief.

---

424. Præcipe for an order appointing a guardian to an infant as respondent to a petition under Ord. 510.

(*Formal parts : see ante, No.* 421.)

Required an order appointing a guardian *ad litem* to A. B., an infant, who has been served with a copy of the petition preferred on the —— of ——, 18—, by D. A. and others in this cause [*Or*, matter]: by whom the said C. D. may appear upon the said petition.

425. Notice of motion for removal of a guardian and appointment of another, under Ord. 612.

(*Formal parts: see ante, No.* 384.)

on the part of (the defendant) A. B., an infant, by C. D., of (*Residence and addition*), his next friend for the purpose of this application, that E. F., the guardian *ad litem* of the said A. B., assigned by an order dated the —— of ——, 18—, may be removed; and that the said C. D., or some other proper person, may be assigned such guardian in lieu of the said E. F. And take notice, that on such motion will be read (*&c., as in No.* 382).

---

426. Affidavit in support of motion.

(*Formal parts: see ante, No.* 300.)

I, G. H., of (*Place of business*), gentleman, the solicitor in this cause [*Or*, matter] for A. B., make oath and say as follows:

1. The said A. B. is [a party respondent named in the petition preferred on the —— of ——, 18—, by D. A. and others in this cause *Or*, matter], [*Or* is a defendant in this cause].

2. The said A. B. is under the age of twenty-one years.

3. I have been instructed by the said A. B. [*Or*, by N. B., the mother of the said A. B.] to apply to this Honourable Court to be assigned the guardian of the said A. B., by whom he may appear upon the said petition.

4. I have no interest in the matters [in the said petition referred to] [*Or*, in question in this suit] adverse to the interest of the said A. B.; nor am I acting for any other person or persons having any interest adverse to that of the said A. B.

5. That Mr. J. H. was by an order of course issued in this cause appointed guardian *ad litem* to the said A. B.

6. *State shortly the reasons why it is sought to remove* J. H. and appoint G. H. (*a*)

(*a*) In *Dewitt* v. *Ward*, the usual *præcipe* order had been obtained under *Ord.* 610, appointing Hoskin, Q. C., guardian *ad litem* to two infants of the ages of 19 and 16 respectively. A motion was subsequently made on their behalf under *Ord.* 612 to discharge the order, and for the appointment of another solicitor as guardian in his place. In support of the application, affidavits were filed by each of the infants, stating that they did not know Mr. Hoskin, and did not desire to, and would not consult with him about the cause; that they did know the solicitor whom they desired to be appointed guardian, and that they were desirous that he should be appointed; and further, that they made the application voluntarily, and not at the instance or suggestion of any other person. The solicitor proposed as guardian also filed the usual affidavit denying having any adverse interest or being concerned for any person who had any adverse interest to that of the infants. The motion came before Proudfoot, V. C., on the 11th October, 1875, who refused the application, holding that the grounds assigned were insufficient to warrant the discharge of the order appointing Mr. Hoskin. It would therefore seem that the Court has deprived infants of all voice in the appointment of guardians *ad litem*, and that they must submit to accept the nomination of the Court unless they can show that the guardian assigned by the Court is for any reason personally unfit to represent them or protect their interests.

In Chancery.

——, the —— day of ——, in the year of our Lord 18—.

Between

Upon the application of the plaintiff alleging that the said defendant is an infant under the age of twenty-one years: It is ordered that ——, one of the solicitors of this Court, be and he is hereby appointed guardian to the said infant defendant, by whom he may answer the plaintiff's bill and defend this suit (*Or*, by whom hemay appear and defend this suit).

Entered.

——, Clerk of Records and Writs.
(*Or*, Dep. Registrar).

427. Order appointing guardian *ad litem*.

Idiots, Lunatics, and Persons of Weak Mind.

1. *Next Friends.*

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff, a person of unsound mind not so found, by A. B., of (*Residence and addition*), his next friend for the purpose of this application, that C. D., the plaintiff's next friend in this suit, may be removed; and that (*Continue as in No.* 415, *ante, to the end*).

428. Notice of motion for removal of a next friend, and approval of another (*a*).

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2. *Guardians ad litem.*

(*Formal parts: see ante, No.* 384.)

On behalf of the defendant A. B., a person of unsound mind so found, by C. D., of (*Residence and addition*), his next friend for the purpose of this application, that the said C. D. may be assigned his guardian, by whom he may defend this suit: his committee, the defendant E. F., having an adverse interest.

429. Notice of motion by a defendant found to be of unsound mind, for a guardian to be assigned him, where his committee is adversely interested.

(*a*) The practice as to the removal and appointment of next friends of idiots, lunatics, and persons of weak mind, is the same, *mutatis mutandis*, as the practice in the case of infants; and such of the forms 415 to 428 as are not included in this section can be readily adapted.

430. Affidavit in support of motion (*a*).

(*Formal parts: see ante, No.* 300.)

I, C. D., of (*Place of business*), gentleman, the solicitor in this cause for the defendant A. B., make oath and say as follows:

1. The defendant A. B. has been served with a copy of the plaintiff's bill in this suit, and has answered the same.

2. The said A. B. has, by proceedings in lunacy, been found to be a person of unsound mind; and the defendant E. F. has been appointed and is now the committee of his estate.

3. The said E. F. has an interest in the matters in question in this suit adverse to the interest of the defendant A. B.

4. I am the person (*Continue as in par.* 3 *of No.* 423).

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431. Notice of motion by a defendant of unsound mind not so found, for a guardian to be assigned him.

(*Formal parts: see ante, No.* 384.)

On behalf of the defendant A. B., a person of unsound mind not so found, by C. D., of (*Residence and addition*), his next friend for the purpose of this application, that the said C. D. may be assigned his guardian, by whom he may defend this suit, and take notice, (*&c., as in Form No.* 382).

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432. Affidavit in support of motion.

(*Formal parts: see ante, No.* 300.)

We, C. D., of (*Place of business*), gentleman, the solicitor in this cause for the defendant A. B., and B. E., of (*State place of residence, and add qualification to practise as a medical man*), severally make oath and say as follows:

And first I the said C. D. for myself say:

1. The said A. B. has been served with a copy of the plaintiff's bill in this suit, and has answered the same.

2. I am (*Continue as in ante, No.* 423, *par.* 3 *to the end*).

3. The said A. B. has not been found of unsound mind by inquisition, or other proceeding in lunacy [*Or as may be*].

4. *Show means of knowledge.*

And I the said B. E. for myself say:

Affidavit as to lunacy of defendant.

5. I have been in actual practice as a physician [*Or as may be*] for —— years last past; and I have for —— years last past professionally attended the above-named A. B. [*Or as may be*].

(*a*) The proposed guardian must swear that he has no adverse interest; but where he is unable to depose to all or some of the other facts, another deponent can be joined, and the affidavit varied accordingly

6. I personally examined the said A. B. on the —— day of ——, 18—, at (*State where*), and on several previous occasions [*Or as may be*], for the purpose of ascertaining his state of mind.

7. From such my examination of the said A. B., I am decidedly of opinion that he is of unsound mind, and wholly incapable of the management of himself or his affairs, or of the care of his property; and I have formed such opinion from (*State the grounds*).

Sworn, &c.

(*Formal parts: see ante, No.* 384.)

(*Continue as in ante, No.* 431, *to the end; and add after word* suit: in lieu of B. D., now deceased.)

433. Notice of motion, by defendant, for a guardian to be assigned him, in lieu of one deceased.

(*Formal parts: see ante, No.* 300.)

We, C. D., of (*Describe the deponents, as in No.* 432), severally make oath and say as follows:

434. Affidavit in support of motion.

And first I the said C. D. for myself say:

1. G. H., who, by an order in this cause dated the —— of ——, 18—, was assigned the guardian *ad litem* of the defendant A. B., died on the —— of ——, 18—, and no person has since been assigned such guardian.

2. I am (*Continue as in No.* 423, *par.* 3, *ante, to the end of that Form.*)

3. The said A. B. has not (*Continue as in No.* 432, *par.* 3, *ante, to the end of that Form*).

Sworn, &c.

(*Formal parts: see ante, No.* 348.)

435. Notice of motion by a person of unsound mind not so found, for a guardian to be assigned him as respondent to a petition.

On behalf of A. B., a person of unsound mind not so found, by C. D., of (*Residence and addition*), his next friend for the purpose of this application: who has been served with the petition preferred on the —— of ——, 18—, by D. A. and others in this cause [*Or,* matter]: that the said C. D. may be assigned the guardian of the said A. B., by whom he may appear upon the said petition. And take notice (*as in No.* 382.)

436. Affidavit in support of motion or petition.

(*Formal parts: see ante, No.* 300.)

We, C. D., of (*Place of business*), gentleman, the solicitor in this cause [*Or*, matter] for A. B. hereinafter named, and B. E., of (*Residence and description of a medical man: see No.* 432, *ante*), severally make oath and say as follows:

And first I the said C. D. for myself say:

1. The said A. B. has been served with a copy of the petition preferred on the —— instant [*Or*, last], by D. A. and others in this cause [*Or*, matter].

2. I am (*Continue as in No.* 423, *par.* 3, *ante, to the end of that Form.*)

4. The said A. B. has not (*Continue as in No.* 432, *par.* 3, *ante, to the end of that Form.*)

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437. Notice of motion by plaintiff, that a guardian may be assigned a defendant.

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff, that one of the solicitors of this Honourable Court, may be assigned the guardian of the defendant A. B., a person of unsound mind not so found, by whom he may (appear to and) defend this suit. And take notice, that on such motion will be read (*&c., as in No.* 382).

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438. Affidavit in support.

(*Formal parts: see ante, No.* 300.)

We, E. F., of (*Place of business*), gentleman, the solicitor in this cause for the plaintiff [*Or as may be*], and B. E., of (*Residence and description of a medical man: see No.* 432, *ante*), severally make oath and say as follows:

And first I the said E. F. for myself say:

1. On the (*Prove service of copy bill, as in No.* 186 *et seq., ante.*) (*a*)

2. On the —— day of ——, 18—, I served C. D., of (*Residence and addition*), who is the person with whom, or under whose care, the said defendant A. B. was at the time of serving him as aforesaid with the said copy of the bill, with the notice of motion now shown to me and marked A, by delivering a true copy of the said notice to, and leaving the same with, the said C. D. personally at (*State where*)—*Or*, with the wife—*Or*, son—*Or*, daughter—*Or*, servant—(being a grown-up person) of the said C. D., at his dwelling-house situate at (*State where*).

(*a*) Where defendant has put in an answer and subsequently becomes lunatic, it is not necessary to prove service of the bill, but the affidavit may be modified accordingly.

3. The said A. B. has not been found of unsound mind by inquisition, or other proceeding in lunacy [*Or as may be*].

4. *Show means of knowledge.*

And I the said B. E. for myself say:

5. I have been in actual practice as a physician [*Or as may be*] for —— years last past.

6. *Show that the defendant is of unsound mind, and the deponent's means of knowledge—see No.* 432, *ante.*

Sworn, &c.

(*Formal parts: see ante, No.* 384.)

on the part of the defendant A. B., that the order dated the —— of ——, 18—, whereby it was ordered that (*Recite so much of it as assigns a guardian*), may be discharged. And take notice that on such motion will be read (*&c., as in No.* 382.)

439. Notice of motion by plaintiff or defendant, to discharge order assigning guardian.

Affidavit in support accompanies.

Married Women.

1. *Next Friends.*

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff A. B., by C. D., of (*Residence and addition*), her next friend for the purpose of this application, that she may be at liberty—

440. Notice of motion by a married woman plaintiff, to substitute a next friend.

If before decree: to amend her bill, by inserting the name of the said C. D. as her next friend, in lieu of E. F., her present next friend.

Or, if after decree: to name the said C. D. as her next friend, in all future proceedings in this suit, in lieu of E. F., her present next friend. And take notice, that on such motion will be read (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 338.)

Upon the application of the plaintiff A. S. F., by C. T., her next friend for this purpose, and upon hearing the solicitors for the applicant, and for the (other) plaintiffs, and for the defendants, and upon reading the decree, dated, *&c.*, and an affidavit of the said A. S. F., filed, *&c.*, It is ordered that upon C. T., of, *&c.*, giving security, to

441. Order, on application by an adult married woman co-plaintiff, to change her next friend, after decree.

be approved of by (the Master at ——), to answer the defendants' costs to this time, and their costs (if any) to be hereafter awarded, the plaintiff A. S. F. be at liberty to name the said C. T. as her next friend in this cause, in the room of (the said) S. G., her present next friend: with liberty for the said S. G. to make such application as he may be advised as to the payment of the plaintiffs' costs of this cause to this time.

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442. Notice of motion on marriage of a female plaintiff, the next friend of the infant co-plaintiff to appoint a next friend of both.

(*Formal parts: see ante, No.* 384.) on the part of the plaintiff L. K., now L. H., the wife of W. H., of (*Residence and addition*), and of the infant plaintiff E. C. M., by J. C., of (*Residence and addition*), their next friend for the purpose of this application, that the plaintiffs may be at liberty to name the said J. C. as the next friend of the said plaintiff E. C. M., in the place of the said plaintiff L. K., now L. H., her present next friend, and also as the next friend of the said plaintiff L. K., now L. H. And take notice in support (*&c., see ante, No.* 382.)

Motions for Allowance of Service of Bill.

443. Affidavit in support of motion for order allowing service of bill (*a*).

(*Formal parts: see ante, No.* 300.)

1. The bill in this cause was filed on the ——— day of ———, 18—.

2. On the ——— day of ——— I forwarded an office copy of the said bill to the Sheriff of the County of ———, in whose bailiwick the defendant A. B. lately resided, as I have been informed by the said Sheriff, and verily believe, with instructions to serve the same on the said defendant A. B., without delay.

3. On the ——— day of ——— the said Sheriff returned the said office copy bill to me, with the letter now produced to me and marked A.

4. On the ——— day of ——— I forwarded the said office copy bill to C. D. at ———, being the place referred to in the said exhibit A, as the place to which the said defendant A. B. had removed, with instructions, &c.

5. (*Set out in detail, with dates, the various efforts made to effect service within the prescribed time, and then proceed.*)

(*a*) The application should be made within a month after the service, in which case the service of the order allowing the service is dispensed with. If the order is obtained after the month, the order must be served.

6. I have endeavoured to prosecute this suit with effect, and without unnecessary delay, and the delay which has arisen in serving the said defendant with the said office copy bill has not been intentional, but has arisen solely from the difficulty in tracing the said defendant, as hereinafter stated.

(*A certificate of the state of the cause should accompany the affidavit.*)

(*Formal parts : as in Nos.* 338–9.)

444. Order allowing service where application made within a month from the service.

Upon the application of the above named plaintiff, and upon hearing the solicitor for the applicant, and upon reading the affidavit of ———, it is ordered that the service of an office copy of the bill of complaint upon the defendant ——— be allowed as good service, although effected after the time limited in that behalf had expired.

And the said defendant is to have (four) weeks further time from the date hereof within which to answer or demur to the said bill.

(*Proceed as in last Form to the last clause.*)

445. The same where application made after a month from the service.

And the said defendant is to have (four) weeks' further time from the day of the service hereof upon the said defendant within which to answer or demur to the said bill.

Motions to serve Bill, &c., by Publication.

(*Formal parts : see ante, No.* 300.)

446. Affidavit in support of motion for service of bill by publication under Order 100.

1. The plaintiff's bill in this cause was filed on the —— of ——, 18—, against the defendant A. B.

2. *Show that the defendant is absent beyond the jurisdiction, or that upon enquiry at his usual place of abode he could not be found, so as to be served with a copy of the bill or other process ; and that there is just ground to believe that he is gone out of the jurisdiction, or otherwise absconded, to avoid being served with the copy of the bill or other process of the Court. It should also be shown whether or not the defendant has left any relations within the jurisdiction ; and if he have, an affidavit should be obtained from some or one of them, or if they refuse to make affidavit they should be orally examined before a special examiner or Master as to the defendant's whereabouts.*

447. Order directing service of bill by publication under Order 100.

In Chancery, } ———, the ——— day of ———, A.D.
In Chambers. } 18—.

Between—A. B.....Plaintiff,
and
C. D.....Defendant.

Upon the application of the above-named plaintiff, and upon hearing read the affidavit of ——— and the exhibits therein referred to, it is ordered that the defendant C. D. do, on or before the —— day of —— next, answer or demur to the bill of complaint in this cause.

(*See next Form.*)

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448. Notice in case of an absconding defendant, to be published with foregoing order No 447, being Schedule C. to Order 100.

To C. D., the above-named defendant.

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 such relief as he may be entitled to on his own showing, and you will not receive any further notice of the future proceedings in the cause.

Your answer is to be filed at the office of the [Clerk of Records and Writs at Osgoode Hall, in the City of Toronto.]

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449. Affidavit proving publication.

See Form 194, *ante.*

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450. Order to take bill *pro confesso* after service by publication.

(*Formal parts: see ante*, 447.)

Upon the application of the plaintiff ———, and upon reading the order bearing date the —— day of —— last; the affidavit of ——— and the exhibits therein referred to, and the certificate of the (*State of the cause*), it is ordered that the said plaintiff be at liberty forthwith to set down this cause to be heard in order that ——— bill of complaint may be taken *pro confesso* against the said defendant ———, subject to the provisions of the Consolidated General Orders 113, 114, 115 and 116.

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451. Notice in case of an absent defendant, referred to in Order 108, being Schedule E. mentioned in that order.

In Chancery.

Between—A. B.....Plaintiff,
and
C. D.....Defendant.

To the defendant C. D.:

Take notice that a motion will be made in Chambers, at Osgoode Hall, in the City of Toronto, on the —— day of

—— (*the time fixed by the order authorizing 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 showing; and you will not receive any further notice of the future proceedings in the cause.

Dated the —— day of ——, A.D. ——.

Y. X.,
Plaintiff's Solicitor.

Motions to Amend Bills, &c.

In Chancery.

(*Short style of cause.*)

452. Præcipe for order to amend clerical errors.

Required on behalf of the plaintiff, an order to amend the bill, by rectifying the following errors therein, namely: (*State shortly the corrections desired; as:* by substituting the name "Smythe," for the name "Smith," throughout the said bill; by substituting the date "1864," for the date "1846," in the paragraph numbered 2; by substituting the sum "£500," for the sum "£300," in the paragraphs numbered 4, 6, and 10.

Dated &c.,

A. B.,
Plaintiff's Solicitor.

To the [Clerk of Records and Writs,]
or (Deputy-Registrar at ——).

(*Formal parts: see ante, No.* 384.)

453. Notice of motion to amend a clerical error after decree.

on the part of the plaintiff, that he may be at liberty to amend his bill filed in this cause, by striking out the names "Charles Baddeley," and substituting the name "Baddeley," as the Christian name of the plaintiff. And take notice (*&c., as in No.* 382).

(*Formal parts: see ante, No.* 452.)

454. Præcipe for order to amend bill before answer.

on behalf of the plaintiff, an order to amend his bill as he may be advised.

No answer has yet been filed.

455. Notice of motion to amend bill after answer.

(*Formal parts: see ante, No.* 384.)

on behalf of the plaintiff, for leave to amend [*Or*, re-amend his bill by (*set out the proposed amendments, or refer to the same thus*) in the manner shown in the Schedule hereunto annexed.

Adding parties: by adding A. B., C. D. and E. F. as defendants, with apt words to charge them.

Without prejudice to injunction: without prejudice to the injunction awarded in this cause (*a*).

Without prejudice to a notice of motion for injunction: without prejudice to the motion for an injunction now pending in this cause (*b*).

Costs of amendment: upon payment of 20*s.* costs to the defendant A. B.; and without costs as to the other defendants. And take notice (*&c., as in No.* 382).

---

456. Præcipe for order to amend bill, pending demurrer.

(*Formal parts: see ante, No.* 452.)

an order to amend the bill as the plaintiff may be advised [*or as may be: see ante, No.* 455], the plaintiff hereby submitting to the demurrer of the defendant C. D., filed on the ——— day of ———, 18—.

---

457. Notice of motion to amend bill, without the amendment discharging a contempt.

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff, that he may be at liberty to amend his bill, as he shall be advised [*or as may be*], without such amendment operating as a discharge of the contempt committed by the defendant A.B. in [*as may be*], or rendering it necessary to proceed with the process of contempt *de novo*. And take notice (*as in No.* 382).

---

458. Notice of motion to amend joint bill of husband and wife, by making it the bill of the wife only by her next friend.

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiffs, that they may be at liberty to amend their bill in this cause by making the above named H. I. K. (*husband*) a defendant, and making it the bill of complaint of F. C., the wife of the said H. I. K., by C. A. K., of (*Residence and addition*), her next friend, and otherwise as they shall be advised; and that the

(*a*) See *McGregor* v. *Maud*, 2 Chy. Ch. R. 387, as to when notice is necessary.

(*b*) A motion for an injunction held to be abandoned by amending the bill pending the motion under an order of course: *Gouthwaite* v. *Rippon*, 1 Beav. 54; *Macdonell* v. *Street*, 13 Grt. 168; and see *Davy* v. *Davy*, 2 Chy. Ch. R. 81.

costs of this application may be costs in the cause. And take notice, that on such motion will be read (*&c., as in No.* 382).

(*Formal parts: see ante, No.* 384.)

459. Notice of motion to withdraw replication, and amend bill.

on the part of the plaintiffs, that they may be at liberty to withdraw the replication filed in this suit on the —— day of ——, 18—, and amend [*Or*, re-amend] their bill by [*set out amendments desired*]. And take notice, that on such motion will be read (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 300.)

460. Affidavit in support of motion to amend bill.

We, A. B., of (*Residence and addition*), the above named plaintiff [*Or*, one of the above-named plaintiffs—*Or*, We, A. B., of, *&c.*, the next friend in this cause of the above-named plaintiffs], and C. D., of (*Place of business*), gentleman, the solicitor in this cause for the plaintiffs, severally make oath and say as follows:

1. The counsel of the plaintiffs has advised that their bill in this cause should be amended [*Or*, re-amended], and has settled and approved the draft of the amendments proposed to be made in the said Bill.

2. Such amendment is not intended for the purpose of delay or vexation; but because the same is considered to be material for the case of the plaintiffs.

3. For the reasons hereinafter stated, the matter of the said proposed amendment is material, and could not, with reasonable diligence, have been sooner introduced into the said bill, that is to say: (*Show how the amendment is material; and that reasonable diligence has been used.*)

A certificate of the state of the cause accompanies and an affidavit proving the truth of the proposed amendments is also necessary, unless the defendant's own admission on his examination, or in his answer, is sufficient for that purpose.

(*Formal parts: see ante, No.* 384.)

461. Notice of motion, by a plaintiff, for leave to amend, by making a defendant of his co-plaintiff refusing to proceed.

on the part of the plaintiff A. B., that he may be at liberty to amend the plaintiffs' bill by striking out the name of C. D. as a co-plaintiff, and making him a defendant; and that the said C. D. may be ordered to pay to the plaintiff A. B. the costs occasioned by such amendment, and also the costs of giving any security for costs which the defend-

ants or any of them may be held entitled to in consequence of such amendment, and incidental thereto; and also the costs of and incident to this application: to be taxed as between solicitor and client. And take notice (*&c., as in No.* 382).

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462. Notice of motion for time to apply for an order to amend.

(*Formal parts: see ante, No.* 384.)
on the part of the plaintiff, that the time allowed him to obtain an order of course to amend his bill may be enlarged to the ———, 18—; and that the costs of this application may be costs in the cause. And take notice, that on such motion will be read (*&c., as in No.* 382.)

---

463. Order thereon.

(*Formal parts: see ante, No.* 338–9.)
Upon the application, *&c.*, It is ordered that the time allowed the plaintiff to obtain an order to amend his bill be enlarged to the —— day of ——, 18—. And it is ordered that the costs of this application be costs in the cause [*Or*, that the plaintiff A. B. pay to the defendant C. D. $——, for his costs of this application].

---

464. Notice of motion to enlarge time to amend, under an order obtained.

(*Formal parts: see ante, No.* 384.)
on the part of the plaintiff, that the time limited by the order dated the ———, 18—, for the applicant to amend his bill, pursuant to the said order [*Or*, to the order dated the ——, 18—], may be (further) enlarged to the ——, 18—; and that the costs of this application may be costs in the cause. And take notice, that (*&c., as in No.* 382.)

---

465. Order to amend.

(*Formal parts: see ante, Nos.* 338–9.)
Upon the application of the plaintiff, It is ordered that —— be at liberty to amend —— bill of complaint in this cause, as —— may be advised, without costs; amending the defendant —— office-cop— thereof ———, and making such amendment within fourteen days from this date.
Entered.

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466. Præcipe for amendment of a bill

In Chancery.
(*Short title.*)
Præcipe to amend the bill under order, dated the —— day of ——, 18—.

C. D.,
Plaintiff's Solicitor [*Or, agent*].

(*Formal parts: see ante, No.* 384.)

467. Notice of motion, to take amended bill off the file, or strike out amendments, for irregularity.

on the part of the defendant A. B., that the plaintiff's re-amended bill may be taken off the file; or that the paragraph thereof numbered [14*a*] may be struck out from such bill; and that the costs of this application may be paid by the plaintiff. And take notice, that on such motion will be read (*&c., as in No.* 382).

(*Formal parts: see ante, No.* 384.)

468. Another form thereof.

on the part of the defendant A. B., that the plaintiff's amended bill may be taken off the file; or, that the amendments made in the plaintiff's bill since the order dated the ——, 18— (*Order to amend*) may be struck out, and the record restored to the state in which it was in immediately before such amendments were made; and that the plaintiff may be ordered to pay to the defendant his costs occasioned by such amendments, and of this application. And take notice, that on such motion will be read (*&c., as in No.* 382).

(*Formal parts: see ante, No.* 383.)

469. Notice of motion, for payment of defendant's costs of statements in bill abandoned by amendment. (*a*).

on the part of the defendant A. B., that the plaintiff may be ordered to pay to the said defendant his costs of this suit up to the time of filing the plaintiff's amended bill; or so much of the defendant's costs of the original bill, and of his answer thereto, and of the other proceedings thereon, as have been occasioned by the —— and —— paragraphs of the said original bill, and the relief sought with respect thereto [*Or*, as has been occasioned by the relief sought by the said original bill with respect to (*State what*)]; and also the defendant's costs of this application. And take notice, that on such motion will be read (*&c., as in No.* 382).

(*Formal parts: see ante, No.* 384.)

470. Notice of motion for leave to file amended answer (*b*).

on behalf of the defendant A. B., that he may be at liberty to take the answer filed by him in this cause on the —— day of —— off the files [and that he may have liberty to amend the same in the following particulars, namely, by adding, &c., and that he may be at liberty to

(*a*) This application should be made to the Judge at the hearing of the cause: see *McGillivray* v. *McConkey*, 6 Pr. R. 56.

(*b*) Dan. Pr. 743. Where the answer is filed without oath, *Semble* it might be amended, and the notice of motion might be so worded.

re-swear and re-file the same so amended], *Or*, that he may have leave to file in lieu thereof an answer in the form and to the effect (of the Exhibit A, referred to in the affidavit of C. D., filed in support of this application), [*Or*, set forth in the Schedule hereunto annexed.] And take notice that on such motion will be read (*&c., as in No.* 382).

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471. Notice of motion for leave to file supplemental answer under Gen. Ord. 128.

(*Formal parts: see ante, No.* 384.)

on behalf of the defendants, that they may be at liberty to file a supplemental answer in this cause in the form and to the effect set forth in the Schedule hereunto annexed, &c. And take notice that in support (*&c., as in No.* 382).

---

472. Affidavit in support.

(*Formal parts: see ante, No.* 300.)

1. That it is material and necessary for the defendant's defence to this suit that he should be allowed to set up the facts mentioned in his proposed supplemental answer now shown to me and marked A.

2. That this application to file the said supplemental answer is not made for the purpose of delay.

3. (*The proposed supplemental answer should be sworn, or there must be other proof of the truth of the facts proposed to be set up thereby.*)

4. (*If any delay has taken place in making the application, it must be properly explained.*)

A certificate of the state of the cause accompanies.

---

473. Petition to amend clerical error in an order or decree.

(*Formal parts: see ante, No.* 387.)

1. That in the order [*Or decree*] made herein on the —— day of ——, 18—, there is a clerical error in the sixth paragraph thereof; the lands and premises in question in this cause being therein described as "the north half of lot, *&c.*," whereas the said lands are in truth and in fact the south half, *&c.*, as by reference to the Bill of Complaint in this cause will appear.

Your petitioner therefore prays:

That the said order (*Or* decree) may be amended by striking out the word "North" in the 6th paragraph, and by inserting in lieu thereof the word "South."

And your petitioner will ever pray, &c.

(*Formal parts: see ante, No.* 387.)

474. Petition to amend decree or order, so as to make same conform to the judgment of the Court.

1. This cause was heard before the Honourable the Vice-Chancellor B —— at ——, on the ——day of ——.

2. That by the judgment of His Honour it was amongst other things ordered and directed that (*stating that part of the judgment in which the decree is erroneous or defective*).

3. That in the decree (*Or*, order) which has been issued in this cause, and which bears date the —— day of ——, the said order and direction of His Honour the Vice-Chancellor has been omitted, (*Or, state how otherwise the decree varies from the judgment*).

Your petitioner therefore prays:

1. That the said decree [*Or*, order] may be amended by (*state shortly the amendment required*), so that the same may be made to conform to the judgment of the Court.

And your petitioner will ever pray, &c.

(*Formal parts: see ante, No.* 382 *or* 384.)

475. Notice of motion to amend mistake in Master's Report (*a*).

on behalf of the —— for an order to amend the Report of the Master (at ——) made herein on the —— day of ——, by (*stating specifically the amendments sought to be made*). And take notice, that in support of such motion, (*&c., continue as in form* 382).

The certificate of the Master usually accompanies, unless the mistake be one that can be corrected by reference to the report itself.

(*Formal parts: see ante, No.* 384.)

476. Notice of motion to amend writs and other proceedings.

on behalf of the —— for an order amending the writ of injunction issued in this cause on the —— day of ——, [*Or*, the writ of *fieri facias* issued, &c., *Or*, the petition filed herein on the —— day of —— (and all proceedings subsequent thereto) (*b*)] by (*stating specifically the proposed amendment*). And take notice, that in support of such motion will be read (*&c., continue as in No.* 382).

(*a*) Where the mistake is merely a clerical error, or one apparent on the face of the report itself, the motion may be made in Chambers, otherwise the motion should be made in Court.

(*b*) A petition is necessary if the amendment of an order is required: see *Ord.* 335.

Motions to take Bills and other Proceedings off the Files, and to Dismiss Bills, otherwise than at the Hearing, and to Stay Proceedings.

477. Notice of motion by sole plaintiff, to take bill filed without his authority off the files.

(*Formal parts: see ante, No.* 384.)

on the part of A. B., the plaintiff named in the bill filed in this cause on the —— of ——, 18—:

1. That the said bill may be taken off the file of this Court, or dismissed with costs: such bill having been filed without his authority.

2. That the defendant's costs of this suit may be taxed and that Mr. C. D., the solicitor by whom the said bill was filed, may be ordered to pay such costs to the defendants.

3. That in case he shall neglect so to do, and the plaintiff shall pay such costs, or any part thereof, the said C. D. may be ordered to repay to the plaintiff what he shall so pay, together with such costs as he shall be put to by reason of such non-payment.

4. That the said C. D. may be ordered to pay to the plaintiff his costs of this suit, if any, and of this application: to be taxed as between solicitor and client (by the Master at ——). And take notice, that on such motion will be read (*&c., as in No.* 382.)

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478. Notice of motion by a co-plaintiff, to strike his name out of bill filed without his authority.

(*Formal parts: see ante, No.* 384.)

on the part of A. B., one of the plaintiffs named in the bill filed in this cause on the —— of ——, 18—, that his name may be struck out of the said bill: such bill having been filed without his authority; and that Mr. C. D., the solicitor by whom the said bill was filed, may be ordered to pay to the said A. B. his costs, if any, of this suit, and his costs of this application: to be taxed as between solicitor and client. And take notice, that on such motion will be read (*&c., as in No.* 382.)

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479. Affidavit in support of motion.

(*Formal parts: see ante, No.* 300.)

I, A. B., of (*Residence and addition*), the above-named plaintiff [*Or*, one of the above-named plaintiffs], make oath and say as follows:

1. On the —— of ——, 18—, I for the first time became aware that the bill in this cause had been filed in my name as the plaintiff [*Or*, one of the plaintiffs] therein.

2. I am informed and believe that the object of the said bill is (*State object, shortly; as thus:* to have the estate of E. F., deceased, administered under the direction of this Honourable Court.)

3. Mr. C. D., the solicitor by whom, as I am informed and believe, the said bill has been filed, or any person on his behalf, has never been authorized by me, or by my direction, to file the said bill, or to institute or prosecute any other suit or proceeding in my name, or on my behalf, relating to the subject matter of the said bill. I have never consented to or acquiesced in, and I desire to repudiate this suit.

4. *State any communications had with the solicitor who filed the bill, and explain the cause of any delay in applying, since deponent discovered that the suit had been instituted.*

5. *Show means of knowledge.*

(*Formal parts: see ante, No.* 384.)

480. Notice of motion to take information off the files for want of informant's signature.

On the part of the defendant A. B., that the information [*Or*, amended information] in this suit may be taken off the files of this Court for irregularity: the same not being nor purporting to be signed by Her Majesty's Attorney-General, the informant therein named; and that C. D., the person named as the relator in the said information, may be ordered to pay to the defendant A. B. his costs of this suit, and of this application. And take notice (*&c., as in No.* 382.)

(*Titles of both suits, and formal parts: see ante, No.* 384.)

481. Notice of motion for an inquiry which of two suits is for an infant plaintiff's benefit.

on behalf of the above-named infant plaintiff, by C. D., his next friend in the first [*Or*, second] mentioned suit [*Or*, on behalf of the defendant E. F.], that an inquiry may be made which of these suits it will be most for the benefit of the infant plaintiff to prosecute; and that, in the meantime, all other proceedings in these suits may be stayed, And take notice, that on such motion will be read (*&c., as in No.* 382.)

(*Titles of both suits, and formal parts: see ante, No.* 384.)

482. Notice of motion to stay one suit, on the Master's certificate that the other only should be prosecuted.

on behalf of the above-named infant plaintiff, by C. D., his next friend in the first [*Or*, second] mentioned suit [*Or*, on behalf of the defendant E. F.], that all further proceedings in the second [*Or*, first] mentioned suit may be stayed;

and that G. H., the next friend of the plaintiff therein, may be ordered to pay to (the said C. D. and) the defendants their costs of and occasioned by such suit, and of the application for the order dated the —— of ——, 18— (*Order directing inquiry which of the two suits should be prosecuted*), and of the inquiry thereby directed, and of and relating to this application. And take notice, that on such motion will be read (*&c., as in No.* 382.)

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483. Notice of motion for dismissal of, or inquiry as to, a single suit by an infant.

(*Formal parts: see ante, No.* 384.) on behalf of the infant plaintiff, by C. D., of (*Residence and addition*), his next friend for the purpose of this application [*Or*, on behalf of the defendant E. F.], that the bill filed in this cause may stand dismissed; and that G. H., the next friend of the plaintiff therein, may be ordered to pay to the defendant his costs of and occasioned by this suit, and (to the defendant, and the said C. D., their costs) of this application:

Or, that an inquiry may be made whether this suit has been properly instituted; and whether it will be fit and proper, and for the benefit of the infant plaintiff, that this suit should be further prosecuted; and if so, whether the said G. H. is a proper person to be the plaintiff's next friend; and if he is not, that some proper person may be approved as such next friend in his stead.

And that all other proceedings in this suit may be stayed in the meantime. And take notice, that on such motion will be read (*&c., as in No.* 382.)

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484. Petition by sole plaintiff, on coming of age, to dismiss bill with costs before decree.

(*Title—and Address to the Judges: see ante, No.* 387.)

The humble petition of the plaintiff, late an infant, but now of full age,

Sheweth as follows:

1. Your petitioner, when an infant, by C. D., his next friend, filed his bill in this cause against the defendants: to which they appeared; but no decree has yet been made therein.

2. Your petitioner has now attained his age of twenty-one years, and is not desirous to proceed any further in the said cause.

Your petitioner therefore humbly prays, that his said bill may stand dismissed out of Court: with costs to be paid by him to the said C. D., and to the defendants.

And your petitioner will ever pray, &c.

(*Formal parts: see ante, No.* 384.)
on behalf of the plaintiff, late an infant, but now of full age, that on payment by him to C. D., late his next friend, and to the defendants, of their costs of this suit, all further proceedings therein may be stayed. And take notice, that on such motion will be read (*&c., as in No.* 382.)

485. Notice of motion to stay proceedings after decree, in like case.

(*Formal parts: see ante, No.* 384.)
on behalf of the plaintiff A. B., late an infant, but now of full age, that the name of the plaintiff A. B. may be omitted in all future proceedings in this cause, as a party co-plaintiff thereto. And take notice, that on such motion will be read (*&c., as in No.* 382.)

486. Notice of motion, by a co-plaintiff, on coming of age, to strike out his name as plaintiff.

(*Formal parts: see ante, No.* 384.)
on the part of the above named plaintiff A. B., the wife of (the defendant) C. D., by E. F., of *(Residence and addition)*, her next friend for the purpose of this application, that the bill filed in this cause on the —— of ——, 18—, may be taken off the file of this Court, or dismissed with costs: such bill having been filed without the consent of the said A. B.; and that the above named G. H. (*Next friend in bill*) may be ordered to pay to the defendants their costs of this suit; and also to pay to the said E. F. the costs, if any, of the said A. B. of this suit, and her costs of this application. And take notice, that on such motion will be read (*&c., as in No.* 382).

487. Notice of motion, by a married woman, that bill filed on her sole behalf, without her consent, may be dismissed.

(*Formal parts: see ante, No.* 384.)
on the part of (*Continue as in No.* 487, *to* application), that the name of the said A. B. may be struck out of the bill filed in this cause on the —— of ——, 18—: such bill having been filed without her consent; and that the above named C. D. (*Next friend in bill*) may be ordered to pay to the said E. F. the costs, if any, of the said A. B. of this suit, and her costs of this application. And take notice, that on such motion will be read (*&c., as in No.* 382.)

488. The like notice, where the married woman is a co-plaintiff.

489. Notice of motion by a defendant, that a married woman plaintiff may name a new, in lieu of a deceased, next friend.

(*Formal parts: see ante, No.* 384.) on the part of the defendant A. B., that the plaintiff C. D. may be ordered within (one month) from this time to name and appoint a new and sufficient next friend in this suit, in lieu of E. F., now deceased; or, in default thereof, that the plaintiff's bill may stand dismissed with costs. And take notice, that on such motion will be read (*&c., as in No.* 382.)

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490. The like, to stay proceedings till a new, in lieu of a bankrupt, next friend is appointed.

(*Formal parts: see ante, No.* 384.) on the part of the defendant A. B., that all further proceedings in this suit may be stayed until a new and sufficient next friend shall have been named and appointed by the plaintiff, in lieu of C. D., her present next friend: who has become insolvent; but without prejudice to the liability of the said C. D. to the costs already incurred by the defendant A. B. in this suit. And take notice, that on such motion will be read (*&c., as in No.* 382.)

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491. Notice of motion, by plaintiff, to dismiss bill after answer, without costs.

(*Formal parts: see ante, No.* 384.) on the part of the plaintiff, that his bill may stand dismissed as against the defendant [*Or*, all the defendants—*Or*, the defendants A. B., and C. D.], without costs. And take notice, that on such motion will be read (*&c., as in No.* 382.)

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492. Notice of motion, by plaintiff, to dismiss bill as to some of the defendants, after answer, but without prejudice.

(*Formal parts: see ante, No.* 384.) on behalf of the plaintiff, that his bill may stand dismissed as against the defendants A. B. and C. D., with costs; but without prejudice to the question how such costs are ultimately to be borne, as between the plaintiff and other defendants. And take notice, that on such motion will be read (*&c., as in No.* 382).

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493. Notice of motion, to dismiss bill, or stay proceedings, on special terms by consent.

(*Formal parts: see ante, No.* 384.) on the part of the plaintiff [*or as may be*], that, by consent, the plaintiff's bill in this cause may stand dismissed [*Or*, that all further proceedings in this cause may be stayed], on the terms following, namely: (*State the terms*); and that all proper directions for carrying the said terms into effect may be given. And take notice, that on such motion will be read (*&c., as in No.* 382).

(*Formal parts: see ante, No.* 384.)

on the part of the defendant A. B., that (*State the terms proposed; as thus:* upon payment by him to the plaintiff within (three weeks) of the amount of the debt due to the plaintiff from the estate of A. B., the testator in the plaintiff's bill named, on the promissory note therein mentioned, and of interest thereon at 6 per cent. per annum from the —— of ——, 18—, till payment, and of the plaintiff's costs of this suit: to be taxed), the plaintiff's bill may stand dismissed—*Or*, all further proceedings in this suit may be stayed—*If there are other defendants, add:* as against the said defendant A. B. And take notice, that on such motion will be read (*&c., as in No.* 382).

494. Notice of motion, by defendant, to dismiss bill, or stay proceedings, on submitting to satisfy plaintiff's demand.

(*Formal parts: see ante, No.* 384.)

on the part of the defendant A. B.:

1. That an account may be taken of what is now due to the plaintiff for principal money and interest, in respect of his debt in the plaintiff's bill mentioned; and that the costs of this suit, and of this application, may be taxed (by the Master at ——).

2. That upon payment of the amount of the said principal, interest, and costs, by the defendant to the plaintiff, within (one week) after the Master's report shall have become absolute, the plaintiff's bill (*Continue as in No.* 494, *to the end*).

495. Another form thereof.

(*Formal parts: see ante, No.* 384.)

on the part of the defendant D. L. H.:

1. That he may, on or before the —— day of ——, pay the sum of $ —— into Court, to the credit of this cause; and that the same may be laid out in Dominion Stock, and the interest invested and accumulated; but not otherwise dealt with, without notice to him.

2. That upon such payment being made, the plaintiff's bill may stand dismissed as against all the defendants, except the said D. L. H.: with costs to be taxed and without prejudice to any other suit.

3. That the defendant D. L. H. may pay to the plaintiff and the said other defendants, respectively, their costs of this suit, including the costs of this application: to be taxed.

4. That, on the undertaking of the defendant D. L. H. to indemnify the plaintiff against any proceeding which

496. Notice of motion, by a subsequent incumbrancer, to dismiss a foreclosure and redemption suit with costs, as against his co-defendants, on payment of a security fund into Court; and for inquiry as to amount due to plaintiff.

may be taken in the meantime, by any party, for redeeming the plaintiff's security, an account may be taken of what is due to the plaintiff for principal and interest in respect of his mortgage securities, in the pleadings mentioned, and for all sums of money properly paid by him in respect of his mortgage securities.

5. That the plaintiff's costs of this suit, and all costs, charges, and expenses properly incurred by him, and by D. J. deceased, the testator in the pleadings named, respectively, in any other suits, or otherwise in respect thereof, may be taxed.

6. That an account may be taken of the rents and profits of the said mortgaged premises, come to the hands of the plaintiff, or to the hands of any other person or persons by his order or for his use, or which he, without his wilful default, might have received.

7. That what shall be coming on the said account of rents and profits, may be deducted from what shall be due to the plaintiff for principal, interest, and costs, as aforesaid; and the balance be certified.

8. That the plaintiff, and the defendant D. L. H., respectively, may be at liberty to apply to this Court, as they may be advised.

9. That in default of payment by the defendant D. L. H. of the said $——, by the time aforesaid, the costs of the plaintiff, and the said other defendants, of this application, may be taxed, and be paid to them by the defendant D. L. H. And take notice, that on such motion will be read (*&c., as in No.* 382).

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497. Notice of motion to stay proceedings, till costs of former suit are paid.

(*Formal parts: see ante, No.* 384.)
on the part of the defendant A. B., that all further proceedings in this cause—*If there are other defendants, add:* as against the said defendant—may be stayed until after the plaintiffs shall have paid to the said defendant the sum of $——, the amount of the taxed costs directed to be paid by them to him by the order made in the cause of C. *v.* D., dated the —— of ——, 18—. And take notice (*&c., as in No.* 382.)

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498. Further notice of motion, for dismissal of bill, in default of payment.

(*Formal parts: see ante, No.* 384.)
on the part of the defendant A. B., that the plaintiffs may be ordered, on or before the —— of ——, 18—, to pay to the defendant the sum of $——, mentioned in the order in this cause dated the —— of ——, 18—, pursuant to

the order made in the cause of C. *v.* D., dated the —— of ——, 18—; or, in default thereof, that the plaintiff's bill may stand dismissed out of Court—*If there are other defendants, add:* as against the said defendant—for want of prosecution without further order: with costs to be paid by the plaintiffs to the said defendant. And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 384.)

499. Notice of motion to stay proceedings, till payment by plaintiff of costs ordered to be paid by him in the suit.

on the part of the defendant A. B., that all further proceedings in this cause—*If there are other defendants, add:* as against the said defendant—may be stayed until plaintiffs shall have paid to the said defendant the sum of $——, the amount of the taxed costs payable by them to him, pursuant to the order dated the —— of ——, 18—. And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante No.* 384).

500. Notice of motion to stay proceedings by plaintiff till he clears his contempt.

on the part of the defendant A. B., that all proceedings in this cause be stayed until the plaintiff has cleared his contempt in not (*State what*). And take notice, that on such motion will be read (*&c., as in No.* 382.)

(*Titles of both suits and formal parts: see ante, No.* 384.)

501. Notice of motion to stay proceedings in one of two concurrent creditors' suits, after a decree in the other only.

on the part of A. B., the plaintiff in the first mentioned cause [*Or* C. D., the defendant in each of the above mentioned causes—*or as may be*]:

1. That all further proceedings in the second mentioned cause may be stayed; and that the costs of E. F., the plaintiff therein, up to the time he had notice of the decree in the first mentioned cause dated the —— of ——, 18—, including his costs of this application, may be taxed.

Where assets admitted: 2. That such costs may be paid to the plaintiff E. F., by the defendant C. D. [*or as may be*], out of the assets of G. H., the testator in the pleadings named; and that the plaintiff E. F. may be at liberty to go in under the said decree, and prove his claim, against the assets of the said G. H.

Or where assets denied: 2. That the plaintiff E. F. may be at liberty to go in under the said decree, and prove his

claim, and the amount of his said costs, against the assets of the said G. H.

3. That the costs of the defendant C. D. of the second mentioned cause, and the costs of the plaintiff A. B., and the defendant C. D. [*or as may be*], of this application, may be costs in the first mentioned cause.

Motions to Dismiss for want of Prosecution.

502. Notice of motion to dismiss bill for want of prosecution.

(*Formal parts: see ante, No.* 384.) on the part of the defendant A. B., that the plaintiff's bill in this cause may stand dismissed—*If there are other defendants, add:* as against the said defendant—for want of prosecution: with costs to be paid by the plaintiff to the said defendant, to be taxed by the Master at ——. And take notice (*&c., as in No.* 382).

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503. Notice of motion to dismiss after a default, where the bill has not been dismissed in case of default.

(*Formal parts: see ante, No.* 384.) on the part of the defendant A. B., that unless the plaintiff amends his bill, pursuant to the order dated the —— of ——, 18—, within one week, the said bill may stand dismissed—*If there are other defendants, add:* as against the said defendant—with costs to be paid by the plaintiff to the said defendant. And take notice (*as in No.* 297.)

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504. Notice of motion to enlarge the time limited by plaintiff's undertaking to speed the cause.

(*Formal parts: see ante, No.* 384.) on the part of the plaintiff, that the time limited by the order dated the —— of ——, 18—, for the plaintiff to amend his bill [*Or*, file replication—*Or*, serve notice of motion for a decree—*Or*, set down this cause for hearing —*or as may be*], may be enlarged to the —— of ——, 18—. And take notice (*&c., as in No.* 382.)

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505. Notice of motion to restore bill.

(*Formal parts: see ante, No.* 384.) on the part of the plaintiff, that notwithstanding he has not amended his bill [*or as may be*] in this cause, pursuant to the order dated the —— day of ——, 18--, his bill may be restored to the file of the Court. And take notice that (*&c., as in No.* 382.)

506. Notice of motion to dismiss bill for non-service within the time limited by Gen. Ords. 94, 95 and 620. (a)

(*Formal parts: see ante, No.* 384.)

on the part of the defendants [*Or*, of the defendant A. B.], that the plaintiff's bill may be dismissed out of this Court with costs, on the ground that the same has not been served upon the defendants [*Or*, the defendant A. B.] within the time limited by the General Orders of this Honourable Court in that behalf, [or that the certificate of *lis pendens* registered against the lands and premises in question herein may be ordered to be vacated and discharged;] and take notice (*&c., as in No.* 382).

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507. Affidavit in support of motion.

(*Formal parts: see ante, No.* 300.)

1. I am the defendant in this cause.

2. I have ever since the ——— day of ——— (*the date of filing the bill*) been continuously residing at ———, within the jurisdiction of this Honourable Court (*Or, if without the jurisdiction, then state the place of residence, with such precision that it may be seen what length of time for answering the defendant would be entitled to under Gen. Ord.* 620), and I am still residing there.

3. (*If deponent's address were known to the plaintiff or his solicitor, or there is reason to believe that it was, it should be so stated.*)

4. I have not been served with any office copy of the plaintiff's bill in this cause, nor am I aware that the plaintiff or his solicitor have made any effort to have me served with an office copy of the said bill.

5. I have never before nor since the (*date of filing the bill in the cause*) concealed my place of residence, nor in any way intentionally avoided the service upon me of the office copy of the bill of complaint, or any other proceedings in this cause.

6. A certificate of *lis pendens* has been registered against my lands, which are referred to in the plaintiff's bill, and the same is a cloud upon my title.

(*A certificate of the state of the cause accompanies.*)

(a) *Somerville* v. *Kerr*, 2 Chy. Ch. R. 154.

Motions to dismiss for non-attendance of Plaintiff to be examined, or for non-production by Plaintiff.

508. Notice of motion to dismiss under Ord. 144 for non-production by the plaintiff or for refusal to attend to be examined.

(*Formal parts: see ante, No.* 384.) on the part of the defendant that the plaintiff's bill of complaint may be dismissed out of this Court with costs, on the ground that the plaintiff has failed to file any affidavit in obedience to the order for production of documents served upon him in this cause [*Or* has failed to produce or to give any sufficient reason for not producing the documents in his possession, pursuant to the order to produce documents served upon him in this cause] [*Or* has failed to attend to be examined pursuant to the appointment of (——, Esq., the Special Examiner of this Honourable Court) and the writ of subpœna served upon him in this cause]; and take notice, that in support of such motion will be read (*&c., as in No.* 382).

The certificate of the Clerk of Records and Writs, or Deputy Registrar and Special Examiner, proving default and state of cause, and affidavit of service of order to produce, or of appointment and subpœna for examination, accompany.

Motions to Dismiss where the Suit has Abated, or become otherwise defective.

509. Notice of motion, by defendant, to dismiss bill, unless prosecuted by representatives of deceased sole plaintiff (*a*).

(*Formal parts: see ante, No.* 384.) on the part of the defendant A. B., that C. D. and E. F., the legal personal representatives [*Or as may be*] of the late plaintiff G. H., now deceased, may be ordered, within (one month), to obtain and serve on the said defendant an order to revive this suit; or, in default thereof, that the plaintiff's bill may stand dismissed without costs.—*If there are other defendants, add:* as against the said defendant—for want of prosecution. And take notice (*&c., as in No.* 382).

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510. The like, unless prosecuted by surviving co-plaintiff (*a*).

(*Formal parts: see ante, No.* 384.) on the part of the defendant A. B., that the plaintiff C. D. (*surviving plaintiff*) may be ordered, within (*Continue as in last form, to the end, and add*): with costs to be paid by the said plaintiff C. D. to the said defendant. And take notice (*&c., as in No.* 382).

(*a*) See Smith's Pr. 7th Ed. 545.

(*Formal parts: see ante, No.* 384.)

511. Notice of motion, by representatives of deceased defendant, to dismiss suit, unless revived against them (*a*).

on the part of A. B., of (*Residence and addition*), and C. D., of, *&c.*, the legal personal representatives of the late defendant E. F., now deceased, that the plaintiff may be ordered, within one month, to obtain and serve on them an order to revive this suit; or, in default thereof, that the plaintiff's bill may stand dismissed.—*If there are surviving defendants, add:* as against the said A. B. and C. D.—for want of prosecution.—And take notice (*&c., as in No.* 382).

(*Formal parts: see ante, No.* 384.)

512. Notice of motion, by defendant, to dismiss or stay suit, unless prosecuted by assignee of bankrupt sole plaintiff (*b*).

on the part of the defendant A. B., that C. D. and E. F., the assignees [*Or*, that C. D., the official assignee—*Or*, creditors' assignee] of the estate and effects of the above-named plaintiff, who has been adjudicated an insolvent, may be ordered, within (three weeks) to take proper supplemental proceedings in this suit, for the purpose of prosecuting the same against the said defendant; or, in default thereof,

If before decree: that the plaintiff's bill may stand dismissed.—*If there are other defendants, add:* as against the said defendant, without costs — without further order.

Or, if after decree: that all further proceedings in this suit—*If there are other defendants, add:* as against the said defendant—may be stayed. And take notice (*&c., as in No.* 382).

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513. Order dismissing bill with costs.

In Chancery, } ———, the ——— day of ———,
In Chambers. } A. D. 18——.

Between

Upon the application of the defendant ———, and upon hearing read ——— : It is ordered, that the plaintiff's bill of complaint be and the same is hereby dismissed out of this Court as against the said defendant ———.

And it is further ordered, that the plaintiff do pay to the said defendant the costs of the suit forthwith, after the taxation thereof.

Entered, 18 . }
Order Book, No. p. . }

(*a*) In case of a sole defendant dying, it would seem this motion can only be made by his representatives, where the death takes place after decree.—*Ib.* 547. If a sole defendant die before decree, it would seem that his representatives are without remedy. —*Reeves* v. *Baker*, 13 Beav. 115.

(*b*) The notice should be served on the bankrupt as well as his assignees.—*Vestris* v. *Hooper*, 8 Sim. 570.

MOTIONS TO COMPEL ELECTION.

514. Notice of motion, by defendant, for plaintiff to elect.

(*Formal parts: see ante, No.* 384.)
on behalf of the defendant A. B., for the usual order for the plaintiff to elect whether he will proceed in this Court, or in his pending action at law for the same matter. And take notice, that (*&c., as in No.* 382).

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515. Notice of motion to discharge order to elect.

(*Formal parts: see ante, No.* 384.)
on the part of the plaintiff, that the order made in this cause, dated the —— of ——, 18—, whereby it was ordered that (*Recite the ordering part*) may be discharged: with costs to be paid by the defendant A. B. to the plaintiff. And take notice (*&c., as in No.* 382).

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516. Ordinary form of election.

In Chancery.

(*Title.*)

In pursuance of the order made in this cause, dated the —— day of ——, 18—, the plaintiff hereby elects to proceed in this Court [*Or*, to proceed at law]. Dated this —— day of ——, 18—.

C. D., the plaintiff above named, in person.

Or,

E. F., solicitor for the plaintiff above named.

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517. Notice of filing election.

(*Formal parts: see ante, No.* 181.)
Take notice that I have this day filed the plaintiff's election, pursuant to order dated the —— day of ——, 18—.

Dated this, &c.

A. B., *Plff.'s Solr.*

To Messrs. B. & C., *Deft.'s Solrs.*

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518. Notice of motion for further time to elect.

(*Formal parts: see ante, No.* 384.)
on the part of the plaintiff, that the time limited by the order, dated the —— day of ——, 18—, for the plaintiff to make his election may be enlarged to the —— day of ——, 18—. And take notice (*&c., as in No.* 382).

Motions to set aside Irregular Proceedings.

(*Formal parts: see ante, No.* 384.)

519. Notice of motion to set aside proceedings for irregularity.

on behalf of the plaintiff for an order setting aside [the writ of *fieri facias* issued out of this Honourable Court on the part of the defendant C. D. against the goods and chattels of the plaintiff, on the —— day of ——, and directed to the Sheriff of the County of ——, and all proceedings had thereon], on the ground that the same is irregular, because (*state the grounds of irregularity intended to be relied on* (*a*). And take notice, (*&c., as in No.* 382).

Motions to Re-hear, and to stay Proceedings pending Re-hearing.

(*Formal parts: see ante, No.* 384.) (*b.*)

520. Notice of motion for leave to rehear after lapse of time limited by *Con. Ords.*

on behalf of the [defendant] for an order giving him liberty on payment into Court of the usual deposit to set this cause down at the next sittings of this Court for the rehearing of causes to be holden on the —— day of —— next, in order that the order made herein on the —— day of —— by His Honour the [Vice] Chancellor —— may then and there be reheard. And take notice (*&c., as in form No.* 382).

(*Formal parts: see ante, No.* 300.)

1. *Show state of cause.*

521. Affidavit in support.

2. *Explain why cause not set down for rehearing within the usual time, and explain any other delay which may have arisen.*

3. *Show how applicant will be prejudiced if deprived of opportunity of rehearing.*

4. *Show, if possible, that the other side will not be prejudiced by the delay.*

5. *Show in what respects the order sought to be reheard is conceived to be erroneous, and that applicant has good ground for rehearing.*

(*Formal parts: see ante, No.* 384.)

522. Notice of motion to stay proceedings pending rehearing.

on behalf of the [defendant C. D.] for an order staying all further proceedings under the decree [*Or* order] made in this cause on the —— day of —— last, pending the

(*a*) See *Ord.* 277.
(*b*) This motion must be brought before a Judge in Chambers. See *Ord.* 560, s. 12.

rehearing of the said decree [*Or* order], upon the defendant C. D. giving security to the plaintiff for the payment of the amount found due to him under the said decree [*Or* order]—*Or*, upon the said defendant C. D. giving security that he will duly perform the act [*Or* acts] directed by the said decree [*Or* order] to be done by him, —in case the said decree [*Or* order] shall be ultimately affirmed—or upon such other terms as to this Honourable Court shall seem just. And take notice (*&c., as in form No.* 382).

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523. Affidavit in support.

(*Formal parts: see ante, No.* 300.)

1. *Show state of cause.*

2. *Show that cause has been set down to be reheard, and at what sittings.*

3. *Show that applicant intends to and will prosecute the rehearing, and that application is made bona fide and not for delay.*

For form of bond to stay execution on appeal, *see* post, *No.* 853. This may be readily adapted for staying execution pending rehearing.

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524. Notice of motion for leave to appeal from Master's report.

(*Formal parts: see ante, No.* 384.) on behalf of the [plaintiff] for an order giving him liberty to set this cause down forthwith, to be heard by way of appeal from the Report of the Master at —— dated the —— day of ——, and filed on the —— day of ——, notwithstanding that the same has become confirmed, on the grounds set forth in the Schedule hereto annexed, *Or*, on the following grounds (*stating the grounds of appeal*). And take notice (*&c., as in form No.* 382).

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525. Affidavit in support.

(*Formal parts: see ante, No.* 300.)

1. *Show state of cause.*

2. *Explain why cause not set down before confirmation of report, and also explain any delay which may have arisen in making application.*

3. *Verify grounds of appeal alleged in the notice of motion.*

Motions to take Proceedings off the Files for Scandal, &c.

(*Formal parts: see ante, No.* 384.)

526. Notice of motion to take affidavit off the files for scandal or impertinence(*a*).

on behalf of the defendant, that the affidavit of John Brewis, filed in this cause on behalf of the plaintiff, on the 2nd day of March, 1874, may be taken off the files of this Court, as being scandalous and impertinent, and that the whole of the seventh paragraph of the affidavit of the plaintiff, filed on the 2nd day of March, 1874, may be expunged, as being scandalous and impertinent, and that the plaintiff on whose behalf the said affidavits were filed may be ordered to pay the costs of and occasioned by such affidavits, and the costs of this application as between solicitor and client. And take notice (*&c., as in No.* 382).

Motions for further time to Answer.

(*Formal parts: see ante, No.* 384.)

527. Notice of motion for further time to demur alone (*b*).

on the part of the defendant A. B., that he may have —— days further time to (answer, or demur, or to) demur alone to the plaintiff's bill; and that the costs of this application may be costs in the cause. And take notice, that on such motion will be read (*&c., as in No.* 382).

(*Affidavit accounting for delay accompanies. See post, No.* 529.)

Motions for Leave to Answer after Bill taken pro confesso.

(*Formal parts: see ante, No.* 384.)

528. Notice of motion for leave to file an answer after Bill taken *pro con.* (*c*)

on the part of the defendant A. B., that the note *pro confesso* entered herein on the —— day of —— [*Or*, the order *pro confesso* obtained against the defendant, dated the —— day of ——, *and* the decree made

(*a*) See *Middlemas* v. *Wilson*, 10 L. R. Ch. 230. Where affidavits or other papers are ordered to be taken off the file of the Court for scandal or impertinence, the officer in whose custody the same may be, on production of the order seals up the objectionable document, so that it can no longer be read, and endorses on the cover, "In Chancery—*Brown* v. *Jones*—Taken off the file for scandal (*Or as may be*), under order dated ——

"A. H., *Clerk of R. and W.*"

If any part of a document is ordered to be expunged, the officer having the custody of it, on production of the order expunges the part, and writes a memorandum on the margin, opposite the part or parts expunged, "Expunged under order dated, &c.

"A. H., *Clerk of R. and W.*"

(*b*) If a defendant get further time to answer and demur, he will not be entitled to demur alone, unless the order expressly reserve that right: *Cameron* v. *Boultbee*, 2 Ch. R. 41; *Chamberlain* v. *McDonald*, *ib.* 204.

(*c*) *Kline* v. *Kline*, 3 Chy. Ch. R. 79. Where the decree has been pronounced on the merits, a motion to set it aside must be made in Court; but when the decree has gone by default, it may be set aside on motion in Chambers.

herein, dated the ——— day of ———] may be vacated and set aside, and that the defendant A. B. may be at liberty, on or before the —— day of ——, 18—, to put in an answer, or demurrer, not demurring alone [*or as may be*] to the plaintiff's bill; upon such terms as to costs as this Honourable Court may seem just. And take notice (*&c., as in No.* 382).

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529. Affidavit in support of application for further time.

(*Formal parts: see ante, No.* 300.)

1. The bill in this cause was served on the defendant A. B., on the —— day of ——, 18—.

2. *Show, succinctly, in numbered paragraphs, that due diligence has since been used to put in an answer, and the present state of the cause.*

3. It is essential to the due preparation and completion of the said answer that one month's [*or as may be*] further time should be granted to the said defendant to put in the same. The pending application by the said defendant for such further time is not intended for the purpose of delay or vexation.

4. *Show means of knowledge.*

Motions for Orders pro confesso.

530. Notice of motion for an order *pro confesso* for default of answer. (*a*)

(*Formal parts: see ante, No.* 384.)

on behalf of the plaintiff, for an order that the plaintiff may be at liberty to set this cause down in order that the same may be heard *pro confesso* against the defendant A. B. And take notice, that in support of such motion (*&c., as in No.* 382).

Affidavit of sereice of bill (see ante, No. 186 *et seq.) and cetificate of state of the cause accompany.*

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531. Notice of motion for an order directing Registrar to draw up Decree on præcipe in mortgage suit.

(*Formal parts: see ante, No.* 384.)

on behalf of the plaintiff, for an order directing the Registrar [*Or*, Deputy Registrar at ———], to draw up a decree in accordance with the prayer of the plaintiff's bill on præcipe. And take notice (*&c., as in No.* 382).

(*a*) For form of Order *pro con.*, where a defendant has been served by publication, see ante No. 450.

(*Formal parts: see ante, No.* 384.)

532. Notice of motion for an order *pro con.* for defendant's non-production or non-attendance to be examined.

on behalf of the plaintiff, for an order that the plaintiff may be at liberty forthwith to set this cause down to be heard *pro confesso* against the defendant A. B., notwithstanding the answer filed by him in this cause: on the ground that the said defendant has failed to file any affidavit in obedience to the order for production of documents served upon him in this cause [*Or*, has failed to produce or to give any sufficient reason for not producing the documents in his possession, pursuant to the order to produce documents served upon him in this cause, *Or*, has failed to attend to be examined pursuant to the appointment of ———, Esq., the Special Examiner of this Honourable Court, and the writ of subpœna served upon him in this cause.] And take notice, that in support of such motion will be read (*&c., as in No.* 382).

(*As to evidence in support, see ante, No.* 506.)

Production of Documents.

In Chancery.

Brown v. *Jones.*

533. Præcipe for order to produce

Required on behalf of the plaintiff [*Or*, defendant B. A.], an order for the defendant [*Or*, plaintiff] to produce documents.

Dated, &c. A. B.,
Plt.'s [*or Deft.'s*] *Solicitor.*

To the (Clerk of Records and Writs),
(*or*, Deputy Registrar at ———).

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534. Order to produce.

In Chancery. } ——, the ——— day of ———, in the year of our Lord 18—.

Between Plaintiff,

and

Defendant.

Upon the application of the said ———, It is ordered that the said ——— do, within ten days after service of this order upon ——— or ——— solicitor, produce before and leave with the Clerk of Records and Writs (*Or*, Deputy Registrar at ———) of this Court, upon oath, all deeds, books, papers, writings and documents in —— custody or power relating to the matters in question in this cause, and that the said ——— be at liberty to

inspect and take copies of, or extracts from, the same; and that the Clerk of Records and Writs (*Or*, the said Deputy Registrar at ——) do cause the same to be produced before any Master or Examiner of this Court, and at the hearing of this cause.

Entered

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535. Order for production by a Corporation aggregate (*a*).

(*Formal parts: see ante, No.* 338–9.)

1. Upon the application of the said [plaintiff] and upon reading the certificate of the Clerk of Records and Writs (*Or*, Deputy Registrar at ———), It is ordered that the said [defendants] the A. B. Co. do within ten days after service of this order upon them or their solicitor produce before and leave with the said Clerk of Records and Writs (*Or*, Deputy Registrar at ———) all deeds, books, papers, writings and documents in their custody or power relating to the matters in question in this cause, and do also, within the said ten days, file with the said Clerk of Records (*Or*, Deputy Registrar at ———) the affidavit or affidavits of one or more of their officers having the charge of such documents, as to the documents in the custody or power of the said Company, relating to the matters in question in this cause, unless the said defendants shall satisfy the Court by sufficient evidence that they are unable to procure such affidavit or affidavits to be made.

2. It is further ordered that the said plaintiff be at liberty to take copies of or extracts from the said documents, and that the said Clerk of Records and Writs (*Or*, Deputy Registrar at ———) do cause the same to be produced before any Master or Examiner of this Court and at the hearing of this cause.

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536. Affidavit on production, referred to in Order 137, being Schedule G. mentioned in that order.

(*Formal parts: see ante, No.* 300.)

I, ———, of ———, make oath and say:—

1. I have in my possession or power the documents relating to the matter in question in this suit set forth in the first and second parts of the first Schedule hereto annexed.

2. I object to produce the said documents set forth in the second part of the said first Schedule (*b*).

(*a*) See *Ranger* v. *G. W. R.*, 4 D. G. & J. 74; *Republic of Liberia* v. *Imperial Bank*, 16 L. R. Eq. 179.

(*b*) The documents must be described in the Schedule with sufficient particularity to enable the opposite party to identify the documents produced as those referred to in the Schedule to the affidavit. A general description such as "a bundle of letters" or "a number of books of account" is insufficient: See *Hamilton* v. *Nott*, 16 L. R. Eq. 112.

3. (*State upon what ground the objection is made, and verify the fact as far as may be.*)

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second Schedule hereto annexed.

5. The last mentioned documents were last in my possession or power on (*State when*).

6. *State what has become of the last mentioned documents, and in whose possession they now are; for example:* [The said settlement, and other deeds and documents in the said second Schedule mentioned, were on or about the —— day of —— delivered by me to one W. S., and have been since and are now in the custody, possession or power of the said W. S., and I have requested the said W. S. to allow me to inspect the same since the service of the order for production on my solicitor in this cause; but he refuses to produce the same, or to give me any information with respect to their contents; and I am, therefore, unable to set forth the same, or any of them, with greater certainty or particularity than in the said second Schedule appears.]

7. According to the best of my knowledge, remembrance, information and belief, 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, solicitor or agent, or in the possession, custody or power of any other person on my behalf, any deed, account, book of accounts, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatever 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 annexed (*a*).

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537. Objection to discovery, on ground of privilege, by a defendant.

I say that the said documents set forth in the second part of the said first Schedule relate exclusively to my own title to the lands in question in this cause, and do not in any way show, or tend to show, any right or title in the plaintiffs, or either of them, therein or thereto, or in or to any part thereof. And I submit that the same

(*a*) The affidavit must be sworn after the date of the order to produce: *Kennedy* v. *Andes Insurance Co.*, 3 Chy. Ch. R. 489.

are privileged documents. I deny that thereby, or by any of them, if produced, the truth of the matters in the plaintiffs' bill mentioned, or any of them, would appear.

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538. Objection by mortgagee to produce documents (*a*).

I say that I am a mortgagee, and that a large sum is still due and owing to me, on my mortgage securities; and that the said several deeds, documents, and papers and writings set forth in the second part of the said first Schedule form and support my title, and are intended to be used by me in evidence thereof accordingly; and do not contain anything impeaching my case, or tending to support the plaintiffs' title, otherwise than as such title is admitted by me in my answer. And I insist that, until I have been paid the principal money and interest due on my said mortgage, in the plaintiffs' bill and hereinbefore mentioned, and the costs of this suit, the plaintiffs are not entitled to inspect the said deeds, documents, papers and writings, or any of them, or to have the same or any of them produced for any purpose.

In Chancery.

(*Short style of cause.*)

539. Notice of production.

Take notice, that the plaintiff (*Or*, defendant) has this day filed his affidavit on production of books and papers, and has deposited the documents therein mentioned (*if the fact be so*) in the office of the Clerk of Records and Writs (*Or*, Deputy Registrar, *as the case may be*). [And take notice, that I require to be served with due notice when you intend to inspect the same.] (*b*)

Dated, &c.

Yours, &c.,

To C. D., Esq., Solicitor for ——.

A. B., Solicitor for ——.

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540. Notice to inspect papers produced (*b*).

In Chancery.

(*Short style of cause.*)

Take notice, that I will attend at the office of the Clerk of Records and Writs (*Or*, of the Deputy Registrar, *as the case may be*) on —— next, at —— o'clock A.M. (*Or*, P.M.),

(*a*) See *Chichester* v. *Marquis of Donegal*, 5 L. R. Chy. 497; but where mortgagee denies right of mortgagor to redeem, he is bound to produce the mortgage deed. See *Patch* v. *Ward*, 1 L. R. Eq. 436.

(*b*) It has been the practice heretofore with the Clerk of Records and Writs and Deputy Registrars to allow documents produced to be inspected by the opposite party, and, indeed, any party choosing to search the files, without notice to the party producing. When, however, the party producing considers the documents produced of such

to examine the books and papers produced by the defendant (*Or*, plaintiff, *as the case may be*).

Dated, &c.

Yours, &c.,

To C. D., Esq., A. B.,
Solicitor for ——. Solicitor for ——.

(*Formal parts: see ante, No.* 384.)

541. Notice of motion for better affidavit as to documents.

on the part of the plaintiff [*or as may be*], for an order requiring the defendant A. B. [*or as may be*] forthwith to file a further and better affidavit, as to the possession of documents: pursuant to the order dated the —— day of ——, 18 —; and that the said defendant [*or as may be*] may be ordered to pay the costs of this application on the ground that the affidavit filed by him on the —— day of —— is insufficient (*State shortly wherein it is deemed to be insufficient.*) And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, Nos.* 338–9.)

542. Order thereon, where the affidavit is held to be insufficient

and upon reading the order dated the —— day of ——, 18— (*Order to produce*), and an affidavit of the defendant A. B. [*or as may be*] filed the —— day of ——, 18 —, in pursuance thereof; and it appearing that the said affidavit is insufficient,

If the defendant applies for and obtains further time, add: and the said defendant [*or as may be*], by his solicitor, now applying for further time to file a full and sufficient affidavit, It is ordered, that the time for the said defendant [*or as may be*] to file a full and sufficient affidavit, pursuant to the said order, be enlarged to the —— day of ——, 18 —.

If the documents have been ordered to be deposited in Court, add also: And it is ordered, that the said defendant [*or as may be*] have till the —— day of ——, 18 —, to produce and leave with the [Clerk of Records and Writs], pursuant to the said order, any documents relating to the matters in question in this cause [*or as may be*] which by the affidavit so to be made by him shall appear to be in his possession or

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a character that their inspection by persons other than parties to the suit, or their solicitors, would be a prejudice to him, *semble* he would have a right to insist that the inspection should only be allowed on notice to him, in order that he might have the opportunity of being present at the inspection. Notice to this effect should be given to the officer with whom the documents are left as well as to the opposite party.

power: except such of the same, if any, as he may by such affidavit object to produce. And

it is ordered, that the defendant A. B. [*or as may be*] pay to the plaintiff C. D. [*or as may be*] $——, for the costs of this application.

Or, the costs of this application: to be taxed.

Or, it is ordered, that the costs of this application be costs in the cause.

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543. Notice of motion for the production of documents objected to be produced.

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff [*or as may be*], that the defendant A. B. [*or as may be*] may be ordered, within (seven) days after service, to produce and leave with the [Clerk of Records and Writs] the several documents mentioned in his affidavit filed the —— day of ——, 18—, and in the second part of the first Schedule thereto [*or as may be*], and thereby admitted to be in his possession or power, but which documents he thereby objects to produce. And that the (*applicant*), his solicitors and agents, may be at liberty to inspect and peruse the said documents, and take copies and abstracts thereof and extracts therefrom at his own expense. And take notice (*&c., as in No.* 382).

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544. Notice of motion for an affidavit as to the possession of specified documents

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff, that the defendant A. B. may be ordered, within (seven) days after service, to make and file a full and sufficient affidavit, stating whether he has, or has had, in his possession or power the following documents, or any of them; that is to say (*Specify the documents*); and accounting for the same, and that the said defendant may be (*Continue as in preceding form*).

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545. Notice of motion for further time to file an affidavit as to documents.

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff [*or as may be*], that the time limited by the order dated the —— day of ——, 18—, for the applicant to make and file an affidavit as to documents, may be enlarged until the —— day of ——, 18—; and that the costs of this application may be costs in the cause. And take notice (*&c., as in No.* 382).

546. Notice of motion for leave to seal up irrelevant matter.

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff [*or as may be*], that he may be at liberty to seal up such parts of the documents mentioned in the (first) Schedule to his affidavit filed in this cause the —— day of ——, 18—, as, according to the said affidavit, do not relate to the matters in question in this cause [*or as may be*]. And take notice (*&c., as in No.* 382).

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547. Notice of motion for the delivery out of documents deposited in Court, under an order.

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff [*or as may be*], that (*Describe what; as thus:* all the documents—*Or*, the documents mentioned in the Schedule hereto) deposited by him with the [Record and Writ Clerk], pursuant to the order dated the —— day of ——, 18—, may be delivered out to the applicant. And take notice (*&c., as in No.* 382).

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548. Receipt on delivery out of deposited documents.

Received the documents [*or as they may be described in the order*] mentioned or referred to in the above order.

Dated this —— day of ——, 18—.

(*Signature of the party to whom the documents are ordered to be delivered.*)

Witness to the signature of the said A. B.:

C. D.

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549. Notice of motion for order *pro con* against defendant for non-production.

(*See ante, No.* 532.)

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550. Notice of motion to dismiss bill for non-production by plaintiff.

(*See ante, No.* 506.)

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551. Notice of motion to commit for non-production (*a*).

(*Formal parts: see ante, No.* 384.)

on behalf of the plaintiff, for an order to commit the defendant A. B. to the gaol of the County or United Counties in which the said defendant may be found, for contempt, in not producing and leaving with the Clerk of

(*a*) This notice must be served four clear days before motion is made returnable: *Kelly* v. *Smith*, 1 Chy. Ch. R. 364—exclusive of Sundays and holidays; *Wilson* v. *Gould*, 2 Chy. Ch. R. 267; and may be served on the solicitor of the party.—*Ord.* 296. Where the party has filed an affidavit which is considered insufficient, the proper course is to move for an order for him to file a better affidavit: see ante, *No.* 541; *Ross* v. *Robertson*, 2 Chy. Ch. R. 66.

Records and Writs [*Or*, Deputy Registrar at ———] all books, deeds, papers, and writings and documents in his custody or power, relating to the matters in question in this cause, and in not filing any affidavit in relation thereto, pursuant to the order for production of documents dated the —— day of ———, served upon him in this cause. And take notice, that upon and in support of such motion will be read the said order to produce, and the admission [*Or*, affidavit] of service thereof, and the certificate of the Clerk of Records and Writs [*Or*, Deputy Registrar at ———] (*&c., as in form No.* 382).

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552. Order to commit for non-production.

(*Formal parts: see ante, Nos.* 338–9.)

Upon the application of the ———, and upon hearing read ———, and it appearing that the ——— has not produced before or left with the ——— the books, deeds, papers, writings and documents in his custody or power, relating to the matters in question in this cause, nor filed any affidavit relating thereto, although duly required so to do. It is ordered that the Sheriff of the County or United Counties in which the said ——— may be found, do take the said ——— into his custody, and commit —— to the gaol of his County or United Counties, to answer —— said contempt. And it is further ordered that a writ or writs of attachment do issue accordingly.

Discovery.

Examination of parties after answer, or time for answering.

553. Notice of examination of defendant or plaintiff.

In Chancery.

(*Short style of cause.*)

Take notice, that the plaintiff [*Or*, defendant] intends to examine the defendant A. B. [*Or*, plaintiff], touching the matters in question in this cause on ——— next, the —— day of ———, at —— o'clock, before A. B., Esq., Special Examiner of this Honourable Court, pursuant to his appointment hereto annexed.

Dated, &c.,

Yours, &c.

To ———.

(*Formal parts: see ante, No.* 553.)

Take notice, that the plaintiff [*Or*, defendant] intends to examine A. B., Esquire, the President of the defendants the G. Y. Company, for the purpose of discovery in this cause, pursuant to the practice of this Honourable Court in that behalf, on —— next, the —— day of ———, at — o'clock, before A. B., Esq., Master of this Honourable Court at ———, pursuant to his appointment hereto annexed.

554. Notice of examination of an officer of a corporation under Con. Ord.

Dated, &c.,

Yours, &c.

To ———.

Motions to Change Venue.

(*Formal parts: see ante, No.* 384.)

on behalf of the plaintiff [*Or*, defendant], for an order to change the venue in this cause from the [City of Toronto] to the [Town of Cornwall]; and take notice, that upon and in support of such application (*&c., as in No.* 382).

555. Notice of motion to change the venue.

(*Formal parts: see ante, No.* 300.)

1. That the plaintiff's cause of suit herein (if any he have) arose wholly at the Town of Cornwall (*a*).

2. That in order to prove my defence in this cause it will be necessary for me to subpœna at least ten witnesses, all of whom are material and necessary witnesses in my behalf, and each of them reside either in, or within five miles of, the said Town of Cornwall.

3. That I do verily believe that all the witnesses for the plaintiff also reside either in, or within ten miles of, the said Town of Cornwall.

4. The said Town of Cornwall is distant ——— miles from the said City of Toronto, and the railway fare from Cornwall to Toronto is $—.

5. That the expense of subpœnaing my said witnesses to Toronto will be greatly in excess of the expense of subpœnaing them to the said Town of Cornwall, and I believe from a calculation which I have made that such extra expense will amount to the sum of $— at least.

556. Affidavit in support of motion by a defendant.

(*a*) This clause is not necessary where it can be shown that there is a clear and palpable balance of convenience in favour of hearing the cause at the place to which the venue is sought to be changed: *Noad* v. *Noad*, 6 Pr. R. 48. But when the question of convenience is more evenly balanced, it may be sufficient to turn the scale.

6. This cause can be much more conveniently tried at the said Town of Cornwall than at the said City of Toronto, and at much less expense.

7. This application is made in good faith, and not for the purpose of delay.

Sworn, &c.

A certificate of the state of the cause accompanies.

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557. Another form.

(*Formal parts: see ante, No.* 300.)

1. A. G., Esquire, the Sheriff of the County of ——; D. E., Esquire, the Registrar of the County of ——; F. R., Esquire, the Treasurer of the said County of ——; and Mr. A. B., the Town Clerk of the Town of Cornwall, are each and all material and necessary witnesses on my behalf, and I cannot safely proceed to a hearing of this cause without the evidence of the said several parties.

2. That I am informed by the said parties, and believe that if they are compelled to attend the sittings of this Court at Toronto, it will materially interfere with the due discharge of their duties as public officers as aforesaid, and will be a great inconvenience to the public.

3. The said parties all reside in the said Town of Cornwall, and I believe this cause can be quite as conveniently tried at the said Town of Cornwall as at the City of Toronto.

4. This application is made in good faith, and not for the purpose of delay.

MOTIONS TO EXAMINE WITNESSES DE BENE ESSE.

558. (*See ante, No.* 292.)

MOTIONS FOR SUBPŒNA TO QUEBEC.

559. (*See ante, No.* 288 *et seq.*)

MOTIONS FOR SUBPŒNA TO COUNTY REGISTRAR.

560. (*See ante, No.* 236 *et seq.*)

Motions for Commissions to Examine Witnesses.

(*See ante No.* 279 *et seq.*)

561.

Motions for Interim Alimony.

(*Formal parts: see ante, No.* 384.)

on behalf of the plaintiff, for an order requiring the defendant to pay to the plaintiff the sum of $—— per week for interim alimony, from the date of the service of the bill of complaint upon the defendant until the hearing of this cause, and also her interim disbursements up to and inclusive of her disbursements for the said order. And take notice (*&c., as in form No.* 382).

562. Notice of motion for payment of interim alimony.

(*Formal parts: see ante, No.* 300.)

1. I am the plaintiff in this cause.

2. On the —— day of ——, 18—, I was married to the defendant A. B. [according to the rites and ceremonies of the Church of Rome, at Saint Paul's Church, in the Town of ——, by C. D., a priest of the said church], *or* [by A. B., minister of the —— Society, duly authorised by law as I verily believe to celebrate matrimony].

3. That the paper now produced to me and marked with the letter A is a certificate of my said marriage.

(*An affidavit proving the defendant's means and the nature and value of his property should also be produced, unless that sufficiently appears on the answer.*)

563. Affidavit in support proving marriage where the same is not admitted by the answer.

Motions for Writs of Ne Exeat Provincia, or Writs of Arrest.

That Her Majesty's writ of *ne exeat provinciâ* may issue out of, and under the seal of, this Honourable Court, to restrain the said defendant C. D. from departing out of the jurisdiction of this Honourable Court.

564. Prayer for the writ, in a bill.

In Chancery.

(*Style of the cause as in No.* 300.)

I, A. B., of (*Residence and addition*), the above named plaintiff, make oath and say as follows:—

1. *State, concisely, the institution and object of the suit; as thus:* The bill in this cause was filed by me on the —— day of ——, 18—, against the above named

565. Affidavit in support of application for the writ.

defendant A. B., to obtain an account of all moneys received by the said defendant for or on my account, or for my use, as my agent in the management of my estate called E., in the county of ———, as in the said bill mentioned, and of the application of such moneys; and for payment by the said defendant to me of what, on taking such account, should be found due from him to me.

2. *State the existence of a debt due from the defendant; as thus:* The two accounts now produced and shown to me, and marked respectively F. and G., have been rendered to me by the said defendant, and purport to be his accounts as such agent as aforesaid. It appears by the said accounts that the said defendant is indebted to me in the sum of $——, on balance thereof. I have investigated the said accounts; and I positively say that [*Or,* and to the best of my belief] the said defendant C. D. is now justly and truly indebted to me in the sum of $—— (*a*) and upwards, on the balance of the said accounts [*or as may be.*]

3. *Show defendant's intention to go abroad; and deponent's means of knowledge.*

4. From the facts aforesaid, and for the reasons hereinbefore stated, I verily believe that the said defendant C. D., unless he be forthwith apprehended, will quit Canada with intent to defraud me; and that the debt due to me as aforesaid from the said defendant will be in danger of being lost to me by the said defendant quitting the jurisdiction of this Honourable Court.

Sworn, &c.

Revivor and Supplement.

Orders of Revivor.

566. Common forms of allegations in the præcipe, for an order of revivor.

Assignment.—On the —— day of ——, 18—, the [plaintiff] by deed assigned and conveyed all his estate and interest in [the lands and premises] in question in this cause to C. D., who is now entitled to the same.

Insolvency.—On the —— day of ——, 18—, the plaintiff [*or as may be*] became an insolvent under the Insolvent Acts in force in this Province; and A. B. was on the —— day of ——, 18—, appointed, and is now, the official assignee of his estate and effects under the said insolvency.

(*a*) Not less than $100.

Insolvency.—Appointment of new assignee.—E. F. was on the —— day of ——, 18—, appointed, and is now, the official assignee of the estate and effects of the said A. B., in lieu of the said C. D.

Death.—On the —— day of ——, 18—, the plaintiff [*or as may be*] died intestate [and unmarried] [*Or*, having first duly made and published his last will and testament.]

Heirship.—The said plaintiff [*or as may be*] left A. B. his heir at law, [and C. D., his widow], him surviving; and the lands and premises in question in this cause descended to, and are now vested in, the said A. B., [subject to the right of dower of the said C. D. therein.]

Devise.—Whereby he devised all his estate and interest in the lands and premises in question in this cause to C. D., who is now solely entitled to the same.

Letters of administration.—On the —— day of ——, 18—, letters of administration of the personal estate of the said A. B. were granted to C. D.; whereby he became, and is now, the legal personal representative of the said A. B.

Probate.—The said A. B., by his last will, dated the —— day of —— 18—, appointed C. D. and E. F. executors thereof. On the —— day of ——, 18—, the said will was proved by the said C. D. and E. F.; whereby they became, and are now, the legal personal representatives of the said A. B.

Lunacy, and appointment of committee. — On the —— day of ——, 18—, the plaintiff [*or as may be*] was found lunatic by inquisition [*or as may be*]; and C. D. has been appointed, and is now, the committee of his estate.

Lunacy: Appointment of new committee.—On the —— day of ——, 18—, E. F. was appointed committee of the estate of the said A. B., in lieu of the said C. D.

Marriage of female plaintiff.—On the —— day of ——, 18—, the plaintiff A. B. intermarried with, and she is now the wife of, C. D., of, &c.

Marriage Settlement.—By an indenture dated the —— day of ——, 18—, executed on the said marriage, all the share and interest of the plaintiff in the subject matter of this suit has been assigned to E. F. and G. H., upon certain trusts thereby declared thereof.

567. Order of revivor.

In Chancery.

(*Full style of cause.—Before Revivor.*)

upon the application of the [plaintiff] alleging (*Recite the præcipe as in No.* 566, *and then add*):

It is therefore ordered that this suit do stand revived at the suit of the said plaintiff [*Or*, in the name of the said ——— as plaintiff] against the said defendants [*Or*, against the said ——— as defendants], and be in the same plight and condition as the same was in at the time of the said abatement.

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568. Endorsement on order of revivor, under Order 341, being part of Schedule N. referred to in that order.

"Take notice that if you desire to discharge this order, you must apply to the Court, by motion or petition, for that purpose, within fourteen days after the service hereof upon you. The original bill in this cause is filed in the office of the Clerk of Records and Writs [*Or*, Deputy Registrar] at ———;" (*and if the service is after a decree directing a reference to a Master, add:*) "and the reference under the decree in this cause is being prosecuted in the office of the Master at ———."

A. B.,
Plaintiff's Solicitor.

To C. D. and E. F.,
(the parties to be served with the order.)

II.—*Appointing, or Dispensing with a Representative.*

569. Notice of motion to appoint a representative.

(*Formal parts: see ante, No.* 384.)

on behalf of the plaintiff [*or as may be*], that the defendant A. B. [*Or*, A. B. of (*Residence and addition*),] may be appointed to represent the estate of C.D., deceased [*Or*, the respective estates of C. D. and E. F., deceased], in the plaintiff's bill named [*or as may be*], for the purposes of this suit. And take notice (*&c., as in No.* 382.)

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570. Notice of motion to dispense with a representative.

(*Formal parts: see ante, No.* 384.)

on behalf of the plaintiff [*or as may be*], that this cause, and the proceedings therein, may be carried on and prosecuted, notwithstanding the absence of any person representing the estate of A. B. [*Or*, the respective estates of A. B. and C. D.], deceased, in the plaintiff's bill named [*or as may be*]. And take notice (*&c., as in No.* 382.)

III.—*Supplemental Statements.*

In Chancery.

Between (*Set out the title of the cause.*)

571. Formal parts of a supplemental statement, under Orders 349 and 350 (*a*).

Statement, by way of supplement, to be annexed to the bill of complaint of the above named plaintiff.

1. }
2. } (*Set forth, concisely, the supplemental matter, in paragraphs, numbered consecutively.*)
3. }

(*Name of counsel.*)

(*Formal parts: see ante, No.* 300.)

572. Affidavit to be filed and served therewith, under Order 350.

The several matters [*Or*, the matter] alleged and set up in the supplemental statement now produced and shown to me, marked with the letter A., arose [within two weeks from this day] (*i. e. the day of filing*) *Or*, on the —— day of ——, 18—, (*giving a date within two weeks of the filing of the statement.*)

Sworn, &c.

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573. Notice of motion to file supplemental answer.

(*See ante, No.* 471.)

(*Formal parts: see ante, No.* 384.)

574. Notice of motion for leave to file supplemental statement where more than two weeks have elapsed since subject matter of proposed statement arose.

on behalf of the plaintiff for leave to file a supplemental statement in the form and to the effect set forth in the Schedule hereto annexed, notwithstanding more than two weeks have elapsed since the subject matter of the said proposed supplemental statement arose [*Or*, notwithstanding the plaintiff is unable to file an affidavit showing when the subject matter of the said proposed supplemental statement arose.] And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 300.)

575. Affidavit in support of motion.

1. The allegations contained in the supplemental statement now produced and shown to me, marked A., are true in substance and in fact; and I am advised by my counsel [*Or*, solicitor], and believe that it is material and necessary for the proper prosecution of this suit, that I

(*a*) The statement must be accompanied by an affidavit that the subject matter thereof arose within two weeks of its filing, unless the Court otherwise order. See *Ord.* 350.

should be allowed to set up the several matters in the said statement contained.

2. *State, if possible, when subject matter of proposed statement arose, and when it first came to the knowledge of the plaintiff or his solicitor.*

3. *Explain any delay which may have arisen in making the application since such knowledge acquired.*

4. This application is made in good faith, and not for the purpose of delay.

Sworn, &c.

Where the matter of the proposed statement is not within the applicant's own knowledge, the affidavit should be modified accordingly; and in that case the deponent should state that he believes the alleyations in the statement to be true, and at the same time show the grounds of his belief.

Injunctions and Restraining Orders.

Section I.—*Generally.*

576. Prayer for injunction, in a bill (*a*).

That the defendant A. B. may be restrained, by the order and injunction of this Honourable Court, from (*State what; as thus:* prosecuting the said action so commenced by him as aforesaid against the plaintiff; and that all the defendants may be respectively restrained, in like manner, from commencing or prosecuting any other action or proceeding against the plaintiff, for the recovery of the rent now due from the plaintiff under the said lease, or any part thereof; or otherwise concerning the matters aforesaid)—*And see post, Nos.* 581 *to* 592.

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577. Notice of administration decree to a creditor proceeding at law.

In Chancery.

(*Title of the suit in Equity.*)

Take notice, that by a decree [*Or*, an order], dated the —— day of ——, 18—, in this suit: which has been instituted for the administration of the estate of A. B., late of, *&c.*, deceased: the usual accounts are directed to be taken of the estate of the said A. B., including an account of his debts.

Take also notice that, inasmuch as you, the undernamed C. D., can go in under the said decree [*Or*, order], and prove the debt, if any, alleged to be due to you from

(*a*) See, however, *Kennedy* v. *Bown*, 21 Grt. 95.

the estate of the said A. B., for the recovery whereof you have brought an action in Her Majesty's Court of Queen's Bench [*or as may be*], against E. F., the executor [*Or*, administrator] of the said estate, and for the costs of the said action to this time, if you the said C. D., after the receipt of this notice, proceed with the said action, an application will be made to the Court of Chancery to restrain you, your attorneys and agents, from further prosecuting the said action, and to deprive you of the costs incurred therein subsequent to the receipt of this notice. Dated this —— day of ——, 18—.

G. H., of (*Place of business*), solicitor for the said E. F. [*or as may be.*]

To the said C. D., and to Mr. L. M., his attorney [*Or*, agent] in the said action.

(*Formal parts: see ante, No.* 382.)

578. Notice of motion to restrain a creditor from proceeding at law, after an administration decree.

on the part of the plaintiff [*Or*, defendant E. F.]:

1. That C. D., his attorneys and agents, may be restrained from further prosecuting the action brought by him in Her Majesty's Court of Queen's Bench [*or as may be*], against the defendant E. F. [*or as may be*], the executor [*Or*, administrator] of A. B., the testator [*Or*, intestate] in the pleadings of this cause named, to recover a debt alleged to be due to the said C. D. from the estate of the said A. B. [*or as may be.*]

2. That the said C. D. may be at liberty to go in under the decree [*Or*, order] made in this cause, dated the —— day of ——, 18—, and prove the claim for which the said action is brought.

Where assets admitted: 3. That, upon the said C. D. establishing his said claim, the defendant E. F. [*or as may be*] may be at liberty, out of the assets of the said A. B., to pay to the said C. D. his costs of the said action, up to the time he had notice of the said decree [*Or*, order]: to be taxed.

Or where assets denied: 3. That the costs of the said C. D. of the said action, up to the time he had notice of the said decree [*Or*, order], and his costs of this application, may be taxed; and that he may be at liberty to add the amount thereof to his said claim, and to prove for the same under the said decree [*Or*, order.] And take notice that in support (*&c., as in No.* 382.)

579. Affidavit by the personal representative, and his solicitor, in support of motion to restrain creditor at law.

In Chancery.

(*Formal parts: see ante, No.* 300.)

We, G. H., of (*Place of business*), gentleman, the solicitor in this cause for the defendant E. F.—*If so:* and also his attorney in the action hereinafter mentioned—and the above named defendant E. F., of (*Residence and addition*), severally make oath and say:

And first, I, the said G. H., for myself, say as follows:

1. On the —— day of ——, 18—, C. D. brought an action in Her Majesty's Court of Queen's Bench [*or as may be*], against the said defendant E. F., as the executor [*Or*, administrator] of A. B., the testator [*Or*, intestate] in the pleadings of this cause named, to recover the sum of $——, alleged to be due to the said C. D. from the estate of the said A. B. [*or as may be.*]

2. *State, concisely, the material proceedings in the action; as thus:* The said E. F. duly appeared to the said action; and issue has been joined therein, and notice of trial given for the next assizes to be holden at ———, in the county of ———.

3. The suit in which this affidavit is made was instituted on the —— day of ——, 18—, by a creditor of the said A. B. [*or as may be*] for the administration of the estate of the said A. B.

4. By the decree [*Or*, order] dated the —— day of ——, 18—, made on the hearing of the said suit, the usual accounts are directed to be taken of the estate of the said A. B.: including an account of his debts.

5. *Prove service on the plaintiff at law of the decree or order.* (*See ante, No.* 323.)

And I, the said E. F., for myself, say as follows:

6. The only assets of the said A. B. now in my hands consists of (*State what; as:* the sum of $—— cash); and such assets are insufficient, in a due course of administration, to pay the claim of the said A. B. in the said action, and his costs thereof [*or as may be.*]

Sworn, &c. (*See ante, No.* 303.)

Section II.—*Interlocutory Injunctions, and Restraining Orders*

580. General form of notice of motion for an injunction.

(*Formal parts: see ante, No.* 382.)

On the part of the plaintiff, that the defendant A. B., his [*Or*, defendants A. B., C. D., &c., their, and each of their] attorneys and agents [*Or*, officers, contractors, servants,

workmen, and agents—*or as may be*], may be restrained, by the order and injunction of this Honourable Court, from (*State what : For examples, see post, Nos.* 581—592 : until the hearing of this cause [*or as may be*], or until further order. And take notice that in support (*&c., see ante, No.* 382.)

(*Formal parts : see ante, Nos.* 382 *and* 580.)

581. Notice of motion to restrain action at law (*a*).

from proceeding in the action at law commenced by the said defendant T. T. against the plaintiffs, as in the plaintiff's bill mentioned; and from commencing or prosecuting any other action or suit, or other proceeding, against the plaintiffs, or either of them, for the recovery of the mortgage debenture in the bill mentioned: until further order. And take notice (*&c., as in No.* 382.)

(*Formal parts : see ante, Nos.* 382 *and* 580.)

582. Notice of motion to restrain interference with ancient lights.

from continuing to erect or raise the walls or building, now in course of erection by the defendants to the north of the plaintiff's premises, in the bill mentioned, to a greater height than the same wall or building now is: until, *&c.* And take notice (*&c., as in No.* 382.)

(*Formal parts : see ante, Nos.* 382 *and* 580.)

583. Notice of motion to restrain infringement of copyright.

from printing, publishing, selling, or otherwise circulating such portion of the defendant's works, intituled "Mineral Statistics of the United Kingdom of Great Britain and Ireland, for the year 1865," in the plaintiff's bill mentioned, as is set forth in the statistics contained in the annual statements or publications published by, or on behalf of, the plaintiff, as in the plaintiff's bill mentioned; and from doing any other act or thing in invasion or infringement of the plaintiff's copyright in the said annual statements or publications, or any of them: until, *&c.* And take notice (*&c., as in No.* 382.)

(*Formal parts : see ante, Nos.* 382 *and* 580.)

584. Notice of motion to restrain infringement of patent.

from making and selling, or making or selling, any blue or purple violet dye made according to the process discovered in the specification of the letters patent in the bill

(*a*) See *Kennedy* v. *Bown*, 21 Grt. 95.

mentioned, or according to any process being a colourable imitation thereof; and from in any manner infringing the said letters patent: until, &c. And take notice (&c., *as in No.* 382.)

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585. Notice of motion to restrain infringement of trade mark.

(*Formal parts: see ante, Nos.* 382 *and* 580.) from affixing, or causing to be affixed, to any casks of wine shipped to their, or any of their order, or used by them, or any of them, the brand or mark of a crown, and the word Seixo, or any other combination of marks or words so contrived as, by colourable imitation or otherwise, to represent the marks or brands used by the plaintiff; and from employing, or permitting to be employed, any marks or brands, or words or other designation, in respect of wines offered for sale by the defendants, or any of them, which shall be so contrived as to represent, or to induce a belief, that such wines are Crown Seixo, or the produce of the quinta do Seixo, in the plaintiff's bill mentioned; and also from describing, or offering for sale, the wines simply as Seixo wine; or otherwise using the word Seixo in respect of such wine; without clearly distinguishing the same from wine produced on the plaintiff's said quinta do Seixo: until, &c. And take notice (&c., *as in No.* 382.)

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586. Notice of motion to restrain execution for rent.

(*Formal parts: see ante, Nos.* 382 *and* 580.) from taking any further proceedings, by distress or otherwise, to recover the rents and profits of the hereditaments and premises in the plaintiff's bill mentioned; and from putting in force and execution the distress levied by the defendant upon the goods and chattels of W. P., in the plaintiff's bill mentioned: until, &c. And take notice (&c., *as in No.* 382.)

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587. Notice of motion to restrain the pollution of a river.

(*Formal parts: see ante, Nos.* 382 *and* 580.) from causing or permitting any sewage, or water polluted with sewage, to pass through the drains or channels under their control into the river C., in such manner as to render the water of the said river at or near the plaintiff's mill, in the bill mentioned, unfit for use by the plaintiff, or otherwise injurious to the health of the persons resident at the said mill: until, &c., and take notice (&c., *as in No.* 382.)

(*Formal parts: see ante, Nos.* 382 *and* 580.)
from possessing himself of, getting in, or receiving, and from disposing of, charging, or incumbering, any part of the moneys, credits, property, assets, estate or effects of or belonging to the partnership business in the bill mentioned; and from incurring any debts or debt in respect of the said business, and from carrying on, or in any manner interfering in, or intermeddling with, the said business, or any of the moneys, property, assets or affairs thereof, without the consent of the plaintiff: until, *&c.* And take notice (*&c., as in No.* 382.)

588. Notice of motion to restrain the getting in of partnership assets, or intermeddling with the business.

(*Formal parts: see ante, Nos.* 382 *and* 580.)
from prosecuting the actions of ejectment commenced by the defendants the I. R. Company, as in the plaintiff's bill mentioned, against the defendants the D. and S. R. Company, or either of such actions; and from commencing or prosecuting any other action or actions for obtaining possession of the lands purchased by the plaintiffs for the purposes of the said D. and S. R. Company: until, *&c.* And take notice (*&c., as in No.* 382.)

589. Notice of motion to restrain a public company.

(*Formal parts: see ante, Nos.* 382 *and* 580.)
from transferring on the register the ship marked or called No. 4, in the bill mentioned, to any person or persons; and also to restrain the said defendant, his servants and agents, from removing the said ship out of the jurisdiction of this Court: until, *&c.* And take notice (*&c., as in No.* 382.)

590. Notice of motion to restrain the transfer of a ship's register, and sailing of the ship.

(*Formal parts: see ante, Nos.* 382 *and* 580.)
on the part of the plaintiff [*or as may be*], that A. B., of, *&c.*, may be restrained, until further order, from intermarrying with the plaintiff C. D [*or as may be*], and from having any intercourse or communication with the said C. D. And take notice (*&c., as in No.* 382.)

591. Notice of motion to restrain marrying ward of Court.

(*Formal parts: see ante, Nos.* 382 *and* 580.)
from felling any timber or other trees standing or growing in the meadow, or in the hedge, in the plaintiff's bill mentioned; and from cutting the said hedge, or the un-

592. Notice of motion to restrain the felling of timber.

derwood thereof: and from committing any other waste, or otherwise interfering with the said meadow, or trees, or hedge: until, *&c.* And take notice (*&c., as in No.* 382.)

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593. Certificate of bill filed.

In Chancery.

(*Full style of cause.*)

These are to certify, that the plaintiff's bill in this cause was regularly filed on the —— day of ——, 18— (*If so:* and that the same was duly amended on the —— day of ——, 18—): as appears by my book.

Dated, &c.

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594. Notice of motion for substituted service of copy bill, and notice of motion for an injunction (*a*).

(*Formal parts; see ante, No.* 384.)

on behalf of the plaintiff, that service of a printed copy of the plaintiff's bill, duly endorsed, together with a copy of the order hereon, upon A. B., at (*State where*), may be deemed good service upon the defendant C. D.; and that the plaintiff may at the same time serve notice of motion for an injunction on the —— day of ——, 18—, in accordance with the prayer of the plaintiff's bill; and that service of such notice upon the said A. B. may be deemed good service upon the defendant C. D. And take notice (*&c., as in No.* 382.)

---

595. Notice of motion to apply for an interim order, *&c.* (*a*).

(*Formal parts: see ante, No.* 384.)

on behalf of the plaintiff, for an interim order in the terms of the 4th paragraph of the plaintiff's bill, until after ——, the ——— day of ———; and for leave to serve notice of motion for that day, with the bill, before appearance [*or as may be.*] And take notice (*as in No.* 382.)

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596. Order for interim injunction.

(*Formal parts: see ante, No.* 336.)

And the plaintiff, by his counsel, undertaking to abide by any order this Court may make as to damages, in case the Court shall hereafter be of opinion that the defendant shall have sustained any by reason of this order which the plaintiff ought to pay; This Court doth order, that the defendant T. A. P. be restrained, until Saturday, the 2nd day of September next, from obtaining any payment, *&c., &c.*; and that a writ of injunction do issue accordingly, and the plaintiff is to be at liberty to serve the defendant with

(*a*) This application is usually *ex parte*.

the bill, and also, before answer, with notice of a motion to be made before this Court on Friday, the 1st day of September next, to continue the said injunction.

(*Formal parts: see ante, No.* 384.)

597. Notice of motion for leave to amend bill, without prejudice to notice of motion for an injunction.

on the part of the plaintiffs, that they may be at liberty to amend their bill, as they shall be advised [*or as may be*]: without prejudice to the notice of motion for an injunction in this cause; and that the costs of this application may be costs in the cause. And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 384.)

598. Notice of motion for time to file affidavits on motion for injunction, and serve notice of motion for decree.

on the part of the defendants, that the time within which the applicants may file their affidavits on the plaintiff's motion for an injunction may be enlarged until the ——— day of ———, 18—; and that the time within which the plaintiff may file affidavits in reply, and serve notice of motion for a decree, may be enlarged until the ——— day of ——, 18—, and that the costs of this application may be costs in the cause. And take notice (*&c., as in No.* 382.)

In Chancery.

(*Shortened style of cause.*)

599. Notice of injunction having been ordered.

Take notice, that his Lordship the Chancellor [*or as may be*] has this day granted an injunction [*Or*, made an order that an injunction be awarded] in this cause, to (*State terms of injunction or order.*)

Dated, &c.

And take also notice, that the said injunction will be issued [*Or*, that the said order will be drawn up], and served upon you, as soon as practicable.

Dated, &c.

A. B.,
Plaintiff's Solicitor.

To (*Party enjoined.*)

ONTARIO.

In Chancery.

600. Writ of injunction.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To Greeting:

Whereas it has been represented to us, in our Court of Chancery, on the part of ——— complainant, that ——has

lately filed —— bill of complaint in our said Court of Chancery, against you the said ———, to be relieved touching the matters therein complained of, in which bill it is stated, among other things, that your actings and doings in the premises are contrary to equity and good conscience: We therefore, in consideration thereof, and of the particular matters in the said bill set forth, do strictly command you the said ———, and the persons before mentioned, and each and every of you, under the penalty of five thousand pounds, to be levied upon your lands, goods and chattels, to our use, that you absolutely desist and refrain from ———— (*following terms of order.*)

Witness, the Honourable ———, our Chancellor, this —— day of ——, 18—, in the —— year of our reign.

———, Clerk of Records and Writs.

———, Plaintiff's Solicitor.

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601. Notice of motion to dissolve an interlocutory injunction.

(*Formal parts: see ante, No.* 382.) on the part of the defendant A. B., that the injunction awarded by the order in this cause, dated the ——— day of ———, 18—, may be dissolved. And take notice (*&c., as in No.* 382.)

---

602. Notice of motion to discharge, for irregularity, order awarding injunction.

(*Formal parts: see ante, No.* 382.) on the part of the defendant A. B., that the order dated the ——— day of ———, 18—, made in this cause, on the application of the plaintiff, whereby it was ordered that (*State what*), may be discharged for irregularity, with costs to be paid by the plaintiff to the said defendant for that (*State the irregularity complained of.*) And take notice (*&c., as in No.* 382.)

Section III.—*Continuing or Granting Injunctions at the Hearing.*

603. Writ of perpetual injunction.

The same as No. 600, *ante.*

SECTION IV.—*Consequences of the Breach of an Injunction, or Restraining Order.*

604. Notice of motion for committal for breach of injunction.

(*Formal parts: see ante, No.* 384.)
on the part of the plaintiff, that the defendant A. B. may stand committed to ——— prison of the county or united counties in which he may be found, for breach of the injunction granted pursuant to the order dated the —— day of ——, 18— [*Or, if writ not served, say:* awarded to the plaintiff, by the order dated the —— day of ——, 18—], to restrain the said defendant from (*State what*)—*If so:* and for breach of the undertaking given by the said defendant on, *&c.;* and that the said defendant may be ordered to pay the costs of this motion. And take notice (*&c., as in No.* 382.)

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605. Affidavit in support of motion to commit.

(*Formal parts: see ante, No.* 300.)
1. *Prove service of notice of the injunction, or restraining order: see ante, No.* 323*; or if a writ of injunction has been served, prove service thereof; as thus:* I did, on the —— day of ——, 18—, serve the above named defendant A. B. with the writ of injunction issuing out of, and under the seal of, this Honourable Court, now produced and shown to me, and marked A., by delivering a true copy of the said writ to, and leaving the same with, the said defendant A. B., personally, at (*State where*); and I, at the same time, produced and showed to the said defendant A. B. the said original writ so under seal as aforesaid. At the time of the service aforesaid, there was on the said original writ, and on the copy thereof so served as aforesaid, an indorsement in the words and figures following; that is to say: (*Set out a copy of the endorsement.*)
2. *Prove that defendant has committed a breach.*
3. *Prove service of notice of motion for committal for the breach: see ante, No.* 322.

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606. Notice of motion for discharge from custody.

(*Formal parts: see ante, No.* 384.)
on the part of the defendant A. B., that [upon his paying or tendering to the plaintiffs their costs of the order dated the —— day of ——, 18—, and the costs of his contempt, and of this application: such costs to be taxed

by the Master in case the parties differ]: (*a*) the defendant A. B. may be discharged out of the custody of the Sheriff of the County of ———, as to his said contempt.

———

SECTION V.—*Orders in the Nature of Injunctions.*

Stop Orders.

607. Petition for a stop order.

(*Title—and address: see ante, No.* 387.)

The humble petition of A. B., of (*Residence and addition*),

Showeth as follows:

1—3. *Show the assignor's interest in the fund in Court:*

4. *Show the assignment to, or other title of, the assignee; as thus:* By an indenture dated the —— day of ——, 18—, and made between the said C. D., of the one part, and your petitioner of the other part, the said C. D., for the consideration therein mentioned, assigned his said one-third share of the said $10,000 unto your petitioner, his executors, administrators and assigns, absolutely, by way of sale [*Or*, mortgage]; and authorized him and them to receive and give discharges for the said share [*or as may be.*]

5. *Describe the present state of the fund in Court; as thus:* The said sum of $10,000 is now standing in Court to the credit of this cause, [*or as may be.*]

Your petitioner therefore humbly prays that (*Describe the fund or share of fund to be restrained: see post,* 608–9.) Or that (*&c.: Conclude as in No.* 387, *ante.*)

———

608. Notice of motion for a stop order on an entire fund in Court.

(*Formal parts: see ante, No.* 384.)

on the part of A. B., of (*Residence and addition*), that the (*Describe the fund to be affected, and how it stands in the Accountant-General's books, according to his certificate; as thus:* moneys in Court to the credit of this cause, to which C. D. is entitled [*Or*, so much of the Dominion Stock *Or*, the Canada 6 per cent. bonds], in which the sum of $——— is invested in the name of the Accountant of this Honourable Court to the credit of this cause, and

(*a*) It would seem that where a party in custody has otherwise purged his contempt, the payment of the costs of the contempt will no longer be made a condition precedent to his discharge; *Jackson* v. *Mawby*, L. R. 1 Ch. D. 87.

to which [*Or*, the moneys now invested upon the mortgage of C. D., in the name of the Accountant of this Honourable Court to the credit of this cause, and to which, &c.]
to which the plaintiff C. D.—*Or*, defendant C. D.—*Or*, C. D., of (*Residence and addition*) is—*If so:* or may be or become—entitled, or any part thereof, *If so:* or any interest hereafter to accrue due on the said stock, or any part thereof,
may not be transferred, sold, paid out, or otherwise disposed of without notice to the said A. B. And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 384.)
on the part of A. B., of (*Residence and addition*), that the one-third share to which the plaintiff C. D.

609. The like, on a share of a fund in Court.

Or, defendant C. D.—*Or*, C. D., of (*Residence and addition*)—is *If so:* or may be or become—entitled of the (*Describe the fund, and cause, &c., as in No.* 608, *ante*,) or any part thereof, *If so:* or of any interest hereafter to accrue due on the said annuities, or any part thereof, may not be transferred, sold, paid out, or otherwise disposed of without notice to the said A. B. And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 300.)
1, 2. *Show titles of assignor and assignee: see ante, No.* 607, *pars.* 1—4.

610. Affidavit in support of petition or motion.

3. *Prove assignor's execution of the assignment; as thus:* The said indenture is the —— writing, marked A., now produced and shown to me. I saw the said C. D. execute the said indenture. The name or signature "———," subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said C. D.; and the name or signature "———," subscribed to the attestation of such signature endorsed on the said indenture, is of my proper handwriting [*Or*, I am well acquainted with the handwriting of the said C. D.: having seen him write. The name or signature "———," subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said C. D.]
4. *In the case of a petition, prove service thereof, when necessary.*
5. *Show means of knowledge.*

611. Notice of motion for a further stop order, on assignment of interest by restraining party.

(*Formal parts: see ante, No.* 384.)
on the part of L. M., of (*Residence and addition*), that the (*Describe the fund, or share of fund, to be restrained: see ante, No.* 608,) may not be transferred, sold, paid out, or otherwise disposed of without notice to the said L. M.: instead of A. B., as directed by the order dated the —— day of ——, 18— (*Former stop order*). And take notice (*&c., as in No.* 382.)

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612. The like.

(*Formal parts: see ante, No.* 384.)
on the part of L. M., of (*Residence and addition*), that the said L. M. may be substituted for A. B. in the order dated the —— day of ——, 18— (*Former stop order*) named, as the person to whom notice is to be given before any transfer, sale, payment out, or other disposition is made of the bank stock [*or as may be*] in the said order mentioned. And take notice (*&c., as in No.* 382.)

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613. Petition, for the like order.

(*Title—and address: see ante, No.* 387.)

The humble petition of L. M., of (*Residence and addition*),

Showeth as follows:

1. *Recite the existing stop order; as thus:* By an order dated the —— day of ——, 18—, and made in this cause on the petition [*Or,* on the application] of A. B., it was ordered that (*Set out so much of the order as imposed the restraint.*)

2. *Show the title of the petitioner; as thus:* By an indenture dated the —— day of ——, 18—, and made between the said A. B. of the first part, the said C. D. of the second part, and your petitioner of the third part, for the consideration therein mentioned, the said A. B., with the privity of the said C. D., assigned, and the said C. D. assigned and confirmed, the said (one-third share of the said) Dominion 6 per cent. stock unto your petitioner, his executors, administrators and assigns, by way of absolute sale [*Or,* mortgage]; and thereby authorized him and them to receive and give discharges for the same.

3. The said $—— Dominion 6 per cent. stock is now standing in the name of the Accountant-General, to the credit of this cause [*or as may be.*]

Your petitioner therefore humbly prays that (the share of the said C. D., of) the said $—— stock [*or as may be*], or any part thereof—*If*

so: or any interest hereafter to accrue thereon or any part thereof—may not be transferred, sold, paid out, or otherwise disposed of without notice to your petitioner: instead of the said A. B., as directed by the said order of the —— day of ——, 18— [*Or*, that your petitioner may be substituted for the said A. B., as the person to whom notice is to be given before any transfer, sale, payment out, or other disposition is made of the said $—— stock [*or as may be*]—*If so:* or the interest to accrue due thereon.

Or that (*&c.: Continue as in No.* 387, *ante, to the end.*)

(*Formal parts: see ante, No.* 300.)

Show title of the applicant: see ante, No. 613, *pars.* 1, 2.

614. Affidavit in support of summons, or petition.

3. *Prove execution by the assigning parties; as thus:* The said indenture dated the —— day of ——, 18— (*assignment*), is the —— writing marked B., now produced and shown to me. I saw the said A. B. and C. D. respectively execute the said indenture marked B. The name or signature "———," subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said A. B. The name or signature "———," subscribed to the said indenture as another of the parties executing the same, is of the proper handwriting of the said C. D. The name or signature "———," subscribed to the attestation endorsed on the said indenture of the signatures thereto of the said A. B. and C. D., is of my proper handwriting. [*Or*, I am well acquainted with the handwriting of the said A. B. and C. D., respectively, having seen them write. The name or signature "———," subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said A. B.; and the name or signature "———," subscribed to the said indenture as another of the parties executing the same, is of the proper handwriting of the said C. D.]

4. *Show means of knowledge.*

Sworn, &c.

(*Formal parts: see ante, No.* 384.)

615. Notice of motion to discharge a stop order.

on the part of C. D., in the order dated the —— day of ——, 18—, named [*Or*, C. D., of (*Residence and addition*)], that the (said) order dated the —— day of ——, 18—,

whereby it was ordered [*Or*, that so much of the order dated the —— day of ——, 18—, as directs] that (*Recite, concisely, the order, or restraining clause*) may be discharged —*If so:* with costs to be paid by the said A. B. to the said C. D. And take notice (*&c., as in No.* 382.)

RECEIVERS.

SECTION I.—*Mode, and Effect, of Appointment of a Receiver.*

616 Prayer for a receiver; and injunction in a bill.

That some proper person or persons may be appointed by this Honourable Court, to receive the rents and profits of the real estate of the said testator, and to collect and get in his outstanding personal estate [*or as may be*].—And that the defendant A. B. may be restrained, by the order and injunction of this Honourable Court, from in any way interfering with the said real and personal estate, or any part thereof, or with any rents or profits, dividends or interest, arising from any part of the said real and personal estate.

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617. Notice of motion for a receiver.

(*Formal parts: see ante, No.* 382.)

on the part of the plaintiff, that a proper person [*Or*, that L. M., of (*Residence and addition*), on giving security] may be appointed (*State for what purpose: as thus:*

to receive the rents and profits of the real and leasehold estates, and to collect and get in the outstanding personal estate of A. B., the testator in the bill named):

If of real or leasehold estates, add:

And that the tenants of the said estates may be ordered to attorn, and pay their rents in arrear and growing rents to such receiver:

If of outstanding personal estate, add:

And that the defendant C. D., the executor of the will [*Or*, administrator of the personal estate] of the said A. B., may be ordered to deliver over to such receiver all securities in his hands for such outstanding personal estate, together with all books and papers relating thereto (*or as may be*).

And that such receiver may be directed from time to time to pass his accounts, and pay his balances into Court, to the credit of this cause. And take notice (*&c., as in No.* 382.)

(*Formal parts : see ante, No.* 382.)

618. Notice of motion for a receiver, pending actions at law.

on the part of the plaintiff, that some proper person may be appointed to receive the rents and profits of the real estates of M. E., the intestate in the plaintiff's bill named : until such time as the plaintiff's title shall be determined in some or one of the actions at law in the bill mentioned ; and that the same person may be appointed to receive the rents and profits of the leasehold estates of the said M.E.; and to collect and get in her outstanding personal estate, pending the litigation as in the said bill mentioned.—*Direction to the tenants : see ante, No.* 617. And that the plaintiff may deliver over to such person so to be appointed all securities in his hands for such outstanding estate, together with all books and papers relating thereto.—*Directions for receiver to pass his accounts, and pay in balances : see ante, No.* 617.

(*Title—and address : see ante, No.* 387.)

619. Petition by a defendant, for the appointment of a receiver.

The humble petition of the defendant C. D.

Showeth as follows :

1. *State the institution and object of the suit.*
2. *State the decree and subsequent material proceedings.*
3. *State the special grounds for the appointment of a receiver.*

Your petitioner therefore humbly prays, that a proper (*Continue as in No.* 617, *ante, to the end*), Or that your lordships (*Continue as in No.* 387, *ante.*)

(*Formal parts : see ante, No.* 382.)

620. Notice of motion for leave for a party to the cause to propose himself as receiver.

on the part of the plaintiff [*Or*, defendant A. B.], that he may be at liberty to propose himself as the person to be appointed receiver under the decree [*Or*, order] dated the ——, 18— ; but without giving security : he undertaking to act without salary [*or as may be*].

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621. Underwriting of a warrant for the appointment of a receiver.

For the appointment of a receiver under the decree in this cause dated ——, on —— next, at —— a. m. [*Or* p. m.], and A. B., of the town of ——— (Esquire), is proposed as the said receiver ; and C. D., of the same place, ———, and E. F., of the same place, ———, are proposed as his sureties.

622. Counter proposal for appointment of receiver.

In Chancery.

(Short style of cause.)

Take notice, that I will, on the —— day of ——, when the warrant for the appointment of a receiver in this cause, taken out by ——, and served upon ——, is attendable, propose that instead of the said A. B., proposed by —— as receiver, C. D., of —— (Esquire), be appointed; and I propose as his sureties E. F., of ——, and G. H., of ——.

Dated, &c.

Yours, &c.,

To K. S., Esq., *Solicitor for* ——.

I. J., *Solicitor for* ——.

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623. Affidavit of the nature and value of the property over which the receivership is to extend.

(Formal parts: see ante, No. 300.)

1. *Describe the property, succinctly; as thus:* The real and leasehold estates of the testator A. B., in the decree [*Or*, order] in this cause, dated the ——, 18—, mentioned, consist of the short particulars set forth in the first column of the first part of the Schedule hereto.

2. The said estates are in the occupation of the several persons, and at the annual rents, specified in the second and third columns of the said first part.

3. The arrears of rent specified in the fourth column of the said first part are also now due.

4. The outstanding personal estate of the said testator consists of the particulars set forth in the first column of the second part of the said Schedule; and the values thereof are set forth in the second column of the said second part.

5. *Show means of knowledge.*

The Schedule above referred to.

First Part.

Particulars of estate.	Tenant's name.	Annual rent.	Arrears due.
		$ c.	$ c.
The Home Farm, at Uxbridge, Ontario,	John Jones,	300·00	75·00
&c.	*&c.*	*&c.*	*&c.*

Second Part.

Particulars of outstanding estate.	Value.
Book debts.....	$ cts. 350·00
&c.	*&c.*

(*Formal parts: see ante, No.* 300.)

624. Affidavit of fitness of proposed receiver.

1. I have for —— years last past known and been well acquainted with L. M., of (*Residence and addition*), the person proposed to be appointed in this cause the receiver of the rents and profits of the real estate, and to get in the outstanding personal estate, of the testator A. B. [*or as may be*].

2. The said L. M. is (*State the trade, business, or profession, if any, of the proposed receiver; and where carried on, and for how long, to the deponent's knowledge.*)

3. The said L. M. is a person of respectability and integrity, and of good credit; and in my judgment he is a fit and proper person to be appointed receiver of the said rents and profits, and outstanding estate [*or as may be.*]

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625. Receiver's recognizance.

A. B., of ———, C. D., of ———, and E. F., of ———, before our Sovereign Lady the Queen in her Court of Chancery for Ontario, personally appearing, do acknowledge themselves, and each of them doth acknowledge himself to owe to ——, Esq., Master of the said Court at ———, (*a*) the sum of —— of lawful money of Canada, to be paid to the said ——, his executors, administrators and assigns, and unless they do pay the same, they, the said A. B., C. D., and E. F. are willing, and do grant, and each of them is willing, and doth grant for himself, his heirs, executors and administrators, that the said sum of —— shall be levied, recovered, and received of and from them, and each of them, wheresoever the same shall or may be found.

WITNESS, the Honourable P. M. M. S. V., Chancellor of our said Court at Toronto, the —— day of ——, in the —— year of Her Majesty's reign, and in the year of our Lord 18—.

WHEREAS by an order of the Court of Chancery for Ontario, made in a cause wherein ——— are plaintiffs and

(*a*) See *Ord.* 279.

——— defendants, and bearing date the —— day of ——, It was ordered that it should be referred to the Master of this Court at ——— to appoint a proper person to receive, (*Or*, upon the above bounden A. B. first giving security to the satisfaction of the said Master, he should be appointed receiver of) [the rents and profits of the real estate, and to collect and get in the outstanding personal estate of ——] in the said order named. And whereas the said Master hath appointed and approved of the above bounden A. B. and C. D. and E. F., as sureties for the said A. B., and hath also approved of the above written recognizance with the under-written condition as a proper security to be entered into by the said A. B. and C. D. and E. F., pursuant to the said order and the General Orders of the said Court in that behalf, and in testimony of such approbation, hath signed an allowance in the margin hereof.

NOW THE CONDITION of the above written recognizance is such, that if the said A. B. do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the [rents and profits of the real estates, and in respect of the personal estate of the said X. Y.], and do and shall duly pay the balances which shall from time to time be certified to be due from him at such periods as may be directed, then the above recognizance shall be void and of none effect, otherwise the same is to be and remain in full force and virtue.

Taken and acknowledged at ———, in the city of ——, this —— day of ——, before me.

(*Signature of the Master.*)

A. B. [L. S.]
C. D. [L. S.]
E. F. [L. S.]

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626. Affidavit of sureties, as to their solvency.

In Chancery.

(*Title of the cause as in No.* 300.)

We, C. D., of (*Residence and addition*), and E. F., of, *&c.*, the proposed sureties for L. M., of (*Residence and addition*), the person proposed to be appointed receiver in this cause, severally make oath and say as follows:

1. First, I the said C. D., for myself say, that I am a resident inhabitant of the Province of Ontario, and am a freeholder (*Or*, householder) well and truly worth the sum of $—— (*Insert the amount for which he is to be bound*), after payment of all my just debts and liabilities.

2. And I the said E. F., for myself say, that I am (*&c.: as above, to the end.*)

Sworn (*&c.: see ante, No.* 303.)

In Chancery.

(*Shortened style of cause.*)

627. Appointment of receiver, under Order 282.

I hereby appoint A. B., of ———, Esquire (*or as may be*), receiver in this cause (*If without compensation, add:* but no compensation is to be allowed to him for his services as such receiver.)

Dated at ——, this ——, day of ——.

(*Signature of Judge or Master.*)

In Chancery.

(*Shortened style of cause.*)

628. Notice to tenant to attorn to receiver.

I, L. M., of (*Residence and addition*), the receiver appointed in this cause of the rents and profits of the real estate of A. B., the testator in the bill in this cause named [*or as may be*], hereby give you notice and require you to attorn and become tenant to me for (*Describe the property; as thus:* the messuage or tenement, garden and outbuildings, with the appurtenances, situate at A., in the county of B.), now occupied by you, and for such other part or parts of the said real estate as is or are in your occupation; and to pay to me your rent in arrear, and growing rent, for the said premises. Dated this —— day of ——, 18—.

L. M.

To W. P., of (*Residence and addition.*)

In Chancery.

(*Shortened style of cause.*)

629. Attornment thereon.

I, W. P., of (*Residence and addition*), attorn and become tenant to L. M., the receiver appointed in this cause, for (*Describe the property: see ante, No.* 628), as the same are now in my occupation: to hold the same at and under the same rent, and subject to the same covenants and conditions as I now hold the same. And I have this day paid to the said L. M. the sum of (twenty cents) for and on account, and in part payment of the said rent. Dated this —— day of ——, 18—.

Witness:

V. N, of (*Residence and addition.*)

W. P.

(*Formal parts: see ante, No.* 384.)

630. Notice of motion for tenant to attorn, and pay rent.

on the part of the plaintiff [*or as may be*], that W. P., of (*Residence and addition*), may be ordered, within seven days after service, to attorn and become tenant to L. M.,

the receiver appointed in this cause, for, or in respect of, the (*Describe the property; see ante, No.* 628), now occupied by the said W. P.; and pay his rent in arrear, and growing rent for the same, to the said L. M. And take notice that upon and in support (*&c., as in No.* 382.)

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631. Notice of motion, for tenant to attorn, and for occupation rent to be paid.

Proceed as in No. 630, *ante, to* the said W. P.; *and continue thus:* And that an annual value, by way of rent, may be set upon the said premises during the time the said W. P. has been in the possession or occupation thereof; and that the said W. P. may be charged therewith. And take notice (*&c., as in No.* 382.)

SECTION II.—*Powers, Duties, and Liabilities of Receivers.*

632. Notice of motion for leave for receiver to distrain.

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this cause, may be at liberty to distrain upon the goods and chattels of E. F., of (*Residence and addition*), for the sum of $——, being arrears of rent due from him on the ——, 18—, in respect of the (*Describe the property: see ante, No.* 628)—*If so:* and that the said distress may be made in the name of the defendant C. D.; and that he may be indemnified in respect thereof out of the estate of the testator A. B. [*or as may be*]. And take notice (*&c., as in No.* 382.)

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633. Notice of motion for leave for receiver to bring an action for arrears of rent.

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this cause, may be at liberty to bring and prosecute an action in [one of Her Majesty's Superior Courts of Law at Toronto] ——, in the name of the defendant W. J., as executor of the will of G. S., the testator in this cause, to obtain payment of $——, due for rent from the said W. J. to the said testator's estate; and that the defendant W. J. may be indemnified therein out of the said estate. And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 384.)

634. Notice of motion for payment to receiver of monies received by defendant.

on the part of the plaintiff, that the defendant E. A. may be ordered, on or before the ——, 18—, or within four days after service, to pay to L. M., the receiver appointed in this cause, all monies received by the said defendant since the appointment of such receiver: the amount to be verified by affidavit And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 384.)

635. Notice of motion for leave for receiver to cut and sell timber.

on the part of the plaintiff, that L. M., the receiver appointed in this cause, may be at liberty to cut and fell the trees specified in the affidavit of C. D., filed the ——, 18—, and the exhibit marked A. thereto; and to sell the same by public auction, according to the usual particulars and conditions of sale in like cases; and that the said receiver may receive the purchase moneys for the said trees, and bring the amount thereof into his account as such receiver. And take notice (*&c., as in No.* 382.)

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636. Other notices of motion relating to the management of property comprised in a receivership.

See the following Forms, *post:* which can be readily adapted to a receivership:—

Action: For leave to bring, 727; or defend, 728–9; or compromise, 732.
Business: For leave to carry on, 730.
Claim: For leave to compromise, 732.
Debts: For leave to pay, 731.
Lease: For leave to obtain renewal of, 734.
To approve agreement to grant, 735.
Repairs, or Drainage works: For leave to execute, 733.
Suit: For leave to institute, 727; or defend, 728–9; or compromise, 732.

Section III.—*Receivers' Accounts.*

In Chancery.

(*Style of cause as in No.* 300.)

637. Affidavit by receiver, verifying his account

I, L. M., of (*Residence and addition*), the receiver appointed in this cause, make oath and say as follows:

1. The account contained from page —— to page ——, both inclusive, in each of the two several papers marked with the several letters A. and B., produced and shown to me at the time of swearing this my affidavit, and pur-

porting to be my account of the rents and profits of the real estate, and of the outstanding personal estate of A. B., the testator [*Or*, intestate] in this cause, from the —— day of ——, 18—, to the —— day of ——, 18—, both inclusive, doth contain a true account of all and every sum and sums of money received by me, or by any other person or persons by my order, or, to my knowledge or belief, for my use, on account or in respect of the said rents and profits accrued due, on or before the —— day of ——, 18—, or on account or in respect of the said personal estate: other than and except what is included as received in my former account [*Or*, accounts] sworn to by me.

2. The several sums of money mentioned in the said account hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

Sworn, &c.

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638. Account of receiver; referred to in No. 637.

In Chancery.

(*Short style of cause.*)

The first [*or as may be*] account of L. M., the receiver appointed in this cause by [*Or*, pursuant to] an order made in this cause, dated the —— day of ——, 18—, to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate of A. B., the testator [*Or*, intestate] in this cause named: from the —— day of——, 18—, to the —— day of ——, 18—.

REAL ESTATE.—RECEIPTS.

No. of item.	Date when received.	Tenants' names.	Description of premises.	Annual rent.	Arrears due at —, 18—.	Amount due at —, 18—.	Amount received.	Arrears remaining due.	Observations.
				£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	
		John Jones ...	Home Farm, in the County of Oxford						
		Thomas Jones...	House at Village of Norton						

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE.

No. of item.	Date of payment or allowance.	Names of persons to whom paid or allowed.	For what purposes paid or allowed.	Amount.	Observations.
				$ c.	
1		Sun Fire Office.....	One year's insurance of ——, due ——.....		
2		Thomas Carpenter..	Bill for repairs at house let to Thomas Jones...		
3		James Francis	Allowance for a half-year's taxes, due——		
			Total payments		

RECEIPTS ON ACCOUNT OF PERSONAL ESTATE.

No. of item.	Date when received.	Names of persons from whom received.	On what account received.	Amount received.
				$ c.

PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE.

No. of item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
				$ c.

SUMMARY.

	$ c.	$ c.
Amount of balance due from receiver on account of real estate on last account.....		
Amount of receipts on the above account of real estate		
Balance of last account paid into Court		
Amount of payments and allowances on the above account of real estate.....		
Amount of receiver's costs of passing this account as to real estate		
Balance due from the receiver on account of real estate		$

	$ c.	$ c.
Amount of balance due from receiver on last account of personal estate		
Amount of receipts on the above account of personal estate		
Balance of last account paid into Court		
Amount of payments and allowances on the above account of personal estate..		
Amount of receiver's costs of passing this account as to personal estate		
Balance due from the receiver on account of personal estate.....		$

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this cause, may be ordered, on or before the —— day of ——, 18—, or within four days after service, to pay into Court, to the credit of this

639. Notice of motion to compel receiver to pay balance into Court.

cause [*or as may be*], the sum of $———, by the Master's report, dated the —— day of ——, 18—, certified to be due from him on passing his account therein mentioned; and that the said L. M. may be ordered to pay the costs of this application. And take notice (*&c., as in No.* 382.)

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640. Notice of motion for leave to put recognizance in suit.

(*Formal parts: see ante, No.* 384.)
on the part of the plaintiff [*or as may be*], that he may be at liberty [*Or*, that the defendant C. D., the executor of the will of A. B., the testator in this cause—*or as may be*—may be ordered] to put in suit the recognizance, dated the —— day of ——, 18—, entered into by L. M., the (late) receiver in this cause, together with C. D. and E. F., his sureties. And take notice (*&c., as in No.* 382.)

SECTION IV.—*Discharge of Receiver.*

641. Petition to discharge receiver, and vacate recognizance.

(*Title—and address: see ante, No.* 387.)

The humble petition of the plaintiff [*or as may be*], Showeth as follows:

1. *Recite decree or order appointing receiver, subject to his giving security, and the Master's report of such security having been given—Or, the decree or order directing a proper person to be appointed receiver, and the subsequent order appointing such person.*

2. *State to what time the receiver has passed his accounts, and accounted for his balances; as thus:* Pursuant to the said decree, *&c.*, the said L. M. has passed his accounts as such receiver to the —— day of ——, 18—; and has paid, in the manner thereby directed, the balances from time to time certified to be due from him on his said accounts.

3. *State why a receiver has ceased to be necessary; as thus:* By an order dated the —— day of ——, 18—, C. D. and E. F. have been appointed trustees of the real estate of the testator G. H., and such estate has been conveyed to and vested in them, upon the trusts of his will. By reason thereof, it is expedient that the appointment of a receiver of the said estate should be discontinued.

4. That on the —— day of ——, the said L. M. brought in and passed before the Master (at ——) his final account, and he has paid into Court to the credit of this cause the

balance found by the said Master to be in his hands upon the footing of the said final account.

Your petitioner therefore humbly prays, that the said L. M. may be discharged from being receiver as aforesaid; [and that he may be ordered to pass his final account as such receiver, and pay the balance certified to be due from him thereon into Court, to the credit of this cause, *or as may be;*] (*a*) and that [thereupon] the recognizance, dated the ——, 18—, entered into by the said L. M., together with C. D. and E. F. as his sureties, may be vacated.—*Add, if desired, a clause as to the costs; as thus:* And that the costs of all proper parties of this application, and consequent thereon, may be taxed as between solicitor and client; [and that the said L. M. may be directed to pay such costs; and be allowed the same on passing his said account.] And that the same be ordered to be paid out of the Court to the credit of this cause. Or that (*Continue as in No.* 387, *ante, to the end.*)

(*Formal parts: see ante, No.* 384.)

642. Notice of motion to discharge receiver.

on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this cause, may be discharged; and that he may be ordered (*Continue as in prayer of No.* 641, *ante, to* said account.) And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 384.)

643. Notice of motion to vacate receiver's recognizance.

on the part of the plaintiff [*or as may be*], that the recognizance dated the —— day of ——, 18—, entered into by L. M., the receiver in this cause, together with C. D. and E. F. as his sureties, may be vacated. And take notice (*&c., as in No.* 382.)

SECTION V.—*Liabilities and Rights of Sureties.*

(*Formal parts: see ante, No.* 384.)

644. Notice of motion for receiver to give a new security on death or bankruptcy of a surety.

on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this cause, may be ordered to give a new security duly to account for what he shall receive as such receiver: C. D., one of his sureties hereinafter named, having died [*Or,* having been adjudged bankrupt]; and

(*a*) If paragraph 4 be omitted in the petition, the words between [ ] may be inserted.

that such security may be approved by the Judge. And that the said L. M. may be ordered to pass his accounts up to the date of such new security; and pay the balance certified to be due from him thereon into Court, to the credit of this cause [*or as may be*]. And that upon such new security being given, and payment in manner aforesaid of the said balance, the recognizance dated the ——, 18—, entered into by the said L. M., together with the said C. D. and E. F. as his securities, may be vacated. And take notice (*&c., as in No.* 382.)

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645. Notice of motion by surety, for leave to attend the passing of receiver's account.

(*Formal parts: see ante, No.* 384.) on the part of C. D., one of the sureties in this cause for L. M., the receiver appointed therein, that the said C. D. may be at liberty to attend, at his own expense, the passing of the accounts of the said L. M. as such receiver [*or as may be*]. And take notice (*&c., as in No.* 383.)

PAYMENT OF MONEY, AND TRANSFER OF STOCK INTO COURT.

646. Præcipe for direction to bank to receive money referred to in Order 353, being Schedule O. mentioned in that order.

In Chancery.

(*Short style of cause.*)

Required, a direction to the bank to receive from —— $——, payable into Court to the credit of this cause, under —— dated —— (*or as the case be*).

Dated, &c.

A. B., *Defendant's Solicitor,*
(*Or as the case may be*).

---

647. Affidavit of having cast up Schedules to answer, and of balance due thereon.

(*Formal parts: see ante, No.* 300.)

1. I have cast up the several items set forth in the first and second Schedules [*or as may be*] to the answer of the defendant A. B. filed in this cause on the —— day of ——, 18—.

2. The items in the said first Schedule [*or as may be*] amount to the sum of $1,000, and no more; and the items in the said second Schedule [*or as may be*] amount to the sum of $600, and no more.

3. The said sum of $600 being deducted from the said sum of $1,000, there remains a balance or sum of $400: which sum of $400 appears by the said answer and Schedules to be due from the said defendant A. B. to the estate of C. D., the testator in the plaintiff's bill named [*or as may be.*]

(*Formal parts: see ante, No.* 300.)

1. I have cast up the several items set forth in the account marked A., left [in Chambers] by the defendant A. B., and verified by his affidavit filed in this cause on the —— day of ——, 18—.

2. The items on the receipt side of the said account amount to the sum of $1,000, and no more; and the items on the payment side of the said account amount to the sum of $6,000, and no more.

3. The said sum of $600 being deducted from the said sum of $100, there remains a balance or sum of $400: which sum of $400 appears by the said affidavit and account to be due from the said defendant A. B. to the estate of C. D., the testator in the plaintiff's bill named [*or as may be.*]

648. Affidavit of having cast up an account, and of the balance due thereon.

(*Formal parts: see ante, No.* 300.)

1. (*Describe the cash; according to the order directing the payment in; as thus:* interest accrued on the $——, in the order made in this cause [*Or,* matter] dated the —— day of ——, 18—, mentioned, previous to the transfer thereof thereby directed), and which pursuant to the said order is to be paid into Court to the credit of this cause [*or as may be*], amounts to the sum of $——, and no more.

649. Affidavit of amount of cash to be paid into Court, pursuant to order.

PAYMENT OF MONEY, AND TRANSFER OF STOCK OUT OF COURT.

In Chancery.

(*Short style of cause.*)

Required a cheque for $—— [with $—— interest thereon from —— to —— (*being the period, if any, for which interest is payable under the order, but which has not been already taken into account and computed*)], payable to ——; and the following papers are produced herewith (*naming the decrees, reports, &c., showing the party's right to the cheque; thus:*

Decree dated ——.
Report dated ——, *&c.*)
Dated, &c.

A. B., *Plaintiff's Solicitor,*
(*Or as the case may be.*)

650. Præcipe for cheque referred to in Order 356, being Schedule O referred to in that order.

651. Affidavit of amount of residue of a fund; to be dealt with by the Registrar or Accountant-General.

(*Formal parts: see ante, No.* 300.)

1. The residue of the (*Describe what: according to the decree or order; as thus:* sum of $——, Dominion Stock, in the decree [*Or,* order] dated the —— day of ——, 18—, mentioned, after the sale of so much thereof as, with the cash in the bank on the credit of this cause, was sufficient to raise the sum of $——), amounts to the sum of $——, and no more.

———

652. Notice of motion for payment of an incumbrance out of a fund in Court.

(*Formal parts: see ante, No.* 384.)

on the part of C. D., of (*Residence and addition*), that the sum of $——, principal money due to him on the security of a mortgage dated the —— of ——, 18—, from A. B., together with interest thereon at the rate of $—— per cent. per annum from the —— of ——, 18—, and the costs of the said C. D. of this application, may be raised and paid to the said C. D. out of the $——, Dominion Stock, and $——, cash, remaining to the credit of this cause (*if to a special account, add*) "The account of A. B., and his incumbrancers," (*or as may be.*)

———

653. Petition of husband and wife, for payment to her of fund standing to her separate account where fund in gross exceeds $600 or annual payments exceed $50.

(*Title—and address: see ante, No.* 387.)

The humble petition of A. B., of (*Residence and addition*), and C., his wife,

Showeth as follows:

1. *Show how the account has been raised; as thus:* Pursuant to an order dated the —— day of ——, 18—, the sums of $——, Dominion Stock, and $——, cash, were carried over in this cause [*Or,* matter] to "The account of C. D., an infant," and such cash was afterwards invested in the purchase of $—— like stock; and the interest which has since accrued on the said sums of stock has been from time to time laid out in like stock.

2. *Show the present state of the fund; as thus:* The said stock, cash, and interest are now represented by the sums of $——, Dominion Stock, and $——, cash, standing to the credit of this cause [*Or,* matter]. "The account of C. D., an infant," [*or as may be.*]

3. *Show the identity, marriage, and majority of the wife; as thus:* Your petitioner C. B. is the same person as C. D., in the said order named. On the —— of ——, 18—, your petitioner C. B. attained her age of twenty-one years; and on the —— of ——, 18—, your petitioners intermarried.

4. *State whether there is or not a settlement; as thus:* No settlement or agreement for a settlement whatsoever was made before or upon, or has been made since, the marriage aforesaid of your petitioners.—*Or, if there was a settlement or agreement, add, if so:* other than a certain settlement [*Or*, agreement] dated the —— of ——, 18—; but which does not affect the said stock and cash, or any portion thereof.

5. That your petitioner A. B. is willing and consents that the said moneys should be paid out to his wife and co-petitioner C. B. (*a*)

6. That your petitioner C. B. does not desire that the said fund should be settled.

Your petitioners therefore humbly pray as follows:

1. That the said $——, stock, may be sold.

2. That their costs of this application may be taxed, as between solicitor and client.

3. That out of the proceeds of such sale, and the said $——, cash, and any interest to accrue on the said stock, the said costs to their solicitor be paid.

4. That the residue of the said proceeds, cash, and interest may be paid to your petitioner C. B. Or that (*Conclude as in No.* 387, *ante*).

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654. Notice of motion by husband and wife, for payment to her of fund standing to her separate account.

(*Formal parts: see ante, No.* 384.)

on the part of A. B., of (*Residence and addition*), and C., his wife, late, and in the order dated the —— of ——, 18—, described as C. D., an infant:

1. That the $——, Dominion Stock, standing in the name of the Accountant to the credit of this cause [*Or*, matter], "The account of C. D., an infant" [*or as may be*], may be sold.

2. That the costs of this application, as between solicitor and client, may be taxed: or ascertained at Chambers.

3. That out of the proceeds of such sale, and the $——, cash, in the bank on the like credit, and any interest to accrue on the said stock, the said costs to the applicants' solicitor be paid.

4. That the residue of such proceeds, cash, and interest may be paid to the applicant C. B. And take notice (*&c., as in No.* 382.)

(a) If the wife desire the fund to be paid to her husband, the petition may be altered accordingly.

655. Affidavit in support of petition for payment to wife of fund standing to wife's separate account where the fund exceeds $600 or the annual payments exceed $50.

In Chancery.

(*Style of cause as in No.* 300.)

We, E. F., of (*Residence and addition*), and A. B., of (*Residence and addition*), and C., his wife, severally make oath and say as follows:

And first, I, the said E. F., for myself say:

1. I am the solicitor for the said deponents A. B., and C. his wife, in the matter of the application made by them by petition presented [*Or*, by motion] on the —— of ——, 18—, in this cause [*Or*, matter]; and I am well acquainted with the said A. B., and C. his wife [*or as may be.*]

2. The said C. B. is the same person as "C. D., an infant," in the order in the cause [*Or*, matter] dated the —— of ——, 18—, named; and the said C. B. is also the same person as "C., daughter of H. and L. D." [*or as may be.*]

And we the said A. B. and C., his wife, for ourselves say:

3. On the —— of ——, 18—, we intermarried at —— church at W., in the County of Y., and we are the same persons A. B. and C. D., respectively named in the paper writing now produced and shown to us, and marked B., and purporting to be a certified copy of an entry in the register book of marriages kept for the said church of —— at W., for the year 18— [*or as may be.*]

4. No settlement or agreement for a settlement whatsoever was made before or upon, or has been made since our said marriage—*If so*: other than and except the settlement [*Or*, agreement for a settlement] now produced and shown to us, and marked D., and dated the —— of ——, 18—.

5. And I, the said A. B., for myself, say that I am willing that the moneys standing in Court to the credit of this cause, to which my said wife is entitled, shall be paid out to her (*a*). *If there is no settlement, add*:

6. And I, the said C. B., say that the said E. F. has explained to me, and I am aware that I am entitled to have the said moneys settled upon me and my children, and I do not desire that the said money should be so settled.

7. And I, the said E. F., for myself, say that I have explained to the said C. B., previously to her swearing to this affidavit, that she is entitled to have the said fund now in Court in this cause to which she is entitled vested in trustees upon the following trusts, viz.: (*State the trusts, as post, No.* 659, *par.* 3, *and continue*:) And I do verily believe the said C. B. fully understood the said explanation and her rights in the premises.

(*a*) If the wife desire the fund to be paid to her husband, the affidavit can be altered accordingly.

Or, if there is a settlement, or agreement for a settlement, add:

And I, the said E. F., for myself, further say:

8. I have carefully perused the said settlement [*Or* agreement for a settlement] dated the —— of ——, 18—, and which is also now produced and shown to me, and marked D.; and, according to the best of my judgment, the (*Describe the funds proposed to be dealt with*) are not, nor is, nor are, any part or parts thereof subject to the trusts of the said settlement [*Or*, agreement for a settlement], or in any manner comprised therein, or affected thereby.

(Sworn, *&c., as in No.* 303.)

(*Formal parts: see ante, No.* 384.)

656. Notice of motion to take a married woman's examination as to the disposition of a fund in Court.

on the part of A. B., of (*Residence and addition*), and C. his wife, late, and in the order dated the —— day of ——, 18—, called C. D., an infant [*or as may be*]: that the said C. B. may attend before the Master at ——, and be examined, apart from her said husband, touching the manner in which she is willing and desirous that the (*Describe the funds to be dealt with*) shall be transferred, paid, applied or disposed of, with the usual directions. And take notice (*&c., as in No.* 382.)

In Chancery.

(*Title, as in order directing the examination.*)

657. Examination of a married woman by a Master.

The examination of C. B., the wife of A. B., in the order made in this cause [*Or*, matter] dated the —— day of ——, 18— (*Order directing the examination*), respectively named: taken pursuant to the said order.

I, the said C. B., the wife of the said A. B., having been this day examined, secretly and apart from my husband, by E. F., in the said order named, as to whom and in what manner, and for what purpose, I am willing and desirous that the (*Describe the funds: as in the order directing the examination*), in the said order mentioned, shall be transferred, paid, applied or disposed of, for answer thereto say: that I am willing and desirous that the said sums of (*State what*) shall be (*State the result of the examination; as thus:* transferred and paid to my husband the said A. B.—*Or*, settled for the benefit of myself and my children, in such manner as the Court of Chancery, or any Judge thereof, may please to direct.) *If to be transferred and paid to husband, add:* And I hereby freely and volun-

tarily consent to the said sums being transferred and paid to him accordingly. As witness my hand, this —— day of ——, 18—.

C. B.

Witness to the signature of the said C. B.
X. Y.

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658. Certificate of examination to be appended to foregoing Form, No. 657.

To the Honourable the Judges of the Court of Chancery:

I, the undersigned E. F., named in the order dated the —— day of ——, 18—, above-mentioned: humbly certify that, pursuant to the said order, I have this day examined the above-named C. B., the wife of the above-named A. B., secretly and apart from her said husband, as to whom, in what manner, and for what purpose, she is willing and desirous that the sums of (*Describe them*), in the said order mentioned, shall be transferred, paid, applied or disposed of. And I have taken such examination in writing, as above set forth.

I further certify that, at the time of such examination, I read over the said order to the said C. B., and explained to her the purport and effect thereof; and I was satisfied that she was then aware of the nature and object of the said examination—*If the funds are to be transferred and paid to the husband, add:* and that she freely and voluntarily consented to the sums above-mentioned being transferred and paid to her said husband A. B.

E. F.,
Master at ——.

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659. Notice of motion for a settlement, by order, of a fund in Court on wife and children.

(*Formal parts: see ante, No.* 384.)

on the part of C. B., the wife of A. B., of (*Residence and addition*), by E. F., of (*Residence and addition*), her next friend for this purpose:

1. That the costs of this application, as between solicitor and client, may be taxed: or ascertained at Chambers; and may be paid out of the (*Describe the fund; as thus:* $——, cash, in the bank to the credit of this cause [*Or,* matter]—*If to special account, add:* "The account of C. B., the wife of A. B.") (*or as may be.*)

2. That the residue of the said fund may be carried over to the credit of "The account of the settlement of C., the wife of A. B., and her children," and be laid out in Dominion Stock.

3. That the said stock may be held upon the following trusts, namely (*State the trusts ; as thus :*)

Upon trust for the said C. B., for her life, and, during any coverture, for her separate use ; without power of anticipation ;

And after her decease, upon trust for the said A. B., for his life ;

And after the decease of the survivor of them, upon trust for all, or any one or more, exclusively of the other or others, of the children of the said C. B. by the said A. B., or any future husband, as she shall by deed or will appoint ; and in default of such appointment, and in so far as no such appointment shall extend, in trust for all the children, or the child, of the said C. B., who being sons or a son shall attain the age of twenty-one years, or, being daughters or a daughter shall attain that age, or marry under that age ; and, if more than one, in equal shares.

And in case there shall be no such child who, being a son, shall attain the said age, or, being a daughter, shall attain the said age, or be married, then from and after the decease of the said C. B., in trust for the said A. B., his executors, administrators and assigns.

Or, then in case the said C. B. shall die under coverture, in trust for such person or persons as she shall, by her last will, appoint ; and in default of such appointment, in trust for the next of kin of the said C. B., according to the statutes for the distribution of the estates of intestates ; as if she had never been married ; but in case she shall survive the said A. B., then in trust for the said C. B., her executors, administrators and assigns,

And that any of the said children who shall take appointed shares shall bring such appointed shares into hotchpot, with their brothers and sisters, taking in default of appointment.

4. That the interest from time to time to accrue, during the life of the said C. B., on the said annuities may be paid to the said C. B., on her separate receipt, until further order.

660. Affidavit by husband and wife, for payment or transfer to wife of a fund, not exceeding $600 or $50 in annual payments directed before their marriage to be paid or transferred to her: where there is no settlement or agreement whatever.

In Chancery.

(*Title of the cause or matter.*)

We, A. B., of (*Residence and addition*), and C. his wife, severally make oath and say as follows:

1. This deponent C. B. is the same person as C. D., in the decree [*Or*, order] made in this cause [*Or*, matter] dated the —— day of ——, 18—, named, and to whom the sums of (*State what: as in the decree or order*) are thereby directed to be paid (transferred and delivered.)

2. *Prove the marriage.*

3. No settlement or agreement for a settlement whatsoever was made or entered into before or upon, or has been made since our said marriage.

4. The said sums of $—— and $—— have not respectively yet been paid (transferred and delivered), pursuant to the said decree [*Or*, order.]

5. Under the circumstances aforesaid we are desirous to have the said sums of (*State what*) paid (transferred and delivered) to us, pursuant to the said decree [*Or*, order], and the Consolidated General Orders of this Honourable Court in this behalf.

Sworn (*&c.: see ante, No.* 303.)

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661. The like, where there is a settlement or agreement, but not affecting the fund.

In Chancery.

(*Title of the cause or matter as in No.* 300.)

We, A. B., of (*Residence and addition*), and C., his wife, and E. F., of (*Place of business*), gentleman, the solicitor of the said A. B., and C., his wife, severally make oath and say as follows:

And first, we, the said A. B., and C., his wife, for ourselves say:

1. This deponent (*Proceed as in No.* 660, *ante, to the end of par.* 3; *and continue as follows*): other than and except the settlement [*Or*, agreement for a settlement] now produced and shown to us, and marked D., and dated the —— day of ——, 18—.

4. The said sums (*Continue as in par.* 4 *of No.* 660, *ante, to the end of par.* 5.)

And I, the said E. F., for myself say:

5. I have carefully perused the said settlement [*Or*, agreement for a settlement] dated the —— day of ——, 18—, and which is also now produced and shown to me, and marked D.; and, according to the best of my judgment, the sums of (*Describe the monies, stocks, funds, shares or securities sought to be paid, transferred or delivered out; and the cause, or matter, and account in*

which they stand,) are not, nor is, nor are any part or parts thereof, subject to the trusts of the said settlement [*Or*, agreement for a settlement], or in any manner comprised therein, or affected thereby.

Sworn (*&c.: see ante, No.* 303.)

(*Formal parts: see ante, No.* 300.)

662. Affidavit for payment, &c., to the survivors of personal representatives under an order not naming them.

1. I was well acquainted with A. B., deceased, and he was the person to whom the probate of the will [*Or*, letters of administration of the effects] of C. D., deceased, the person named in the order dated the —— day of ——, was [*Or*, were] granted by the Court of Probate [*or as the case may be*], on the —— day of ——, jointly with E. F. and G. H.: which probate [*Or*, letters of administration], marked X., is [*Or*, are] now produced and shown to me.

2. The said A. B. is also the person named in the certificate of burial [*Or*, official extract from the register of deaths] hereunto annexed.

(*Formal parts: see ante, No.* 300.)

663. The like, under an order naming them.

1. I was well acquainted with A. B., deceased, the person named in the order dated the —— day of ——, 18—, as one of the legal personal representatives of C. D., deceased.

2. The said A. B. is also the person named in the certificate of burial [*Or*, official extract from the register of deaths] hereunto annexed.

(*Formal parts: see ante, No.* 300.)

664. Affidavit for payment, &c., to (surviving) personal representatives, under an order for payment to a person, or his representatives.

1. I was well acquainted with A. B., deceased, the person named in the order dated, *&c.*, and late of, *&c.* (*Follow description in probate or administration.*)

2. Probate of the will [*Or*, letters of administration of the effects] of the said A. B. was [*Or*, were] granted by the Court of Probate [*or as the case may be*], on the —— day of ——, 18—, to C. D. and E. F.: which probate [*Or*, letters of administration], marked X., is [*Or*, are] now produced and shown to me.

3. The said A. B. is also the person named in the certificate of burial [*Or*, official extract from the register of deaths] hereunto annexed.

665. Notice of motion for payment of costs to one solicitor, instead of another.

(*Formal parts: see ante, No.* 384.)
on the part of C. E. W., of, *&c.*, that the costs which by the order dated the —— day of ——, 18—, were directed to be paid to S. D., as solicitor for A. B., *&c.*, may, instead thereof, be paid to the applicant C. E. W. And take notice (*&c., as in No.* 382.)

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666. Affidavit of a person being alive: for the Accountant.

(*Formal parts: see ante, No.* 300.)

1. A. B., in the order made in this cause [*Or*, matter] dated the —— day of ——, 18— (*Order under which periodical payment is made*), named [*Or*, The above named A. B.], was alive on the —— day of ——, 18—: as I know from (*State means of knowledge; as thus:* having seen him on the last mentioned day, at (*State where.*)

2. To the best of my knowledge, information, and belief, the said A. B. is also now alive.

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667. Affidavit that person entitled to a fund in Court has attained full age.

(*Formal parts: see ante, No.* 300.)

1. I am the mother of the above named defendant C. D. [*or as may be: showing means of knowledge of deponent.*]

2. The above named defendant C. D. was born on the —— day of ——, 18—, and is now of the full age of 21 years.

Contempts in Master's Office.

668. Notice of motion to commit for contempt in Master's office.

(*Formal parts: see ante, No.* 384.)
on behalf of the [plaintiff], for an order to commit [the defendant C. D.] to gaol for his contempt in not bringing into the office of the Master of this Court [at ——] the accounts and statements by the said Master directed to be brought into and filed in his office by the said [defendant C. D.] on the —— day of ——. And take notice that (*&c., as in form No.* 382.)

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669. Master's certificate of default.

In Chancery.

(*Shortened style of cause.*)

At the request of the [plaintiff's] solicitor, I certify that I did on the —— day of ——, [by my warrant in that behalf], direct the defendant C. D. to (*specify the act as to which default has been made; e. g.*) [bring in and file

in my office on the —— day of ——, the accounts in answer to the inquiries directed by the decree made in this cause dated the ——day of ——, duly verified by his affidavit, and to bring in and deposit in my office at the same time under oath all books of accounts, documents and papers relating to the estate of E. D. in the said decree mentioned], but the said defendant C. D., although duly served with my said warrant [*Or*, notified of my said direction], hath not [brought in and filed in my office any accounts in answer to the inquiries directed by the said decree, nor any affidavit in relation thereto, nor hath he brought in and deposited in my office any books of account, documents or papers relating to the estate of the said E. D.,] pursuant to my said [warrant, *Or*, direction], as by my books appears (*a*).

Dated, &c.

I. O.,
Master ——.

In Chancery.
In Chambers. } ——, the —— day of ——, A.D. 18 —.

Between (*Shortened style of cause.*)

670. Order to commit for contempt in M. O

Upon the application of the [plaintiff], and upon hearing read the certificate of the Master (at ——), and the decree made in this cause, and it appearing that the [defendant C. D.] has not brought into the office of the said Master the accounts and statements [by the said Master directed to be filed by him the said defendant C. D.], although duly required so to do: It is ordered that the Sheriff of any County or Union of Counties in which the said [defendant C. D.] may be found, do take the said C. D. into his custody, and commit [him] to the gaol of his County or United Counties, to answer [his] said contempt. And it is further ordered that a writ or writs of attachment do issue accordingly.

(*Formal parts: see ante, No.* 384.)

671. Notice of motion for discharge from custody on leaving accounts.

on behalf of the [defendant C. D.], that he may be discharged from the custody of the Sheriff of the County of ——, touching his contempt for not [leaving certain accounts and statements] in the office of the Master of this Court (at ——), pursuant to the said Master's

(*a*) Where the defaulting party has not wholly neglected to comply with the direction, but it is claimed that what he has done is an insufficient compliance, a warrant should be obtained from the Master calling on the defaulting party to show cause why he should not do such further act as may be deemed necessary in order effectually to comply with the Master's direction.

warrant, dated the —— day of ——, [upon payment (*a*) or tender of the costs of contempt to the [plaintiff's] solicitor or agent], the accounts and statements having now been left. And take notice (*&c., as in No.* 382.)

---

672. Affidavit in support.

(*Formal parts: see ante, No.* 300.)

1. The several accounts and statements which, by the warrant of the Master of this Honourable Court (at ——), dated the —— day of ——, the defendant C. D. was ordered to bring in and file, duly verified by affidavit, in the office of the said Master, were brought in and filed in the office of the said Master on the —— day of ——, duly verified by the affidavit of the said defendant C. D., pursuant to the said warrant.

2. The said [defendant C. D.] is now in the custody of the Sheriff of the County of ——, under an attachment for a contempt in not bringing in and filing the said accounts and statements pursuant to the said Master's warrant—as I know from (*show means of knowledge*).

---

673. Master's certificate of compliance with warrant.

In Chancery.

(*Shortened style of cause.*)

I certify that the [defendant C. D.] has [brought in and filed in my office the several accounts and statements, duly verified by affidavit, which by my warrant dated the —— day of ——, I directed him to bring in and file in my office in this cause.

Dated, *&c.*

MOTIONS FOR PRODUCTION OF PLEADINGS AT ASSIZES, &c.

674. Affidavit in support of motion for order for Clerk of Records and Writs to attend with pleadings, &c., at assizes in another cause.

(*Formal parts: see ante, No.* 300.)

1. That an action is now pending in the Court of Queen's Bench for Ontario, between A. B. and C. D., plaintiffs, and D. E. and F. G., defendants, and the said action is coming on for trial at the next assizes to be holden at the Town of ——, in and for the County of ——, on the —— day of —— next.

2. That it is material and necessary for the plaintiff upon the trial of the said action to be able to produce in evidence certain (*state nature of documents required*)

(*a*) See ante, p. 380, note (*a*).

which [are] now upon the files of this Honourable Court, [*Or*, which are now deposited in this Honourable Court] in the office of the [Clerk of Records and Writs,] in this cause.

3. [*State why office copies of the documents sought to be produced will not be sufficient evidence*]. (*a*)

MOTIONS TO ENLARGE TIME FOR REDEMPTION.

(*Formal parts: see ante, No.* 384.)

on the part of the defendant:

675. Notice of motion to enlarge the time to redeem, in a foreclosure suit.

1. That, upon payment by him to the plaintiff of the plaintiff's costs of this application: to be taxed: and upon payment by him to the plaintiff, on or before the —— day of ——, 18—, of the sums of $—— and $——, by the Master's Report, dated the ———, 18—, certified to be due to the plaintiff for interest in respect of his mortgage security therein mentioned, and for his costs of this suit, the time for the defendant to redeem the lands and premises comprised in the said mortgage may be enlarged for six calendar months.

2. That upon the aforesaid payments being made, subsequent interest may be computed on the principal money due to the plaintiff on his said security, and his subsequent costs of this suit be taxed (*If so:* and the account of rents directed by the decree dated the ——— day of ———, 18—, be continued, and the balance dealt with in the manner therein mentioned): and the amount due to the plaintiff certified; and a new time and place appointed for the payment thereof to him by the defendant.

3. That, in default of such payment, the defendant may be foreclosed. And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 300.)

676. Affidavit in support.

1. *Show what efforts have been made by applicant to redeem within the time limited.*

2. *Show value of land, and amount of plaintiff's claim.*

3. *Show what prospect applicant has of redeeming if the time for redemption be extended.*

(*a*) *Chadwick* v. *Thompson*, 2 Chy. Ch. R. 389.

Motions for Appointment of New Day.

677. Notice of motion to continue accounts and for appointment of a new day to redeem when state of account has been changed. (*a*)

(*Formal parts: see ante, No.* 384.)

1. That the accounts directed to be taken by the decree may be continued.

2. That the amount due to the plaintiff for principal, interest, and costs may be certified.

3. That in lieu of the time and amount mentioned in the Master's Report, dated —, a new time may be appointed for the defendant to pay the amount which shall be so certified to be due to the plaintiff.

---

678. Order to take a new account and appoint a new day where decree is for sale.

(*Formal parts: see ante, Nos.* 338–9.)

It is ordered that it be referred back to the Master of this Court at —— to take a new account of the amount due to the plaintiff [and the subsequent incumbrances] and to appoint a new day for redemption [three months] after the said Master shall make his report, and it is ordered that upon the defendant A. B. paying to the plaintiff and the said subsequent incumbrancers the amount which may be found due to them, at such time and place as the said Master shall appoint, that they do assign and convey the mortgaged premises, and deliver up all deeds relating thereto to the defendant A. B., or enter up satisfaction upon the roll of their judgments, pursuant to the decree in that behalf. But in default of the said defendant A. B. making such payments as aforesaid, it is ordered that the said mortgaged premises be sold, pursuant to the said decree.

---

679. Order to take new account and appoint new day for redemption by subsequent incumbrancers where decree is for foreclosure.

(*Formal parts: see ante, Nos.* 338–9.)

It is ordered that it be referred back to the Master of this Court at —— to take a new account of the amount due to the plaintiff, and to appoint a new day for redemption [three months] after the said Master shall make his report.

And it is ordered that upon the defendants (*the subsequent incumbrancers who have proved claims*) paying to the said plaintiff the amount which may be found due to him at such time and place as the said Master shall appoint, that he do assign and convey the mortgaged premises in the pleadings mentioned, and deliver up all deeds

(*a*) For forms of affidavits of non-payment, bank certificate, and affidavit verifying, see post, Nos. 682–6.

relating thereto, pursuant to the decree in that behalf. But in default of the said defendants —— making such payment as aforesaid, It is ordered that they do stand absolutely debarred and foreclosed of and from all right, title and equity of redemption of, in and to the said mortgaged premises as by the said decree directed (*a*).

(*Formal parts: see ante, Nos.* 338–9.)

680. Order appointing a new day for payment of mortgage money where no new account taken.

Upon the application of the plaintiff, and upon hearing read the report of the Master of this Court at ———, bearing date the —— day of ——, 18—, &c., and the plaintiff waiving the taking of any subsequent account, It is ordered that the said defendant ——— do pay the sum of ——, by the said report found due to the plaintiff, into the ——— to the joint credit of the said plaintiff and the Accountant of this Court, between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the —— day of ——, instead of the time and place mentioned in the said report.

And it is ordered that a copy of this order be served upon the said defendant ——— at least seven days before the said —— day of ——.

Entered.

———, R. C. C.

MOTIONS FOR FINAL ORDERS OF FORECLOSURE, OR SALE.

In Chancery.

(*Title of the cause.*)

681. Power of attorney, to attend and receive money certified to be due by a Report—where sum ordered to be paid to party and not into Court.

I, A. B., of (*Residence and addition*), the above named plaintiff [*or as may be*], hereby appoint E. F., of (*Residence and addition*), and G. H., of, *&c.*, jointly and severally, my attorneys and attorney, to attend on the —— day of ——, 18— (*Day fixed for payment*), at ———, and then and there in my name, and on my behalf, to receive from the above named defendant C. D. [*or as may be*], the sum of $———, in the Master's Report made in this cause, dated the —— day of ——, 18—, mentioned, and appearing thereby to be payable to me at the time and place aforesaid. And on receipt of the said sum, for me, and in my name, or in the names of my said attorneys or attorney, to give, sign, seal and deliver a

(*a*) Where the subsequent incumbrancers have been foreclosed, the mortgagor is the party to redeem, and the order must be altered accordingly.

valid release and discharge for the same. And I hereby agree to ratify and confirm whatsoever my said attorneys or attorney shall lawfully do, or cause to be done, in or about the premises, by virtue hereof. In witness whereof I have hereunto set my hand and seal this ——— day of ———, 18--.

A. B. (Seal.)

Signed, sealed, and delivered by the above named A. B. in the presence of

L. M., of (*Residence and addition.*)

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682. Bank manager's certificate of non-payment, and affidavit proving his signature.

In Chancery.

(*Short style of cause.*)

Bank of ———, the —— day of ——, 18—.

I, ———, manager of the said Bank at ———, do hereby certify that no sum of money was, on the —— day of ——, or before or since, paid into this bank to the joint credit of ———, and of the [Accountant] of the Court of Chancery, or to the credit of the said ——— alone, by ———, or by any one on ——— behalf.

Witness,

---

683. Affidavit verifying bank certificate.

In Chancery.

Between (*Style of cause: see ante, No.* 300.)

I, ———, of ———, in the county of———, make oath and say as follows:

Firstly.—That I was present and did see ———, of ———, Esquire, sign the above certificate, on the —— day of ——, 18—, and that the name ——— is of his proper handwriting.

Secondly.—That the said ——— is the manager of the ——— bank at ——— aforesaid

Thirdly.—That the name ———, thereto subscribed as the party witnessing the same, is of my proper handwriting.

Sworn, &c.

(*Formal parts: see ante, No.* 300.)

684. Affidavit of mortgagee of non-payment of mortgage debt, where mortgagee is not in possession (*a*).

1. I have not, nor hath, nor have any person or persons by my order or to the best of my knowledge, information and belief, for my use, received the sum of ——, being the amount found due to me by the [report of the Master (at ——) *Or*, the decree] in this cause, or any part thereof, or any security or satisfaction for the same or for any part thereof, but the whole of the said sum of —— remains justly due and owing to me under the mortgage security in question in this cause.

2. I am not now and since the date of the said mortgage never have been, nor hath, nor have any person or persons by my order, or for my use, been in possession of the lands and premises comprised in the said mortgage, or of any part thereof, nor in receipt of the rents, issues and profits of the same or of any part thereof.

——

(*Formal parts: see ante, No.* 300.)

685. Affidavit of non-payment of mortgage debt by mortgagee in possession.

1. I have not, nor hath, nor have any person or persons by my order or to the best of my knowledge, information and belief, for my use, received the sum of ——, being the amount found due to me by the [report of the Master (at ——), *Or*, the decree] in this cause, or any part thereof, or any security or satisfaction for the same, or for any part thereof, but the whole of the said sum of —— remains justly due and owing to me under the mortgage security in question in this cause.

2. I am in the receipt of the rents and profits of the lands and premises comprised in the said mortgage; but I have not, nor hath, nor have any person or persons by my order, or to the best of my knowledge, information and belief, for my use, received any greater sum in respect of the rents, issues and profits of the said mortgaged premises than the amount wherewith I have been charged by the said [Master in and by his said report *Or*, decree.]

Or, I am and have been, prior to and ever since the making of the said [report *Or*, decree in the occupation of the lands and premises comprised in the said mortgage, and the [said Master, in and by his said report,

(*a*) If payments have been received before the day appointed for redemption, notice of credit must be served on the party ordered to redeem a reasonable time before the day appointed for redemption.—See *Ord.* 457. If notice of credit be not served, a new account will have to be taken and a new day appointed for redemption. If payments on account be made subsequent to the day appointed for redemption, such payments will not affect the plaintiff's right to a final order, but the affidavit must be varied accordingly.

has charged me *Or*, and I have been charged by the said decree] with an occupation rent for the same up to the day appointed for payment.

---

686. Affidavit of non-payment of mortgage debt by agent where mortgagee is out of the jurisdiction. (*a*)

(*Formal parts: see ante, No.* 300.)

The above-named plaintiff is residing at ——, out of the jurisdiction of this Honourable Court, and he has been residing there ever since ———

2. I am the duly authorized agent of the said plaintiff in this Province, and by power of attorney duly executed by the said plaintiff I am authorized to collect and receive the moneys secured by the mortgage in question in this cause, and the mortgage deed has been ever since —— and still is in my custody and possession.

3. I have not, nor hath, nor have any person or persons by my order or to the best of my knowledge, information and belief, for my use, nor to the best of my knowledge, information and belief hath the said plaintiff or any person or persons, by his order or for his use, received the sum of ——, being the amount found due to the said plaintiff by the [report of the Master (at ——) *Or*, decree] in this cause, or any part thereof, or any security or satisfaction for the same or any part thereof, but the whole or the said sum of —— remains justly due and owing to the said plaintiff under the mortgage security in question in this cause.

4. I am not, and since the date of the said mortgage never have been, nor hath, the said plaintiff nor to the best of my knowledge, information and belief hath or have any person or persons by my, or his order, or for my, or his use, been in possession of the lands and premises comprised in the said mortgage, nor of any part thereof, nor in receipt of the rents, issues and profits of the same or of any part thereof.

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687. Final order of foreclosure against original mortgagor.

(*Formal parts: see ante, Nos.* 338–9.)

Upon the application of the ———, and upon hearing read ———, It is ordered that the defendant —— do stand absolutely debarred and foreclosed of and from all right, title and equity of redemption of, in and to the mortgaged premises in the pleadings mentioned.

Entered, 18—.
Order Book, No. p.

(*a*) If the mortgagee be in possession, the affidavit must be varied accordingly, see preceding form.

(*Formal parts: see ante, Nos.* 338–9.)

688. Final Order for sale and of foreclosure against parties not proving claims in Master's office.

Upon the application of the ———, and upon hearing read ———, It is ordered that the lands and premises in the pleadings mentioned, or a competent part thereof, be sold in pursuance of and in the manner directed by the decree in this cause.

And it is further ordered that the defendants ——— do stand absolutely debarred and foreclosed of and from all right, title and interest of, in and to the mortgaged premises in the pleadings mentioned.

Motions to Open Foreclosure.

(*Formal parts: see ante, No.* 384.)

689. Notice of motion to open foreclosure.

on behalf of the defendant, for an order vacating the final order of foreclosure obtained by the plaintiff in this cause, dated the ——day of ——, and extending the time for the defendant to redeem the plaintiff until the —— day of ——, next, upon such terms as to the Court may seem just; and for taking such further accounts as may be necessary in the premises. And take notice in support (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 300.)

690. Affidavit in support.

1. *Explain any delay which may have arisen in making application.*
2. *Show what efforts were made to redeem before final order obtained, and cause of their being fruitless.*
3. *Show value of land and amount of plaintiff's debt.*
4. *Show what prospect the applicant has of being able to redeem in case the further time to redeem be granted.*

Motions as to Title, and for Payment of Purchase Money, in Specific Performance Cases.

(*Formal parts: see ante, No.* 382.)

691. Notice of motion for an inquiry as to the title. (a)

on the part of the plaintiff, that an inquiry may be directed whether a good title can be made to the hereditaments comprised in the agreement dated the —— day of ——, 18—, in the plaintiff's bill mentioned [*or as may be*]; and if a good title can be made, then a further inquiry when it was first shown that a good title could be made. And take notice (*&c., as in No.* 382.)

(a) See Danl. Pr. 5th Ed. p. 1112.

692. Statement of the points in dispute, for Master's office.

In Chancery.

(*Short title.*)

Statement of the points in dispute between the plaintiff and defendant, as to the title to the hereditaments comprised in the agreement dated ——, 18—, in the plaintiff's bill mentioned [*or as may be*], and by the order dated ——,18 —, directed to be inquired into.

A. Plaintiff's requisitions, dated ——,18—.	B. Defendant's replies, dated ——, 18—.	C. Plaintiff's replies, dated ——, 18 —.
1.	1.	1.
2.	2.	2.
3.	3.	3.

693. Notice of motion to fix time for payment of amount due to the vendor. (*a*)

(*Formal parts: see ante, No.* 382.)

on the part of the plaintiff:

1. That the defendant A. B. may be ordered, on the —— day of ——, 18—, between the hours of twelve and one of the clock in the afternoon, to pay to the plaintiff C. D., at ——— [*or as may be*], the sum of ———, by the Master 's report dated the ——day of ——, 18—, certified to be due to the plaintiff for principal, interest, and costs as therein mentioned, together with interest at the rate of $—— per cent. per annum on —— part thereof, from the last mentioned day to the day of payment; and also the plaintiff's costs of, and occasioned by, this application: such costs to be taxed by the Master at ———, in case the parties differ.

2. That upon such payment being made, the plaintiff may execute and deliver to the defendant the indenture of conveyance from the plaintiff to the defendant in the said report mentioned; and deliver to the defendant, upon oath, all deeds and writings in his custody or power relating to the hereditaments in the said report also mentioned [*or as may be*]. And take notice (*&c., as in No.* 382.)

(*a*) Dand. Pr. (5th Ed.), p. 1116.

Motions to Rescind Contract in Specific Performance Cases.

(*Formal parts: see ante, No.* 300.)

694. Affidavit of vendor of non-payment by vendee, in suit for specific performance, on motion to rescind contract.

I have not, nor hath, nor have any person or persons by my order, nor to the best of my knowledge and belief, for my use, received the sum of ——— found due to me by the defendant C. D. by the decree [*Or*, Master's report] made in this cause, nor any part thereof, nor any security or satisfaction for the same, but the whole amount thereof remains justly due and owing to me by the said defendant C. D.

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695. Bank certificate of non-payment

See ante, No. 682.

(*Formal parts: see ante, Nos.* 338–9.)

696. Order rescinding contract in suit for specific performance by vendor. *a*)

1. It is ordered that the contract in the pleadings mentioned be and the same is hereby rescinded.

2. It is further ordered that all further proceedings in this cause be stayed, save and except such as the plaintiff may be advised to take for the recovery of the costs already ordered to be paid, and the costs of this application.

3. It is further ordered that the defendant do pay to the plaintiff his costs of this application forthwith after taxation thereof.

Motions to Invest Funds in Court, or in Hands of Trustee, &c.

(*Title—and address: see ante, No.* 387.)

697. Petition for the investment of a fund in Court, in a purchase, or on mortgage. (*b*)

The humble petition of the plaintiff [*or as may be*], Showeth as follows:

Show that the fund in Court is available for investment; as thus:

1. A. B., the testator in the pleadings of this cause named, by his will, dated the —— day of ——, 18—, bequeathed to the defendants C. D. and E. F. the residue of his personal estate, upon trust to convert the same into money, and to invest such money in their names in the purchase of freehold hereditaments, or on real securities,

(*a*) See *Watson* v. *Cox*, 15 L. R. Eq. 219.
(*b*) See *Re Healy*, 1 Chy. Ch. R. 190.

in ———; and to permit your petitioner to receive the rents and profits or other income of such investment during his life, with remainders over.

2. The testator died on the —— day of ——, 18—, without having revoked or altered his said will; and probate of such will was, on the —— day of ——, 18—, granted by the Surrogate Court of the County of, *&c.*, to the defendant C. D. and E. F., the executors therein named.

3. This suit was instituted for the administration of the estate of the said A. B.; and by the decree made therein, dated the —— day of ——, 18—, the trusts of the said will were directed to be performed, and carried into execution; and the usual accounts and inquiries as to the estate of the testator were directed to be taken and made; and the clear residue of his personal estate was directed to be ascertained and certified.

4. Pursuant to the said decree, the Master made his report dated the —— day of ——, 18—, and thereby certified that there was no debt of the said testator remaining unpaid; and that the clear residue of his personal estate consisted, amongst other things, of the sum of $10,000 standing in Court to the credit of this cause.

5. By an order dated the —— day of ——, 18—, on the hearing of this cause on further directions, the interest of the said $10,000 was directed to be paid to your petitioner during his life, or until further order.

Show the investment proposed to be made; as thus:

6. Your petitioner, on behalf of the parties interested under the testator's will in his residuary personal estate, lately entered into an agreement (conditional on the approval thereof by this Honourable Court) with G. H., of, *&c.*, dated the —— day of ——, 18—, for the purchase from the said G. H., at the sum of $6,000 [*Or*, for a loan to the said G. H. of the sum of $6,000, on the security of a mortgage, bearing interest at $—— per cent. per annum], of certain freehold hereditaments belonging to the said G. H., situate at, *&c.*, and comprising about —— acres: to which agreement your petitioner craves leave to refer.

7. The said proposed purchase [*Or*, loan] is a fit and proper investment of the sum of $6,000 in accordance with the trusts of the testator's will; and your petitioner is desirous that the same should be approved by this Honourable Court; and that the said $6,000 should be paid out of the said $10,000.

Your petitioner therefore humbly prays:

1. That the said agreement may be carried into effect.

2. That the usual inquiry may be directed as to the title to the said hereditaments.
3. That in case such title shall be approved, a proper conveyance [*Or*, mortgage] of the said hereditaments may be directed to be settled.
4. That upon the due execution thereof by all proper parties, the said $6,000 may be paid out of the said $10,000, and paid to such person or persons as shall be certified to be entitled to receive the same.
5. That the costs of your petitioner, and all other proper parties, of this application, and consequent thereon, including the investigation of the title to the said hereditaments (except such costs as shall be properly payable by the said G. H.), may be taxed, and be raised and paid out of the said fund in Court.
6. That the rents and profits of the hereditaments so to be purchased [*Or*, the interest to accrue on the said investment on mortgage], and also the interest to accrue on the residue, for the time being, during the life of your petitioner, may be directed to be paid to him, or his legal personal representatives, until further order.

Or that your lordships (*Continue as in prayer of No.* 387, *ante, to the end.*)

(*Formal parts: see ante, No.* 382 *or* 384.)

698. Notice of motion to approve of the investment by trustees of a fund in their names, in a purchase, or on mortgage.

on the part of the defendants C. D. and E. F. [*or as may be*]:

1. That the conditional agreement dated the —— day of ——, 18—, entered into by the applicants with G. H., of, *&c.*, for the purchase from him, at the sum of $6,000 [*Or*, for a loan to him of the sum of $6,000 on the security of a mortgage, bearing interest at $—— per cent.], of certain hereditaments belonging to him, situate at, *&c.*, may be approved on behalf of the parties interested under the will of A. B., the testator in the pleadings named, in the residuary personal estate; and be carried into effect.
2. That the usual inquiry may be directed as to the title to the said hereditaments.
3. That in case such title shall be approved, a proper conveyance [*Or*, mortgage] of the said hereditaments to the applicants, the trustees of the said will, may be settled.

4. That upon the due execution thereof by such parties as shall be certified to be proper, the applicants may be at liberty to pay the said $6,000, out of a fund of $10,000 standing in their names, and forming part of the testator's residuary personal estate held by them upon the trusts of the testator's will; and to pay the said $6,000 to such person or persons as shall be certified to be entitled to receive the same.

5. That the costs of the applicants, and all other proper parties, of this application, and consequent thereon, including the investigation of the title to the said hereditaments (except such costs as shall be properly payable by the said G. H.), may be taxed; and that the applicants may be at liberty to pay such costs out of the said fund and retain their own costs, and pay the other costs to the parties entitled. And take notice (*&c., as in No.* 382.)

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699. Affidavit of a Surveyor, in support of the petition or motion.

In Chancery.

(*Title of the cause or matter.*)

I, J. W., of (*Residence*), land surveyor [*or as may be*], make oath and say as follows:

1. I have carried on the business of a land surveyor at ——— aforesaid for ——— years and upwards last past, and have had, during that period, considerable experience in such business; and I believe myself well qualified to judge of the value of the estate hereinafter mentioned, and of like property in the vicinity thereof.

2. In pursuance of instructions received by me from Messrs. X. & Y., the solicitors in this cause for the plaintiff [*or as may be*], I, on the —— day of ——, 18—, on behalf of the said plaintiff [*or as may be*], made a careful survey of the estate mentioned and described in the paper writing marked A., now produced and shown to me, and purporting to be (*State what; as thus:* the particulars of the Blackacre estate, belonging to G. H., situate at, *&c.*), and delineated on the plan marked B., thereunto annexed, and now also produced and shown to me.

3. I believe that the acreage and other particulars of the estate so surveyed by me are correctly set forth in the said paper writing marked A., and that the abuttals, boundaries and subdivisions thereof are correctly delineated on the said plan marked B.

4. I have also, in pursuance of the said instructions, made a careful estimate and valuation of the estate so surveyed by me; and in so doing I have taken into consideration the tenure and situation of the said estate, the nature

and quality of the land, and what would be a fair price for a purchaser to pay for the said estate as an investment, and in expectation of being able to obtain a similar or better price for the same upon a re-sale.

5. To the best of my judgment and belief, founded on the survey, estimate and valuation aforesaid, the said estate is fully and fairly worth, as a present investment, the sum of $——.

6. *Add the special circumstances, if any, which render the proposed purchase or security desirable.*

Sworn (*&c.: see ante, No.* 302.)

CHANGING SOLICITOR.

In Chancery.

A. v. *B.*

700. Præcipe for order changing solicitor.

Required on behalf of the [plaintiff] [*Or*, defendant, *Or*, defendant C. D.,] an order appointing Mr. Y. Z. his solicitor in this cause, in the place and stead of Mr. D. H., his present solicitor.

Dated, &c.

Y. Z.,
Solicitor for (*Applicant.*)

To the [Clerk of Records and Writs,]
Or (Deputy-Registrar at ——).

(*Formal parts: see ante, No.* 338.)

701. Order to change solicitor (*a*).

It is ordered that the solicitor for the [plaintiff] be changed, and that Mr. Y. Z. be appointed [his] solicitor in the place and stead of Mr. D. H.

In Chancery.

A. v. *B.*

702. Notice to Clerk of Records and Writs, or Deputy-Registrar of appointment of a new solicitor in place of one deceased.

Please enter my name as solicitor for —— in the place of C. D., deceased.

Dated, &c.

Yours, &c.,
E. F.,

To the Clerk of Records and Writs.

(*a*) This order is obtained on præcipe. See *Ord.* 49.

SECTION I.—*Motions for leave to bid.*

703. Notice of motion for leave to bid at sale.

(*Formal parts: see ante, No.* 384.) on behalf of the plaintiff [*Or*, of the defendant *or other party having the conduct of the sale*], that he may be at liberty to bid at the sale directed by the decree (*Or*, order) dated the —— day of ——, 18—, of the lands in question in this cause. And take notice (*&c., as in No.* 382.)

SECTION II.—*Motions to enforce Contract.*

704. Notice of motion to compel payment in of the purchase money, and for a re-sale on default.

(*Formal parts: see ante, No.* 384.)

1. On the part of the plaintiff (*or other persons having the conduct of the sale*), that A. B., who, by the report of the Master at ——, dated ——, was declared to be the purchaser of the land and premises directed to be sold by the decree dated ——, may be ordered ——, on or before the ——, 18—, or subsequently within seven days after service, to pay into Court, to the credit of this cause [*or as may be: according to the decree or order of sale*], the sum of $——, being the purchase money for the said premises:

Or, being the balance of the purchase money for the said premises, after deducting $——, paid by him as a deposit:

If so: making together the sum of $——.

If so: together with interest thereon at $—— per cent. per annum from the ——, 18— (*as in the conditions or contract of sale*), until payment.

That the said A. B. may be ordered to pay to the applicant his costs of this application.

Add, if desired: That in default of such payment being made by the said A. B. within the time aforesaid, the premises whereof he has been allowed the purchaser, as aforesaid, may be re-sold pursuant to the conditions of sale under which he purchased the same; and that the said A. B. may be ordered to make good any deficiency in the price which may be obtained upon such re-sale, and all costs and expenses occasioned by his default, and that in case the said premises cannot be re-sold, that the said A. B. may be held to his purchase. And take notice (*&c., as in No.* 382.)

705. Notice of motion to compel payment by former purchaser of deficiency on a re-sale, after his default.

Proceed as in No. 704, *ante, to* may be ordered; *and continue thus:*
on or before the ——, 18—, or subsequently within seven days after service, to pay into Court, to the credit of this cause [*or as may be*], the sum of $——, being the difference between the sum of $——, the price at which the said A. B. was allowed the purchaser as aforesaid, and the sum of $—— for which the said premises have been re-sold in pursuance of the order dated the ——, 18—, on his default; and that the said A. B. may be ordered to pay the applicant and defendants [*or as may be*] all costs and expenses of and occasioned by such default, and of this application: to be taxed by the Master at ——. And take notice (*&c., as in No.* 382.)

Section III.—*Motions to Discharge and substitute purchasers.*

(*Formal parts: see ante, No.* 384.)

706. Notice of motion by purchaser, to be discharged from his purchase.

on the part of A. B.: who (*Describe the purchaser, as in No.* 704, *ante*):

1. That the applicant may be discharged from being such purchaser.

2. That his costs, charges, and expenses occasioned by his bidding for [*Or*, by his entering into the conditional contract dated the —— day of ——, 18—, in the said order of the —— day of ——, 18—, mentioned], and being allowed the purchaser of the said premises, and of and incident to this application, may be taxed.

3. That his said costs, charges, and expenses

If so: and also the sum of $——, paid by him as a deposit on his purchase money, may be paid to him out of the $——, moneys in Court to the credit of this cause [*or as may be*]:

Or, may be paid to him by the plaintiff C. D.:

without prejudice to the question by whom, or out of what fund, the same should be ultimately borne. And take notice (*&c., as in No.* 382.)

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707. Notice of motion by vendor, to discharge purchaser.

Proceed as in No. 704, *ante, to end of description of the purchaser; and continue thus:* that the said A. B. may be discharged from being such purchaser, on the terms following: (*State them.*)

708. Notice of motion to substitute a purchaser.

(*Formal parts: see ante, No.* 384.)
on the part of A. B.: who (*Describe the original purchaser, as in No.* 704, *ante; and continue thus:*)
and of C. D., of (*Residence and addition*), that the said C. D. may be substituted for the said A. B. as the purchaser of the said premises; and upon complying with the conditions of sale be let into possession of the said premises, or into the receipts of the rents and profits thereof, from the —— day of ——; and that all proper parties may be ordered to join in and execute a proper conveyance or assurance of the premises to the applicant, or as he shall direct: such conveyance or assurance to be settled by the Master at ——, in case the parties differ. And take notice (*&c., as in No.* 382.)

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709. Affidavit in support, before report on sale has become confirmed.

In Chancery.

(*Title of the cause.*)

We, A. B., of (*Residence and addition*), and C. D., of (*Residence and addition*), severally make oath and say as follows:

1. We have agreed that, if approved by this Honourable Court, the deponent C. D. shall be substituted for the deponent A. B. as the purchaser, at the price of $——, of the lands comprised in parcel ——, part of the lands sold under the decree [*Or*, order] dated the —— day of ——, 18—, in this cause, and for which the deponent A. B. was declared to be the purchaser at the sum of $——, at the sale thereof at ——, on the —— of ——, 18—.

2. And we, each speaking positively as to himself, and to the best of his knowledge and belief as to other persons, lastly say, that save as aforesaid, there is no agreement, underbargain, contract, or understanding whatsoever by or between us, or by or between any other person or persons by our order, or on our behalf, respectively, for or in respect of the said premises so purchased by the deponent A. B. as aforesaid.

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710. Affidavit in support of motion to substitute a purchaser after report on sale has become confirmed.

(*Formal parts: see No.* 709.)

1. We have agreed that, if approved by this Honourable Court, the deponent C. D. shall be substituted for the deponent, A. B. as the purchaser of the (land comprised in parcel ——, part of the) lands sold under the decree [*Or*, order] dated the —— day of ——, 18—, in this cause; and whereof the deponent A. B. is allowed the purchaser by the report on sale, dated the —— day of ——, 18—.

2. And we, each speaking positively as to himself, and to the best of his knowledge and belief as to other persons, lastly say, that no agreement, underbargain, contract, or understanding whatsoever, by or between us, or by or between any other person or persons by our order, or on our behalf, respectively, for or in respect of the said premises, was made, entered into, or come to upon or at any time prior to the —— day of ——, 18— (*day when report became confirmed.*)

(*Formal parts : see ante, No.* 384.)

711. Notice of motion to open biddings, or for a re-sale.

on the part of the plaintiff [*or as may be*], that the sale, on the —— day of ——, 18—, of [parcel No. —, of] the lands and premises directed to be sold by the decree [*Or*, order] dated the —— day of ——, 18—, may be set aside and the biddings opened, and that A. B. may be discharged from being the purchaser of the said lands, and that the offer of A. B. to purchase the same for the sum of $——— may be accepted, or that the said lands may be directed to be re-sold. And take notice (*&c., as in No.* 382.)

SECTION IV.—*Motions for Compensation.*

(*Formal parts : see ante, No.* 384.)

712. Notice of motion for compensation by purchaser.

on behalf of A. B., of the Township of ——, in the County of ——, farmer, the purchaser of ——, for an order authorising him to retain out of his purchase money [*or* for payment out of Court, *or* by the plaintiff, to the said A. B.] of the sum of $—— for compensation for the loss sustained by the said A. B. by reason of (*here state the ground on which compensation is claimed.*) And take notice (*&c., as in form No.* 382.)

(*Affidavit proving right to compensation accompanies.*)

SEETION V.—*Motions for delivery of possession.*

In Chancery.

(*Short style of cause.*)

713. Notice by purchaser to vendors' solicitor requiring delivery of possession.

Take notice, that the purchaser A. B. has paid into Court his purchase money pursuant to the conditions of sale, and he hereby requires you to deliver to him possession of the lands purchased by him in this cause, on the

—— day of —— next; and take notice, that he will on that day attend on the premises at such hour as you may appoint to receive possession of the said lands, and in default of possession being on that day delivered to him he will make application to the Court to compel you to deliver possession thereof.

Dated, &c.

Yours, &c.,

To *Plaintiff's Solicitor.*

C. D.,
Solicitor for the said A. B.

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714. Notice by vendors' solicitor of time for delivering possession.

In Chancery.

(*Short style of cause.*)

Take notice, that the vendors will on —— next, at —— o'clock in the forenoon, deliver possession to A. B., or to whom he may appoint, of the lands purchased by him in this cause, and he is hereby notified to attend on the premises at the above named time to receive possession.

Dated, &c.

Yours, &c.,

To Mr. C. D.,
Solicitor for A. B.

Plaintiff's Solicitors.

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715. Demand of possession.

In Chancery.

(*Short style of cause.*)

We hereby demand and require of you to quit and deliver to A. B., (*a*) of ——, in the County of ——, farmer, on or before the —— day of —— next, the possession of the lands in question in this cause, being lot No. ——, in —— Concession of the Township of ——, in the County of ——, of which you are now in the occupation, the said A. B. having become the purchaser thereof at the sale had in this cause, and having duly complied with the conditions of sale, and being now entitled to receive possession of the same. And take notice, that in case you shall fail to quit and deliver up possession of the said lands as hereby required, an application will be made to the Court of Chancery to compel you to quit and deliver up possession of the said premises, and to pay the costs of this demand, and occasioned by your default.

Dated, &c.

H. & M.,
Plaintiff's Solicitors.

To the defendant D. F.

(*a*) Where the possession is not to be delivered direct to the purchaser, the form of demand must be varied accordingly.

(*See ante, No.* 322, *then proceed*):

716. Affidavit of service and demand by person to whom possession is required to be delivered.

2. At the time of such [*Or* on the —— day of —— after the] service of the said demand, I did demand of the said D. F. the possession of the said premises in the said demand mentioned, but the said C. D. then said (*state answer*), and refused to quit and deliver up possession of the said premises, and continues still to hold and occupy the same.

(*Formal parts: see ante, No.* 384.)

717. Notice of motion for delivery of possession.

on behalf of ——— (*the vendors, or the purchaser: see Con. Ord.* 389) for an order directing the defendant D. F. to deliver up possession of the lands and premises in question in this cause within such time as this Honourable Court shall direct, and also to pay to the applicant his costs of and incidental to this application, including the demand of possession served upon the said defendant D. F. And take notice (*&c., as in form No.* 382.)

In Chancery.

(*Short style of cause.*)

718. Demand of possession by mortgagee after final order of foreclosure.

I hereby require you forthwith to quit and deliver up possession of the lands and premises in question in this cause, being lot number ——, in the —— Concession of the Township of ——, in the County of ———, to me [*or* to my agent C. D.], I having obtained a final order of foreclosure against you in this cause, dated the —— day of ——, 18—.

Dated, &c. A. B.

To the defendant E. F.

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719. Affidavit of service and demand of possession.

(*See ante, No.* 716.)

(*Formal parts: see ante, No.* 384.)

720. Notice of motion for delivery of possession by mortgagor to mortgagee after final order of foreclosure.

on behalf of A. B., the above named plaintiff, for an order directing the defendant C. D. forthwith to quit and to deliver up to the plaintiff the possession of the lands and premises in question in this cause, being (*describe the lands*), and that he do pay to the plaintiff his costs of and incidental to this application. And take notice (*&c., as in form No.* 382.)

SECTION VI.—*Motions for Vesting Orders.*

721. Notice of motion for vesting order.

(*Formal parts: see ante, No.* 384.)
on behalf of A. B., of the [Township of Vaughan, in the County of York, farmer], the purchaser of the lands [*or*, of parcel number (one) of the lands] sold in this cause [*if more than one sale*, add] at the sale had herein on the —— day of —— 18—, for an order vesting the said lands, being (*Describe them as they are intended to be described in the vesting order*), in the said A. B., his heirs and assigns, for all the estate, right, title and interest of the plaintiff and the defendants (*or as may be*) therein and thereto. And take notice (*&c., as in No.* 382.)

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722. Accountant's certificate of payment of purchase money.

In Chancery.

(*Short style of cause.*)

I certify that [A. B.] the purchaser of the lands (*or*, of parcel number one of the lands) sold in this cause has paid the full amount of his purchase money into Court to the credit of this cause.

Dated, *&c.*

SECTION VII.—*Motions to dispense with payment of Purchase money into Court.*

723. Notice of motion to dispense with payment of purchase money into Court.

(*Formal parts: see ante, No.* 384.)
on behalf of A. B. [of the Township of Vaughan, in the County of York, farmer], the purchaser of the lands [*or*, of parcel number (one) of the lands] sold in this cause [*if more than one sale*, add] at the sale had herein on the —— day of ——, 18—, for an order dispensing with payment into Court of the amount of his purchase money and the interest accrued thereon [*or*, of $——, part of his purchase money, and the interest accrued thereon since the —— day of ——.] And take notice (*&c., as in No.* 382.)

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724. Receipt of party entitled to purchase money, and consent to order dispensing with payment of same into Court.

In Chancery.

(*Short style of cause.*)

I, C. D., of ——, the plaintiff in this cause, do acknowledge to have received this day from A. B., the purchaser of the lands [*or*, of parcel number (one) of the lands] sold in this cause on the —— day of ——, the sum of $——, being the amount of his purchase money for the said lands with interest thereon to date, and I consent to

an order being made dispensing with payment of the said purchase money into Court.

Dated, *&c.*

C. D.

Witness, S. B.

In Chancery.

(*Short style of cause.*)

725. Another form.

I, C. D., of ——, one of the defendants in this cause, do consent and agree that an order be made dispensing with payment into Court by A. B., the purchaser of the lands [*or*, of parcel number (one) of the lands] sold in this cause, of $——, being the amount of his purchase thereof, and also of the interest which has accrued or may hereafter accrue thereon; and I give this consent knowing that I am entitled to the said purchase money, and that I am entitled to have the same paid into Court in this cause, and knowing also that the same if paid into Court would not be paid out except to me or to my order.

Dated, *&c.*

C. D.

Witness, S. B.

(*Formal parts: see ante, No.* 300.)

726. Affidavit verifying consent.

I was personally present and did see [the defendant C. D.] sign the consent now produced and shown to me, marked A., on the day of the date thereof, at ———, in the County of ———, and the name "C. D." thereunto subscribed is in the proper handwriting of the said defendant C. D., and the name "S. B." thereunto subscribed as the name of the witness attesting the said signature of the said C. D., is of the proper handwriting of me this deponent.

(*Where the receipt is in the form No.* 725, *add:*)

2. I further say that immediately before the said defendant C. D. so signed the said consent, I explained to the said C. D. and he thoroughly understood that he is entitled to the purchase money of the said A. B. referred to in the said consent, and the interest which has accrued and may hereafter accrue thereon, and that he the said defendant C. D. was entitled to have the said purchase money and interest paid into Court by the said A. B. in this cause, and that if the same were paid into Court, the same would not be paid out except to him the said defendant C. D. or his lawful representatives, or to his or their order.

Motions on behalf of Trustees as to Management of Trust Estate.

727. Notice of motion for leave to institute a suit, or bring an action.

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiffs [*Or*, defendants, A. B. and C. D.: *or as may be*], the trustees [*Or*, executors] of the will of E. F., the testator [*Or*, the administrators of E. F., the intestate] in the pleadings named [*or as may be*].

1. That they may be at liberty to institute and prosecute a suit [*Or*, to commence and prosecute an action in one of the Superior Courts of Law—*Or*, to take proceedings in the proper County Court] against all proper parties, for the purpose of (*State, shortly, the object; as thus:* compelling a foreclosure or sale of the hereditaments comprised in the mortgage security for $500 [*Or*, recovering a debt of $500 due] from G. H., and now forming part of the outstanding estate of the said E. F.)

That the applicants may be indemnified, in such manner as the Referee shall direct, against any costs to be incurred by them in such suit [*Or*, action—*Or*, proceedings], out of the estate of the said E. F. And take notice (*&c., as in No.* 382).

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728. Notice of motion for leave to defend a suit in equity.

(*Formal parts: see ante, No.* 727.)

1. That they may be at liberty to defend the suit commenced against them in this Court by A. B. and C. D., the executors of L. M. [*or as may be*], for the purpose of [*State, shortly, what; as thus:* compelling a foreclosure or sale of the hereditaments comprised in the mortgage security for $500 to the said L. M.: the equity of redemption whereof forms part of the estate of the said E. F.]; and the short title of which suit is "Brown *v.* Jones."

2. That the applicants may be indemnified (*Conclude as in No.* 727, *ante.*)

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729. Notice of motion for leave to defend an action or other proceeding.

(*Formal parts: see ante, No.* 727.)

1. That they may be at liberty to defend the suit commenced against them by O. P., in Her Majesty's Court of Queen's Bench [*Or*, in the County Court of ———, *or as may be*], to recover the sum of $500 alleged to be due to him from the estate of the said E. F. [*or as may be.*]

2. That the applicants may be indemnified (*Conclude as in No.* 727, *ante.*)

(*Formal parts: see ante, No.* 727.)

730. Notice of motion for leave to carry on testator's business.

That the applicants may be at liberty to carry on the testator's business of a ———, at ———, until the sale thereof, or until the —— day of —— next, and to use and employ for that purpose any part of the sum of $—— now in their hands, and forming part of the testator's personal estate. And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 727.)

731. Notice of motion for leave to pay debts.

That the applicants may be at liberty, out of the assets of the said E. F. in their hands, to pay the debts of the said E. F. specified in the Schedule to the Master's report, dated the ——, 18 [*Or*, in the exhibit marked A. to the affidavit of the applicants filed ——, 18—, *or as may be*]. And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 727.)

732. Notice of motion for leave to compromise a suit, action, or claim.

That the applicants may be at liberty to compromise the suit [*Or*, action] of "Brown *v.* Jones," instituted by [*Or*, against] them, in this Court—*Or*, in Her Majesty's Court of Queen's Bench [*or as may be*] against (*Or*, by (*State whom*),], for (*State, shortly, the object of the suit, or action*)—*Or*, the debt due by [*Or*, to] G. H. to [*Or*, from] the estate of the said E. F.—upon the terms following, namely (*State them*). And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 727.)

733. Notice of motion for leave to execute repairs, or drainage works.

That the applicants may be at liberty to lay out sums of money not exceeding the respective sums set forth in the second column of the Schedule hereto, in effecting the repairs [*Or*, works of drainage] and improvements specified in the affidavit of A. B., filed the ——, 18—, and in the exhibits thereto, to those portions of the estates of the testator E. F., situate at ——, in the county of ——, which are now in the occupation of the respective persons whose names are set forth in the first column of the said Schedule; and may be allowed what they shall so lay out on passing their accounts in this cause.

The Schedule above referred to.

Names of Occupiers.	Estimated amount to be laid out.
	$ cts.
Peter Brice	209·08
John Witham	80·04
Benjamin Scholefield	137·11
	426·23

734. Notice of motion for leave to obtain a renewal of a lease.

(*Formal parts: see ante, No.* 727.)

That the applicants may be at liberty to accept from G. H. a renewal, for the term of —— years, from —— next, at the annual rent of $——, of the lease dated the ——, 18—, of the —— farm at B., in the county of C., now forming part of the outstanding estate of the said E. F., such lease to be granted to the applicants as executors of the will of the said E. F. And take notice (*&c., as in No.* 382.)

735. Notice of motion to approve of agreement to grant a lease.

(*Formal parts: see ante, No.* 727.)

That the conditional contract dated the —— day of ——, 18—, entered into by the applicants [*Or*, by G. H., as the agent for, and on behalf of, the applicants—*or as may be*], to grant to L. M. a lease of the —— farm at B., in the county of C. [*or as may be*], part of the trust estate of the testator E. F., on the terms and conditions therein mentioned, may be directed to be carried into effect; such lease to be approved by the Referee in Chambers [*or as may be.*] And take notice (*&c., as in No.* 382.)

736. Affidavit in support.

In Chancery.

(*Title of the cause.*)

We, G. H., of (*Residence and addition*), and J. K., of, *&c.*, severally make oath and say as follows:

First, I, the said G. H., for myself, say as follows:

1. I have, for —— years last past, carried on the business of a surveyor, auctioneer, and land and estate agent at ——, in the county of ——; and I am well acquainted with the value, management, and letting of land and house property, in the neighbourhood of the farm hereinafter mentioned.

2. I am well acquainted with the farm and premises described or referred to in the agreement dated the —

day of ——, 18—, made between (*Describe the parties*), and now produced and shown to me, and marked A.

3. I was recently employed by the plaintiffs [*or as may be*] to obtain a tenant for the said farm and premises, and to negotiate the letting thereof.

4. Having well considered the value of the said farm and premises, I am of opinion that the rent of $——, in the said agreement mentioned, is the best rent that can reasonably be obtained for the said premises; and that the terms and conditions of the said agreement in other respects (*If a draft lease has also been approved, add:* and of the draft lease referred to in the said agreement, and now also produced and shown to me, and marked B.), are fair and reasonable, and such as are usually inserted in leases of property of the same nature; and in my judgment and opinion it will be beneficial to the estate of the testator E. F. [*or as may be*] that the said agreement should be carried into effect.

5. I have made inquiries as to the position and means of the said L. M. (*tenant*), and as to his ability to pay the rent and perform the covenants and agreements on his part contained in the said agreement, and to be contained in the lease to be granted in pursuance thereof. From information derived by me in prosecuting such inquiries, I am of opinion that the said L. M. is fully able to pay the said rent and perform the said covenants and agreements; and that he is in all respects a desirable tenant for the said premises.

6. And I, the said J. K., for myself say, that the signature "——," set and subscribed to the agreement dated the —— day of ——, 18—, now produced and shown to me, and marked A., is of the proper writing of the said L. M., one of the parties thereto: as I know from having seen him subscribe such signature thereto.

Motions for the Appointment of New Trustees.

(*Formal parts: see ante, No.* 300.)

737. Affidavit of eligibility of proposed trustees.

1. *Show deponent's personal knowledge of the proposed trustees; as thus:* I have, for —— years last past, known, and been well acquainted with E. F., of (*Residence and addition*), and G. H., of (*Residence and addition*), the persons proposed to be appointed new trustees of the will of A. B., late of (*Residence and addition*), deceased, the testator in the decree [*Or*, order] in this cause [*Or*, matter]

dated the —— day of ——, 18—, named [*Or*, of the indenture of settlement, dated the —— day of ——, 18—, made on the marriage of A. B. with C. D., in the decree, *&c.*, mentioned—*or as may be.*]

2. *Show the position in life of the proposed trustees, and their eligibility; as thus:* The said E. F. has, for —— years last past, carried on business as a banker at ——, in the (County) of ——. The said G. H. has, for —— years last past, carried on business as a wine-merchant at ——, in the (County) of ——. During my aforesaid acquaintance with them I have had many opportunities of forming an opinion as to their habits of business and integrity. The said E. F. and G. H. respectively are persons in good credit in the neighbourhood in which they respectively carry on business as aforesaid, and are both men of business habits, and of strict honour and integrity.

3. In my judgment and opinion the said E. F. and G. H. are fit, proper, and eligible persons to be appointed new trustees of the said will [*Or*, indenture of settlement—*or as may be.*]

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738. Consent to act of proposed trustees.

In Chancery.

(*Short title.*)

We, the undersigned E. F., of (*Residence and addition*), and G. H., of (*Residence and addition*), do hereby testify our consent to accept the office of trustees, and to act in the trusts of the will of A. B., late of (*&c., as in No.* 737, *ante*): in case the Court of Chancery shall think fit to appoint us to that office. Dated this —— day of ——, 18—.

E. F.
G. H.

Signed by the said E. F. and G. H. in the presence of
J. K.

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739. Affidavit, verifying the signatures thereto.

(*Formal parts: see ante, No.* 300.)

1. The signatures "——," and "——," respectively set and subscribed to the paper writing marked A., hereunto annexed [*Or*, now produced and shown to me], purporting to be the consent, dated the —— day of ——, 18—, of E. F. and G. H., to accept the office of trustees of the will of A. B. [*or as may be*], are of the respective proper handwriting of the said E. F. and G. H., in such paper writing respectively named and described: as I know from having seen them respectively sign the said paper writing.

Notice to Defendant to Conduct Sale.

In Chancery.

(*Short title.*)

To ———, defendant.

Take notice, that the plaintiff elects that the sale of the mortgaged premises be conducted by you instead of by the plaintiff, and you are at liberty to withdraw the deposit made by you in this cause for the purpose of such sale.

Dated, *&c.*

E. F.,
Plaintiff's Solicitor.

740. Notice to the defendant that he may conduct sale under decree, referred to in Order 430, being Schedule R. mentioned in that order.

Motions for Interpleader Orders, &c.

(*Formal parts: see ante, No.* 339.)

It is ordered that the plaintiff (*execution creditor*), and Mr. E. F. (*the claimant*), or their solicitors or agents, do attend before the Referee in Chambers, at Osgoode Hall, in the City of Toronto, on the —— day after the day of service hereof on them respectively, at ten of the clock in the forenoon, or at such other hour as Chambers may be held, and then and there state the nature and particulars of their respective claims to the goods and chattels seized by the Sheriff of ——, under the writ of *fieri facias* issued in this cause, and maintain or relinquish the same, and then and there show cause why they should not abide by such order as may then be made herein touching their said claims and as to costs, and in the meantime let all further proceedings be stayed.

741. Order for execution creditor and claimant to appear and maintain or relinquish their claims. (*a*)

(*Formal parts: see ante, No.* 384.)

on behalf of F. W. J., Esquire, Sheriff of the County of York, for an interpleader order in this cause, in the usual form, between the above-named defendant C. D., and E. F. the claimant; and you the said defendant C. D., and the said E. F., your solicitors or agents, are required to

742. Notice of motion by Sheriff for interpleader order (*b*)

(*a*) It has been heretofore the practice in some cases for the Sheriff to serve notice of motion on the execution creditor and the claimant, and the practice has not been objected to; the 28 Vic., c. 19, s. 2, however, seems to contemplate that the parties should be called before the Court by rule or order, and it may be doubtful whether it would be competent for the Court to make an order barring the claim of a party not appearing where only a notice of motion had been served. The more correct practice would appear to be for the Sheriff to apply in the first instance, *ex parte*, for an order as above.

(*b*) See note to preceding form.

attend before this Honourable Court in Chambers at the time and place aforesaid, and state the nature and particulars of your respective claims to the goods and chattels seized by the said Sheriff under the writ of *fieri facias* issued in this cause, and to maintain and relinquish the same, and submit to and abide by such order as may be made herein for the trial of an issue or otherwise; and in the event of the non-attendance of either party, an order may be made barring the claim of such party not attending, with costs, and protecting the said Sheriff. And take notice (*&c., as in No.* 382).

To the Execution Creditor A. B.,
and to C. D. the claimant.

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743. Affidavit of Sheriff in support.

(*Formal parts: see ante, No.* 300.)

1. Under and by virtue of a writ of *fieri facias* issued out of and under the seal of this Honourable Court, in this cause, by or on behalf of the above-named [plaintiff] against the goods and chattels of the [defendant C. D.], and which writ bears date the —— day of ——, 18—, I did on the —— day of —— instant seize and take possession of the following goods and chattels which appeared to me to be the property of the said defendant C. D., and I have ever since had and now have the same in my possession under the said writ.

2. On the —— day of —— instant I was served with the notice in writing now shown to me and marked A., by or on behalf of C. D., the claimant therein named, and the goods and chattels referred to in the said notice are those so seized by me as aforesaid [*Or*, on the —— day of ——, one C. D., of the Township of ——, in the County of ——, farmer, came to me and informed me that he was the owner of the goods and chattels so seized by me as aforesaid, and forbade me to sell the same under the said execution, and threatened to and will, I believe, hold me responsible if I sell the said goods under the said execution.]

3. I have informed the said [plaintiff's solicitor] of the said claim, but he refused to authorize me to abandon the said seizure.

4. The application for an interpleader order in respect of the said goods and chattels, in support of which I make this affidavit, is not made by me in collusion with the said [plaintiff] nor the said claimant C. D., but the same is made *bonâ fide* and solely for my own protection.

(*Formal parts: see ante, No.* 338.)

and E. F., the claimant named in the affidavit of the said Sheriff, not appearing to maintain or relinquish his claim, although duly notified so to do, as by affidavit of service appears: It is ordered that the said E. F., and all persons claiming from or under him, be and they are hereby for ever barred from prosecuting his claim, referred to in the affidavit of the said Sheriff, against the said Sheriff, his executors or administrators.

744. Order barring claim of claimant.

It is further ordered that the said E. F. do forthwith pay to the said Sheriff the possession money incurred by the said Sheriff since the date of the service upon the said Sheriff of the claim of the said E. F., &c. (*the costs are in the discretion of the Court; unless the claim be made fraudulently, and for the purpose of vexation, the claimant will not be ordered to pay costs.*)

(*Formal parts: see ante, No.* 338.)

and A. B., the execution creditor named in the affidavit of the said Sheriff, not appearing to maintain or relinquish his claim to the goods and chattels referred to in the affidavit of the said Sheriff, under the execution issued by him in the cause, although duly notified so to do, as by affidavit of service appears: It is ordered that the said Sheriff do withdraw from the possession of the said goods.

745. Order where execution creditor fails to appear and claimant does appear.

2. It is further ordered that no proceedings be taken against the said Sheriff, his executors or administrators, by the said A. B. or the said claimant E. F. in respect of the seizure of the said goods or the abandonment thereof under this order.

3. It is further ordered that the said A. B. do pay to the said Sheriff the possession money incurred by him [since the making of the claim of E. F.] (*or such other time as the Court may think fit to name.*)

(*Formal parts: see ante, No.* 339.)

1. And neither the said plaintiff (*the execution creditor*) nor E. F., the claimant named in the affidavit of the said Sheriff, appearing to maintain or relinquish their claims to the goods and chattels referred to in the said affidavit: It is ordered that the said Sheriff do proceed and sell so much of the said goods as may be necessary to pay the expenses incurred by him in respect of the seizure and

746. Order where neither execution creditor or claimant appears.

keeping possession of the said goods, and do thereafter withdraw from the possession of the residue of the said goods and chattels.

2. It is further ordered that no proceedings be taken against the said Sheriff, his executors or administrators, by the said [plaintiff] or the said E. F. in respect of the said seizure of the said goods, or for anything done by the said Sheriff by virtue of this order.

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747. Order disposing of claims by Judge or Referee in Chambers.

(*Formal parts: see ante, No.* 338.)

and the said plaintiff (*the execution creditor*) and E. F. (*the claimant*) consenting that the merits of their respective claims to the goods and chattels referred to in the said affidavit should be disposed of by the presiding Judge [*Or* Referee in Chambers] in a summary manner.

It is ordered, *&c.*

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748. Interpleader rder directing issue.

In Chancery.
In Chambers. } ——, the —— day of ——, A. D. 18—.

Between (*Shortened style of cause.*)

Upon the application of the Sheriff of the ———, and upon hearing the Solicitor for the applicant, and for the execution creditor, and for ——— the claimant, and upon reading the affidavits of ——: IT IS ORDERED that, upon payment of the appraised value of the goods and chattels seized by the said Sheriff under the writ of *fieri facias* issued in this cause into Court by the said claimant within ——— days from this date, or upon the said claimant giving within the same time security to the satisfaction of the Master of this Court for the payment of the same amount by the said claimant according to the directions of any order of this Court to be made herein, and upon payment to the said Sheriff by the said claimant of the possession money from the date of this order, the said Sheriff do withdraw from the possession of the goods and chattels seized by him under the writ of *fieri facias* issued herein, and claimed by the said claimant.

AND IT IS FURTHER ORDERED, that unless such payment shall be made, or such security be given within the time aforesaid, the said Sheriff do proceed to sell the said goods and chattels, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from the date of the said seizure, into Court, to the credit of this cause, to abide further order herein.

AND IT IS FURTHER ORDERED, that the parties do proceed to the trial of an issue in the ——— Court of ———, in which the said claimant shall be the plaintiff and the said execution creditor shall be defendant, and that the question to be tried shall be whether at the time of the delivery of the said writ to the said Sheriff the said goods, or any part thereof, were the property of the claimant as against the execution creditor.

AND IT IS FURTHER ORDERED, that such issue shall be tried at ———. AND the question of costs, and all further questions, are reserved until after the trial of the said issue, to be disposed of in Chambers.

AND IT IS FURTHER ORDERED, that no action shall be brought against the said Sheriff for the seizure or sale of the said goods.

MOTIONS TO GARNISHEE DEBTS, &C.

(*Formal parts: see ante, No.* 384.)

on behalf of the (*execution creditor*) for an order for the (*debtor*) to attend before the Master of this Court at ——, at such time and place as the said Master shall appoint, and submit to be orally examined upon oath as to what debts are owing to him. And take notice (*&c., as in No.* 382.)

749. Notice of motion for examination of debtor as to what debts are due to him under C. L. P. Act, sec. 287

(*Formal parts: see ante, No.* 300.)

Proceed as in form No. 754, *post, and add:*

5. That A. B. is indebted to the said (*execution debtor*) in the sum of ——, for (*state the nature of the debt, and show means of knowledge.*)

6. The said A. B. resides at ———, within the jurisdiction of this Honourable Court.

750. Affidavit in support of motion to attach debts under sec. 288 of C. L. P. Act.

(*Formal parts: see ante, No.* 338.)

It is ordered, that all debts owing by or accruing from A. B. to the said (*debtor*) be attached to answer the amount due and owing from the said (*debtor*) to the said (*creditor*) under the decree [*or* order] made in this cause and dated the —— day of, *&c.*

751. Order attaching debts (*a.*)

It is ordered, that the said A. B. do attend before [the Referee in Chambers, at Osgoode Hall, in the City of Toronto, at ten of the clock in the forenoon, or so soon

752. Order for garnishee to appear (*a.*)

(*a*) These orders may be combined or may be granted separately. See C. S. U. C. cap. 22, s. 289.

thereafter as Chambers may be held, on the —— day after the day of service hereof, *Or* before the Judge of the County Court of the County of ———, at such time and place within the said county as the said Judge shall appoint (*a*)], to show cause why he should not pay to the said (*creditor*) the debt due from him the said A. B. to the said (*debtor*), or so much thereof as may be sufficient to satisfy the amount due and owing from the said (*debtor*) to the said (*creditor*), under the decree [*or* order] made in this cause, and dated, *&c.* And take notice (*&c., as in No.* 382.)

MOTIONS TO EXAMINE, AND COMMIT, JUDGMENT DEBTOR.

753. Notice of motion for examination of debtor under C. S. U. C. cap. 24, sec. 41.

(*Formal parts: see ante, No.* 384.)
on behalf of the (*execution creditor*) for an order for the (*debtor*) to attend before the Master of this Court at ——, at such time and place as the said Master shall appoint, and submit to be orally examined upon oath touching his estate and effects, and as to the property and means he had when the debt or liability (*b*) which was the subject of this suit was incurred, and as to the property and means he still hath of discharging the amount decreed (*or* ordered) to be paid by him to the (*execution creditor*) in this cause, and as to the disposal he may have made of any property since contracting such debt or incurring such liability. And take notice (*&c., as in No.* 382.)

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754. Affidavit in support.

(*Formal parts: see ante, No.* 300.)

1. By a decree (*or* order) of this Honourable Court made in this cause, and dated the —— day of, *&c.*, —— the (*debtor*) was ordered to pay to the (*execution creditor*) forthwith (*or as may be*) the sum of $——.

2. On the —— day of, *&c.*, —— writs of *fieri facias* against the goods and chattels and lands and tenements of the said (*debtor*) were issued in this cause, directed to the Sheriff of the County of ———, in which county the said (*debtor*) resides, requiring the said Sheriff to levy the amount so ordered to be paid by the said (*debtor*) to the said (*creditor*).

3. The said Sheriff, on the —— day of, *&c.* [returned

(*a*) See C. S. U. C. cap. 22, secs. 289, 292.
(*b*) Where the claim is for costs only, say "when the liability for the costs ordered to be paid by him in this suit was incurred."

the said writ against the said (*debtor's*) goods "*nulla bona*"] *or* [informed me by letter that the said (*debtor*) has no goods and chattels in his the said Sheriff's bailiwick, and that he will be compelled to return the writ against the said (*debtor's*) goods "*nulla bona*"], and the execution against the said (*debtor's*) lands is still in the hands of the said Sheriff wholly unsatisfied (*or as may be.*)

4. No part of the said sum of $—— so ordered to be paid by the said (*debtor*) to the said (*creditor*) has been paid to him, and the whole of the said sum still remains due and unsatisfied (*or as may be.*)

(*Formal parts: see ante, No.* 384.)

755. Notice of motion to commit debtor for non-attendance, or unsatisfactory answers, or for concealing or making away with his property.

on behalf of the (*creditor*) for an order that a writ of *capias ad satisfaciendum* may issue out of this Honourable Court, directed to the Sheriff of the County of ——, to commit the said (*debtor*) to the common gaol of the said county, for such period not exceeding twelve months as to the Referee in Chambers may seem fit ————, on the ground that [without sufficient excuse he did not attend to be examined, *Or* upon his examination had] before A. B., Esquire, the Master of this Court at ———, under the order made in this cause on the —— day of, *&c.* [the said (*debtor*) did not make satisfactory answers, *Or* refused to disclose his property or his transactions respecting the same] in the following particulars that is to say (*state concisely the particulars in which the debtor's answers are alleged to be unsatisfactory, or he failed to disclose his property or transactions*) [*Or* it appeared that the said (*debtor*) had concealed *or* made away with (*specify the property*) being the property of the said (*debtor*) in order to defeat or defraud his creditors or some of them.] And take notice, (*&c., as in No.* 382.)

It must be shown on the application in what County the debtor resides and if necessary an affidavit showing that fact must be filed, and when the motion is to commit for non attendance, due proof of service of the order and Master's appointment must be adduced.

(*Formal parts: see ante, Nos.* 338–9.)

756. Order to commit debtor.

It is ordered that a writ of *capias ad satisfaciendum* do issue out of and under the seal of this Court, directed to the Sheriff of the County of ——— in which County

the said (*debtor*) resides requiring the said Sheriff to take the said (*debtor*) into his custody, and to commit him to the common gaol of his said County for the space of —— months for that, (*here state shortly the ground upon which the debtor is committed.*)

CHAPTER X.

Proceedings Originating before a Judge or the Referee, in Chambers.

Section I.—*Administration of Estates on Motion.*

757. Notice of motion for administration order, under Order 468, being Schedule U referred to in that order.

In the matter of the Estate of E. F., late of the Township of Vaughan, in the County of York, deceased.

A. B. against C. D.

To C. D., Executor of E. F., deceased. (*a*)

Take notice, that A. B., 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 E. F., will apply to the Referee in Chambers of the Court of Chancery, in Chambers, at Osgoode Hall, in the City of Toronto, on the —— day of ——, 18—, at the hour of ——, or if opposed, then to a Judge in Chambers, so soon thereafter as a Judge shall be sitting in Chambers, for an order for the administration of the estate, real and personal, of the said E. F., by the Court of Chancery; and upon such application will be read the affidavits of (*State the materials upon which the application is founded*) this day filed.

If you 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 may seem just and expedient.

Dated, &c.

G. H.,
Solicitor for the above named A. B.

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758. Affidavit in support of an administration order by a creditor.

(*Formal parts: see ante, No.* 300.)

1. *State the amount, and nature of the debt; and any existing security for its payment, or negative the existence of any such security.*

2. *Prove that the defendants are the proper persons to*

(*a*) If administration of realty also desired, some party interested in the realty must also be notified, unless the party moving be so interested himself. See *Ord.* 472.

be sued; as thus: The said John Thomas died on or about the —— day of ——, 18—; and probate of his will has [*Or*, letters of administration of his personal estate have] been granted to the defendant William Jackson [*or as may be*], and he is now the sole personal representative of the said John Thomas deceased.

3. *Show means of knowledge.*

If administration of realty is sought, some ground should be laid for it, thus:

4. I have applied to the said William Jackson for payment of my said debt, and I have been informed by the said William Jackson that the personal estate of the said John Thomas, deceased, come to his hands is insufficient for the payment of the debts of the said deceased, and he has refused, and still refuses, to pay my said debt.

5. The said John Thomas died seised of or otherwise well entitled to the following lands (*describe them shortly*), and I believe that it is necessary that the same, or some part thereof, should be sold, for the payment of the debts of the said deceased.

(*Formal parts: see ante, No.* 300)

759. Affidavit in support of an administration order by a specific, pecuniary, or residuary legatee (*a*).

1. *State, succinctly, the nature of the bequest; as thus:* The above named John Thomas, by his will dated the — day of ——, 18—, bequeathed to me all his household furniture and effects [*Or*, a legacy of $400, payable three months after his death—*Or*, one-fifth of the residue of his personal estate and effects—*Or*, an annuity of $80, during my life.]

2. *Prove that the defendant is the proper person to be sued; as thus:* The said John Thomas died on or about the —— day of ——, 18—, and probate of his will has been granted to the defendant William Jackson [*or as may be.*]

3. *Show that the bequest has not been satisfied; as thus:* The household furniture and effects bequeathed to me as aforesaid have not yet been delivered to me [*Or*, The legacy of $400 bequeathed to me as aforesaid remains due to me from the said testator's estate—*Or*, The share of residue bequeathed to me as aforesaid has not been accounted for, or paid to me—*Or*, I am now entitled to the said annuity of $80 bequeathed to me as aforesaid; but no provision to secure the due payment thereof has been made—*or as may be.*]

4. *Show means of knowledge.*

(*a*) This application cannot be made until a year has elapsed from the death of the testator.

760. The like, by a next kin (*a*).

(*Formal parts: see ante, No.* 300.)

State the death of the person whose estate is to be administered, and show that the applicant is one of the next of kin; as thus: 1. The above named John Thomas died on or about the —— day of ——, 18—, a bachelor, and intestate; and without leaving any father, mother, sister or brother him surviving.

2. The said John Thomas was the son of Charles Thomas, late of, *&c.* The said Charles Thomas had two children only; that is to say: (1) the said intestate John Thomas; and (2) my father, Francis Thomas.

3. The said Francis Thomas died on or about the —— day of ——, 18—. The said Francis Thomas had three children only; that is to say: (1) my brother, the defendant Edward Thomas; (2) my sister Mary, now the wife of William Hughes, of, *&c.*; and (3) me the deponent.

4. As a child of the intestate's said brother Francis Thomas, I claim to be one of the next of kin of the said intestate John Thomas; and, as such, to be entitled to a distributive share of his personal estate. Such share has not been paid, or accounted for to me.

Show that the defendant is the proper person to be sued; as thus: 5. Letters of administration of the personal estate of the said John Thomas have been granted to the defendant Edward Thomas [*or as may be.*]

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761. Affidavit in support of an administration order by a person interested in real estate.

(*Formal parts: see ante, No.* 300.)

State, succinctly, the nature of the applicant's interest under the will, and the persons to be sued; as thus: 1. The above named John Thomas, by his will dated the ——— day of ———, 18—, devised all his real estate to the defendant Edward Styles, upon trust to sell and convert the same into money, and invest such money as therein mentioned; and to pay the income to accrue from such investment unto the testator's wife, Louisa Thomas, for her life; and after her death, to raise the sum of $1,000 out of the said trust estate, and pay the same to me, on my attainment of the age of twenty-one years; and the said testator appointed the defendant William Jackson executor of his will.

2. The said testator died on the ——— day of ———, 18—; and probate of his will was on the ——— day of ——, 18—, granted to the defendant William Jackson.

(*a*) This application cannot be made until a year has elapsed from the death of the testator.

3. The defendant Edward Styles accepted the trust reposed in him by the said will; and he converted the testator's real estate into money, and made certain investments out of the proceeds thereof.

4. The testator's widow the said Louisa Thomas died on the ——— day of ———, 18—; and I attained my age of twenty-one years on the ——— day of ———, 18—.

5. I am now entitled to receive the said sum of $1,000; but the defendant Edward Styles refuses or neglects to pay the same to me.

6. *Show means of knowledge.*

In Chancery.

Between—A. B.....Plaintiff.

and

C. D.....Defendant.

762. Judge's or Referee's appointment in Chambers referred to in Order 198, being Schedule K mentioned in that order.

The ——— day of ——— is hereby appointed 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 ———.

(*To be signed by Judge, or Referee.*)

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 may seem just and expedient.

G. H., solicitor for ———

(*Formal parts: see ante, No.* 382.)

763. Notice of motion by personal representative—

on the part of A. B., and C. D., the executors of the will [*Or*, administrators of the personal estate] of the above named (John Thomas),

That, until the account of debts and liabilities affecting the personal estate of the said (John Thomas), directed to be taken by the order made in this matter dated the ——— day of ———, 18—, has been taken thereunder, G. H., of (*Residence and addition*): who has, or claims to have, a demand upon the estate of the said (John Thomas), by reason of a debt or liability due from such estate: may be restrained from proceeding with the action commenced by him in Her Majesty's Court of Queen's Bench at Toronto [*or as may be*], against the said A. B., and C. D., to enforce his said demand and from com-

(1) to restrain proceedings at law by a creditor, pending the taking of the account.

mencing or prosecuting any other action against the said A. B., and C. D., for or in respect of the said demand. And take notice (*&c., as in No.* 382.)

(2) to restrain a creditor from proceeding at law, where the account has been taken and certified.

That G. H., of (*Residence and addition*)—*If so:* who, by the Master's report, dated the ——— day of ———, 18—, and made in this matter pursuant to the order therein dated the ——— day of ———, 18—, is certified to have a demand upon the estate of the said (John Thomas) to the amount of $—— [*or as may be, as in report*]—may be restrained, by the order and injunction of this Honourable Court, from proceeding with the action (*Continue as par.* 1 *to the end, and add:*) until the further order of this Court.

(3) to deposit a fund to answer contingent liability.

1. That they may be at liberty to pay into Court, to the credit of this matter to an account to be entitled: "Fund to answer the testator's contingent liability to E. F.," the sum of $——; and that the same may be laid out in Dominion stock, and the interest thereon accumulated.

2. That the said fund may be deemed to be a fund set apart and appropriated out of the estate of the said (John Thomas) to answer the contingent liability to E. F., by the Master's report dated the ——— day of ———, 18—, allowed in respect of the covenant entered into by the said (John Thomas) with him, as therein mentioned [*or as the facts may be*].

3. That any person interested in the said fund may be at liberty to apply as he may be advised. And take notice *&c., as in No.* 382.)

SECTION II.—*Sales of Infants' Estates.*

764. Petition for sale of infants' estate under C. S. U. C., cap. 12, sec. 50.

In Chancery.

In the matter of E. B and F. B., infants under the age of twenty-one years.

To the Honourable the Judges of the Court of Chancery.

The humble petition of E. B. and F. B., both of the Village of B ———, in the County of ———, infants under the age of twenty-one years, by M. B. of the same place, widow, their mother and next friend, and the said M. B. (*a*)

SHEWETH:

1. Your petitioners E. B. and F. B. are two of the children of A. B., late of the Village of B ———, in the County

(*a*) The petition is to be presented, in the name of the infant, by his guardian, or by a person applying by the same petition to be appointed guardian. See *Ord.* 528.

of ———, (farmer), who died intestate on the —— day of ——, in the year 18—.

2. The said A. B. left him surviving your petitioner M. B., his widow, and five children only, namely G., who is of the full age of twenty-one years, and is now married to one A. W., of the township of ———, yeoman, H. B., of the township of ———, yeoman, who is also of the full age of twenty-one years, J. B., who subsequently died intestate, unmarried and without issue, on the —— day of ——, and your petitioner E. B., being twelve years of age, and your petitioner F. B., being nine years of age.

3. The said A. B. never had any other children, and your petitioners and the said G. W. and H. B. are his sole and only heirs and heiresses at law.

4. Your petitioner M. B. was duly appointed by the Surrogate Court of the County of ———, and she is now the sole administratrix of the estate of the said A. B., deceased.

5. The said A. B. died possessed of a small amount of personal property, consisting of household furniture, which was of the aggregate value of, and actually realized $300, and farm stock, consisting of a small quantity of grain, a few farming implements, and a few head of cattle, which was of the aggregate value of, and actually realized $400; but the said personal property has been all exhausted in the payment of debts due by the said A. B. at the time of his death, and his funeral and testamentary expenses. (*a*)

6. There still remain due from the estate of the said A. B. divers debts amounting in the aggregate to the sum of $——, and the creditors to whom the same are due are pressing for payment, and threaten, and will, unless they be paid without delay, take legal proceedings to recover the same out of the real estate hereinafter mentioned, and your petitioners are apprehensive that the estate of the said A. B. will be put to great costs and expenses in consequence of such proceedings.

7. The said A. B. was, at the time of his death, seized of the following real estate, namely, village lot number one, on the north side of W—— Street, in the said Village of B——, containing a quarter of an acre, and lot number 5 in the 6th concession of the Township of ———, in the County of———, containing 200 acres. (*b*)

8. The said village lot was used by the said A. B. for a garden, and for one year since his death was rented for that purpose; but, with that exception, it has been and

(*a*) See *Ord.* 529.
(*b*) See *Ord.* 529.

now is vacant and unproductive, and the same cannot be made productive except by the erection of a building thereon; but your petitioners have no means of erecting a building upon the said lot, and the said G. W. and H. B. are unwilling to join your petitioners in raising money by mortgage of the said lot, in order to put up a building thereon.

9. The said lot could not in any event be rented in its present condition for more than $20 per annum, and taxes.

10. The taxes upon the said village lot amount to $—— per annum, and your petitioners E. B. and F. B. have no means to meet their share thereof, and there is now $—— of taxes in arrear upon the said lot and the same is advertised for sale on the —— day of —— next, and will then be sold for taxes unless the arrears be sooner paid.

11. One R. L. of the said village of B.——, merchant, has offered to purchase the said village lot for the sum of $—— which your petitioners are advised is a fair price for the same, and the said G. W., H. B. and your petitioner M. B. have agreed to concur in a sale of the said lot to the said R. L., at that sum, and your petitioners E. B. and F. B., submit that their interests require and will be substantially promoted by the acceptance of the offer of the said R. L.

12. Upon the said lot number 5 there is a small saw mill, but the same has not been worked since the death of the said A. B., and is now greatly out of repair and neither your petitioners nor the said G. W. or H. B., have any means for repairing the same and the said lot has been since the death of the said A. B. wholly unproductive.

13. The said last mentioned property is well timbered and of the value of $——, and the said saw mill and timber constitute the principal value of the said lot, but by reason of the danger of fire spreading to the said lot during the summer months the same is liable to be greatly depreciated in value.

14. Your petitioners submit that from the nature of the property it would be inexpedient to attempt to rent the said lot.

15. The amount required to place the said mill in proper repair is about the sum of $—— but even if that sum could be raised and expended upon it your petitioners and the said G. W. are unable and the said H. B., although able is unwilling to work the said mill, and your petitioners submit that it is not advisable to expend any money upon the said mill nor to attempt to hire any person to work the same.

16. Your petitioners submit that it is necessary as well for the payment of the debts remaining due by the estate of the late A. B., as also for the interest of your petitioners E. B. and F. B., that the said lot 5 should be sold, and the said G. W. and H. B., and your petitioner M. B., are willing to consent to the same being sold under the order and direction of this Honourable Court.

17. Your petitioner M. B. is willing to release her dower in all the said real estate, and also her interest therein in right of the said J. B. deceased, and to accept in lieu thereof such gross sum as this Honourable Court may think reasonable.

18. Your petitioners E. B. and F. B. further show that they have no other property or means of livelihood except their interest in the said real estate, and that by reason of their tender years they are unable at present to earn anything towards defraying the expenses of their maintenance and education.

19. No guardian has been appointed for your petitioners E. B. and F. B., but your petitioner M. B., is willing to be their guardian if appointed by this Honourable Court.

20. Your petitioners E. B. and F. B are now attending the Public School in the said Village of B———, and they submit that it would be for their benefit that they should be enabled to attend school continuously until they respectively attain the age of fifteen years.

21. Your petitioners E. B. and F. B. further submit that in the event of the said real estate being sold, that their respective shares in the purchase money should be invested under the order and direction of this Honourable Court, and that the interest which may accrue on their respective shares together with so much of the principal money as may be required to make up the sum of $120 per annum for each of your petitioners E. B., and F. B., until they respectively attain the age of fifteen years should be applied towards their maintenance and education, and that thereafter the interest only of their said shares should be applied towards their maintenance until they respectively attain the age of twenty-one years.

Your petitioners therefore, pray:

1. That the offer of the said R. L., to purchase the said village lot, number six, may be accepted and that upon payment of his purchase money into Court, a conveyance may be made to him of the said lot.

2. And that the said lot number five may be

ordered to be sold by public auction, private contract or tender as may seem best.

3. That an account may be taken of the debts remaining due by the estate of the said A. B., and that the same may be ordered to be paid out of the proceeds of the said sales.

4. That the shares of the said G. W., H. B., and M. B., in the said purchase money may also be ascertained and paid to them out of the proceeds of the said sales.

5. That the costs of this matter may be also ordered to be paid out of the proceeds of the said sales.

6. And that the shares of your petitioners E. B. and F. B., may be invested under the direction of this Honourable Court, and that such suitable provision may be made thereout for the maintenance and education of your petitioners E. B., and F. B., as in the twenty-first paragraph of this petition mentioned, or in such other manner as to this Honourable Court shall seem proper.

7. And your petitioners further pray that the said M. B., or some other fit and proper person may be appointed the guardian of your petitioners E. B. and F. B., during their minority.

8. And that all proper direction may be given and accounts taken, and that your petitioners may have such further and other relief as to this Honourable Court may seem just.

And your petitioners will ever pray, &c.

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765. Examination of infants above the age of seven years, taken under *Ord.* 532.

In Chancery.

(*Full style of matter.*)

The examination of the above named infants E. B. and F. B., taken before me apart, under the provisions of Consolidated General Order 532, this —— day of ——, 18—, at my Chambers, in the City of ———.

E. B. being examined by me, says: I am a son of the late A. B. He died in the month of ——, 18—. I am living with my mother, M. B. I have heard read the petition in this matter. I am now twelve years of age. I understand that the object of the petition is to obtain the sanction of the Court of Chancery to the sale of the two lots mentioned in the petition, and to have my share of the proceeds of the sale applied, so far as may be necessary,

towards my support and education; and also, that my mother may be appointed my guardian. I consent to the prayer of the petition; and I think it will be for my interest that the land should be sold, and that my mother should be appointed my guardian. I understand that I am entitled to a fifth share in the two lots, and that my share cannot be sold without my consent. I know that the village lot is lying vacant, and that nothing is got for it. I have seen the mill on the other lot. It is out of order. It has not been working since my father died, so far as I know. It is not far from B. I often go out there. My mother is kind to me. I am attending the public school at B. I can read and write. I am in the second book. My sister F. goes to school with me.

E. B.

Here the Master may properly add such observations as to the intelligence or otherwise of the child, as he may think necessary for the information of the Court.

F. B. being examined by me, says: I am a daughter of the late A. B. Father died in ——, 18—. I am living with my mother. I cannot read. No one has read the petition in this matter to me. I don't know what it means, or what it is about. (I explain that the object of the petition is to obtain the sanction of the Court of Chancery to the sale of the two lots mentioned in the petition, and for the appointment of M. B. as guardian for the said F. B. She appears to me to understand the explanation I give her, and states): Having heard the object of the petition explained to me by the Master, I consent to it. I think it would be best that the lands should be sold. I know that I am entitled to a share in the two lots mentioned in the petition, and I understand that my share cannot be sold without my consent. My mother is kind to me. I should like her to be appointed my guardian. I am attending the public school at B. I have been going there since —— last. I think it would be best for me that I should be allowed to attend school until I can read and write well. I am now nine years old.

F. B.

I certify that the foregoing examinations of the said E. B. and F. B. were taken by me, apart, at my Chambers, at the City of ——, on ——, the —— day of ——, 18—, under the provisions of the Consolidated General Order 532.

A. B.,

Dated this ——. Master at ——(a)

(a) The examination is to be annexed to the petition. See *Ord.* 532.

766. Certificate of Master of production of infant under seven years.

In Chancery.

(*Full style of matter.*)

I certify that the above named infant C. D. was on this —— day of ——, 18—, produced before me, at my Chambers, at ———, and that he appeared to me to be under the age of seven years.

A. B.,
Master at ——.

Dated, &c.

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767. Examination of witnesses in support of petition.

In Chancery.

(*Shortened style of matter.*)

Examination of witnesses taken before me *vivâ voce* in support of the petition in this matter under the provisions of Consolidated General Order 533, at my Chambers at ———, this —— day of ——, 18—.

A. B., of ———, in the County of ———, farmer, being called on the part of the petitioners, and being duly sworn, states:—I knew the late A. B., &c.

A. B.

I certify that the foregoing depositions were taken before me *vivâ voce* under the provisions of Consolidated General Order 533, at my Chambers, at ———, this —— day of ——.

N. W.,
Master at ———.

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768. Consent of adult parties jointly interested with infants in lands sought to be sold.

In Chancery.

(*Full style of matter.*)

I, H. B., of ———, in the County of ———, yeoman, do hereby consent that the lands and premises mentioned in the petition in this matter, namely, village lot number six, &c. (*describing land as in the petition*), be sold under the direction of this Honourable Court, and I agree to join in the conveyance to the purchaser, and to accept such part of the purchase money as may be awarded to me by this Honourable Court.

Dated, &c.

H. B.

Witness,
F. W.

The consent must be verified by affidavit. *See ante, No.* 331.

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769. Consent of mortgagee where the land sought to be sold is subject to a mortgage.

In Chancery.

(*Full style of matter.*)

I, C. D., of ———, in the County of ———, merchant, the mortgagee of lot number, &c. (*describing it as in the petition*), do consent that the said lot be sold freed from

my said mortgage, under the order of the Court of Chancery to be made in this matter, and I do hereby agree to accept payment of my mortgage debt out of the proceeds of the sale to be had under such order, and upon such payment to release and discharge my said mortgage.

Dated, &c.

C. D.

Witness,
F. W.

This consent must be verified by affidavit. See ante, No. 331.

In Chancery.

(*Full style of matter.*)

770. Consent of widow to sale, free from dower, where she does not join in the petition.

I, M. B., of ———, in the County of———, widow of A. B., deceased, do hereby consent that lots (*describe land as in the petition*) be sold under the order of this Honourable Court to be made in this matter, freed from my dower, and I do hereby agree to join in the conveyance of the same, and to accept such gross sum out of the proceeds of such sale, in lieu of my said dower, as this Honourable Court shall think reasonable.

Dated, &c.

M. B.

Witness,
F. W.

This consent must be verified by affidavit. See ante, No. 331.

In Chancery.
In Chambers. } ——, the —— day of ——, A.D. 18—

771. Order for sale of infants' estate, etc.

In the matter of A. B., C. B., and D. B., all infants under the age of twenty-one years.

1. Upon the humble petition of the above named infants by J. B., of ——, in the County of —— [farmer], their father and next friend, and of the said J. B., presented unto this Court this day, upon reading the said petition, and the depositions taken before the Master in ordinary and the Masters of this Court at Belleville and Kingston, and the examination of the said petitioners A. B. and C. B., taken before the Master in ordinary and the said Master at Kingston, and the certificate of the said Master at Kingston as to the said petitioner D. B., and upon hearing the solicitor for the said petitioners, and it appearing that it is necessary, for the maintenance and education of the said infants, that [part of] the lands in the said petition mentioned should be sold, *or* it appearing that the lands

in the said petition mentioned are exposed to waste and dilapidation, *or* to depreciation, by reason of (*stating cause*), and that the interest of the said infants requires and will be substantially promoted by a sale of the said premises, and it appearing that J. B. is a fit and proper person to be appointed guardian of the above named infants and their estates :

2. It is ordered that the said J. B. be and he is hereby appointed guardian of the said infants, he first giving security to the satisfaction of the Master of this Court at Kingston, before he in any way intermeddles with the estate of the said petitioners by virtue of this order.

3. It is further ordered that the following lands, being all and singular those certain parcels or tracts of land and premises in the said petition mentioned (*or if a part only is to be sold, describe lands to be sold specifically,*) [being part of the lands in the said petition mentioned], be forthwith sold with the approbation of the said Master at Kingston, freed from the mortgage of ——— [and the dower of ———], in the said petition mentioned, by public auction, tender or private contract, and for cash or on credit, or partly for cash and partly on credit, as to the said Master shall seem best.

4. And it is ordered that the purchaser or purchasers do pay his or their purchase money into Court, to the credit of this matter, subject to the order of this Court, and the said Master is to settle the conveyance or conveyances to the purchaser or purchasers, and all proper parties are to join therein as the said Master shall direct, and the said Master is to execute the said conveyance on behalf of the said infant D. B.

5. And it is ordered that the said Master do take an account of the amount due to the said ——— in respect of their mortgage [and also fix a sum in gross to be allowed to the said ——— in lieu of dower], and to tax to them their costs of this matter.

6. And it is ordered that the said Master do inquire and state of what the fortune of the said infants consists, and what (if anything) would be a proper sum to be allowed for the future maintenance and education of the said infants during their minority, having regard to the amount of their fortune and position in life [and the ability of their said father to maintain them], and for what time such allowance should be paid.

7. And it is further ordered that the said Master do tax to the said petitioners their costs of this matter between solicitor and client.

8. And it is further ordered that the said purchase money when paid into Court be applied—

First. In payment of the amount found due to ——— upon their said mortgage [and of the sum in gross to be allowed to the said ——— in lieu of dower], according to their priorities, to be settled by the said Master.

Second. In payment of the costs of the said petitioners between solicitor and client.

9. And it is ordered that the residue of the purchase money be invested for the benefit of the said infants in equal shares and such part of the income thereof [and also of the principal money of their respective shares] as the said Master shall direct, be paid to the guardian for the said infants from time to time for the maintenance and education of the said infants, and the residue of the said shares, with any interest which may accumulate thereon, be paid to the said infants respectively as they shall respectively attain their majority, unless this Court in the meantime make any other order concerning the same.

SECTION III.—*Appointment and Removal of Guardians.*

In Chancery.

(*Title of the cause or matter.*)

772. Notice of motion for the appointment of a guardian of the person, where a suit is pending (a).

(*Proceed as in No.* 382*; and continue thus*): on the part of the plaintiff [*Or*, defendant—*Or*, above named] A. B., an infant, by C. D., of (*Residence and addition*), his next friend,—That the said C. D. (*State degree of relationship, if any, to the infant; as thus:* the maternal uncle of the said infant), or some other proper person, may be appointed the guardian of the person of the said A. B. during his minority, or until further order—*And, if desired, a direction for payment of the costs of the application: see post, No.* 773, *par.* 3.

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773. The like of the person and estate—or estate only.

(*Proceed as in No.* 382*; and continue thus*): on the part of the above named infant A. B., by the above named C. D., of (*Residence and addition*), his next friend:

1. That the said C. D. (*State degree of relationship, if*

(a) Where it is considered more advisable to file a petition, it can be readily framed from the affidavit: post, No. 774, clauses 1 to 6. It must, of course, be the petition of the infant by his next friend. Where the infant is of unsound mind, not so found: *see post, No.* 785; and where the appointment of a guardian is desired for the purpose of concurring on behalf of infant in a special case. See post, No. 813

any, to the infant; as thus: the brother of the said infant), or some other proper person, may—*If so:* upon giving security—be appointed the guardian of the person and estate—*Or,* the guardian of the estate—of the said A. B. during his minority, or until further order.

If the guardian is to pass accounts, add: 2. And that the said C. D., or other such guardian, may from time to time pass his accounts, and pay the balances which shall be certified to be due from him into Court to the credit of this matter; and that such balances may be invested in [Dominion Stock]; and the interest to accrue thereon, and all accumulations of interest, be invested in like manner [*or as may be.*]

If any provision as to costs is necessary, add: 3. And that the costs of this application may be taxed as between solicitor and client; and that the said C. D., or other such guardian, may retain and pay the same out of any moneys of the said infant which may come to his hands, and be allowed the same on passing his said accounts [*or as may be.*]

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774. Affidavit in support of application to appoint a guardian.

In Chancery.

(*Title of the cause or matter.*)

We, C. D., of (*Residence and addition*), and W. R., of, *&c.*, severally make oath and say as follows:—

And first I, the said C. D., for myself, say as follows:

1. I am the person proposed to be appointed the guardian of the above named infant A. B. [*Or,* A. B., the infant named in the notice of motion ——, in this matter, dated the —— day of ——, 18—, *or as may be*].

2. *Show infant's age; as thus:* The said A. B. is now of the age of —— years, and upwards. He is "A., son of C. and L. B."

3. *Show nature and amount of infant's fortune; as thus:* The said A. B. is absolutely entitled, under the will of his maternal uncle E. F., late of (*Residence and addition*), deceased, to the following properties, namely:

(1) A freehold estate, being part of lot 7, in the 8th concession of G., in the county of H., containing about 80 acres, and held by L. M. on lease at $120 a year.

(2) $800 Dominion Stock standing in the names of R. S. and T. W., the trustees of the will of the said E. F.

(3) $500 cash in the hands of the said R. S. and T. W., arisen from the dividends on the said stock.

The said A. B. is also entitled under the said will, in remainder expectant on the death of N. F., to a life in-

terest in Dominion Stock, also standing in the names of the said R. S. and T. W., the trustees thereof.

4. *Show what relations the infant has; as thus:* The only relations of the said A. B. now living are:—(1) This deponent, his maternal uncle; (2) S. H., wife of T. H., of (*Residence and addition*), the half-sister of the said A. B.; and (3) R. D. V., the half-brother of the said A. B., who is a captain in Her Majesty's army, and is now stationed with his regiment at Bombay, in the East Indies.

5. *Show where the infant is now residing, and under whose care; as thus:* The said A. B. was, at the time of the death of his father C. B., which happened on the ——, 18—, and is now residing, as a scholar, at ——— college, ———.

6. *State willingness to act as guardian; as thus:* I am willing to act as the guardian of the person and estate [*or as may be*] of the said A. B., during his minority, in case this Honourable Court shall think fit to appoint me to that office.

7. *Show means of knowledge.*

And I, the said W. R., for myself, say as follows:

8. *Show fitness of proposed guardian; as thus:* I know, and have for —— years last past been well acquainted with, the deponent C. D. The said C. D. is married, and has three children, namely: a son of the age of —— years; and two daughters of the respective ages of —— and —— years. The said C. D. resides with his wife and children at (*state where*). In my judgment and belief the said C. D. is a fit and proper person to be appointed the guardian of the person and estate [*or as may be*] of his nephew the said infant A. B.: for the following reasons (*state them*).

Sworn, &c.

In Chancery.

(*Short title.*)

775. Consent of guardian to act.

I, the undersigned C. D., of (*Residence and addition*), do hereby consent to accept the office of guardian of the person and estate [*or as may be*], of the above named infant A. B. [*or as may be*], in case the Court of Chancery shall think fit to appoint me to that office. Dated this —— day of ——, 18—.

C. D.

Signed by the said C. D. in the presence of J. K.

This consent should be verified by affidavit. See ante, No. 331.

776. Bond by guardjan of the persons and estates of infants, male and female.

Know all men by these presents, that we, A. B., of (*Residence and addition*), C. D., of, &c., and E. F., of, &c., are jointly and severally held and firmly bound unto A. N. B., Esquire, Accountant of the Court of Chancery, in the penal sum of $——— of lawful money of Canada, for which payment well and truly to be made to the said A. N. B., his heirs, executors, administrators, successors in office, or assigns, we bind ourselves, and each of us by himself, our and each of our heirs, executors, and administrators respectively, firmly by these presents.

Sealed with our seals, and dated this —— day of ——, in the year of our Lord ——.

Whereas by an order of the Court of Chancery for Ontario, made in a certain cause wherein ——— are plaintiffs, and ——— defendants [*Or*, in a certain matter wherein A. B. by C. D., his next friend, was petitioner], dated the —— day of ——, 18—, it was ordered that it should be referred to the Master of this Court, [at ———], to appoint some fit and proper person to be guardian of the persons and estates of G. F. and M. F. [*naming the infants*] (*a*). And whereas the said Master hath appointed the said above bounden A. B. as such guardian, and hath approved of the above bounden C. D. and E. F. as sureties for the said A. B., and hath also approved of the above written obligation, with the underwritten condition, as a proper security to be entered into by the said A. B., C. D., and E. F., pursuant to the said order and the General Orders of the said Court in that behalf, and in testimony of such approbation hath signed an allowance in the margin hereof. Now the condition of this obligation is such, that if the above bounden A. B. do and shall, according to the practice of the said Court, as often as he shall be required, make a just and true account of the personal estate, and rents and profits of the real estate of the said G. F. and M. F., and each of them, as now are, or shall hereafter come to the hands, custody, or possession of the said A. B., and which he may receive out of or concerning the said estate, and shall carefully observe, perform, and keep the orders and directions of the said Court touching or concerning the said G. F. and M. F., or either of them, their, his, or her estate, and touching all such moneys as shall remain due upon the foot of his accounts duly taken by the said Master, and shall be careful to see the houses, buildings, and structures of the said G. F. and M. F., and of each of them, to be

(*a*) Where the order appoints the guardian, and merely refers it to the Master to settle the security, the recital will have to be varied accordingly.

well and sufficiently repaired, and so kept and maintained, during the continuance of the said wardship, and shall carefully preserve and keep all the deeds, evidences, and writings touching the lands and estates of them the said G. F. and M. F., and each of them, as now are, or shall hereafter come to his hands, custody, or possession, and shall provide for the persons of the said G. F. and M. F., and for their safety, and shall not sell or alienate his interest in the said custody or wardship to any person or persons whomsoever, without the order of the said Court having been first obtained in that behalf, and do and shall not permit or suffer the said G. F. and M. F., or either of them, during the said wardship, to marry without the consent of the Court, but shall in all things demean himself as a careful and faithful guardian of the person and estates respectively of them the said G. F. and M. F., then the above obligation shall be void and of none effect, otherwise the same is to be and remain in full force and virtue. (*a*)

Sealed, signed and delivered }
in the presence of }

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777. Notice of motion to remove a guardian of the person, or supply a vacancy occasioned by death, or by the marriage of a female guardian.

Proceed as in No. 772, *ante, to* further order; *and add:* in the place of X. Y., his present guardian [*Or*, now deceased—*Or*, who has intermarried with W. U.—*or as may be—and add, if desired, a direction for payment of the costs of the application. See ante, No.* 773].

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778. Affidavit in support.

(*Formal parts: see ante, No.* 300.)

1. *Show how the guardian sought to be removed, or deceased, or married, was appointed.*

2. *Show the grounds for such removal—or prove such death or marriage.*

3. *Show the fitness to be appointed of the proposed guardian, and his consent to act.*

4. *Show with whom, or under whose care, the infant is living.*

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779. Notice of motion for leave to take infant out of the jurisdiction.

(*Formal parts*: *see ante, No.* 384.)

on the part of the infant plaintiff [*or as may be*], by C. D., of ———, his next friend, that the said infant may be at liberty to accompany J. R. P. (*guardian*) on an intended visit to the L. C. R., in the K. of S.: on the undertaking

(*a*) For affidavit of execution, see ante, No. 331; and for affidavit of justification by sureties, see ante, No. 401.

of the said J. R. P. that the said infant shall return within the jurisdiction of this Court within (two months) from this time; or immediately, if so ordered by this Court.

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780. Undertaking to bring infant back.

In Chancery.

(*Short title.*)

I, A. B., the guardian of the person of the infant C. D., do hereby undertake that the said infant shall return within the jurisdiction of this Court within —— months from this time; or immediately, if so ordered by this Court, or any Judge thereof.

Dated this —— day of ——, 18—.

A. B.

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781. Notice of motion to extend time for return of the infant.

(*Formal parts: see ante, No.* 384.)

on the part of the infant plaintiff [*or as may be*], by C. D., of ———, his next friend, that the time limited by the order dated ——, 18—, for the return of the said infant within the jurisdiction of this Court, may be extended until the —— day of ——, 18—, on the undertaking of W. H. H., one of his guardians, that he shall return within the jurisdiction within the last mentioned time.

SECTION IV.—*Maintenance and Advancement.—Management of Property of Infants.*

782. Notice of motion for an allowance for maintenance.

(*Formal parts: see ante, No.* 384.)

on the part of the infant plaintiff, by C. D., of ———, his next friend [*or as may be: see ante, No.* 772.]

That the sum of $—— per annum may be allowed for the maintenance and education of the said infant, as from the —— day of ——, 18—, and for the time to come, during his minority, or until further order.

If guardian of the person be also guardian of the estate, add: And that such allowance may be retained and applied by W. F., the guardian of the person and estate of the said infant, by equal half-yearly payments on the —— day of ——, and —— day of ——, out of the income of the said infant's estate: the first of such payments to be retained on the —— day of ——, 18—.

Or if a receiver has been appointed, or another person is guardian of the estate, add: And that such allowance may be paid by W. F., the guardian of the estate of the said infant [*Or*, the receiver appointed in this cause], by

equal half-yearly payments (*as above*); and that he may be allowed the same on passing his accounts.

Or if to be paid out of a fund in Court, add: And that such allowance may be paid to W. F., the guardian of the said infant, by equal half-yearly payments (*as before*), out of the interest to accrue from time to time on the $—— Dominion Stock standing in the name of the Accountant-General, to the credit of this cause [*or as may be*].

Add, if desired, a direction as to the taxation and payment of the costs of the application: see ante, No. 773.

(*Formal parts: see ante, No.* 300.)

783. Affidavit in support of motion for allowance for maintenance.

1. *Show the age of the infant, the nature and amount of his fortune, what relations he has, where he is residing, and under whose care: see ante, No.* 774.

2. *Show that the fund proposed to be operated upon for maintenance is available for that purpose.*

3. *Show that the sum sought to be allowed for maintenance is a proper amount; and set forth, in a Schedule, a scheme for the application thereof, under the following or similar heads:—*

School bills	
Clothing	
Pocket money	
Medical attendance	
Maintenance, Travelling, and Incidental expenses in vacations	
Total	$

(*Formal parts: see ante, No.* 384.)

784. Notice of motion for an increase of maintenance.

on part of the infant plaintiff A. B., by C. D. of ——, his next friend [*or as may be*], that the sum of $—— per annum may be allowed, in addition to the sum of $—— per annum allowed by the order dated the —— day of ——, 18—, making together $—— per annum, for the maintenance and education of the said infant A. B., as from the —— day of ——, 18—, and for the time to come during his minority; and that such increased allowance of $—— a year may be raised and paid in the same manner as the said allowance of $—— is directed to be raised and paid by the said order of the ——day of ——, 18—[*or as may be*].—*Add, if desired, a direction for payment of the costs: see ante, No.* 773.

785. Petition for the appointment of a guardian, and allowance for maintenance of an infant of unsound mind, not so found.

In Chancery.

In the matter of A. B., an infant under the age of twenty-one years, and a person of unsound mind, not so found.

To the Honourable the Judges of the Court of Chancery.

The humble petition of A. B., of ———, an infant under the age of twenty-one years, and a person of unsound mind, not so found, by C. D., of (*Residence and addition*), his next friend.

Showeth as follows:

1. *Show state of mind of the petitioner; as thus:* Your petitioner is a person of weak or unsound mind; but he has never been so found by inquisition or other proceeding in lunacy.

2. *Show the age of the petitioner.*

3. *Show the nature and amount of the petitioner's fortune; and that the fund proposed to be operated upon for maintenance is available for that purpose. See ante, No.* 774.

4. *Show what relations the petitioner has.*

5. *Show where the petitioner is now residing, and under whose care.*

6. It will be for the benefit and advantage of your petitioner that the said C. D. should be appointed guardian of his person and estate; and that an allowance of $—— should be made for his maintenance out of the income of his said property.

Your petitioner therefore humbly prays:

1. That the said C. D. or some other proper person may be appointed the guardian of the person of your petitioner during his minority, or until further order.

2. That the costs of this application may be taxed, and raised and paid out of the said $—— Dominion Stock [*or as may be*].

3. That out of the interest to accrue from time to time on the residue of the said stock, the annual sum of $—— may be allowed for the maintenance of your petitioner; and be paid half yearly to his said guardian, until further order.

4. That the residue of the said interest may be laid out in like stock, and accumulated.

Or that this Honourable Court (*Conclude as in No.* 387, *ante.*)

(*Formal parts: see ante, No.* 300.)

1. *See ante, No.* 783, pars. 1—3.

2. *Prove by a medical man the present state of mind of the petitioner or applicant: see post, No.* 803.

786. Affidavit in support of petition or motion.

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff [*or as may be: see ante, No.* 772].

787. Notice of motion for leave to article or apprentice an infant.

1. That the said infant may be placed out as an articled clerk [*Or*, apprentice] with A. B., of (*Residence and addition*), for the purpose of being instructed in the profession [*Or*, trade] of a ———.

2. That $—— may be allowed as a proper premium to be paid to the said A. B., and the further sum of $—— for the outfit of the said infant.

3. That proper articles of clerkship [*Or*, a proper indenture of apprenticeship] may be approved by ———.

4. That upon the execution of such articles [*Or*, indenture] by the parties thereto (*State how the premium, outfit, and costs are to be raised; as thus:*)

E. F., the guardian of the said infant, may, out of the rents and profits of his estate, pay to the said A. B. the said premium of $——; and apply the said $—— for such outfit.

Or, C. D., the trustee of the will of E. W., deceased—*Or*, B. C., the receiver appointed in this cause—may, out of the rents and profits of the said infant's estate, pay the said premium of $—— to the said A. B., and pay the said outfit of $—— to the said E. F.; on the undertaking of the said E. F. to apply the same for that purpose. *Or*, the said sum of $—— and $—— may be raised out of the $—— Dominion Stock standing in the name of the Accountant-General to the credit of this cause [*or as may be*]; and that out of the money thereby arising the said $—— may be paid to the said A. B., and the said $—— to the said E. F. (*&c.: as last above.*)

5. *Add, if desired, a direction as to the costs: see ante, No.* 773.

(*Formal parts: see ante, No.* 300.)

1. The (above named) infant G. H. is now of the age of —— years. He has, of his own free will, chosen to be brought up to the profession [*Or*, trade] of a ———; and

788. Affidavit in support.

wishes to be articled [*Or*, apprenticed] to learn such profession [*Or*, trade.] In my opinion, he is physically adapted for such profession [*Or*, trade.]

2. I have for —— years last past known, and been well acquainted with, A. B., of (*Residence and addition of master*); and during —— years last past he has been continuously and extensively engaged in his profession [*Or*, trade] of a ———.

3. The said A. B. resides with his wife and family; and from my knowledge of him, and from inquiries I have made of various persons also acquainted with him, I believe the said A. B. to be a person of good moral character, of respectability and integrity, and well versed in the said profession [*Or*, trade] of a ———. In my judgment and opinion, the said A. B. is a fit and proper person to have, and fully competent to instruct, an articled pupil [*Or*, apprentice] in the said profession [*Or*, trade.]

4. The said A. B. is willing to take the said infant as an articled clerk [*Or*, apprentice] in his said profession [*Or*, trade] for a term of —— years, on being paid a premium of $——.

5. I have made inquiries of various persons engaged in the said profession [*Or*, trade] of ———; and am informed by them, and believe, that the said premium of $—— is a reasonable and proper sum to be paid to a person in the position of the said A. B.

6. The said infant will require an outfit on his being articled [*Or*, apprenticed]; and, from inquiries I have made on the subject, I believe the sum of $—— will be a necessary and proper sum to be allowed for such outfit.

Section V.—*Marriage and Marriage Settlements of Wards of Court.*

789. Petition to interdict marriage of ward of Court.

(*Title—and address: see ante, No.* 388.)

The humble petition of A. B., of (*Residence and addition*), the guardian of the above named plaintiff C. D., an infant [*or as may be*],

Showeth as follows:

1. *Show how infant has become a ward of Court; as thus:* This suit has been instituted by the said plaintiff C. D., by E. F., her next friend, for the purpose of having the estate of G. D., deceased, the father of the said C. D., administered under the direction of this Honourable Court. The said C. D. is, under the will of the said G. D., entitled to one-fourth of the clear residue of his personal estate, which is of considerable value.

2. *Show present age of infant; as thus:* The said C. D. is now of the age of —— years: having been born on the —— day of ——, 18—.

3. *Show appointment of guardian, if any; as thus:* By an order made in this cause [*or as may be*], dated the —— day of ——, 18—, your petitioner was appointed the guardian of the said C. D. during her minority, or until further order.

4. *Show the grounds for the belief that a clandestine marriage is in contemplation; and with whom; and, if so, that the intended wife, or husband, is not a fit person.*

Your petitioner therefore humbly prays, that the said X. Y. and C. D. (*intended husband and wife*) may be restrained from intermarrying; and from having any interview, intercourse, or communication with each other, in any manner whatsoever.

Or that this Honourable Court (*Conclude as in No.* 387, *ante.*)

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff [*or as may be*], that A. B., of (*Residence and addition*), may be committed to prison for a contempt of this Honourable Court in having married the infant defendant E. F. without the leave of the said Court.

790. Notice of motion to commit husband, for marrying ward without consent

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(*Formal parts: see ante, No.* 384.)

on the part of A. B., the guardian of the above named infant C. D. [*or as may be*], that an inquiry may be made whether the said infant C. D. has contracted a valid marriage with F. G., of (*Residence and addition*), and under what circumstances; and in case a valid marriage has been contracted, that a proper settlement of the fortune of the said infant may be approved by the Court.

791. Notice of motion for inquiry as to validity of marriage of ward.

(*Proceed as in No.* 789, *ante, to end of par.* 3.)

4. *Show grounds for the belief that a marriage has taken place; with whom, when, and where; and by whose connivance.*

792. Petition for the like.

Your petitioner therefore humbly prays, that an inquiry may be made whether the said infant C. D. has contracted a valid marriage with the said F. G., and under (*Continue as in last Form, to the end.*)

Or that this Honourable Court (*Continue as in No.* 387, *ante, to the end.*)

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793. Petition for leave for a ward of Court to marry.

In Chancery.

(*Title of the cause or matter in which the infant is a ward of Court.*)

To the Honourable (*see ante, No.* 388.)

The humble petition of the above named infant E. F., by G. H., of (*Residence and addition*), her testamentary guardian [*or as may be*],

Showeth as follows:

1—3. *Show how the infant has become a ward of Court—the infant's age—and the appointment of a guardian, if any: as in No.* 789.

4. *Show, concisely, the state of the infant's fortune; and how invested.*

5. J. K., of (*Residence and addition*), has made proposals of marriage to your petitioner: which proposals she has, with the sanction and approval of her said guardian G. H., accepted, subject to the approbation of this Honourable Court.

6. *State, shortly, the age, rank, position in life, and fortune of the proposed husband.*

Your petitioner therefore humbly prays, that an inquiry may be made whether the said proposed marriage is a fit and proper marriage for your petitioner; and if so, that your petitioner and the said J. K. may be at liberty to lay proposals before the Judge in Chambers for a settlement on such marriage; and that a proper settlement of the property of your petitioner may be approved, and be executed by all necessary parties; and that, upon the due execution thereof, your petitioner and the said J. K. may be at liberty to intermarry.

Add direction as to taxation and payment of costs.

Or that this Honourable Court (*Continue as in No.* 387, *ante, to the end.*)

(*Formal parts: see ante, No.* 384.)

on the part of the above named infant E. F., by G. H., her testamentary guardian [*or as may be*]:

794. Notice of motion for leave for a ward of Court to marry.

1. That the applicant may be at liberty to accept proposals of marriage made to her by J. K., of (*Residence and addition.*)

2. That a proper settlement prior to such marriage may be settled and approved by the Judge.

3. That, upon the execution of such settlement by all necessary parties, the applicant and the said J. K. may be at liberty to intermarry.

4. *Add direction as to taxation and payment of costs.*

In Chancery.

(*Short Title.*)

795. Proposals for a settlement.

The proposals of the infant E. F., and of J. K., for a settlement to be executed on their marriage.

The property of the said E. F. consists of (*State what*).

The property proposed to be settled by the said J. K. consists of (*State what.*)

The trustees proposed on behalf of the said E. F. are,

A. B., of (*Residence and addition*); and C. D., of, *&c.*

The trustees proposed on behalf of the said J. K. are,

B. C., of, *&c.*, and X. Y., of, *&c.*

It is proposed to vest the whole of the fortune of the said E. F. in the said four trustees, upon the following trusts (*State the same shortly; as thus:*

Upon trust for the said E. F. till the marriage; and after the marriage,

Upon trust to pay the income to the said E. F., for her separate use, but without power of anticipation, during the joint lives of the said E. F. and J. K.; and after the decease of either, to pay the income to the survivor for life.

After the death of the survivor, the corpus to be held in trust for the children or remoter issue of the marriage, as the said E. F. and J. K. shall jointly by deed, and, in default, as the survivor shall by deed or will, appoint; and subject to any such appointment, in trust for the children of the marriage equally: to vest in sons at twenty-one, and in daughters at twenty-one or marriage.

In default of issue, the corpus to be held in trust for the said E. F., if she survives the said J. K.; and if not, then in trust for her testamentary appointees, or statutory next of kin, as if she had never been married.)

Power to be reserved to the said E. F., if she survives the said J. K., to make a settlement, out of her fortune, on a subsequent marriage: to the extent of one-half, if but one child of the present marriage; and of one-third, if two or more such children. The settlement to contain an agreement to settle any other or future property of the said E. F., amounting, at any one time at the time of the acquisition thereof in possession, to $——, except plate, jewels and similar articles: which excepted articles are to be held for her separate use.

Set out, in like manner, the proposed trusts of the property to be settled by the husband.

The settlement also to contain all such provisions as to maintenance, advancement, hotchpot, investment and transposition, appointment of new trustees and reimbursement, as the Judge may approve.

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796. Order approving marriage of ward, and settling fund, without deed.

(*Formal parts: see ante, No.* 338.)

And this Court being of opinion that the proposed marriage between the said A. B. and the said infant C. D. is a fit and proper marriage for the said infant; and it appearing that the property to which the said infant is entitled consists of $——, standing in the name of the Accountant-General, to the credit of this cause; and the Court having approved the settlement hereinafter contained, as a proper settlement to be made of the said property upon or in contemplation of the said marriage, doth sanction and approve the same; and doth order that the costs of the infant of this application and incident thereto be taxed between solicitor and client; and that, upon the production of a certificate of the solemnization of the said marriage, so much of the said $—— as will raise the said costs and $200 be sold; and that out of the money to arise from such sale, the said costs be paid to Mr. E. F., the applicant's solicitor, and the said $200 be paid to G. H., the guardian of the said infant, for the outfit of the said infant: he undertaking duly to apply the same; and that the residue of the said $—— be carried over in trust in this cause, "The account of the settlement of C., the wife of A. B., and her children;" and be thenceforth held upon the following trusts; namely: upon trust for the said C. D. for her life, and, during any coverture, for her separate use without power of anticipation. And after her decease, in case the said A. B. shall survive her, upon trust for him for his life. And after the decease of

the survivor of them, upon trust for all, or any one or more, exclusively of the other or others, of the children of the said C. D., by her said intended or any future marriage, as she shall, by deed or will, appoint; and in default of such appointment, and in so far as no such appointment shall extend, in trust for all the children, or the child, of the said intended marriage, who being sons or a son shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age, or marry under that age; and if more than one, in equal shares. And in case there shall be no such child who, being a son, shall attain the said age, or, being a daughter, shall attain that age or be married, then, in case the said C. D. shall die under coverture, in trust for such person or persons as she shall by her last will appoint; and in default of such appointment, in trust for the next of kin of the said C. D., according to the Statutes for the Distribution of the Estates of Intestates, as if she had never been married; but in case she shall survive her present or any future husband, then in trust for the said C. D., her executors, administrators and assigns. And any of the said children who shall take appointed shares shall bring such appointed shares into hotchpot, with their brothers and sisters, taking in default of appointment. And it is ordered that, after the said intended marriage, the interest to accrue on the sums of annuities to be carried over as aforesaid be from time to time, as the same shall accrue, paid to the said C. D., on her separate receipt, during her life, or until further order. (*a*)

SECTION VI.—*Petitions by Trustees to pay Trust Fund into Court.*

In Chancery.

797. Petition by trustees for leave to pay trust fund into Court.

In the matter of the trusts of [the last will and testament and codicil thereto of A. W., deceased], and in the matter of the Imperial Act passed 10th and 11th Victoria, chapter 96, intituled "An Act for better securing trust funds, and for the relief of trustees" —*Add when applicable:* and of the Imperial Act 12th and 13th Victoria, chapter 74, intituled "An Act for the further relief of trustees," and the Consolidated Statutes of Ontario, formerly Upper Canada, chapter 12 (*b*).

(*a*) Where the trust fund is to be vested in trustees, the order would direct the payment out of the fund to the trustees upon the celebration of the marriage.

(*b*) It is customary in England to refer to the Acts under which applications are made to the Court under its statutory jurisdiction, in the heading of the proceedings as above, but in this country, where the whole jurisdiction of the Court is statutory, it would seem

To the Honourable the Judges of the Court of Chancery.

The humble petition of E. H. of, &c., gentleman, and the Reverend W. D., of the same place, Clerk in Holy Orders, Showeth as follows:

1. That A. W., late of the City of Toronto, in the County of York, and Province of Ontario, widow, deceased, duly made and published her last will and testament, bearing date the —— day of ——, 18—, and on the —— day of ——, 18—, duly made and published a codicil to the said will, and by the said will and codicil thereto appointed your petitioners executors thereof, which said will and codicil were on the —— day of ——, 18—, duly proved in the Surrogate Court of ———, and letters probate thereof granted to your petitioners.

2. That by the said will the said testatrix gave and bequeathed to (*Recite material part of will relating to the trust fund in question; as thus:*) M. D., amongst others, a legacy of $450, and by her said codicil she gave and bequeathed to N. C. a legacy of $500.

3. The said A. W. departed this life on the —— day of ——, 18—, without having in any way revoked the said will or codicil.

4. (*Set out reason for claiming benefit of the Act; as thus:*) The said M. D. and N. C. are both infants under the age of twenty-one years, the said M. D. being now of the age of —— years, and the said N. C. of the age of —— years.

5. Your petitioners submit to answer all enquiries and to obey all orders which may be made by this Honourable Court in respect of the said two several sums of money.

Your petitioners pray as follows:

1. That they may be allowed to pay the said two several sums of money into this Honourable Court, in this matter, to the credit of the said M. D. and N. C. respectively, and that upon such payment your petitioners and the estate of the late A. W. may be released and discharged from all liability in respect thereof.

2. That your petitioners may have such further and other relief as to this Honourable Court may seem meet.

And your petitioners will ever pray, &c.

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to be an unnecessary although a convenient practice. In England no order is necessary to authorize the trustee to pay a trust fund into Court; *Re* Bigg, 11 Beav. 27.—In this country, however, it has been customary to apply on petition in Chambers for an order. A trustee paying a trust fund into Court without any sufficient reason may have to pay the costs occasioned by his so doing.

(*Formal parts: see ante, No.* 300.)

798. Affidavit in support.

1. I am one of the executors named in the last will and testament of A. W., late of ———, widow, deceased.

2. The exhibit now shown to me and marked A. is the probate of the last will and testament and codicil thereto of the said A. W., deceased.

3. M. D. and N. C., two of the legatees named in the said will, are now infants under the age of twenty-one years, and of the age of —— years and —— years respectively.

Sworn, &c.

(*Formal parts: see ante, No.* 339.)

799. Order on application.

1. It is ordered that the petitioners E. H. and the Reverend W. D. be at liberty to pay into Court in this matter, to the credit of M. D., of ———, spinster, $——, and to the credit of N. C., of ———, spinster, $——, subject to further order; and upon such payment the said petitioners and the estate of the said A. W. be discharged in respect of the said sums.

2. And it is further ordered that when the said sums shall be paid into Court as aforesaid, a sufficient portion of the unappropriated Dominion Stock now standing in the name of the Accountant of this Court be appropriated at current rates as an investment of the said moneys, and that the dividends accruing on such investments be in like manner from time to time invested until the said M. D. and N. C. shall become entitled to be paid the said sums, or until this Court shall make other order concerning the same.

3. And it is further ordered that a copy of this order be forthwith served on the said M. D. and N. C.

Section VII.—*Petitions by Trustees for Advice under 29 Vic., c. 28, s. 31.*

In Chancery.

800. Petition by trustee for advice under 29 Vic., cap. 28, s. 31.

In the matter of an Act of the 29th Victoriæ, c. 28, s. 31, intituled "An Act to amend the law of property and trusts in Upper Canada,

and

In the matter of the trusts of the will of A. P.

To the Honourable the Judges of the Court of Chancery.

The petition of G. T., of the City of Hamilton, Esquire, Showeth as follows:

1. On the 11th October, 1860, A. P., widow of G. P.,

late of the City of Hamilton, merchant, then residing in the City of Hamilton, made a will purporting to be her last will and testament, duly executed so as to pass real estates, whereby she gave and devised all the lands and tenements, hereditaments, and real estate situate in the Province of Canada, of or to which she should at her death be seised or entitled, or of which she should at her death have power to dispose by will unto and to the use of the petitioner G. T., his heirs and assigns. The said A. P. also thereby gave and bequeathed all the moneys, securities for money, goods, chattels, credits, and personal estate, situate or being within the said Province, of or to which she should at her death be possessed or entitled, or of which she should at her death have power to dispose by will unto the said petitioner, his executors and administrators, and both the said devise of real estate and bequest of personal estate were upon the trusts, and with, under, and subject to the powers, provisoes, and declarations therein contained of and concerning the same.

2. By her said will the testatrix gave to her son Charles E. P. an annuity or yearly sum of £200 sterling during his life, to be paid by equal half-yearly payments to Dr. O., of Edinburgh, for the maintenance and support of his said son; but out of that sum, £20 sterling a year was to be paid by the said R. O. to her faithful servant and friend M. T. so long as she should remain with her son, and it was her fervent hope and desire that she should remain with him so long as they both should live. The testatrix also gave to her father, S. T., the sum of £500 sterling, and to her sister, M. O., wife of the said Dr. O., the sum of £500 sterling, and to her executor, G. T., the now petitioner, the sum of £500 sterling, and to the British and Foreign Bible Society the sum of £500 sterling, and the testatrix directed that the above mentioned annuity and legacies should be paid by your petitioner out of her real and personal estate in Canada.

3. The testatrix by her said will gave to your petitioner power to sell the said real estate, and to collect and get in the said personal estate; and, after payment of the annuity and legacies aforesaid, declared that your petitioner should invest the same in the manner therein specified, and pay over yearly unto her daughter A., the wife of J. A. C., of the City of N. Y., for her sole and separate use, independently of her husband, and free from his debts, control, and engagements, the whole residue of the yearly rents, profits, interest, and income of the said trust estate, and after her death in trust as to the whole

of the residue of her real and personal estate in Canada for the child or children of her said daughter A., then living, and their heirs, and the issue of such as should be dead, and their, his or her heirs, in equal shares, as tenants in common; and in default of child or children of her said daughter A., in trust to pay to her said husband £500 sterling; and as to the residue of the trust estate in trust for her late husband's nephews and niece, C. P., S. P., A. P., and M. P., all of L., the children of C. S. P., of L., merchant, and their heirs, in equal shares, as tenants in common.

4. The testatrix by her said will made devises and bequests of her real and personal estate in England and Scotland, and appointed your petitioner and R. O. and C. P. her executors, and stating her will and desire that your petitioner, his executors, administrators, and assigns, should have the sole management and superintendence of all her affairs, property and business in Canada, and should prove that will there, and that the other executors should act in the execution of her will in Scotland and England.

5. On the 24th July, 1861, the said testatrix made a codicil to her said will, duly executed so as to pass real estates, whereby, among other things, she revoked the bequest of the said annuity to her son, C. E. P., but so as not to affect the bequest of the yearly sum of £20 to M. T., which she thereby charged on her real and personal estate in Canada, and directed to be remitted by your petitioner to Dr. O., to be by him paid to the said M. T., and she thereby directed that the bequest to the British and Foreign Bible Society should not be paid till after the death of her daughter A., and then only in the event of her dying without issue at the time of her death; but in the event of her leaving issue, then that the amount of the said legacy should go to the issue, together with the provision otherwise made for such issue by her will.

6. On the 19th February, 1872, the said testatrix, then residing at Fairlie, in Ayrshire, in Scotland, signed a testamentary paper, but not in the presence of witnesses, nor attested in any manner, whereby, so far as her property in Canada is concerned, she purported to make the following disposition:—"To my husband's nephews, S. S. P. and A. P., any property in shares, money or lands I may possess in Canada at the time of my death, after paying £500 to my beloved friends, G. and M. T., of Hamilton, Ontario, Canada." And she thereby requested S. and A. to be her trustees, believing that they

would carry out her wishes, and below the signature to the said paper she wrote, "I annul my former will, now lying in Hamilton, Ontario, Canada, in the hand of G. T., Esq. My agent in Hamilton, who had my affairs in charge, is J. S., Esq., Hamilton, Ontario, Canada."

7. The said testatrix died on the 10th January, 1873; and probate of the said last mentioned testamentary paper was, on the 23rd September, 1873, granted by the Surrogate Court of the County of Wentworth to S. S. P. and A. P., of the City of L., in England, merchants.

8. The testatrix's son C. E. P., her father Dr. T. P., her daughter A. C., her only grandchild, daughter of said A. C., and her son-in-law J. A. C., all predeceased the testatrix.

9. Your petitioner is advised that the testamentary paper, signed at Fairlie, is effectual as a will of personal property, but is not effectual as a revocation of the will devising the real estate; and the devise of the real estate being upon trust for sale, and thus operating a conversion into personalty, your petitioner is in doubt as to the proper course for him to pursue, and he requests to be advised if his proper course is or is not:

1. To sell the real estate in Canada, and pay the charges made thereon by the said will and codicil, so far as the same yet subsist, and divide the residue in the manner pointed out by the will devising the real estate.

2. Or to sell the real estate in Canada and pay over the proceeds to the executors under the said testamentary testament, to be by them applied as directed therein by the testatrix.

Certificate of Counsel.

In my opinion the case above stated is a proper one for the advice of a Judge of the Court of Chancery, under the Act to amend the law of Property and Trusts in Upper Canada.

W. P.

SECTION VIII.—*Proceedings relating to Lunatics.*

801. Petition to declare a person a lunatic. (*a*)

In Chancery.

In the matter of A. B., a supposed lunatic.

To the Honourable the Judges of the Court of Chancery.

The humble petition of C. B., of, &c., and R. D., of, &c., Showeth:

1. That A. B., formerly of, &c., but now of, &c., now is

(*a*) A petition for a declaration of lunacy must be presented to a Judge in Chambers. See *Ord.* 560.

and hath for eleven years past been so deprived of his reason and understanding, that he is rendered altogether unfit and unable to govern himself or to manage his affairs, as by the affidavits filed in support of this petition appears.

2. That the said A. B. is entitled to the following lands and premises in fee simple, viz. (*describe lands*), which are of the value of $——, and which have been and now are rented for an aggregate annual rental of $—— [*Or*, the said lands are wholly unproductive] (*or as may be*), and he is also possessed of personal estate consisting of (*shortly describe it*), which is of the aggregate value of $——, and from which an annual income of $—— is derived (*or as may be.*)

3. The said A. B. is now of the age of —— years, and has never been married.

4. From the —— day of —— until the —— day of ——, the said A. B. resided with and under the care of ——, but on or about the said last mentioned day he was removed to the Provincial Lunatic Asylum at Toronto, where he has ever since continued to reside, and now is residing.

5. Your petitioner C. B. is a brother of the said A. B., and your petitioner R.D. is a son of W. D., formerly W. B., now deceased, who was a sister of the said A. B., and the said A. B. hath no other relatives resident in this Province.

6. Your petitioners submit that it is necessary and for the interest of the said A. B. that some fit and proper person should be appointed committee of the person and estate of the said A. B.

Your petitioners therefore pray:

1. That a commission may issue out of and under the seal of this Honourable Court to enquire as to the alleged lunacy of the said A. B., or that the said A. B. may be declared to be a lunatic.

2. That some fit and proper person may be appointed committee of the person and estate of the said A. B.

3. That your petitioners may be paid their costs of this matter out of the estate of the said A. B.

4. That all proper directions may be given, and that your petitioners may have such further and other relief as may seem just.

And your petitioners will ever pray, &c.

802. Petition by Creditors to declare a person a lunatic, and for appointment of Committee.

(*Formal parts: see ante, No.* 801.)

1. That the said A. B. (*the supposed lunatic*), for several years last past carried on the business of a merchant in the Town of ———.

2. In the course of his dealings he became indebted unto your petitioner C. D. in the sum of $——, and to your petitioner E. F. in the sum of $——.

3. The said A. B. hath of late become so deranged in his mind as to be totally incapable of managing his affairs, as by the affidavits filed in support of this petition appears; and his friends, to insure his safety as well as that of others, have been under the necessity of putting him in a place of confinement, and have incurred considerable expenses in having proper care taken of his person, and as far as in them lies of his property.

4. That the affairs and concerns of the said A. B. must necessarily be entirely ruined, and all his adventures and engagements rendered unproductive of any benefit to himself or your petitioners, or others his creditors, unless some person or persons properly qualified be legally appointed to manage and conduct and superintend them.

5. That the family and relations of the said A. B. live in England, and none of them live or reside in the Province of Ontario.

6. That some of the creditors of the said A. B., since his lunacy, have commenced legal proceedings against the said A. B., and are endeavouring to obtain priority in payment of their debts.

1. Your petitioners, therefore, as well on behalf of themselves as of others the creditors of the said A. B., pray that the said A. B. may be declared to be a lunatic.

2. That some fit and proper person may be appointed committee of the person and estate of the said A. B.

3. That the claims of your petitioners and of the other creditors of the said A. B. may be ascertained, and that proper provision may be made for payment of the same out of the estate of the said A. B.

4. That your petitioners may be paid their costs of this matter out of the estate of the said A. B.

5. That all proper directions may be given, and that your petitioners may have such further and other relief as may seem just.

And your petitioners will ever pray, &c.

In Chancery.

In the matter of A. B., a supposed lunatic.

803. Affidavit in support of petition for declaration of lunacy.

I, C. D., of the City of ———, doctor of medicine, physician to the Provincial Lunatic Asylum at Toronto, make oath and say:

1. That I have since the year 18— been in the habit of attending on the above-named A. B., formerly of ———, who has been ever since the said year and now is a patient residing in the Provincial Lunatic Asylum.

2. That I have always considered him a person of weak intellect and erroneous judgment, incapable of conducting his own affairs, and if at liberty, liable to offend public decorum.

3. That the said A. B. hath a high opinion of himself as an author, and sets great value upon two manuscripts of his, one of which is a life of the Reverend J. W., transcribed by himself from the printed work; the other, which he calls an original work, on things natural and spiritual, consists also of a considerable number of detached sentences transcribed from books which have accidentally fallen in his way.

4. That he asserts, &c. (*Set out specifically other instances of mental aberration.*)

5. That he hath likewise many other aberrations of intellect, which are somewhat difficult to describe, but are sufficiently marked in his conduct, and which leave no doubt in my mind that the said A. B. is a lunatic, and wholly unfit for the government of himself and his affairs.

6. That I saw the said A. B. at the said Lunatic Asylum on the —— day of —— instant, and found that he was still subject to the mental hallucinations which I have hereinbefore described, and I am of opinion that his lunacy is incurable.

Sworn, &c.

(*Formal parts: see ante, No.* 803.)

804. Another form.

I, E. F., of, &c., doctor of medicine, make oath and say:

1. On the —— day of —— instant, I did, at the request of, &c., visit the above named A. B., at the house of ———, situate, &c., for the purpose of ascertaining the state of mind of the said A. B.

2. That I then and there examined the said A. B., and from my examination I am decidedly of opinion that the said A. B. is of unsound mind, and wholly incapable of

the management of himself or his affairs, or of the care of property.

3. I further say that I formed such opinion as well from (*here give specific instances of mental aberration, e. g.*) the said A. B.'s extreme defect of memory and understanding evident to me, and his want of all power of continued attention, as also from the said A. B.'s eagerly addressing himself to all appearance in whispers to some painted figures and portraits hung in the room, and that the said A. B.'s manner in so doing was, in my judgment, very different from mere eccentricity of character, and altogether inconsistent with rationality or soundness of understanding.

Sworn, &c.

---

805. Another form.

(*Formal parts: see ante, No.* 803.)

1. I have for twelve years last past been well acquainted and in habits of intimacy with the above named A. B., and during that period have been his medical attendant, and have often attended him in that capacity.

2. I lately observed that although the general bodily health of the said A. B. continues good, yet that his mental faculties are very obviously impaired, and that such mental imbecility has more particularly increased during the last ten weeks, as is apparent from the incoherency of his common conversation, and his signing any instrument presented to him relating to his property and affairs.

3. The said A. B. is of —— years of age, or thereabout, and I am satisfied that he will not recover his former mental faculties, and he is now entirely incapacitated, by reason of his mental imbecility, for taking care of himself or his property.

Sworn, &c.

---

806. Another form.

(*Formal parts: see ante, No.* 803.)

1. The said A. B. is in so imbecile a state of mind as to be totally inattentive to the natural evacuations from his body, and is entirely incapable of assisting himself in those respects, or in dressing himself, or being useful to himself in any way whatever.

2. He conceives and declares poison to be mixed with all his food and medicine, which he therefore constantly refuses to take; and he is constantly talking in appearance to himself or to some invisible being, and often gives

orders aloud, as if commanding an army or a fleet, in a way and utterance unconnected and unintelligible.

3. I further say that, from these circumstances, and from the said A. B.'s want of power to confine or give his attention to any rational subject, and his whole demeanour generally, I am convinced that the said A. B. is and has been, during the last eighteen months, during all which time I have been in the habit of seeing and conversing with him constantly, of unsound mind and understanding, and altogether unfit for and incapable of the management of himself and his estate and affairs.

Sworn, &c.

(*Formal parts: see ante, No.* 803.)

807. Affidavit by relative residing with lunatic, as to his lunacy, and as to his property, &c.

1. That the above named A. B., is the only brother of my late mother, M. C., deceased, who was his only sister.

2. That the said A. B., is a bachelor, and I and my sisters B. C. and M. C., spinsters, are the only children of the said M. C., and the only next of kin of the said A. B., both the father and mother of the said A. B. have been dead many years past.

3. I have for several years past been acquainted and conversant with the whole of the estates and property of my uncle the said A. B., and in the Schedule to this my affidavit, I have set forth an account thereof, and of the persons who occupy the same, the rents whereof according to my computation, which I believe to be correct, amount in the whole to the annual sum of $—— subject to deductions for taxes.

4. I further say that the said A. B. is also entitled to (*here specify the personal property shortly*) which is I believe of the aggregate value of $——, and from which an annual income of $—— is derived.

5. I have resided with my uncle the said A. B., for the last nine months, and I have lately applied to the tenants of his real estates for payment of their rents, but they have refused alleging that by reason of the state of mind of the said A. B., they cannot be compelled to pay their rents to any person, nor can they be turned out of possession of the property.

6. I am unable to maintain the said A. B. without being paid some portion of the annual income due and owing to the said A. B.

7. I am willing to act as the committee of the person and estate of the said A. B. in case this Honourable Court shall see fit to appoint me.

808. Affidavit of fitness of proposed committee, (a)

(*Formal parts: see ante, No.* 803.)

1. I am well acquainted with C. B. of &c., ———, and have been so for —— years past.

2. The said C. B. is a person of good character and of steady, sober and industrious habits, and bears the character of being and is in fact as I verily believe, an upright honourable man.

3. The said C. B. is shrewd and capable in the transaction of business, and I believe he is in every way a fit and proper person to have the care and management of the person and property of the above named A. B.

4. The said C. B. is accustomed to the management of a farm and I believe if the management of the said A. B.'s farm is committed to him he will work it to the best advantage for the said A. B.

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809. Consent of proposed committee.

In Chancery.

In the matter of A. B. a supposed lunatic.

I, C. B. of &c., ——— am willing and do hereby consent to act as the committee of the person and estate [*or as may be*] of the above named A. B., if this Honourable Court shall see fit to appoint me.

Dated, *&c.*

(Signature.)

Witness.

To be verified by affidavit.

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810. Certificate of judge to be indorsed on petition.

I declare the within named A. B. to be a lunatic.

Dated, *&c.*

S. H. S.
V. C.

---

811. Order declaring lunacy and appointing committee.

In Chancery.
In Chambers.
V. C. B——

(*Date.*)

In the matter of A. B. a lunatic.

Upon the humble petition of C. D. of &c., ——— presented unto the presiding Judge in Chambers this day, and upon hearing read the said petition and the affidavits of, &c., and upon hearing what was alleged by the solicitor for the said petitioner.

(a) Affidavits of this kind should be framed with regard to the duties the proposed committee will be called on to perform, and as far as practicable should be made by persons of known standing and respectability.

1. This Court doth declare that the said A. B. is a lunatic.

2. And it is ordered [that C. D. of &c., ——— be and he is hereby appointed committee of the person [and estate] of the said A. B., he first giving security to the satisfaction of the Referee in Chambers (*or* Master of this Court at ———) in the sum of $——, before he shall in anywise intermeddle with the estate of the said lunatic, *Or*, that it be referred to the Master of this Court at ———, to appoint some fit and proper person or persons, committee of the person [and estate] of the said A. B., such committee first giving security, &c., *as above*].

3. And it is further ordered that the said committee [when appointed] do once in each year or oftener if required, make a just and true account before the said Master, of all and singular the rents, issues, and profits of the real estate, if any, of the said lunatic, and also of the personal estate and the profits thereof as are now, or shall hereafter come to his hands, custody or possession, or which he may receive out of the said estate, and do also, from time to time, pay into Court to the credit of this matter, subject to further order, the balances which may be found to be in his hands upon the footing of such accounts.

4. And it is further ordered that the costs of the said petitioner in this matter be taxed between solicitor and client, and paid out of the estate of the said lunatic.

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812. Bond by Committee of Estate of Lunatic.

KNOW ALL MEN BY THESE PRESENTS, that we, C. B., of, &c., E. F., of, &c., and G. H., of, &c., are jointly and severally held and firmly bound unto (A. G., of, &c., the Registrar), of the Court of Chancery, his executors, administrators and assigns in the penal sum of $—— (*double the amount of the personal estate and of the annual rents and profits of the real estate*), to be paid to the said A. G., his executors, administrators or assigns, or his or their certain attorney or attorneys, for which payment well and truly to be made, we, and each of us by himself, do bind ourselves, our and each of our heirs, executors and administrators firmly by these presents, sealed with our seals and dated this —— day of, &c.

WHEREAS, by an order made by the Court of Chancery for the Province of Ontario, dated the —— day of, &c., and made "In the matter of A. B., a lunatic," it is declared that the said A. B. is a lunatic, and it is by the said order referred to the Master of the said Court at

———, to appoint some fit and proper person committee of the person and estate of the said A. B., upon such person giving security to the satisfaction of the said Master before he should intermeddle with the estate of the said A. B. (*Where the order declaring the lunacy also appoints the committee this recital must be varied accordingly.*) AND WHEREAS the said Master hath approved of the above bounden E. F. and G. H. as sureties for the said C. B., and hath also approved of the above written obligation, with the underwritten condition as a proper security to be entered into by the said C. B., E. F. and G. H., pursuant to the said order, and the Statute in that behalf, and in testimony thereof hath signed an allowance in the margin hereof.

NOW, THE CONDITION of the above-written obligation is such that if the above bounden C. B. do and shall once in each year, or oftener if thereunto required by the said Court, duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estate, and in respect of the personal estate of the said A. B., and do and shall truly pay the balances which shall from time to time be certified to be due from him at such times as may be directed, and do within six months after his appointment as such committee, file in the office of the (Registrar (*a*)) of the said Court for the time being a true inventory, verified by the oath of the said C. B., of the whole real and personal estate of the said lunatic, stating the income and profits thereof, and setting forth the debts, credits and effects of the said lunatic, as far as the same shall have come to the knowledge of the said C. B.; and in case any property of the said lunatic shall be discovered by the said C. B. after the filing of such inventory, if the said C. B. shall file in the office of the said (Registrar (*a*)), a true account of the same, verified by the oath of the said C. B., from time to time, as the same shall be discovered; and if the said C. B. shall be careful to see the houses, buildings and structures of the said lunatic to be well and sufficiently repaired, and so kept and maintained so long as he shall be committee of the said lunatic's estate, and shall carefully preserve and keep all the deeds, evidences and writings touching the real and personal estate of the said lunatic as now are or hereafter shall come to his hands, custody or possession [and shall provide for the person of the said lunatic and for his safety. (*b*)], and shall not alienate his

(*a*) See 39 Vic., c. 7, sec. 2, (O).
(*b*) Omit these words where the person appointed committee of the estate is not also committee of the person.

interest in the custody of the [person and (*a*)] estate of the said lunatic, and shall in all things observe and perform the orders and directions of the said Court touching or concerning the [person and (*a*)] estate of the said lunatic, and in all things demean himself as a careful and faithful committee of the [person and (*a*)] estate of the said lunatic, then the above obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Sealed, signed and delivered } in presence of }

Affidavits proving the due execution of the bond by the obligors, and affidavits of justification by the sureties must accompany. (*For Forms, see ante, Nos.* 331 *and* 401.)

CHAPTER XI.

SPECIAL CASE.

In Chancery.

In the matter of A. B., a person of unsound mind not so found [*Or*, an infant]; and of the Act 28th Victoria, chapter 17, intituled "An Act to amend the Consolidated Statute respecting the Court of Chancery."

813. Notice of motion to appoint special guardian of lunatic or infant.

(*Formal parts: see ante, No.* 384.)

on behalf of the above named lunatic A. B., that the said C. D., of (*residence and addition*), may be appointed the special guardian of the said A. B., for the purpose of concurring in his name, and on his behalf, in a special case proposed to be stated for the opinion of this Court, as to (*State object of the case; as thus:* the construction of the will of L. N. deceased): in which the said A. B. is interested.

In Chancery.

(*Title, as in No.* 813, *ante.*)

814. Affidavit in support of motion, in the case of a lunatic.

We, E. F., of (*Place of business*), gentleman, the solicitor in this matter for the above named A. B., and B. E., of (*&c., as in No.* 432), severally make oath and say:

And first I, the said E. F., for myself, say as follows:

1. The said A. B. is interested in the subject matter of a special case proposed to be stated for the opinion of this Honourable Court, under the provisions of the above

(*a*) Omit these words where the person appointed committee of the estate is not also committee of the person.

mentioned Act, as to the construction of the will of L. N., deceased [*or as may be*].

2. The said A. B. has not been found of unsound mind by inquisition, or other proceeding in lunacy [*or as may be*].

3. I know and am well acquainted with C. D., of (*residence and addition: as in the notice of motion*), the person proposed to be appointed the special guardian of the said A. B., for the purpose of concurring in his name, and on his behalf, in the said special case.

4. The said C. D. is (*State degree of relationship to, or connection with the family of, the lunatic: as thus:* the brother of the said A. B.); and has no interest in the subject matter of the said proposed special case adverse to the interest therein of the said A. B.; and in my judgment and belief the said C. D. is a fit and proper person to be appointed such guardian as aforesaid.

5. *Show means of knowledge.*

And I, the said B. E., for myself, say as follows:

6. I have been in actual practice (*Continue as in ante, No. 432, par. 5, to the end of that form*).

Sworn (*&c.: see ante, No. 303.*)

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815. Affidavit in support of motion, in the case of an infant.

In Chancery.

(*Title, as in No. 813, ante.*)

I, E. F., of (*Place of business*), gentleman, the solicitor in this matter for the above named A. B., make oath and say as follows:

1. The said A. B. is interested (*Continue as in No. 814, ante, to the end of par. 1.*)

2. 3. 4. (*Same as ante, No. 814, par. 3. 4. and 5.*)

Sworn (*&c.: see ante, No. 303.*)

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816. Formal parts of special case.

In Chancery.

Between (*Entitle the case as a cause between some or one of the parties interested, or claiming to be interested, as plaintiffs or plaintiff, and the others of them as defendants.*)

Special case stated for the opinion of the Court of Chancery for Upper Canada, pursuant to the Act 28th Victoria, chapter 17, entituled An Act (*&c.: see ante, No. 813.*)

1. } (*State concisely, in numbered paragraphs, such*
2. } *facts and documents as are necessary to enable the*
3. } *Court to decide the questions raised by the case.*)

The questions submitted for the opinion of the Court are:

1. Whether, *&c.*
2. Whether, *&c.*

A. B., counsel for the plaintiff s
C. D., counsel for the defendants.

NOTE.—This special case is filed by J. J., of ———, in the county of ——— [*or as may be: see ante, No.* 168], solicitor for the above named plaintiffs.

(*Formal parts: see ante, No.* 181.)

817. Notice of filing the case.

Take notice, that I have this day filed the special case in this cause.

In Chancery.

818. *Præcipe* for appearance.

A. } Enter an appearance for A. B., to special case [*Or*,
v. } amended special case] at the suit of B. A.
B. }

Dated this —— day of ——, 18—.

(*Name, &c., of solicitor or party entering the appearance*):

(*Formal parts: see ante, No.* 184.)

819. Notice of appearance.

Take notice, that I have this day entered an appearance for the defendant A. B. to the special case [*Or*, amended special case] herein.

(*Formal parts: see ante, No.* 384.)

820. Notice of motion to amend special case, by consent.

on behalf of the plaintiff, that he may be at liberty to amend the special case as he may be advised. And take notice (*&c., as in No.* 382.)

(*Short title.*)

821. *Præcipe* for amendment of a special case.

For amending special case.

C. D., plaintiff's solicitor [*Or*, agent.]

(*Short title.*)

822. *Præcipe* to set down special case for argument.

Set down the special case herein to be heard on the —— day of ——.

Dated, *&c.*

A. B.,
Plaintiff's Solicitor.

To the Clerk of Records and Writs.

(*See next Form.*)

823. Indorsement thereon.

All parties are *sui juris*.

C. D., *Plaintiff's Solicitor.*

———, 18—.

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824. Notice of motion to set down special case, where a disability.

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff, that he may be at liberty to set down for hearing the special case filed in this cause. And take notice (*&c., as in No.* 382.)

An affidavit in support accompanies.

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825. Notice of motion for deposit in Court of documents referred to in the case.

(*Formal parts: see ante, No.* 384.)

on the part of the plaintiff [*Or*, defendant], that the defendant [*Or*, plaintiff] may be ordered, within (seven) days after service, to produce and leave with the Clerk of Records and Writs the indenture dated the —— day of ——, 18—, [*or as may be*], admitted by the special case filed in this cause to be in his possession; and that the parties to this cause, their solicitors and agents, may be at liberty to inspect and peruse the said document, and take copies and abstracts thereof, and extracts therefrom, as they may be advised; and that the said document may be produced by the Clerk of Records and Writs upon the hearing of the said special case, as the parties to this cause, or either of them, may require. And take notice (*&c., as in No.* 382.)

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826. Notice that special case has been set down for hearing.

(*Formal parts: see ante, No.* 204.)

Take notice, that I have this day set down the special case in this cause for hearing at Osgoode Hall, on —— day next, the —— day of ——, 18—, at 10 o'clock in the forenoon, or as soon thereafter as the same can be heard; and take notice, that if you do not attend at the time and place above named, a decree may be made in your absence.

CHAPTER XII.

ARBITRATION.

In Chancery.

In the matter of the arbitration between A. B. and C. D. [*or as may be.*]

(*Formal parts: see ante, No.* 384.)

827. Notice of motion to make a submission to arbitration, by consent, an order of Court.

on behalf of the said A. B., that the submission to arbitration contained in (*Describe the document; as thus:* an indenture dated the —— day of ——, 18—, and made between the said A. B. of the one part, and C. D. of the other part), may be made an order of this Court. And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 300.)

828. Affidavit verifying signatures to the submission.

1. On the —— day of ——, 18—, I saw A. B. and C. D., the parties to the parchment [*Or*, paper] writing, dated the —— day of ——, 18—, now produced and shown to me, and marked F., and purporting to be a submission of certain matters to arbitration, duly sign, seal, and as their respective acts and deeds deliver [*Or, if not under seal, say:* duly sign] the said exhibited document.

2. The names or signatures "———" and "———" respectively set and subscribed to the said parchment [*Or*, paper] writing, are of the proper handwriting of the said A. B. and C. D., respectively.

3. The name or signature "——," set and subscribed to the attestation of the signatures of the said A. B. and C. D. endorsed on [*Or*, written under] the said parchment [*Or*, paper] writing, is of my proper handwriting.

(*Formal parts: see ante, Nos.* 827 *and* 384.)

829. Notice of motion to stay suit, after a reference agreed on.

on the part of defendant, that all proceedings in this suit may be stayed: the matters in difference therein between the parties thereto, having been agreed to be referred to arbitration. And take notice (*&c., as in No.* 382.)

(*Title: as in No.* 827, *ante.*)

830. Notice to concur in appointment of an arbitrator, or third arbitrator or umpire.

Take notice, that you are hereby required, on or before the —— day of ——, 18—, to concur with me in appointing an arbitrator [*Or*, umpire, or third arbitrator], to whom all matters in difference between us may be referred, in

pursuance of the submission between us dated the —— day of ——, 18—: to act in the place of E. F., deceased [*or as may be*]. Dated this —— day of ——, 18—.

A. B., of (*Residence and addition.*)

To C. D., of (*Residence and addition.*)

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831. Notice of motion for such appointment to be made, on default.

(*Formal parts: see ante, Nos.* 827 *and* 384.) that G. H., of (*Residence and addition*), may be appointed arbitrator [*Or*, umpire, or third arbitrator], to whom all matters in difference between the said A. B. and the above named C. D. may be referred, in pursuance of the submission between them dated the —— day of ——, 18—: the said G. H. to act in the place of E. F., deceased [*or as may be*]. And take notice (*&c., as in No.* 382.)

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832. Notice of motion to revoke appointment of sole arbitrator.

(*Formal parts: see ante, No.* 827 *and* 384.) on the part of the above named A. B., that the appointment by the above named C. D., of E. F. to act as sole arbitrator, to whom all matters in difference between the said A. B. and C. D. shall be referred, in pursuance of the submission between them dated the ——, 18—, may be revoked. And that the said matters in difference may be referred to the said E. F., jointly with G. H., of (*Residence and addition*), as the arbitrators of the said A. B. and C. D., respectively. And take notice (*&c., as in No.* 382.)

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833. Notice of motion to refer matters in difference in a cause to arbitration, by consent.

(*Formal parts: see ante, Nos.* 827 *and* 384.) on the part of the plaintiff [*or as may be*], that, by consent, all matters in difference between the parties to this cause may be referred to the arbitrament and final determination of S. Y., of, *&c.*, on the terms following; namely:

1. The said arbitrator is to make his award in writing, on or before, *&c.*; or within such further time as he shall appoint.
2. All deeds, books and papers in the custody or power of any of the parties, relating to the matters in question, are to be produced before the said arbitrator, as he shall direct: to be ascertained by the oaths of the respective parties producing the same.
3. The parties and their witnesses: being first sworn: are to be examined, as the said arbitrator shall direct.

4. The costs of this cause, and of this application, and of the reference hereby directed, are to be in the discretion of the said arbitrator.
5. No bill is to be filed, or any action or other proceeding brought or taken, by any of the parties hereto, against the said arbitrator, for any matter or thing he shall do in or about, or touching any of the matters hereby referred to him.
6. The said arbitrator is to have power from time to time to enlarge the time for making his award: as he shall think fit.
7. Either of the parties hereto is to be at liberty to make such award an order of this Court.

Liberty to apply

(*Formal parts: see ante, Nos.* 827 *and* 384.)

834. Notice of motion to enlarge time for making award in a cause.

on the part of the plaintiff [*or as may be*], that the time limited by the order dated the ——, 18—, for R. B., therein named, to make and publish his award in this cause, may be enlarged until the ——, 18—. And take notice (*&c., as in No.* 382.)

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835. Formal parts of an award.

To all to whom these presents shall come: I, E. F., of (*Residence and addition*), send greeting:

Whereas (*Recite the agreement or submission, or so much of its terms as may be essential to show the authority of the arbitrator, or umpire, with respect to the subject matter of reference, and the time, power of enlargement, and manner of making the award. Recite the enlargements, if any; and then proceed thus:*)

Now know ye, that I the said E. F., having taken upon myself the burthen of the said arbitration, and having heard and duly considered all the allegations and evidence of the said respective parties of and concerning the said matters in difference, and so referred as aforesaid, do make and publish this my award in writing of and concerning the said matters so referred to me; and do hereby award (*&c.: Conclude with a distinct statement of the arbitrator's decision on all the points referred to him*). In witness thereof I have hereunto set my hand (*If so:* and seal) this —— day of ——, 18—. E. F.

Witness to the signature of the said E. F.
[*Or*, signed, sealed and delivered by the said E. F. in the presence of]:
G. H., of (*Residence and addition*).

836. Affidavit of publication of an award.

(*Formal parts: see ante, No.* 300.)

1. On the —— day of ——, 18—, I saw E. F., of (*Residence and addition*), sign and publish [*Or*, sign, seal and publish] his award in this matter, dated the —— day of ——, 18—, and now produced and shown to me, and marked G.

2. The name or signature "——," set and subscribed to the said award as the party executing the same, is of the proper handwriting of the said E. F.

3. The name and signature "——," set and subscribed to the attestation, written at the foot of the said award, of the execution thereof by the said E. F., is of my proper handwriting.

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837. Notice of motion to make award an order of Court.

(*Formal parts: see ante, Nos.* 384 *and* 827.)

on the part of the plaintiff [*or as may be*], that the award dated the ——, 18—, of E. F., the arbitator in this cause, may be made an order of this Honourable Court. And take notice that on such motion (*&c., as in No.* 382.)

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838. Notice of motion to set down for hearing a special case stated by an arbitrator.

(*Formal parts: see ante, Nos.* 384 *and* 827.)

on the part of the plaintiff [*or as may be*], that the award dated the ——, 18—, of E. F., the arbitrator in this cause [*Or*, matter], may be set down for hearing as a special case, upon the questions thereby submitted for the determination of this honourable Court. And take notice (*&c., as in No.* 382.)

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839. Notice of motion to set aside an award.

(*Formal parts: see ante, Nos.* 382 *and* 827.)

on the part of the plaintiff [*or as may be*], that the award dated the ——, 18—, of E. F., the arbitrator in this cause [*Or*, matter], may be set aside on the following grounds; namely (*State them; as thus:* (1) For that the said arbitrator has not arbitrated upon matters which were referred to him; (2) For that the said award is uncertain, and not final as to the matters arbitrated upon, or referred to in the said award). And take notice (*&c., as in No.* 382.)

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840. Notice of motion to remit matters to reconsideration of arbitrator.

(*Formal parts: see ante, Nos.* 382 *and* 827.)

on the part of the said R. W., that the time limited by the submission to arbitration in this matter, for making the award in pursuance thereof, may be enlarged to the ——, 18—; and that the matters be remitted to the arbitrator,

to supply an accidental omission in one part of his award of the words "taken in due form of law as aforesaid and," and of the word "satisfy"; and for a direction therein that if one of the parties to the said reference should pay the whole of the fees and compensation of the third arbitrator, the other party should repay him a moiety thereof; and also for the re-execution of the said award. And take notice (*&c., as in No.* 382.)

CHAPTER XIII.

PROCEEDINGS UNDER STATUTE 6 ANNE, C. 18, AND UNDER TRUSTEE ACT, 1850.

SECTION I.—*Proceedings for Production of Cestui Que Vie* (*a*).

841. Notice of motion for production of *cestui que vie* (*b*).

In Chancery.

In the matter of an indenture of lease dated ——, 18, made between A. B. of the one part, and C. D. of the other part (*or as may be*).

And in the matter of the Act 6th Anne, chapter 18, intituled "An Act for the more effectual discovery of the death of persons pretended to be alive, to the prejudice of those who claim estates after their deaths."

(*Formal parts: see ante, No.* 382.)

on behalf of A. B., of (*Residence and addition*), that C. D., of, &c., may be ordered, on the ——, 18—, to produce and show at ——, in the county of F.: between the hours of eleven in the forenoon, and one in the afternoon (*or as may be*): according to the provisions of the above Act: to the said A. B. (*Or*, to G. H., of, *&c.*, the agent of the said A. B.), L. M., N. O., and P. Q., in the above-mentioned indenture dated, *&c.*, respectively described, or some or one of them. And take notice (*&c., as in No.* 382.)

(*Formal parts: see ante, No.* 300.)

842. Affidavit in support.

1. *Show the creation of the life estate; as thus:* By an indenture dated the —— day of ——, 18—, and made between A. B. of the one part, and C. D. of the other

(*a*) 6 Anne, c. 18. As to this Act, see Dan. Pr. clxxxii., 1843—1847, 1991; Chambers on Infants, 162; Co. Litt. by Harg. 57d. n [2]; Hubback. 181; Seton, 521; Woodfall. 9. As to the course, where the tenant for life, or *cestui que vie*, is abroad, or, though alive, cannot be produced, see 6 Anne, c. 18, ss. 2, 4; Dan. Pr. 1845—1846.

(*b*) See 6 Anne, c. 18, s. 1; Dan. Pr. 1843, 1844. For order in like case, see Seton, 521, No. 1.

part: being the indenture mentioned in the title or heading of this affidavit: certain lands therein described, situate at W., in the township of E., in the county of F., were demised by the said A. B. to the said C. D. for and during the lives of L. M., N. O., and P. Q., therein respectively described, and the life of the longest liver of them.

2. *Show the applicant's title to the reversion; as thus:* By indenture dated the —— day of ——, 18—, made between the said A. B. of the one part, and me, the deponent, of the other part, the said A. B. granted and conveyed to me, my heirs and assigns, all the lands comprised in, and demised by, the said indenture of lease, but subject to such lease. I am now entitled to the reversion of the said lands, expectant on the death of the survivor of the said L. M., N. O., and P. Q.

3. *State special ground for the application; as thus:* I have good cause to believe, and do believe, that all of them, the said L. M., N. O., and P. Q., are dead; and that such deaths are concealed by the said C. D., the lessee, and present tenant of the said lands. (*Show grounds of belief.*)

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843. Notice of motion for production of *cestuis que vies* in Court, on default.

(*Formal parts: see ante, No.* 382.)

on behalf of A. B., in the order, dated, *&c.*, named, that C. D., therein named, may be ordered to produce L. M., N. O., and P. Q., therein also named, at the bar of this Court on —— day of ——, 18—; and in the event of their not being produced, pursuant to the order to be made on this application, that the said L. M., N. O., and P. Q., may be deemed to be dead. And take notice (*&c., as in No.* 382.)

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844. Affidavit in support.

(*Formal parts: see ante, No.* 300.)

1. *Prove service of the order to produce: see ante, No.* 323.

2. *Prove attendance there, and non-production; as thus:* On the —— day of ——, 18—, I personally attended and waited at (*place appointed for production of cestui que vie*), in the county of F., from before the hour of eleven of the clock in the forenoon, till after the hour of one of the clock in the afternoon of that day: being the place and time appointed by the said order of the —— day of ——, 18—, for the production by the said C. D. to me of L. M., N. O., and P. Q., in the said order

named, or some or one of them; but the said C. D. did not, nor did any person on his behalf, attend at the time and place aforesaid, and produce the said L. M., N. O., and P. Q., or any or either of them; nor have the said L. M., N. O., and P. Q., or any or either of them, been produced to me since the date of the said order.

SECTION II.—*Proceedings under "Trustee Act, 1850," &c.*

In Chancery.

845. Petition for a person to convey lands; whereof a trustee died seized without an heir. (a)

In the matter of the trusts of an indenture dated 1st November, 1831, made between R. K. and C. W. R. his wife of the first part, N. R., of the second part, and S. B. of the third part.

And in the matter of the Imperial Statute intituled "The Trustee Act, 1850." *Add where applicable:* and of the Imperial Act, 15th and 16th Victoria chapter 55, intituled "An Act to extend the provisions of the Trustee Act, 1850."

(*Formal parts: see ante, No.* 382.)

1. By the abovementioned indenture dated 1st November, 1831, the fee simple and inheritance of, and in all that certain parcel of land known as (*describing it,*) was conveyed unto, and to the use of the abovenamed N. R., his heirs and assigns.

2–3. *Statement of the death and intestacy of S. B.; and grant of administration of his personal estate.*

4. The said S. B. was illegitimate and never married; and under the circumstances aforesaid died intestate as to trust estates, and without an heir.

[5–7. *Statement of the devise by N. R. of the said lands to the petitioners E. H. and M. H. on trust; his death; probate of his will; and an agreement for the sale by them of the said lands to the co-petitioner C. W. S.*]

8. Your petitioners are desirous of carrying into effect the said agreement, but by reason of the said S. B. having died intestate as to the said lands, and without an heir, they are unable to do so without the assistance of this Honourable Court.

Your petitioners, therefore, humbly pray:

That your petitioner E. H. may be appointed to convey the said lands comprised in, and assured by, the said indenture of the 1st November, 1831, for all the estate and interest, late of the

(a) *Semble*, the petition should be presented in Court. See *Re* Lash, 1 Ch. R. 226.

said S. B. therein, unto and to the use of your petitioner C. W. S., or to such uses and in such manner as he shall direct,—or that such other order may be made in the premises as to this Honourable Court shall seem just.

And your petitioner will ever pray.

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846. Petition for the appointment of new trustees and for vesting order, &c., under Imperial Trustee Act, 1850. (*a*)

In Chancery.

In the matter of, &c.

(*Formal parts: see ante, No.* 382.)

Showeth as follows:

[1—4. *Statements showing a settlement by the will of J. F., of his real and personal estate in trust for the petitioner S. W. for life, with remainder to W. N. W.; and that A. B. and C. D. were the surviving trustees of the will; and a statement of the particulars of the real and personal estate.*]

5. The said C. D. has refused to act further in the trusts of the said will, and your petitioners are desirous that some fit and proper persons should be appointed in his stead, and in the stead of the said W. R. (*deceased trustee*); but inasmuch as the said will does not contain any power for the appointment of new trustees thereof, it has become necessary to apply to this Honourable Court for that purpose.

6. J. G. N., of (*Residence and addition*), and W. D., of, &c., are fit and proper persons to be appointed such trustees; and they have respectively consented and agreed to be so appointed trustees under the said will jointly with the said A. B., and to act as such trustees of the said will.

Your petitioners, therefore, humbly pray as follows:

1. That the said J. G. N. and W. D. may be appointed new trustees of the said will of the said J. F., deceased, in substitution of the said W. R., deceased, and the said C. D., who has refused to act further in the trusts thereof jointly with the said A. B., and that the lands remaining subject to the trusts of the said will may be vested in the said J. G. N. and W. D. jointly with the said A. B. as the trustees of the said will, for the estate by the said will devised to the trustees thereof.

(*a*) This petition must be presented in Court. See *Re* Lash, 1 Ch. R. 226.

[2. That the right to call for a transfer of, and to transfer the stock subject to the trusts of the will of the said J. F. may be vested in the said A. B., and that he may be directed to transfer the same into the names of the said A. B., J. G. N., and W. D., as such trustees as aforesaid.]

3. That the right to sue for and recover any *chose in action*, subject to the trusts of the said will, or any interest in respect thereof, may be vested in the said A. B., J. G. N. and W. D., as such trustees of the said will. Or that (*&c., conclude as in preceding form.*)

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847. Evidence in support of petition.

See forms, ante, Nos. 737–9, *for affidavit of eligibility of proposed trustees; their consent to act; and affidavit verifying signatures. The other facts alleged in the petition must also be duly verified by affidavit.*

CHAPTER XIV.

APPEALS TO THE COURT OF APPEAL, PRIVY COUNCIL, AND SUPREME COURT.

SECTION I.—*Forms of Bonds, &c., on appeal to Court of Appeal.*

848. Bond for security for costs on appeal to Court of Appeal.

Know all men by these presents, that we (*naming all the obligors, with their places of residence and additions*) are jointly and severally held and firmly bound unto (*naming the obligees, with their places of residence and additions*), in the penal sum of four hundred dollars, for which payment well and truly to be made we bind ourselves, and each of us by himself, our and each of our heirs, executors and administrators respectively, firmly by these presents.

Witness our respective hands and seals the —— day of ——, in the year of our Lord 18—.

WHEREAS (*the appellant*) complains, that in the giving of judgment in a certain suit in Her Majesty's Court of Chancery, in the Province of Ontario, between (*naming the parties to the cause*), upon the hearing of the cause [by way of appeal from the report of the Master of the

said Court, dated the —— day of ——, *Or*, upon further directions, *or otherwise as may be*], manifest error hath intervened, wherefore (*the appellant*) desires to appeal from the said judgment to the Court of Appeal.

NOW THE CONDITION of this obligation is such that if (*the appellant*) do and shall effectually prosecute such appeal, and pay such costs and damages as shall be awarded in case the judgment aforesaid to be appealed from shall be affirmed, then this obligation shall be void, otherwise to remain in full force.

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849. Affidavit of justification.

In Chancery.

(*Shortened style of the cause.*)

I, E. F., of (*Residence and addition*) make oath and say:

1. That I am a resident inhabitant of Ontario, and am a householder [*Or*, freeholder] in ———, and that I am worth the sum of $——— (*the sum mentioned in the penalty, or such sum as the deponent is bound in*) over and above what will pay all my debts.

2. And I, J. H., of ———, make oath and say, that I am a householder [*Or*, freeholder] in ———, and that I am worth the sum of $——— (*as in the former case*) over and above what will pay all my debts.

The above named deponents, E. F. and J. H., were sworn at, *&c.*, the —— day of ——, 18—, before me.

A Commissioner, &c.

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850. Bond to stay execution, on appeal to Court of Appeal.

Proceed as in form No. 848 *to the words* "Court of Appeal," *making the penalty the sum required by rules* 4–6 *of Court of Appeal, and continue:* And whereas the said (*appellant*) is desirous that execution may be stayed in the said cause until after the determination of the said appeal.

NOW THE CONDITION of this obligation is such that if (*the appellant*) do and shall effectually prosecute such appeal, and if the judgment appealed from, or any part thereof, shall be affirmed, shall [pay the amount directed to be paid by such judgment, or the part of such amount as to which such judgment shall be affirmed, if it shall be affirmed only in part, and all damages which shall be awarded against (*the appellant*) in the appeal, *Or*, shall perform the act directed to be done by him by the said judgment appealed from, or such other act or acts as the said Court of Appeal shall

by its judgment upon the said appeal direct, and shall pay all damages which shall be awarded against (*the appellant*) in the appeal], then this obligation shall be void, otherwise to remain in full force.

SECTION II.—*Appeals to the Privy Council.*

851. Bond for security for costs, on appeal to the Privy Council, being form given in rule 36 of Court of Appeal.

Proceed as in form No. 848 *to the recitals, making the penalty* $2,000 *; and continue:*

WHEREAS (*the appellant*) alleges that in the giving of judgment in a certain suit in Her Majesty's Court of Appeal in Ontario between (*the respondent*) and (*the appellant*) manifest error hath intervened: Wherefore (*the appellant*) desires to appeal from the said judgment to Her Majesty, in Her Majesty's Privy Council.

NOW THE CONDITION of this obligation is such, that if (*the appellant*) do and shall effectually prosecute such appeal, or (*a*) pay such costs and damages as shall be awarded in case the judgment aforesaid to be appealed against, shall be affirmed, or in part affirmed, then this obligation shall be void, otherwise shall remain in full force.

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852. Affidavit of justification.

See form, ante, No. 849*: the affidavit should be styled* In the Court of Appeal for Ontario.

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853. Bond to stay execution, on appeal to Privy Council

See form, ante, No. 850.

SECTION III.—*Forms of Proceedings on Appeal to the Supreme Court.*

854. Appeal Bond for costs.

See Form, ante No. 848—*the penalty is* $500.

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855. Bond to stay execution.

See Form, ante No. 850.

(*a*) Query "and."

Certificate of security having been given in Court below, where appeal is had under Section 28 of the Supreme Court Act.

856. Certificate of security having been given in Court below.

In the Court of Chancery for Ontario.

A. B.....Plaintiff.

and

C. D.....Defendant.

This is to certify that the above-named (*appellant*) hath given proper security to the satisfaction of this Court for the due prosecution of the appeal by him the said (*appellant*) to the Supreme Court from the decree of this Court made in this cause on the —— day of &c., and for the payment of such costs and damages as may be awarded in case the said decree be affirmed, by [filing in my office the bond of [himself], and C. D. and E. F., his sureties, in the penal sum of [five hundred dollars], a true copy of which [bond] is hereunto annexed.

Given under my hand and the seal of the said Court, this —— day of, &c.

[L. S.] A. G.,
Registrar of the said Court of Chancery for Ontario.

The bond or other instrument by which security may have been given is to be annexed to the certificate.

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857. Another form, where security given by payment into Court.

(*Formal parts*: *see ante*, *No.* 856.)

This is to certify that by an order of the Honourable [the Chancellor, *or* A. B., one of the Vice-Chancellors of this Court], made in this cause, dated, &c., it was ordered that the above-named (*appellant*) should be at liberty on or before the —— day of &c., to pay into this Court to the credit of this cause the sum of five hundred dollars, by way of security, that he the said (*appellant*) would duly prosecute his appeal to the Supreme Court from the decree of this Court made in this cause on the —— day of, &c., and for the payment of such costs and damages as may be awarded in case the said decree be affirmed, and that the said (*appellant*) duly paid into this Court to the credit of this cause the said sum of five hundred dollars, and the same now remains in this Court as security as aforesaid.

Given under my hand and the seal of the said Court, this —— day of, &c.

[L. S.] A. N. B.,
Accountant of the Court of Chancery for Ontario.

Certificate of security having been given where the appeal is had from the Court of Appeal.

In the Court of Appeal for Ontario.

A. B. ..... Appellant.
and
C. D. ..... Respondent.

858. Another form where the appeal is had from the Court of Appeal for Ontario.

This is to certify that the above-named (*party appealing to the Supreme Court*) hath given proper security, &c., (*continue as in Form No.* 856 *or* 857).

[L. S.] A. G.,
Registrar to the said Court of Appeal for Ontario.

In the Supreme Court.

Between—A. B. ..... Appellant.
and
C. D. ..... Respondent.

859. Notice to be filed of party appearing in person on appeal.

I, A. B., intend to appear in person in this appeal (*a*) and I require that all papers required to be served on me herein be served on me at (*naming some place in the City of Ottawa*). (*b*) Dated, &c.

(Signed) H. B.,
Appellant in person.

In the Supreme Court.

Between—A. B. ..... Appellant.
and
C. D. ..... Respondent.

860. Suggestion to be filed of appearance of Solicitor in appeal for party who appeared in person in Court below. (*c*)

Y. Z., Solicitor for the above-named C. D. appears for him on this appeal.

Solicitor for the Respondent.

Dated, &c. (Signed) Y. Z.,

(*a*) See *S. C. Rule* 17.
(*b*) *S. C. Rule* 20.
(*c*) *S. C. Rule* 19.

Factum, or Points of Argument. (*a*)

861. Factum.

In the Supreme Court.

Between—A. B.....Appellant.
and
C. D.....Respondent.

The [appellant] contends that (*here state succinctly the facts and the several points of law which he intends to rely on, in the appeal, and specify the cases intended to be cited in support of each point.*)

Dated, &c.

(Signed) C. D.,
Counsel for the (Appellant).

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862. Notice of hearing (*b*).

In the Supreme Court.

A. B.....Appellant,
and
C. D.....Respondent.

Take notice, that this appeal will be heard at the next Session of this Court, to be held at the City of Ottawa, on the —— day of ——, 18—.

Dated, &c.

(Signed) D. L.,
Appellant's Solicitor.

To A. F., Esquire,
Respondent's Solicitor.

NOTICES OF MOTION.

862a. Notices of motion. (*c*)

The Forms, ante, Nos. 382–385 *can be adapted.*

AFFIDAVITS AND JURATS, &C.

862b. Affidavits, &c.

See ante, Nos. 300, *et seq.*

(*a*) *S. C. Rules*, 23 and 24. The object of this requirement appears to be to enable the Court to inform itself before the argument both of the facts and the questions of law intended to be discussed; in this respect the practice of the Judicial Committee of the Privy Council has been followed. The necessity of some such provision is obvious from the fact of the Court entertaining appeals from the Courts of the different Provinces, in which the laws are so dissimilar. Parties, however, will not, it is conceived, be precluded from raising points which do not appear in the factum filed, although the omission may possibly affect the question of costs.

(*b*) This notice must be served one month—*semble*, this means a lunar month—before the first day of the session.

(*c*) The notice of motion must be served four clear days before the time of moving—*S. C. Rule* 39—and copies of the affidavits filed in support must be served with the notice of motion—*S. C. Rule* 41.

Suggestions for adding parties, &c.

In the Supreme Court.

Between A. B.....Appellant,
and
C. D. and E. F., Respondents.

863. Suggestion to be filed for the purpose of adding parties in consequence of death or insolvency of any of the parties respondent.

And now on the —— day of ——, it is suggested and manifestly appears to the Court here that on the —— day of ——, &c., the above-named respondent C. D. departed this life ~~[and~~ having first duly made and published his last will and testament, whereby he appointed W. G. the sole executor thereof, and the said W. G. afterwards duly proved the said will, and letters probate thereof were duly granted to him by the proper Court in that behalf; *or*, whereby he devised the lands and premises in question unto W. G., *Or*, intestate letters of administration to his said estate were afterwards granted by the Surrogate Court of, &c., to one W. G., who is now the sole personal representative of the said C. D., deceased], by reason whereof all the right, title and interest of the said C. D. of, in or to the subject matter of this appeal hath become vested in the said W. G.: wherefore he is hereby made a party respondent to this appeal in (*a*) place and stead of the said C. D., deceased.

G. H.,
Appellant's Solicitor.

In the Supreme Court.

Between A. B.....Appellant,
and
C. D.....Respondent.

864. Suggestion of the death of sole appellant, by his representatives, in whom the subject matter of appeal has vested (*b*).

And now on the —— day of ——, it is suggested by J. B., the [administrator or executor of *or* devisee named in the last will and testament] of A. B., the above-named appellant, and it manifestly appears to the Court here that on the —— day of, &c., A. B., the above-named appellant, departed this life (*proceed as in preceding form to the word* wherefore *and conclude*): wherefore the said J. B., as such [administrator, executor *or* devisee, *as the*

(*a*) *S. C. Rule* 36. This rule appears to require that a suggestion shall be filed wherever it is necessary by reason of death, or transmission of interest, to add any party to the proceedings, and it would seem that the suggestion must be filed in the case of the death of a sole respondent, notwithstanding that the Act seems to contemplate that the proceedings should be carried on in that event merely upon notice being given to the deceased respondent's representatives. See *S. C. Act*, sec. 45.

(*b*) The leave of the Court or a Judge must be obtained for filing this suggestion. See *S. C. Act*, sec. 43.

case may be], claims to prosecute this appeal as appellant, in the place and stead of the said A. B., deceased, and he is hereby made a party appellant accordingly.

G. H.,
Solicitor for the said J. B.,
Executor of the said A. B., deceased.

[*A suggestion in the case of the insolvency of, or other transmission of interest by, any of the parties, can be readily framed from the foregoing forms.*]

(*Style of cause.*)

865. Suggestion in case of death of one of several respondents, where the interest of the deceased survives to the surviving respondent (*a*).

And now on this —— day of, *&c.*, it is suggested, and manifestly appears to the Court here, that E. F., one of the above-named respondents, on the —— day of, *&c.*, departed this life, by reason whereof his interest in the subject matter of this suit survived to, and is now vested in, the above-named C. D. Wherefore the appellant is at liberty to continue the prosecution of the said appeal against the said C. D. alone.

E. B. J.,
Solicitor for the Appellant.

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866. Notice of filing suggestion, and of intention of appellant to prosecute appeal (*b*).

In the Supreme Court.

Between A. B., ...Appellant,
and
C. D., since deceased, and W. G., added as a party by suggestion,
Respondent.

Take notice, that I have this day filed a suggestion [adding you as a party respondent to this appeal, in the place of the above named C. D., deceased], which suggestion is in the words and figures following (*Copy suggestion, and when new parties are added as respondents, continue:* And take notice, that I intend to proceed with this appeal, and that the same will be heard (*Continue as in form, ante, No.* 862.)

Dated, &c. G. H.,
To (*party added.*) *Appellant's Solicitor.*

(*a*) A suggestion of this nature, it would seem, can be entered without the leave of the Court or a Judge. See *S. C. Act, sec.* 44.

(*b*) See *Supreme Court Act, sec.* 45. There is no provision in the Act or in the rules for service of notice of the filing of the suggestion; but it would seem that notice thereof should in some way be given to all parties added. Section 45 in effect provides that a calendar month's notice of the appeal and of the appellant's intention to continue the suit shall be given to the representatives of a deceased respondent or respondents.

CHAPTER XV.

PROCEEDINGS IN MASTER'S OFFICE.

SECTION I.—*Administration Suits—Advertisements for Creditors, &c.—Affidavits proving claims—Executors' accounts, &c.*

867. Advertisement for creditors, under Order 475, being No. 1 of Schedule V., referred to in that Order.

Pursuant to a decree [*Or*, an order] of the Court of Chancery, made in [the matter of the estate of A. B., and in] a cause, S. against P. [*short title*], the creditors of A. B., late of ———, in the county of ———, who died in or about the month of ———, 18—, are, on or before the ——— day of ———, 18—, to send by post prepaid to E. F., of ———, the solicitor of the defendant C. D., the executor [*Or*, administrator] of the deceased [*or as may be directed*], their Christian and surnames, addresses and description, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or in default thereof, they will be peremptorily excluded from the benefit of the said decree [*Or*, order.] Every creditor holding any security is to produce the same before me, at my Chambers at, &c., on the —— day of ——, 18—, at —— o'clock in the —— noon, being the time appointed for adjudication on the claims.

Dated this —— day of —— 18—.

G. H., *Master.*

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868. Notice of particulars of claims under Order 475.

Sir:

(*Short title of matter or cause, as in the advertisement.*)

I, the undersigned (*Set out, in full, the christian and surnames, address and description of the claimant*), beg to inform you that I claim to be a creditor upon the estate of A. B., late of, *&c., as in the advertisement*), for the sum of $—— (*Set out, or refer to an enclosure, containing the full particulars of the claim; as thus:* being money lent by me to the said A. B., on the —— day of ——, 18—, *Or*, for goods sold and delivered by me to the said A. B.: the full particulars whereof are comprised in the paper writing marked L., sent herewith); and that the only security I hold for the debt so due to me, or any part thereof, is (*State the nature of the securities, if any; as thus:* an I. O. U. of the said A. B. for the said $——, dated ——, 18—)—*Or*, and that I do not hold any se-

curity whatsoever for the debt so due to me, or any part thereof.

Dated, &c.

(*Signature of creditor.*)

To (*Name and address of the person to whom, by the advertisement, the notice is directed to be sent*).

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869. Affidavit of non-receipt of any claim under the advertisement.

In Chancery.

(*Formal parts: see ante, No.* 300.)

I, E. F., of (*Place of business*), gentleman, the solicitor in this cause [*Or*, matter] for the above-named plaintiff [*Or*, defendant C. D.—*or as may be*], the executor [*Or*, administrator] of A. B., late of (*Residence and addition: as in the advertisement*), deceased, make oath and say, as follows:

1. No claim, or particulars of any claim, has or have been sent in to me (*If so, add:* or to my firm of F. & G., of ———, aforesaid—*as in the advertisement*) by any person or persons claiming to be a creditor or creditors of the said A. B., deceased, pursuant to the advertisement issued in that behalf in this cause [*Or*, matter], dated the —— day of ——, 18—, and which was published in the Hamilton *Spectator* of the —— day of ——, 18—.

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870. Affidavit to prove a debt due on a judgment.

(*Formal parts: see ante, No.* 300.)

1. A. B., the testator [*Or*, intestate] in the decree [*Or*, order] dated the —— day of ——, 18—, in this cause [*Or*, matter], was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of $——, for principal money, and for interest thereon at the rate of $6 per cent. per annum, from the —— day of ——, 18—, upon and by virtue of a judgment recovered by me againt the said A. B. in Her Majesty's Court of Queen's Bench at Toronto [*or as may be*], and duly signed on the —— day of ——, 18—, for the sums of $2,000 debt, and $25·18 costs.

2. The said judgment now remains in full force and virtue.

3. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that I have not, nor hath nor have any other person or persons by my order, or for my use, received the said sum of $——, and interest, or any part thereof respectively, nor any security or satisfaction whatsoever therefor, save and except the said judgment (*or as may be*).

(*Formal parts: see ante, No.* 300.)

871. Affidavit to prove a debt due on a mortgage, and covenant to pay.

1. By an indenture dated the —— day of ——, 18—, now produced and shown to me, and marked A., and made between A. B., the testator [*Or*, intestate] in the decree [*Or*, order] dated the —— day of ——, 18—. in this cause [*Or*, matter] named, of the one part, and me of the other part, the said A. B. granted and conveyed lot No. one in the first concession of the township of Barton, in the county of Wentworth, with the appurtenances, unto and to the use of me, my heirs and assigns: subject to a proviso for redemption thereof, in case the said A. B., his heirs, executors, or administrators should on the —— day of ——, 18—, pay to me, my executors, administrators, or assigns, the sum of $5,000, with interest thereon in the meantime at the rate of $6 per cent. per annum; and the said A. B., for himself, his heirs, executors and administrators, thereby covenanted with me, to pay me the said sum of $5,000, with interest as aforesaid, according to the said proviso. The said mortgage was given to secure the sum of $5,000 cash, which was actually lent and advanced by me to the said A. B. at the date thereof (*or as the case may be*).

2. On the —— day of ——, 18—, the said A. B. paid to me the sum of $1,000 in part discharge of the said $5000.

3. The said A. B. was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of $4,000, residue of the said $5,000, with interest on the said $4,000 at the rate aforesaid, from the —— day of ——, 18—, upon and by virtue of the said indenture.

4. And I, speaking positively (*Continue as in par.* 3 *of No.* 870, *ante, to the end: varying the statement where necessary*).

5. I further say that I am not now, and never have been since the date of the said mortgage, nor hath nor have any person or persons, by my order or to my knowledge or belief, for my use, been in the occupation of the said mortgaged premises, or of any part thereof, nor in receipt of the rents, issues or profits of the same or any part thereof.

(*Formal parts: see ante, No.* 300.)

872. Affidavit to prove a debt due on a common money bond.

1. A. B., the testator [*Or*, intestate] in the decree [*Or*, order] dated the —— day of ——, 18—, in this cause [*Or*, matter] named, made his bond, dated the —— day of ——, 18—, to me in the penal sum of $200, conditioned for the

payment by him, his executors or administrators, to me of the said sum of $200, on the —— day of ——, 18—, together with interest thereon, in the meantime, at the rate of $6 per cent. per annum; and which said bond is now produced and shown to me, and is marked A. (*Show consideration, as in No.* 871.)

2. The said A. B. was at the time of his death, and his estate still is, justly and truly indebted to me in the said sum of $200, with interest thereon at the rate aforesaid from the —— day of ——, 18—, upon and by virtue of the said bond.

3. And I, speaking positively (*Continue as in par.* 3 *of No.* 870, *ante, to the end: varying the statement, where necessary.*)

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873. The like, on bond to secure an annuity.

Proceed as in No. 872, *to* conditioned; *and continue thus:* for the payment by him, his executors or administrators, of the sum of $20 a year to me, during the life of E. F.: who is still living (*or as may be*); and which said bond is now produced and shown to me, and is marked A. (*Show consideration, as in No.* 871.)

2. The said A. B. was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of $40, for arrears of the said annuity computed to the —— day of ——, 18—, upon and by virtue of the said bond.

3. And I, speaking positively (*Continue as in par.* 3 *of No.* 870, *ante, to the end: varying the statement, where necessary.*)

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874. The like; on a bill of exchange.

(*Formal parts: see ante, No.* 300.)

1. A. B., the testator [*Or*, intestate] in the decree [*Or*, order] dated the —— day of ——, 18—, in this cause [*Or*, matter] named, was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of $80, for principal money due on a bill of exchange dated the ——, 18—, drawn by me upon and accepted by the said A. B., for the payment of $80 to me —— months after the date thereof;

Or, due on a bill of exchange dated, *&c.*, drawn by one C. D. upon and accepted by the said A. B., for the payment of $80 to me —— months after the date thereof; *Or*, due to me as endorsee of a bill of exchange, dated, *&c.*, drawn by C. D. upon and accepted by the said A. B., for the payment of $80 to

the order of the said C. D. —— months after the date thereof, and by him endorsed to me (*or as may be*);

together with interest on the said principal sum, at the rate of $5 per cent. per annum, from the —— day of ——, 18—; and which said bill of exchange is now produced and shown to me, and is marked A. (*Show consideration, as in No.* 870).

2. And I, speaking positively (*Continue as in par.* 3 *of* 870, *ante, to the end: varying the statement, where necessary*).

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875. Affidavit to prove a debt due on a promissory note.

Proceed as in No. 874, *ante, to* principal money; *and continue thus:* due on a promissory note dated the ——, 18—, for $90, made by the said A. B., whereby he promised to pay to me or my order the sum of $90 one month after the date thereof;

Or, due on a promissory note dated, *&c.*, for $90, made by the said A. B., and payable to me on demand;

Or, due to me as endorsee of a promissory note, dated, *&c.*, made by the said A. B., for the payment of $90 to the order of E. F. —— months after the date thereof, and by the said E. F. endorsed to me (*or as may be*);

together with interest (*Continue as in No.* 874, *ante, to the end: substituting* promissory note *for* bill of exchange).

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876. The like, on a check.

Proceed as in No. 874, *ante, to* principal money; *and continue thus:* due to me as the payee of a banker's check, dated the——, 18—, drawn by the said A. B. on Messrs. C. D. & Co., for the payment of $30 to me or bearer, on demand;

Or, due to me as the bearer of a banker's check, dated, *&c.*, drawn by the said A. B. on Messrs. C. D. & Co., for the payment of $30 to E. F. or bearer, on demand, and by the said E. F. transferred and delivered to me;

and which said check has been duly presented to, and refused payment by, the said Messrs. C. D. & Co., and is now produced and shown to me, and is marked A.

2. And I, speaking positively (*Continue as in par.* 3 *of No.* 870, *ante, to the end: varying the statement, where necessary*).

877. Affidavit to prove a debt due on simple contract.

(*Formal parts: see ante, No.* 300.)

1. A. B., the testator [*Or*, intestate] in the decree [*Or*, order], dated the —— day of ——, 18—, in this cause [*Or*, matter], named, was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of $150 for (*State what; as in the following examples:*

for money lent by me to the said A. B. at his request.
for money paid by me for the use of the said A. B. at his request.
for money received by the said A. B. for my use.
for money found to be due from the said A. B. to me, on an account stated between us.
for goods sold and delivered to me by the said A. B.
for work done, and materials for the same provided by me for the said A. B. at his request.
for salary due and payable from the said A. B. to me, for services done by me for the said A. B. as his clerk, and on his retainer.
for work done by me as the agent of and for the said A. B., and on his retainer, and for commission and reward due and of right payable from him to me in respect thereof.
for work done as an attorney and solicitor, and materials for the same provided, by me for the said A. B., upon his retainer, and for fees due and payable to me in respect thereof, and for money paid by me for the use of the said A. B., at his request.)

If so: and in the further sum of $6 for interest upon, and for the forbearance at interest to the said A. B. by me, at his request, for divers spaces of time, of moneys due and owing to me from the said A. B.; and which interest the said A. B. contracted and agreed with me to pay me.

2. The full particulars of my aforesaid demand are set forth in the paper writing now produced and shown to me, and marked A.—*Where applicable, add:* The prices charged in the said paper writing marked A. are fair and reasonable, and such as are usual and customary in the trade or business [*Or*, profession] of a timber merchant (*or as may be*): as I know from having carried on such trade, *&c.*, for —— years last past.

3. And I, speaking positively (*Continue as in No.* 870, *ante, to the end: varying the statement, where necessary*).

In Chancery.

(*Title of cause or matter.*)

878. Affidavit by a personal representative, to prove a debt due to the estate.

I, C. D., of (*Residence and addition*), the executor of the will [*Or*, administrator of the personal estate] of E. F., late of (*Residence and addition*): who died on the —— day of ——, 18—: acting under probate of such will [*Or*, letters of administration of such estate] granted to me on the —— day of ——, 18—, make oath and say, as follows:

1. *State, in numbered paragraphs, the nature and existence of the debt: as in Nos.* 870—877, *ante; and conclude as follows:*

2. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that the said E. F. did not in his lifetime, and I have not, nor have nor hath any other person or persons by the order of the said E. F., or of myself, or for his or my use, received the said sum of $—— nor any security or satisfaction whatsoever therefor (*or as may be*).

In Chancery.

(*Short title.*)

879. Notice to creditors to produce documents under Order 477, being No. 2 of Schedule V. referred to in that order.

You are hereby required to produce, in support of the claim sent in by you, against the estate of A. B., deceased [*Describe any document required*], before me (*a*) at my chambers at, &c., on the —— day of ——, 18—, at —— o'clock in the —— noon.

Dated this ——— day of ———, 18—.

G. R., of, &c., solicitor for the plaintiff [*Or*, defendant, *or as may be*].

To Mr. S. T.

In Chancery.

(*Shortened style of cause.*)

880. Affidavit of executor or administrator as to claims, under Order 480, being No. 3 of Schedule V. referred to in that order.

We, C. D., of, &c., the above named plaintiff [*Or*, defendant, *or as may be*], the executors [*Or*, administrators] of A. B., late of ——, in the county of ——, deceased, and E. F., of, &c., solicitor, severally make oath and say as follows:

I, the said E. F. [*solicitor*], for myself, say as follows:

1. I have, in the paper writing now produced and shown to me, and marked A., set forth a list of all the claims, the particulars of which have been sent in to me by persons claiming to be creditors of the said A. B., deceased, pursu-

(*a*) This appears to be a mistake in the form. *Semble* the notice should be to produce before the Master at his chambers. See *Ord.* 477.

ant to the advertisement issued in that behalf, dated the —— day of ——, 18—.

And I, the said C. D., for myself, say as follows:

2. I have examined the several claims mentioned in the paper writing now produced and shown to me, and marked A., and I have compared the same with the books, accounts, and documents of the said A. B. [*or as may be, and state any other inquiries or investigations made*], in order to ascertain, as far as I am able, to which of such claims the estate of the said A. B. is justly liable.

3. From such examination [*and state any other reason*], I am of opinion, and verily believe, that the estate of the said A. B. is justly liable to the amounts set forth in the sixth column of the first part of the said paper writing marked A.; and to the best of my knowledge and belief, such several amounts are justly due from the estate of the said A. B., and proper to be allowed to the respective claimants named in the said Schedule.

4. I am of opinion that the estate of the said A. B. is not justly liable to the claims set forth in the second part of the said paper writing marked A., and that the same ought not to be allowed without proof by the respective claimants [*Or*, I am not able to state whether the estate of the said A. B. is justly liable to the claims set forth in the second part of the said paper writing marked A., or whether such claims, or any parts thereof, are proper to be allowed without further evidence.]

Sworn, &c.

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881. List of claims referred to in affidavit No. 448, being exhibit referred to in No. 3 of Schedule V.

In Chancery.

(*Short title.*)

List of claims the particulars of which have been sent in to E. F., the solicitor of the plaintiff [*Or*, defendant, *or as may be*], by persons claiming to be creditors of A. B., deceased, pursuant to the advertisement issued in that behalf, dated the —— of ——, 18—.

This paper writing marked A. was produced and shown to ——, and is the same as is referred to in his affidavit, sworn before me this —— day of ——, 18—.

W. B., &c.

First Part.—Claims proper to be allowed without further Evidence.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Nature of Claim.	Amount Claimed.	Amount proper to be allowed.
				$ cts.	$ cts.

Second Part.—Claims which ought to be proved by the Claimants.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Nature of Claims.	Amount claimed.
				$ cts.

(*Formal parts: see ante, No.* 384.)

882. Notice of motion for payment by claimant of costs of his unsuccessful claim.

on the part of the plaintiff (*or as may be*), that the costs occasioned to the applicant, and the other parties to this suit (*or as may be*), by reason of the claim made by E. F., of (*Residence and addition*), to rank as a creditor upon the estate of the testator G. H. (*or as may be*), under the decree [*Or*, order] dated the —— day of ——, 18—, but which claim has been disallowed, may be ascertained at chambers, or taxed by the Taxing Master; and that the said E. F. may be ordered to pay such costs to the applicant and other parties entitled thereto (*or as may be.*)

And take notice (*&c., as in No.* 382.)

(*Formal parts: see post, No.* 890.)

883. Warrant to show cause why applicant should not have leave to make a claim, where the time allowed has expired, but before Master's report.

To show cause why A. B., of (*Residence and addition*), notwithstanding the time limited for proving claims has expired, should not be at liberty, under the decree [*Or*, order], dated the —— day of ——, 18—, in this cause [*Or*, matter], to come in and establish his claim (*State in respect of what; as thus:* as a creditor upon the estate of C. D., the testator [*Or*, intestate] in the said decree [*Or*, order] named, for the sum of $——.

884. Petition to be admitted as a creditor, after direction to apportion fund amongst certified creditors, but before apportionment made.

(*Title—and address: see ante, No.* 387.)

The humble petition of A. B., of (*Residence and addition*),

Showeth as follows:

Show nature of the suit, and the proceedings had therein; as thus: 1. This suit was instituted for the administration of the estate of C. D.; and by the decree made therein, dated the —— day of ——, 18—, the usual accounts and inquiries were directed to be taken and made, including an account of the debts of the said C. D.

2. The Master at ——— made his report, dated the —— day of ——, 18—, in pursuance of the said decree; and thereby certified the result of the said account of debts, and of the other accounts and inquiries directed by the said decree.

3. The said Master's report having become confirmed on the —— day of ——, 18—, this cause came on to be heard on further directions on the —— day of ——, 18—; and by a decree then made of that date, the costs of this suit were directed to be taxed, and to be paid out of the sum of $1,000 cash in Court to the credit of this cause; and the residue of such cash was thereby directed to be apportioned amongst the creditors of the said C. D., in proportion to the respective amounts certified to be due to them by the said Master's report.

4. Pursuant to the said order, the costs thereby directed to be taxed have been carried into the office of the Taxing Master; but the taxation thereof is not yet completed; and no apportionment of the residue of the said fund has yet been made.

Show nature of petitioner's claim; and why omitted to be made before; as thus: 5. The said C. D. was, at the time of his death, and his estate still is, justly and truly indebted to your petitioner in the sum of $80, for goods sold and delivered by your petitioner to the said C. D., in the course of your petitioner's trade as a wine merchant.

6. Your petitioner, on the ——day of——, 18—, for the first time became aware of the death of the said C. D., and that his estate was under administration by this Honourable Court. By reason of your petitioner's ignorance of the existence of this suit, no claim by or on the part of your petitioner in respect of his said debt was made under the said decree; and your petitioner's said debt is omitted from the said Master's report.

7. Your petitioner is now desirous to establish his said debt against the assets of the said C. D. in this suit.

Your petitioner therefore humbly prays that he may be allowed to rank as a simple contract creditor upon the estate of the said C. D. for the said sum of $80, and for interest thereon at the rate of $6 per cent. per annum from the date of the said decree; and that, notwithstanding the said decree on further directions, the residue which will remain of the said $1,000, after payment of the said costs, may be directed to be apportioned amongst your petitioner, in respect of his said debt and interest, and the several creditors of the said C. D. certified by the said report, in proportion to the respective amounts so due to your petitioner and the said other creditors; and that the apportioned sums may be directed to be paid to your petitioner and the said other creditors accordingly.

Or that (*Continue as in prayer of No.* 387, *ante, to the end.*)

(*Formal parts: see ante, No.* 384.)
on the part of A. B., of (*Residence and addition*):

885. Notice of motion to be admitted as a creditor, after direction to apportion fund amongst certified creditors, but before apportionment made.

1. That he may be allowed to rank as a simple contract creditor upon the estate of C. D., the testator [*Or*, intestate] in the decree in this cause, dated the —— day of ——, 18—, named, for the sum of $80, and for interest thereon at the rate of $6 per cent. per annum from the date of the said decree.

2. That, notwithstanding the order on further directions, dated the ——— day of ———, 18—, the residue which will remain of the sum of $1,000 therein mentioned, after payment of the costs thereby directed to be taxed, may be directed to be apportioned amongst the applicant, in respect of his said debt and interest, and the several other creditors of the said C. D. whose debts are certified by the Master's report dated the —— day of ——, 18—, in proportion to the respective amounts due to the applicant and the said other creditors.

3. That the apportioned sums may be directed to be paid to the applicant and the said other creditors accordingly. And take notice (*&c., as in No.* 382.)

886. Notice to creditor that claim allowed under Order 483, being No. 4 of Schedule V. referred to in that order.

In Chancery.

(Short title.)

To Mr. S. T.

The claim sent in by you against the estate of A. B., deceased, has been allowed at the sum of $——— [with interest thereon at $—— per cent. per annum, from the —— day of ——, 18—, and $—— for costs, *or as the case may be.*]

If part only allowed, add: If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file (*&c., as in next form.*)

Dated, &c.

G. R., of, &c.
Solicitor for Plaintiff,
[*or as may be.*]

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887. Notice to creditor to prove his claim under Order 483, being No. 5 of Schedule V. referred to in that order.

In Chancery.

(Short title.)

You are hereby required to prove the claim sent in by you against the estate of A. B., deceased. You are to file such affidavit as you may be advised in support of your claim, and give notice thereof to ———, Master in Chancery [*or as the case may be*], on or before the —— day of ——, 18—; and to attend personally, or by your solicitor, at his Chambers, on the —— day of ——, 18—, at —— o'clock in the —— noon, being the time appointed for adjudicating on the claim.

Dated this —— day of ——, 18—.

G. R., of, &c.,
Solicitor for the Plaintiff, or Defendant,
[*or as may be.*]

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888. List of debts allowed, being Schedule to Master's Report.

In Chancery.

(Short style of cause.)

List of Debts allowed.

No.	Names of Creditors.	Principal.	Interest Allowed.		Costs at law (if any) subsequent to Judgment.	Costs of this Suit.	Total.
			Rate per Cent.	Amount to date of Report.			
		$ c.		$ c.	$ c.	$ c.	$ c.
	[*Distinguish any which are secured by mortgage, lien, or otherwise entitled to any priority.*]						

In Chancery.

(*Short Title.*)

889. Notice to creditors that cheques may be received under Order 486, being No. 6 of Schedule V. referred to in that order.

The cheques for the amounts directed to be paid to the creditors of A. B., deceased, by an order made in this matter [*Or*, cause], dated the —— day of ——, 18—, may be received at the Accountant's Office, in Osgoode Hall, Toronto, on —— after the —— day of ——, 18—.

G. R., of, &c.,
Solicitor for the Plaintiff,
[*or as may be.*]

To Mr. W. S.,
&c.

In Chancery.

(*Short style of suit.*)

890. Master's warrant.

By virtue of an Order or Decree of Reference, I do appoint the several days and times hereunder written for the several purposes also hereunder written, at my Chambers, in the —— of ——, at which time and place all parties concerned are to attend.

Dated the —— day of ——, 18—.

A. B.,
Master.

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891. Forms of underwriting warrants:

Forms for underwriting warrants.

(1) To consider decree.

To consider the decree, *Or*, decree on further directions, *Or*, order dated, *&c.*

(2) To change conduct of reference.

The plaintiff to show cause why the prosecution [*Or*, further prosecution] of the order made herein on the —— day of, &c., should not be committed to the defendant A. B. [*Or*, to A. B., a creditor who has established his claim herein before the Master.]

(3) To bring in accounts.

The defendant C. D. to bring in his account, duly verified by affidavit, in answer to the 4th, 5th, and 7th inquiries [*or as may be*], directed by the decree, *Or*, decree on further directions in this cause, *Or*, order, dated, &c., on the 5th February, 1875, at 10 a.m.

(4) To proceed on accounts (*a*).

To proceed on the accounts of C. D., with a view to ascertaining what is admitted and what is contested, on ——, at, &c.

(5) Another form (*b*).

To proceed on the accounts of C. D., and take notice, that you are required to admit the same, or such parts thereof as you can properly admit, on —— at, &c.

(6) To hear and determine.

To hear and determine the matter referred to me under the order dated, &c., on —— at, &c.

(7) Tax costs.

To tax costs under the order, &c.

(8) Settle report.

To settle report under the order, &c.

(*a*) See Order 232. (*b*) See Order 233.

Where one day is appointed for all these purposes by the warrant, it is usual to say, to hear and determine, to tax costs, and settle report under the order, *&c.*

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892. Master's directions for production, made in the presence of the solicitor, and entered in his book.

At the request of the plaintiff [*Or*, defendant—*or other party, as the case may be*], I direct that the defendant A. B. [*Or*, the plaintiff C. D.—*or other party, as the case may be*], do, on or before ten of the clock of the —— day of —— next, produce and leave in my office, under oath, all deeds, books, papers, writings and documents (*If any particular deed, book or writing be desired, mention it specifically*) in his [*Or*, their] custody or power in any way relating to the matters in question in this cause.

Particular Proceedings.—Inquiries.—Claims.

893. Advertisement for claimants (other than creditors of a deceased person), to come in.

In Chancery.

(*Short style of suit.*)

Pursuant to a decree [*Or*, an order] of the Court of Chancery, made in (*Set out the short title of the matter or clause*; *as thus:* the matter of the trusts of an indenture dated the 4th January, 1860, between A. B. and C. D.—*Or*, in a cause Jones against Styles—*or as may be*—bearing date the —— day of ——, the (*State the special object of the advertisement; as thus:*) the persons claiming to be the heirs at law of A. B., late of (*Residence and addition*), living at the time of the said A. B.'s death on the —— day of ——, 18—,

Or, the persons claiming to be next of kin, according to the Statutes for the Distribution of Intestates' Estates, of A. B., late of, *&c.*, living at the time of his death on the ——— day of ———, 18—, or to be the legal personal representatives of such of the said next of kin as are now dead,

Or, the persons claiming to be interested under a certain indenture dated the ——— day of ———, 18—, executed by A. B., then of, *&c.*, for the benefit of his creditors,

Or, the persons claiming to be entitled to the legacy of $4,000 bequeathed by the will of the testator Isaac Brown, late of ———, in the county of ———, gentleman, to the child or children of his nephew William Saunders,

Or, the persons claiming to be entitled to any mortgage, charge or other incumbrance upon or affecting the legacy of $4,000 bequeathed to John Jones, now or late of (*Residence and addition*), by the will of his father Ephraim Jones, late of (*Residence and addition*), who died on or about the ——— day of ——, 18—,

are, by their solicitors, on or before the —— day of ——, 18—, at 10 o'clock a.m., to come in and prove their claims, at the Chambers of the Master of the Court at —— (*or as may be*): Or, in default thereof, they will be peremptorily excluded from the benefit of the said decree [*Or*, order].

Dated this —— day of ——, 18—.

A. B.,
Master at ———.

———

(*Formal parts: see ante, No.* 300.)

894. Affidavit in answer to an inquiry as to heirship and kindred.

1. John Hughes, late of (*Residence and addition*), the intestate in the decree [*Or*, order] in this cause [*Or*, matter] dated the —— day of ——, 18—, named, was my son.

2. The said John Hughes died on the —— day of ——, 18—. He is the same person as "John Hughes," in the certificate marked A., now produced and shown to me, named; and purporting to be a copy of an entry of his burial in the register book of burials kept for the parish of W., in the county of Y., for the year 18—.

3. The said John Hughes was married twice only; namely: (1) On the —— day of ——, 18—, to Laura Thornton, at the parish church of S., in the city of T.; and (2) on the —— day of ——, 18—, to Jane Watts, at the parish church of P., in the county of R.

4. The said John Hughes and Laura Thornton are the same persons as "John Hughes," bachelor, and "Laura Thornton," spinster, respectively named in the certificate marked B., now produced and shown to me; and purporting to be a copy of an entry of their marriage in the register book of marriages kept for the said parish of S., for the year 18—.

5. The said Laura Thornton, then Laura the wife of the said John Hughes, died on the —— day of ——, 18—. She is the same person as "Laura Hughes," in the paper writing marked C., now produced and shown to me, named; and purporting to be a copy, under the seal of the General Register Office, of the entry No. ——, in the certified entries of deaths in the district of K., in the county of L., for the year 18--.

6. The said John Hughes and Jane Watts are the same persons as "John Hughes," widower, and "Jane Watts," widow, respectively named in the paper writing marked D., now produced and shown to me; and purporting to be a copy of an entry of their marriage in the register book of marriages kept for the said parish of P., for the year 18—.

7. The said John Hughes had two children only by his wife Laura Hughes, formerly the said Laura Thornton; namely: (1) Albert Hughes, and (2) Maria Hughes.

8. The said Albert Hughes is the same person as "Albert, son of John and Laura Hughes," in the paper writing marked E., now produced and shown to me, named; and purporting to be a copy of an entry of his baptism in the register book of baptisms kept for the parochial chapelry of L., in the county of M., for the year 18—.

9. The said Maria Hughes is the same person as "Maria, daughter of John and Laura Hughes," in the paper writing marked F., now produced and shown to me, named; and purporting to be a copy of an entry of her baptism in the last mentioned register book, for the year 18—.

10. The said Maria Hughes has been married once only; namely: on the —— day of ——, to Thomas Jones, of (*Residence and addition*), at the parish church of N., in the city of O. They are the same persons as "Thomas Jones," bachelor, and "Maria Hughes," spinster, respectively named in the paper writing marked G., now produced and shown to me; and purporting to be a copy of an entry of their marriage in the register book of marriages for the said parish of N., for the year 18—.

11. The said John Hughes had no child by his wife Jane Hughes, formerly the said Jane Watts, and now his widow.

12. The said Jane Hughes and Albert Hughes, and the said Thomas Jones and Maria his wife, formerly the said Maria Hughes, are respectively now living.

13. *Show means of knowledge.*

Sworn, &c.

Inquiries as to Legacies and Annuities.

895. Affidavit by a beneficiary, as to incumbrances by him.

In Chancery.

(*Title of cause or matter.*)

I, John Jones, of (*Residence and addition; and identify the deponent with the cause or matter; as thus:* one of the defendants above named—*Or,* in the plaintiff's bill

in this cause named—*Or*, one of the children of Ephraim Jones, the testator in the decree in this cause (*Or*, matter) dated the —— day of ——, 18— named—(*or as may be*), make oath and say as follows:

1. I have not at any time mortgaged, charged or otherwise incumbered the legacy of $1,000 bequeathed to me by the will of the said testator Ephraim Jones, or any part thereof (*or as may be—according to the inquiry directed*), to, or in favour of, any person or persons whomsoever—*If so:* save and except as hereinafter mentioned, that is to say: By an indenture dated the —— day of ——, 18—, and made between myself of the one part, and Charles Davies, of, &c., of the other part, I assigned the said legacy, and the interest due, and to accrue due in respect thereof, unto the said Charles Davies, to secure to him the repayment of $400, with interest thereon at the rate of $5 per cent. per annum; and which sum, with interest thereon at the rate aforesaid from the —— day of ——, 18—, remains due to the said Charles Davies upon the security of the said indenture (*or as may be.*)

Sworn, &c.

In Chancery.

(*Title of cause or matter.*)

896. Affidavit by an executor, or a trustee, as to notices received of incumbrances.

I, A. B., of (*Residence and addition*), the above-named defendant, and the executor of the will of Ephraim Jones, the testator in the decree [*Or*, order] in this cause [*Or*, matter] dated the —— day of ——, 18—, named (*or as may be*), make oath and say as follows:

1. I have not at any time received notice of any mortgage, charge, or incumbrance created by any person or persons interested under the will of the said Ephraim Jones of the legacies, shares or interests thereby bequeathed to them respectively, or any part or parts thereof (*or as may be—according to the inquiry directed*)—*If so:* save and except the —— notices now produced and shown to me, and marked respectively A., B., *&c.;* and which notices were received by me on the respective days set forth in the first column of the schedule hereto; and the short particulars of the said notices are set forth in the second column of such schedule, opposite the respective days on which such notices respectively were so received.

(*For form of Schedule, see next page.*)

Schedule.

The Schedule above referred to.

Date when notice received.	Short Particulars.
1st January, 1865	A notice, dated ——, 18—, from Messrs. A. & B., of, *&c.*, of an assignment by John Jones of his legacy of $1,000 to Charles Davies, of, *&c.*, to secure $100 and interest.
8th August, 1866.....	A notice, *&c.*

897. List of Legacies remaining unpaid.

In Chancery.

(*Short title.*)

List of Legacies remaining unpaid.

Serial No.	Names of Legatees.	Descriptions.	Amounts of principal and interest.	Total amounts due.
			$ cts.	$ cts.
1	James Oliver	Son of testator, an infant	400 00	
		Interest	7 05	
				407 05
2	Mary Russell	of London, widow	50 00	
		Interest from 1st January, 1867, the death of testator	4 08	
				54 08
3	Jane, the wife of John Williams	of St. Catharines, Esq..	250 00	
		Paid in part	50 00	
			200 00	
		Interest	14 11	
				214 11
			Total	675 24

898. List of Annuities and Arrears due.

In Chancery.

(*Short title.*)

List of Annuities, and arrears due.

Serial No.	Names of Annuitants.	Description of Annuitants and Nature of Annuities.	Amounts of Annuities.	Amounts of Arrears due.
			$ cts.	$ cts.
1	Mary Jones.....	Spinster, daughter of testator during her life.....	50 00	25 00
		Totals.....	50 00	25 00

In Chancery.

(*Title of the cause.*)

899. Affidavit by joint executors and trustees, verifying their accounts, and answering the usual inquiries, as to real and personal estate.

We, A. B., of (*Residence and addition*), C. D., of, *&c.*, and E. F., of, *&c.*, the above named defendants [*or as may be*], severally make oath and say, as follows:—

1. We have according to the best of our knowledge, remembrance, information and behalf, set forth in the first Schedule hereunder written, a full, true, and particular account and inventory of the personal estate of or to which G. H., the testator [*Or*, intestate] in the decree [*Or*, order] dated the —— day of ——, 18—, made in this cause named or referred to, and who died on the —— day of ——, 18—, was possessed or entitled at the time of his death—*If the decree or order directs only an account of personal estate not specifically bequeathed, add:* and not by him specifically bequeathed. Inventory of personal estate at death (*a*).

2. Save what is set forth in the said first Schedule—*If so:* and what is by the said testator specifically bequeathed—the said testator [*Or*, intestate] was not, to the best of our knowledge, information, or belief, at the time of his death possessed of, or entitled to, any debt or sum of money due to him from us, [or any] or either of us, on any account whatsoever, nor to any leasehold, or other personal estate, goods, chattels, or effects, in possession, or reversion, absolutely, or contingently, or otherwise howsoever.

3. The debts of the said testator [*Or*, intestate] are those set forth in our affidavit made under Order 480 of the Con. G. O. of June, 1868, and filed on the —— day of ——, 18— (*b*).

4. The testator's [*Or*, intestate's] funeral expenses have been paid; and the same consist of the items of disbursement numbered —— and —— in the account marked A. hereinafter referred to [*Or, if not paid, state the amount due, and to whom due: as thus:* The said testator's funeral expenses amount to $——; and the same remain due to J. S., of N., in the (county) of M., undertaker]. Funeral expenses.

5. We have, in the account marked A. now produced and shown to us (*c*), according to the best of our know- Account of personal estate.

(*a*) The first Schedule to the affidavit should show the state of the assets at the testator's death; the second, at the time the affidavit is sworn; and the accounts of personal estate verified by the affidavit, should disclose all the receipts and payments in respect of the assets between those periods. Thus, where a testator leaves a sum of bank stock, which the executor afterwards sells, and invests the proceeds in Dominion Stock; the bank stock will appear in the first Schedule; the proceeds of the sale on the debit side of the account; the cost of the Dominion Stock on the credit side; and the amount of the Dominion Stock will form an item in the second Schedule, as an asset outstanding or undisposed of. For form of these Schedules, see *post*, No. 900.

(*b*) The form of this affidavit is given *ante*, No. 880, and is No. 3 of Schedule V. to *Ord.* 480.

(*c*) For form of this account, see *post*, No. 901. Where the decree or order directs that, in taking the account, capital is to be distinguished from income, the account should be divided into two parts: the first embracing the transactions as to capital; the second as to income; and the affidavit varied accordingly.

ledge, information and belief, set forth a full, true and particular account of the personal estate of the said testator [*Or*, intestate]—*If so:* not by him specifically bequeathed—which has come to our hands, or to the hands of [any or] either of us, or to the hands of any person or persons by our, [or any] or either of our order, or for our, [or any] or either of our use: with the times when, the names of the persons from whom, and on what account, the same has been received; and also a like account of the disbursements, allowances, and payments made by us, [or any] or either of us, in respect of, or on account of, the said testator's [*Or*, intestate's] funeral expenses, debts, and personal estate: together with the purposes for which, the same were disbursed, allowed, or paid.

6. We have, in the account marked B. now produced and shown to us, according to the best of our knowledge, information and belief, set forth a full, true and particular account of the legacies left by the said testator (*a*).

7. We, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say: that save and except as appears in the said account marked A., we have not, nor has [any or] either of us, nor have nor has any other persons or person by our, [or any] or either of our order, or for our, [or any] or either of our use, possessed, received, or got in, any part of the said testator's [*Or*, intestate's] personal estate, nor any money in respect thereof; and that the said account marked A. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed, on the account aforesaid.

Personal estate outstanding.

8. To the best of our knowledge, information, and belief, the personal estate of the said testator [*Or*, intestate] now outstanding, or undisposed of, consists of the particulars set forth in the second schedule hereunder written (*b*).

9. Save what is set forth in the said second schedule, there is not, to our knowledge, information, or belief, any part of the said testator's [*Or*, intestate's] personal estate now outstanding, or undisposed of.

Real estate at death.

10. We have, according to the best of our knowledge, remembrance, information, and belief, set forth in the third schedule (*c*) hereunder written the particulars of all the real estate which the said testator [*Or*, intestate] was

(*a*) For form of this account see *post*, No. 901*b*.
(*b*) This schedule should contain all the existing assets; such as Dominion Stock, whether in the executors' names or in Court, and any cash in the hands of the executors; Bloxam, 48. For form of this Schedule, see *post*, No. 900 (2).
(*c*) For form of this Schedule, see *post*, No. 900 (3).

seized of, or entitled to (*Follow the words of the decree or order; as thus:*)

at the time of his death.

Or, at the date of his will, and at the time of his death—*and, in the latter case, if any estates were acquired between those periods, distinguish the same; as thus:*

10. We have (*&c.: as above*, to belief), set forth in the first part of the third schedule hereunder written the particulars of all the real estate which the said testator [*Or*, intestate] was seized of, or entitled to, at the date of his will, and in the first and second parts of such schedule the particulars of all the real estate which the said testator was seized of, or entitled to, at the time of his death.

11. Save what is set forth in the said schedule, the said testator [*Or*, intestate] was not, to the best of our knowledge, information, or belief, at the date of his will or at the time of his death, seized of, or entitled to, any real estate, in possession, remainder or reversion, absolutely or contingently, or otherwise howsoever.

Incumbrances.

12. We have, according to the best of our knowledge, information, and belief, set forth in the fourth schedule hereunder written the particulars of all the incumbrances affecting the said testator's [*Or*, intestate's] real estate, and what part thereof such incumbrances respectively affect (*a*).

Account of rents and profits.

13. We have, in the account marked C. now produced and shown to us (*b*), according to the best of our knowledge, information, and belief, set forth a full, true, and particular account of all the rents and profits of the said testator's [*Or*, intestate's] real estate which have come to our hands, or to the hands of [any or] either of us, or to the hands of any person or persons by our, [or any] or either of our order, or for our, [or any] or either of our use; and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due; and also a like account of the disbursements, allowances, and payments made by us, [or any] or either of us, in respect of the said testator's [*Or*, intestate's] real estate, or the rents and profits thereof, and the times when, the

(a) For form of this Schedule, see *post*, No. 900 (4). If there is no incumbrance, alter the paragraph accordingly; see *post*, No. 905, par. 3.

(b) For form of this account, see *post*, No. 902.

names of the persons to whom, and the purposes for which, the same were made.

14. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say: that, save and except as appears in the said account marked C., we have not, nor has [any or] either of us, nor have nor has any other persons or person by our or [any or] either of our order, or for our [or any] or either of our use, possessed, received, or got in, any rents or profits of the said testator's [*Or*, intestate's] real estate, nor any money in respect thereof; and that the said account marked C. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid or allowed, as above stated.

THE FIRST SCHEDULE ABOVE REFERRED TO.

900. Schedules to foregoing affidavit.

(1) Personalty at death.

Account of the testator's [*Or*, intestate's] personal estate, at his death.

(*Set out the particulars; as in the following examples:*)

1. $500 cash in the house.
2. $1,000 cash at the testator's bankers, Messrs. A. & B.
3. $1,000, Ontario Bank Stock standing in the testator's name.
4. $100 due from John James, for half-year's rent of house at ———, to Michaelmas, 18—.
5. $322,60, balance remaining due from John Thomas, on account of half-year's rent of farm at ———, to Michaelmas, 18—.
6. $300, a debt due from Samuel Jones, on a bond: with interest from ———, at — per cent.
7. A leasehold house situate at ———, held under a lease for a term of ——— years, which will expire on ——, 18—, at a rent of $— a year: underlet to James Evans for a term which will expire on ——, 18—, at a rent of $50 a year.
8. $25, half a year's rent due from the said James Evans at Christmas, 18—.

THE SECOND SCHEDULE ABOVE REFERRED TO.

(2) Personalty outstanding or undisposed of.

Personal estate outstanding or undisposed of.

(*Set out the particulars; as in the above examples.*)

THE THIRD SCHEDULE ABOVE REFERRED TO.

Real estate.

(Set out a short particular of the real estate; as in the following examples:)

(3) Realty.

1. A freehold mansion, and grounds attached, containing about three acres, situate at ———, and called "The Evergreens:" in the testator's occupation at his death, and now in hand, described as follows (*Give full description.*)

2. A freehold farm, called "Low End Farm," situate at ——, containing about 500 acres, and in the occupation of James Evans, under a lease for a term which will expire at ——, 18—, at the yearly rent of $600, described as follows (*Give full description.*)

3. Twenty freehold cottages, situate at ——— aforesaid, in the occupation of Michael Sullivan, *&c.*, as weekly tenants, at rents amounting collectively to $—— a year, described as follows (*Give full description.*)

———

THE FOURTH SCHEDULE ABOVE REFERRED TO.

Incumbrances affecting the real estate.

(Set out a short particular of the incumbrances; and show what part of the above real estate is subject to each; as in the following examples:)

(4) Incumbrances on realty.

1. The mansion and grounds numbered 1 in the third schedule above written are subject to a mortgage created by the testator by indenture dated, *&c.*, in favour of Reuben Johnson, and now vested in Alfred Symes, of (*Residence and addition*), as security for $500 due to him, with interest at $6 per cent.

2. The farm numbered 2 in the said third schedule is charged with the payment of an annuity of $40 to Jemima Brown, of, *&c.*, widow, during her life, under the will of the testator's brother, Ephraim Hughes.

3. The closes of land numbered 4 in the said third schedule are subject to the dower of A. B., widow of the said testator (*or as the case may be.*)

A.

901. Account of personal estate, referred to in No. 899.

In Chancery.

(*Short title of cause.*)

This account marked A. was produced and shown to A. B., C. D., and E. F. [*or as may be*], and is the account referred to in their affidavit sworn this —— day of ——, 18—,

Before me,

(*Signature of the Commissioner or Officer before whom the affidavit is sworn.*)

RECEIPTS. DISBURSEMENTS.

No. of Item.	Date when received.	Names of persons from whom received.	On what account received.	Amount received.	No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	18—			$ c.		18—			$ c.
1		.....	Found in house..		1		James Price	Undertaker's bill for funeral	
2		Evans & Co.	Balance at bankers		2		Messrs. A. & B....	Solicitor's bill for probate ..	
3		.....	Half year's dividend on $2,000 $6 per cent. stock, due ——.		3		John George.....	A debt due to him for medical attendance	
4		John James.....	Half year's rent of freehold, due ——.		4		James Price	Bond debt of $1,000, and $25 for interest thereon from —— to ——.	
5		Samuel Jones	Bond debt of $300 and interest from —— to ——...						
6		James Evans.....	Half year's rent of leasehold house, due—.						
7		William Williams..	Produce of sale of the above leasehold house						

B.

901b. Account of legacies referred to in No. 899.

In Chancery.

(*Short title of cause.*)

This account marked B. was produced and shown to A. B., C. D. and E. F. [*or as may be*], and is the account referred to in their affidavit sworn this —— day of ——, 18—,

Before me,

(*Signature of the Commissioner or Officer before whom the affidavit is sworn.*)

Legacies left by the testator [*Or*, intestate.]

1. To his widow, Jane ———, all his household furniture (*Following the words of the will.*)
2. To his son, Y. Z., the sum of $400, payable (*Following the words of the will.*)
3. To his daughters, Ann, Jane, and Mary, the sum of $1,000 each, payable (*Following the words of the will.*)
4. To his son, S. S., Lot No. —, in the township of ———, in the county of ———, in fee (*or as may be—Following the words of the will.*)

C.

In Chancery.

(*Short title of cause.*)

This account marked C. was produced and shown to A. B., C. D., and E. F. [*or as may be*], and is the account referred to in their affidavit sworn this —— day of ——, 18—, 902. Account of rents and profits, referred to in No. 899.

Before me,

(*Signature of the Commissioner or Officer before whom the affidavit is sworn.*)

RECEIPTS.

No. of Item.	Date when received.	Names of persons from whom received.	On what account, and in respect of what part of the estate received, and when due.	Amount received.
	18—			$ c.
1		John James	Half year's rent for farm in Township of ——, due ——.	
2		Thomas Jones	One quarter year's rent of house at ——, due ——.	
3		John James	Same as No. 1, due ——.	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	18—			$ c.
1		Sun Insurance Office	One year's insurance against fire, due ——.	
2		Thomas Carpenter.	Repairs at John James's farm	
3		James Francis	Taxes—half year due 10th October, 18—, on Thomas Jones' farm	

903. Affidavit by joint executors and trustees, verifying their supplemental accounts of personal estate, and rents and profits.

(*Formal parts: see ante, No.* 300.)

1. We have, in the account marked C., now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full, true, and particular account of the personal estate of G. H., the testator in the decree [*Or*, order] made in this cause, dated the —— day of ——, 18—, named or referred to—*If so*: and not by him specifically bequeathed—which, since the —— day of ——, 18— (the time to which our former account thereof, marked A., verified by our affidavit filed in this cause the —— day of ——, 18—, was made up and rendered), has come to our hands (*Continue as in par.* 5 *of No.* 899, *ante, to the end of that par.*)

2. We, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say: that save and except as appears in the said accounts marked A. and C., we have not, nor has [any or] either of us, nor have nor has any other persons or person by our [or any] or either of our order, or for our [or any] or either of our use, possessed, received, or got in any part of the said testator's personal estate, nor any money in respect thereof; and that the said account marked C. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed on the account aforesaid.

3. To the best of our knowledge, information, and belief, the personal estate of the said testator now outstanding, or undisposed of, consists of the particulars set forth in the schedule hereunder written.

4. Save what is set forth in the said schedule, there is not, to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding, or undisposed of.

5. We have, in the account marked D., now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full, true, and particular account of all the rents and profits of the said testator's real estate, which since the ——— day of ———, 18— (the time to which our former account thereof, marked B., verified by our said affidavit filed in this cause the ——— day of ———, 18—, was made up and rendered), have come to our hands, or to the hands of [any or] either of us, or to the hands of any person or persons by our [or any] or either of our order, or for our [or any] or either of our use; and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times

when the same became due; and also a like account of the disbursements, allowances and payments made by us, [or any] or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

6. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say: that save and except as appears in the said accounts marked B. and D., we have not, nor has [any or] either of us, nor have nor has any other persons or person by our [or any] or either of our order, or for our [or any] or either of our use, possessed, received, or got in, any rents or profits of the said testator's real estate, nor any money in respect thereof; and that the said account marked D. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed as above stated.

The schedule above referred to.

(*Set out the particulars of the personal estate outstanding or undisposed of: For examples, see ante, No.* 900.)

(*Formal parts: see ante, No.* 300.)

904. Affidavit by a sole executor or administrator, verifying his account, and answering the usual inquiries as to personal estate.

1. I have, according to the best of my knowledge, remembrance, information, and belief, set forth in the first schedule hereunder written a full, true, and particular account and inventory of the personal estate of or to which G. H., the testator [*Or*, intestate] in the decree [*Or*, order] made in this cause dated the ——— day of ———, 18—, named or referred to, and who died on the ——— day of ———, 18—, was possessed or entitled at the time of his death.

In a case of testacy, add—and not by him specifically bequeathed.

2. Save what is set forth in the said first schedule, *in a case of testacy, add, if the decree or order is so qualified:* [and what is by the said testator specifically bequeathed,] the said testator [*Or*, intestate] was not, to the best of my knowledge, information, or belief, at the time of his death possessed of, or entitled to, any debt or sum of money due to him from me, on any account whatsoever (*Continue as in par.* 2 *of No.* 899, *ante, to the end of par.*

3: *substituting* "intestate's," *for* "testator's," *where applicable*).

4. I have, in the account marked A., now produced and shown to me, according to the best of my knowledge, information, and belief, set forth a full, true, and particular account of the personal estate,

In a case of testacy, add: of the said testator; *and if the decree or order is so qualified, add also:* not by him specifically bequeathed,

In a case of intestacy, add: of the said intestate,

which has come to my hands, or to the hands of any person or persons by my order, or for my use; with the times when, the names of the persons from whom, and on what account the same has been received; and also a like account of the disbursements, allowances, and payments made by me in respect of, or on account of, the said testator's [*Or*, intestate's] funeral expenses, debts, and personal estate: together with the times when, the names of the persons to whom, and the purposes for which the same were disbursed, allowed, or paid.

5. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, further say: that save and except as appears in the said account marked A., I have not, nor have nor has any other persons or person by my order, or for my use, possessed, received, or got in any part of the said testator's [*Or*, intestate's] personal estate, nor any money in respect thereof; and that the said account marked A. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed on the account aforesaid.

6. To the best of my knowledge, information and belief, the personal estate of the said testator [*Or*, intestate] now outstanding, or undisposed of, consists of the particulars set forth in the second schedule hereunder written.

7. Save what is set forth in the second schedule, there is not, to my knowledge, information or belief, any part of the said testator's [*Or*, intestate's] personal estate now outstanding or undisposed of.

The first [*Or*, second] schedule above referred to.

(*The same as the first* [*Or, second*] *schedule No.* 900, *ante: substituting, where applicable,* "intestate's," *for* "testator's.")

(*Formal parts: see ante, No.* 300.)

905. Affidavit by a sole trustee of testator's will, verifying his account of rents and profits, and answering the usual inquiries as to real estate.

1. I have, according to the best of my knowledge, remembrance, information and belief, set forth in the first schedule hereunder written, the particulars of all the real estate which G. H., the testator in the decree [*Or*, order] made in this cause, dated the —— day of ——, 18—, named or referred to, and who died on the —— day of ——, 18—, was seized of, or entitled to (*Continue as in par.* 10 *of No.* 899, *ante, to the end of that par.*)

2. Save what is set forth in the said schedule, the said testator was not, to the best of my knowledge, information or belief, at the date of his will, or at the time of his death, seized of, or entitled to, any real estate in possession, remainder, or reversion, absolutely or contingently, or otherwise howsoever.

3. I have, according to the best of my knowledge, information and belief, set forth in the second schedule hereunder written the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect [*Or*, to the best of my knowledge, information and belief, there is not any incumbrance affecting the said testator's real estate, or any part or parts thereof.]

4. I have, in the account marked A., now produced and shown to me, according to the best of my knowledge, information and belief, set forth a full, true and particular account of all the rents and profits of the said testator's real estate which have come to my hands, or to the hands of any person or persons by my order, or for my use; and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due; and also a like account of the disbursements, allowances, and payments made by me in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which the same were made.

5. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, further say: that save and except as appears in the said account marked A., I have not, nor have nor has any other persons or person by my order, or for my use, possessed, received, or got in any rents or profits of the said testator's real estate, nor any money in respect thereof; and that the said account marked A. does not contain any item of disbursement, payment, or allowance, other than

such as has actually been disbursed, paid or allowed, as above stated.

The first [*Or*, second—*Or*, third—*Or*, fourth] schedule above referred to.

(*For schedules and account, see Nos.* 900 *and* 902 *ante.*)

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906. Affidavit by joint executors and trustees, of non-receipt of personal estate, or rents and profits.

(*Formal parts: see ante, No.* 899.)

1. We, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, say: that we have not, nor has [any or] either of us, nor have nor has any other persons or person by our [or any] or either of our order, or for our [or any] or either of our use, since the —— day of ——, 18— (the time to which our accounts thereof, marked respectively A. and B., verified by our affidavit filed in this cause the —— day of ——, 18—, were made up and rendered), possessed, received, or got in, any part of the personal estate of G. H., the testator in the decree [*Or*, order] made in this cause, dated the ——, day of ——, 18—, named or referred to, nor any money in respect thereof, nor any rents or profits of the said testator's real estate, nor any money in respect thereof.

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907. Affidavit by a sole executor (or administrator) and trustee of non-receipt of personal estate, or rents and profits.

(*Formal parts: see ante, No.* 300.)

1. I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, say: that I have not, nor have nor has any other persons or person by my order, or for my use, since the —— day of ——, 18— (the time to which my accounts thereof marked respectively A. and B., verified by my affidavit filed in this cause, dated the —— day of ——, 18—, were made up and rendered), possessed, received, or got in, any part of the personal estate of G. H., the testator [*Or*, intestate] in the decree [*Or*, order] made in this cause, dated the —— day of ——, 18—, named or referred to, nor any money in respect thereof, nor any rents or profits of the said testator's real estate, nor any money in respect thereof.

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908. Negative affidavit by the executor of a deceased executor as to the personal estate of the original testator.

(*Formal parts: see ante, No.* 300.)

1. I believe that T. R., the testator in the decree in this cause dated the —— day of ——, 18—, named, was at the time of his death possessed of some personal estate, including certain household furniture, but I cannot, as to my knowledge, information, or belief, say what were the

particulars or value thereof, save and except that it appears by the Probate Act that the amount of the personal estate of the said testator was sworn to be under the value of $——. Save and except as aforesaid, I cannot as to my knowledge, remembrance, information, or belief, set forth a full, true, and particular, or any account or inventory of the personal estate which the said testator T. R. was possessed of, or entitled to, at the time of his death.

2. And I, speaking positively as to myself, and to the best of my knowledge and belief as to other persons, further say: that save as aforesaid, the said T. R. was not at the time of his death possessed of, or entitled to, any debt or sum of money due to him from me, or from R. S., deceased, in the said decree named the executor of the said testator T. R., on any account whatsoever; nor to any leasehold or other personal estate, goods, chattels, or effects, in possession or reversion, absolutely or contingently, or otherwise howsoever.

3. I cannot, as to my knowledge, information, or belief, set forth a true and particular, or any account of the personal estate of the said testator T. R., which came to the hands of the said R. S., or to the hands of any person or persons by his order, or for his use; or a like or any account of the disbursements, allowances, or payments made by the said R. S. in respect of the funeral expenses, debts, or personal estate of the said testator T. R.

4. And I, speaking positively as to myself, and to the best of my knowledge and belief as to other persons, further say: that no part of the personal estate of the said testator T. R. has come to my hands, or to the hands of any other person or persons by my order, or for my use.

5. There is not to my knowledge, information, or belief, any part of the personal estate of the said testator T. R. now outstanding or undisposed of.

In Chancery.

Brown v. *Jones.*

909. Notice of having left accounts, and filed affidavit.

Take notice, that I have this day left at the Chambers of the Master at ——— the accounts of the defendant A. B. (*or as may be*), in answer to the directions in the decree [*Or*, order] dated ——, 18—, and filed an affidavit of the said defendant (*or as may be*) verifying the said accounts, and answering the said decree [*Or*, order].

Dated, &c.

910 Surcharge against an accounting party.

In Chancery.

(*Short title of cause.*)

The surcharge of the plaintiff (*or as may be*) against the defendant A. B. (*or as may be*), under the decree [*Or*, order] in this cause, dated the —— day of ——, 18—.

The plaintiff (*or as may be*) seeks to charge the defendant A. B. (*or as may be*) with the several sums of money hereinafter particularized, beyond what the defendant A. B. (*or as may be*) has, by his account marked A., left at the Chambers of the Master at ———, on the —— day of ——, 18—, pursuant to the said decree [*Or*, order], admitted to have been received by him; that is to say:

(*Set out particulars of the surcharge, in a short and succinct manner; as thus:*)

No. of Item.	Date when received.	Names of persons from whom received.	Particulars of amount received.	Amount received.
				$ c.
73	1863. Jan. 4	John Thomas	Half year's rent of Bolder Farm, due Michaelmas, 1862.....	300 00

911. Notice thereof.

(*Formal parts: see ante, No.* 909.)

Take notice, that I have this day left at the Chambers of the Master at ——— a statement of several sums of money therein and hereinafter particularized, with which the plaintiff (*or as may be*) seeks to charge the defendant A. B. (*or as may be*) beyond what the said defendant (*or as may be*) has, by his account marked A., left in the said Chambers on the —— day of ——, 18—, admitted to have received; that is to say:

(*Set out particulars: as in the surcharge.*)

And take notice, that I have this day filed an affidavit of the plaintiff (*or as may be*) in support of such statement.

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912. Master's order for serving decree on person interested under *Ord.* 60.

In Chancery.

(*Shortened style.*)

Whereas in proceeding under the decree in this cause bearing date the —— day of ——, 18—, it appears that A. B. would by the practice of this Court be a necessary party to this suit, and ought to be served with the decree

herein, pursuant to Order 60 of the Consolidated General Orders of this Court.

It is therefore ordered that the said A. B. be served with an office copy of the said decree endorsed with the notice set forth in Schedule A., referred to in the said Order 60, and also with a copy of this order.

Dated, &c.

C. D.,
Master at ———.

To the within named A. B.:

913. Endorsement on office copy of a decree, served under *Ord.* 60, being Schedule A. referred to in that order.

Take notice, that from the time of the service hereof, you, (*Or, as the case may be, the infant, or person of unsound mind*) will be bound by the proceedings in this cause in the same manner as if you (*Or, the said infant, or person of unsound mind*) had been originally made a party to the suit: and that you (*Or, the said infant, or person of unsound mind*) may, upon service of notice upon the plaintiff, attend the proceedings under the within decree: and that you (*Or, the said infant, or person of unsound mind*) may, within fourteen days after the service hereof, apply to the Court to add to, vary, or set aside the said decree.

A. B.,
of the City of Toronto,
in the County of York,
Plaintiff's Solicitor.

(*Formal parts: see ante, No.* 912.)

914. Master's, Judge's or Referee's order adding a party under *Ords.* 205 & 244.

Whereas, in proceeding under the decree [*Or*, order] in this cause, bearing date, &c., it appears that A. B. ought to be made a party to this suit, and be enabled to attend the proceedings before me.

It is therefore ordered that he be made a party defendant to this cause, and for that purpose it is ordered that he be served with an office copy of the said decree [*Or* order] endorsed with the notice set forth in Schedule L., referred to in [*If order made by a Master, say* Order 245; *if by the Judge or Referee, say* Order 206] of the Consolidated General Orders of this Court; and also with a copy of this Order.

Dated, &c.

Signature of Judge or Officer making order.

915. Endorsement of an office copy of decree served under *Ords.* 205 or 244, being Schedule L. to *Ords.* 206 and 245.

To A. B. (*the person upon whom service has been directed.*)

(*Set out order directing service.*)

If you wish to apply to discharge the foregoing order, or to add to, vary, or set aside the decree, you must do so within fourteen days from the service hereof. (*Where the order fixes a time for 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 may seem 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.

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916. Special order as to mode of service or dispensing with service.

(*Formal parts: see ante, No.* 339.)

It is ordered:

1. That service of an office copy of the decree [*Or*, order] dated the ——, 18—, together with a copy of this order upon A. B., of, *&c.*, be deemed good service upon C. D., E. F. and G. H., and the said defendants are to have — days from the day of such service within which to move, to add to, vary, or set aside the said decree.

Or, that publication of the said decree [*Or*, order] and of the endorsement prescribed by the Consolidated Orders in this behalf, addressed to L. M., and of a copy of this order, in the newspaper called the ———, published at ———, be deemed good service of such decree on the said L. M.; and the defendant L. M. is to have, *&c.* (*continue as in par.* 1.)

Or, that service of an office copy of the said decree [*Or*, order] upon S. T., by sending such an office copy, endorsed with the memorandum prescribed by Consolidated General [Order 245 *or* 206] through the post office, in a prepaid letter, addressed to him at ———, may be deemed good service of such decree on the said S. T.; and the defendant S. T. is to have (*continue as in par.* 1.)

Or, that service of the said decree on W. Y. be dispensed with. (*a*)

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917. Letter enclosing office copy of decree to a person directed to be served through the post office.

To S. T., of ———. (*Place and date.*)

Sir,

In a suit of A. *v.* B., now pending in the Court of Chancery for Ontario, for the administration of the estate of W. A., late of, *&c.*, deceased (*or as may be*), it has, by

(*a*) The Master has power to dispense with the service of the decree on parties necessary to be served under *Ord.* 60. See *Ord.* 587. But he has no such power as to parties necessary to be served under *Ord.* 244.

an order dated the —— 18—, been directed that an office copy of the decree [*Or*, order] therein, dated the —— day of ——, 18—, be transmitted to you, as being one of the next of kin of the said W. A. (*or as may be.*) I beg, therefore, as the plaintiff's solicitor, to enclose you such office copy (marked A.), and also a copy of the said order, dated the ——, 18— (*Order directing service*); and have to call your attention to the memorandum endorsed on the office copy (marked A.)

As I shall have occasion to satisfy the Court that the office copy of the Decree [*Or*, Order], and copy order have reached you, I shall feel obliged by your signing and returning to me, through the post office, the acknowledgment to that effect which you will find written in the fold of the paper enclosed (marked B.) (*a*).

I am, &c.,

X. Y.

(*Place and date.*)

918. Acknowledgment of the receipt of the notice (*b*).

I, S. T., of, *&c.*, hereby acknowledge to have received, through the post office, on the ——, 18—, an office copy of the [decree] in a cause of A. *v.* B., with an endorsement thereon, in the form or to the effect of the within written [decree] and of the endorsement thereon, and also a document purporting to be a copy of an order made on the —— of ——, 18—, in the within mentioned suit, directing such office copy or decree to be transmitted to me.

S. T.

(*Formal parts: see ante, No.* 300.)

919. Affidavit of such service.

1. I have, in the manner hereinafter mentioned, served S. T., in the order made in this cause dated the —— of ——, 18— (*Order directing special mode of service*), named, with the decree [*Or*, order] made in this suit, dated the —— of ——, 18—.

2. On the —— of ——, 18—, I put into the post office, in the city of Hamilton, in the county of Wentworth, a letter duly addressed thus: (*Set out the address*); and with the proper postage stamp affixed thereto, as a pre-paid letter; and of which letter the paper writing marked A. now produced and shown to me is a true copy.

3. The said letter, at the time I posted the same as aforesaid, contained a true copy, as passed and entered, of

(*a*) It seems to be advisable, in every case, to send a form of acknowledgment for signature.

(*b*) The form assumes that the acknowledgment will be written on the original decree and endorsement. Where it is not so intended, the acknowledgment should be varied in form accordingly, and made sufficiently explicit.

the order in this suit dated the —— of ——, 18—, now produced and shown to me, and marked B. (*Order directing special service*), and also an office copy of the said decree [*Or*, order] dated the —— of ——, 18—, with a memorandum endorsed thereon addressed to the said S. T., and which two documents were true copies respectively of the decree [*Or*, order] marked C., and memorandum endorsed thereon marked D., now produced and shown to me.

4. The said letter, when posted as aforesaid, also contained the said exhibited documents marked respectively C. and D., and likewise the acknowledgment, marked E., now appearing in the fold of the said exhibit C, except that such acknowledgment was then undated and unsigned.

5. The said exhibited documents, marked C., D., and E. were received by me on the —— of ——, 18—, through the post office.

6. Under the circumstances hereinbefore stated, I verily believe that the office copy of the said decree [*Or*, order], with such endorsement thereon as aforesaid, and a copy of the said order of the —— of ——, 18— (*Order directing service*), were duly received by the said S. T., at ——, aforesaid, on or about the —— of ——, 18—. (*a*)

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920. Request to Taxing Master to moderate bill of costs claimed by an accounting party.

In Chancery.

(*Short title of cause.*)

The Taxing Master is requested to tax and settle the accompanying bill of costs, identified by my initials thereon: to assist in making a proper allowance in respect thereof in taking the accounts of the defendant (*or as may be*), the executor (*or as may be*) of A. B., the testator (*or as may be*) in this cause, under the decree [*Or*, order] therein dated the —— day of ——, 18—: in which accounts the said bill of costs is claimed as a payment by the said defendant (*or as may be*) to his solicitor.

SECTION II.—*Foreclosure and Redemption Suits.*

921. Notice T under Order 444, being the first part of Schedule T referred to in that order.

In Chancery. (*Date.*)

Between A. B.....Plaintiff,

and

C. D.....Defendant.

Whereas a suit has been instituted by the above named plaintiff for the foreclosure (*or* sale) of certain lands, being (*insert description of lands*) and I have been directed by the decree made in this cause, and dated the —— day

(*a*) For other Forms, see ante, Nos. 323, 325–6, 328 and 363.

of ——, to enquire whether any person, other than the plaintiff, has any charge, lien, or incumbrance upon the said estate: And whereas it has been made to appear before me that you have each some lien, charge, or incumbrance upon the said estate, and I have therefore caused you [each] to be made a party to this suit, and appointed the —— day of ——, at —— o'clock in the —— noon, for you to appear before me, at my Chambers at ——, either in person or by your solicitor, to prove your claims:

Now you are hereby required to take notice: 1st. That if you wish to apply to discharge my order making you a party, or to add to, vary, or set aside the decree, you must do so within fourteen days from the service hereof; and if you fail to do so, you will be bound by the decree, and the further proceedings in this cause as if you were originally made a party to the suit: 2nd. That if you fail to attend at the time and place appointed, you will be treated as disclaiming all interest in the land in question, and it will be dealt with as if you had no claim thereon, and your claim will be in fact foreclosed.

To ——— W. L. *Master.*

In Chancery.

Between A. B.....Plaintiff,

and

C. D.....Defendant.

922. Appointment T under Order 446, being the second part of Schedule T referred to in that order.

Having been directed by the decree in this cause, dated the —— day of ——, to enquire whether any person other than the plaintiff has any lien, charge, or incumbrance upon the lands in the pleadings mentioned, being (*insert description of land*), I do hereby appoint the —— day of —— next, at —— o'clock, in the —— noon, at my Chambers at ——, to proceed with the said enquiries.

And you are hereby required to take notice:

That if you fail to attend at the time and place appointed, you will be treated as disclaiming all interest in the land in question, and it will be dealt with as if you had no claim thereon, and your claim will be in fact foreclosed.

Dated, *&c.* W. L., *Master.*

(*Formal parts: see ante, No.* 300.)

923. Affidavit by a mortgagee not in possession, of amount due to him, under a decree in a foreclosure or redemption suit.

1. There is due to me upon and by virtue of my mortgage security dated the —— day of ——, 18—, in the decree made in this cause dated the —— day of ——, 18—, mentioned (*or as may be*), the sum of $—— for principal money, and the sum of $—— for interest there-

on, computed at the rate of $——— per cent. per annum, from the ——— day of ———, 18—, to the ——— day of ———, 18—: making together the sum of $———: exclusive of my costs of this suit (*or as may be*)—*Show consideration fully, as in No.* 871.

2. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that I have not, nor hath nor have any other person or persons by my order, or for my use, received any sum or sums of money for or on account of the hereditaments comprised in my said mortgage security, or any part thereof; nor any security or satisfaction whatsoever for the said principal money, and interest respectively: save and except the said mortgage security [*or as may be*].

3. I further say that I am not now and since the date of the said mortgage never have been, nor hath nor have any other person or persons by my order or to my knowledge or belief for my use been in the occupation of the said mortgaged premises or any part thereof or in the receipt of the rents and profits of the same or of any part thereof.

Sworn, &c.

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924. Affidavit by a mortgagee in possession, verifying his account of principal and interest, repairs, and rents, without rests.

(*Formal parts: see ante, No.* 300.)

Proceed as in form No. 923 *to end of par,* 1.

2. I have, in the [first part of the (*a*)] account now produced and shown to me marked A., set forth a full, true, and particular account of all sums of money which have become due to me for principal money and interest upon and by virtue of my mortgage security dated the——day of——, 18—, in the said decree mentioned.

3. I have, in [the second part of (*a*)] the said account, set forth a full, true, and particular account of all sums of money paid, laid out, and expended by me in necessary repairs and lasting improvements on the hereditaments comprised in my said mortgage security, and the times when, the names of the persons to whom, and the purposes for which the same were made.

4. I have, in [the third part of (*a*)] the said account, set forth a full, true, and particular account of all the rents and profits of the said mortgaged hereditaments which have come to my hands, or to the hands of any person or persons by my order, or for my use; and the times when, the names of the persons from whom, on what account, and in respect of what part of the said heredita-

(*a*) These words should be left out if the account is made out in the form No. 926.

ments the same have been received, and the times when the same became due; and also a like account of the disbursements, allowances, and payments made by me in respect of the said hereditaments, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which the same were made.

5. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that, save and except as appears in the said account marked A., I have not, nor hath nor have any other person or persons by my order, or for my use, received or got in any rents and profits of the said hereditaments, or any money in respect thereof, or of the principal and interest due to me on my mortgage security as aforesaid; and that the said account does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid or allowed as above stated; and that I have not, nor hath nor have any other person or persons by my order, or for my use, received any security or satisfaction whatsoever for the amount due to me on balance of the said account, or any part thereof, save and except the said mortgage security (*or as may be.*)

In Chancery.

(*Short title of the cause.*)

This account marked A. was produced and shown to the plaintiff A. B. (*or as may be*) and is the account referred to in his affidavit sworn before me this—— day of——, 18—.

925. Account (A) referred to in No. 924 (*a*).

C. D. &c.,

FIRST PART.—*Principal and Interest Due.*

1862, August 8. Amount of principal advanced this day	$2000.00
1866, August 8. Four years' interest thereon at $5 per cent.	400.00
Total of first part	$2,400 00

(*a*) See note to next form.

SECOND PART.—*Expenditure in Repairs and Lasting Improvements.*

No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.	Interest thereon at 5 per cent., computed to 8th August, 1866.
	1865.			$ c.	$ c.
1	Nov. 4.....	Thomas Carpenter.....	New barn at farm occupied by John James.....	190 11	
			Interest.....	.....	7 20
	1866.				
2	March 3.....	William Styles.....	Rebuilding part of house let to Reuben Marshall	140 60	
			Interest	.....	2 90
			Total laid out in repairs, &c.	330 71	10 10
			Add Interest.....	10 10	
			Total of Second Part	340 81	

THIRD PART.—*Rents and Profits.*

RECEIPTS.

No. of Item.	Date when received.	Names of persons from whom received.	On what account, and in respect of what part of the estate received, and when due.	Amount received.
	1864.			$ c.
1	Nov. 11.	John James ..	Half year's rent of farm in Melancthon, due Michaelmas last.....	296 00
2	" 25.	Thomas Jones.	One quarter's rent of house at Chesterford, due same time....	10 00
3	May 1..	John James ..	Same as No. 1, due Lady Day last	296 00
4	June 3..	Thomas Jones.	Same as No. 2, due Lady Day last	10 00
				612 00

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	1865.			$ c.
1	Jan. 1..	Isaac Thompson.	One year's rent charge, due Christmas last....	15 00
2	" 16.	James Francis ..	Land Tax, due ditto	6 00
	1866.			
3	Jan. 5..	Isaac Thompson.	Same as No. 1, due Christmas last....	15 00
				36 00
			Balance	576 00
				612 00

In Chancery.

(*Short style of cause.*)

926. Another form account. (a)

This is Account A. referred to in the affidavit of the plaintiff A. B., sworn before me this —— day of ——, &c.

(Signed) C. D.,
A Commissioner, &c.

1862, Aug. 8.	Amount of Principal money advanced this day		$2000.00
1864, Nov. 11.	Interest to date, @ 10 % per annum		351.70
			2351.70
1864, Nov. 11.	Rent received from H. Brown		380.00
			$1971.70
1865, Aug. 8.	Interest to date, @ 10 % per annum	$146.25	
" "	Paid Thomas Carpenter for new barn on farm occupied by H Brown		200.00
			2171.70
1865, Aug. 8.	Interest on $2171.70 to date, @ 10 % per annum	217.17	
			363.42
			$2535.12
" "	Rent received from H. Brown		380.00
" "	Principal due this day		$2155.12
1867, Feb. 8.	Interest @ 10 % to date,	157.75	
" "	Rent received from H. Brown	95.00	
	Carried forward	62.75	

(a) This account is made out in accordance with the principle laid down by the Court of Queen's Bench in *McGregor* v. *Gaulin*, 4 U. C. R, 378, followed in *Bettes* v. *Farewell*, 1 C. P. 450. The account No. 925 would be open to objection if the payments should happen to exceed the amount due for interest at the time the payments were received—as in that case the plaintiff would be claiming interest on the full amount of the principal after it had been reduced by payment on account; and, on the other hand, in many cases, it would be unjust to the plaintiff to allow the defendant interest on his payments. The effect of such a mode of computation is very forcibly illustrated in *McGregor* v. *Gaulin*, *supra*. In this account, it will be seen, the interest is calculated up to the date of each payment, and the payment is then applied first in satisfaction of such interest, and the balance, if any, to the reduction of the principal. In preparing the account caution must be used in computing interest only on principal money.

	Brought forward.....	$62.75	$2,155.12
1867, Aug. 8.	Interest on $2155 to date @ 10 %.....	157.75	
			220.50
" "	...Balance of Principal and Interest due this day		$2375.62

927. Affidavit of subsequent incumbrancer proving claim.

See ante, Nos. 871, *et seq.*

928. Affidavit of execution creditor proving claim.

(*Formal parts: see ante, No.* 300.)

The defendant C. D. is justly and truly indebted to me in the sum of $—— (*proceed as in form No.* 870 *to the end of par.* 3, *add.*)

4. On the —— day of —— I caused to be placed in the hands of the Sheriff of the County of ———, a writ of execution against the lands of the said defendant C. D. to recover the amount due to me, under the said judgment and the said writ is still in the said Sheriff's hands to be executed, in full force and unsatisfied.

Section III.—*Partnership Suits.*

929. Affidavit by an accountant, of the result of his investigation of partnership accounts.

(*Formal parts: see ante, No.* 300.)

1. In consequence of instructions received by me from Messrs. A. and B., the solicitors in this cause for the plaintiff (*or as may be*), I have carefully examined all the books and accounts of the plaintiff and defendant as co-partners in the business or trade of cotton spinners and manufacturers at R., in the county of L., from the —— day of ——, 18—, when the said partnership commenced, until the —— day of ——, 18—, when the said partnership was dissolved.

2. I have, in the book marked A., now produced and shown to me, set out the particulars and results of my investigation aforesaid, and the accounts of all the dealings and transactions between the plaintiff and defendant in the said business of cotton spinners and manufacturers directed to be taken by the decree in this cause, dated the —— day of ——, 18—.

3. To the best of my knowledge, information, and belief, the said book marked A. contains a true and accurate ac-

count of all the said dealings and transactions, and of the result of my said investigation of the said partnership books and accounts.

(*Title, and introduction: see post, No.* 967.)

930. Master's report of the result of partnership accounts.

1. I have taken an account of the partnership dealings and transactions between the plaintiff and defendant, from the 12th March, 1855: having regard to the partnership articles, and the agreement of dissolution, in the pleadings mentioned.

2. On such account there was due from the said partnership to the plaintiff, on the 25th December, 1862, being the date of the dissolution of the said partnership the sum of $830 in respect of his capital in the said partnership; and which sum of $830 is still due to the plaintiff, together with $105 for interest thereon at the rate of $6 per cent. per annum from the last mentioned day to the date of this certificate; making together $935.

3. On the same account there was due from the said partnership to the defendant on the said 25th December, 1862, the sum of $4,124 in respect of his capital in the said partnership: and the account of the defendant has been debited with $1,137 in respect of the trade stock of the partnership, and the horses, carts, trucks, and other plant and fixtures belonging to the said partnership, taken by him pursuant to the said agreement of dissolution: whereby the said $4,124 has been reduced to $2,987: which sum of $2,987 is still due to the defendant, together with $379 for interest thereon at the rate aforesaid from the said 25th December, 1862, to the date of this certificate: making together $3,366.

4. The defendant has, since the dissolution of the said partnership, received in respect of the assets of the said partnership, other than the said $1,137 with which his account has been debited as aforesaid, sums to the amount of $4,687; and he has paid, or is entitled to be allowed, on account thereof, sums to the amount of $3,139: leaving a balance due from him of $1,548 on that account.

5. The particulars of the above receipts and payments appear in the "Realization Account," at page 2 of the account marked A., verified by the affidavit of the defendant filed the 5th May, 1865, and which account is filed in my office: except, that in addition to the sums appearing in such account to have been realized by the defendant, he has been charged with $557 received by him of A. B., in respect of the assets of the said partnership since

the said 5th May, 1865; and except that I have not allowed the defendant the sum of $1,000 retained by him on the 28th February, 1865, on account of his capital in the said partnership: reserving to the Court the application of the partnership assets realized by the defendant since the dissolution of the said partnership, and except that I have deducted from the item of $49 on the debit side of the said "Realization Account" the sum of $22, whereby the said item is reduced to $27; and except that, in addition to the disbursements appearing in the said "Realization Account," the defendant has been allowed $400 paid by him into Court, with the privity of the Accountant-General, to the credit of this cause, on the 28th February, 1865, pursuant to the said decree.

6. Notwithstanding the foregoing certificate of the result of the said account, the question whether the account of the defendant ought to have been debited with the said $1,137 is, at the request of the plaintiff, reserved for the consideration of the Court.

7. The assets of the said partnership now remaining outstanding or undisposed of consist of, the particulars set forth in the schedule hereto.

All of which I do humbly certify and submit to this Honourable Court.

SECTION IV.—*Appointment of New Trustees.*

(*Formal parts: see ante, No.* 300.)

931. Affidavit of eligibility of proposed trustee.

1. *Show deponent's personal knowledge of the proposed trustees; as thus:* I have, for ——— years last past, known and been well acquainted with E. F., of (*Residence and addition*), and G. H., of (*Residence and addition*), the persons proposed to be appointed new trustees of the will of A. B., late of (*Residence and addition*), deceased, the testator in the decree [*Or*, order] in this cause [*Or*, matter] dated the —— day of ——, 18—, named [*Or*, of the indenture of settlement, dated the —— day of ——, 18—, made on the marriage of A. B. with C. D., in the decree, &c., mentioned—*or as may be*].

2. *Show the position in life of the proposed trustees, and their eligibility: as thus:* The said E. F. has, for ———, years last past, carried on business as a banker at ———, in the (county) of ———. The said G. H. has, for ——— years last past, carried on business as a wine merchant at ———, in the (county) of ———. During my aforesaid acquaintance with them I have had many opportunities

of forming an opinion as to their habits of business and integrity. The said E. F. and G. H. respectively are persons in good credit in the neighbourhood in which they respectively carry on business as aforesaid, and are both men of business habits, and of strict honour and integrity.

3. In my judgment and opinion, the said E. F. and G. H. are fit, proper, and eligible persons to be appointed new trustees of the said will [*Or*, indenture of settlement —*or as may be.*]

In Chancery.

(*Short title.*)

932. Consent to act of proposed trustees.

We, the undersigned E. F., of (*Residence and addition*), and G. H., of (*Residence and addition*), do hereby testify our consent to accept the office of trustees, and to act in the trusts of the will of A. B., late of (*&c.: as in No.* 931, *ante*): in case the Court of Chancery shall think fit to appoint us to that office.

Dated this —— day of ——, 18—.

Signed by the said E. F. and G. H. in the presence of J. K. — E. F. G. H.

(*Formal parts: see ante, No.* 300.)

933. Affidavit verifying the signatures thereto.

1. The signatures "———," and "———," respectively set and subscribed to the paper writing marked A., hereunto annexed [*Or*, now produced and shown to me,] purporting to be the consent, dated the —— day of ——, 18—, of E. F. and G. H., to accept the office of trustees of the will of A. B. (*or as may be*), are of the respective proper handwriting of the said E. F. and G. H., in such paper writing respectively named and described: as I know from having seen them respectively sign the said paper writing.

SECTION V.—*Proceedings relating to Sales.*

In Chancery.

(*Short title.*)

To ———, defendant.

934. Notice to the defendant that he may conduct sale under decree, being Schedule R. to Order 430.

Take notice, that the plaintiff elects that the sale of the mortgaged premises be conducted by you instead of by the plaintiff, and you are at liberty to withdraw the deposit made by you in this cause for the purpose of such sale.

935. Consent of an incumbrancer, or dowress, to estate being sold, free from his incumbrance or her dower.

In Chancery.

(*Short title.*)

I, the undersigned C. D., of (*Residence and addition*), do hereby consent that the real estate of A. B., the testator in the decree [*Or*, order] in this cause, dated the —— day of ——, 18—, named (*or as may be*), shall be sold, with the approbation of the Master at ———, under the provisions of the said decree [*Or*, order], free from my mortgage thereon, for the sum of $500 and interest, created by an indenture dated the —— day of ——, 18— [*Or*, free from my dower; and I agree to accept—a sum in gross to be settled by the said Master, *Or*, the income of one-third of the purchase money during my life—in lieu of my said dower.] And I agree to join in such sale of the said estate, and in the conveyance thereof to the purchaser; and to produce, whenever required, for the purpose of such sale, such of the title deeds and writings relating to the said estate as are in my possession or power.

Dated this —— day of ——, 18—.

Witness to the signature of the said C. D., G. H., of (*Residence and addition.*)

C. D.

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936. Advertisement of sale.

In Chancery.

(*Short title of cause.*)

Pursuant to the decree and final order for sale made in this cause, and bearing date respectively the —— day of ——, and the —— day of ——, A. D. 18—, there will be sold, with the approbation of ———, Esquire, Master of this Court, at ———, by ———, Auctioneer, at his Auction Rooms in the town of ——— (*Or*, at the —— hotel, in the town of ———, *as the case may be*), at the hour of ——, on the —— day of ——, the following lands and premises, in one parcel, [*Or* in —— parcels.] *Describe property in a clear and concise manner, and give such a fair description of the same as the owner would. If more than one parcel, describe each parcel separately, numbering them* 1, 2, *&c.*

If so: the property will be put up at the upset price of $—— [*Or*, parcel 1 will be put up at an upset price of $——, parcel 2 will be put up at an upset price of $——, &c.——*Or*, The property will be offered for sale subject to a reserved bid [on each of the said parcels], which has been fixed by the said Master.] (*Insert terms of pay-*

ment, stating how much is to be paid in cash; when the balance is to be paid; and whether in cash or to be secured by mortgage, and at what rate of interest. State fully every condition varying from, or in addition to, the standing conditions of sale.)

In all other respects the terms and conditions of sale will be the standing conditions of the Court of Chancery.

Further particulars can be had from ———.

Dated at —— this —— day of ——, A. D. 18—.

A. B., Master.

936a. Master's directions as to publication of advertisement.

A. B. v C. D. 1st Jan., 18— } I direct that the advertisement be published once a week (*Or, as may be found beneficial and proper*) in the ——— newspaper for the [four] weeks immediately preceding the sale; that —— posters be put up in conspicuous places in the town of ——; that —— be put up in the immediate neighbourhood of the property, and —— in the village of —— (*making such directions as to publicity as a prudent owner desiring to sell his property to the best advantage would wish.*) And I fix the auctioneer's fees at not more than $——.

(*Formal parts: see ante, No.* 300.)

937. Affidavit verifying the description of the property, as set out in the advertisement.

1. That I am well acquainted with lot No. ——, in the —— concession of the township of ———, in the county of ——, being the premises ordered to be sold in this cause.

2. That the said lot consists of two hundred acres of land, of which one hundred acres are cleared, and the remainder is well timbered with beech and maple; the land cleared is of a light loam, in a good state of cultivation (*give full particulars as to character of soil, &c.*)

3. The said lot is situate about seventeen miles from the town of ———, readily accessible thereto by good roads, which said town of ——— offers a good market for the sale of produce.

4. The said lot, in addition to being well timbered, is also well watered, and has erected thereon farm buildings consisting of (*fully describe them, saying whether of brick or wood, and how long erected.*)

5. There is a good orchard, consisting of —— acres of land, well stocked with excellent fruit trees.

6. The lot is well fenced.

7. There is a prior mortgage on the property (*if so*) for the sum of —— dollars, payable to (*state particulars.*)

8. The lot is now in the occupation of (*state particulars of tenancy.*)

Sworn, &c.

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938. Affidavit as to the mode of lotting.

(*Formal parts: see ante, No.* 300.)

1. I have for —— years last past been engaged in the business of an auctioneer and land and estate agent; and for —— years last past I have carried on such business at ——— aforesaid; and I have had considerable experience in the mode of lotting and selling land and house property.

2. I know and am well acquainted with the estates situate at ———, in the county of ———, proposed to be sold in this cause, and described in the paper writing marked A., now produced and shown to me.

3. On the —— day of ——, 18—, I went over the said estates, and made a careful survey thereof, for the purpose of forming an opinion as to the best mode of dividing and allotting the said estates for the said sale thereof.

4. The said paper writing marked A. sets forth a true and correct description of the said estates, to the best of my knowledge and belief, and the mode in which, in my judgment and opinion, it will be desirable to lot and divide the same for the purposes of the said sale.

5. In my judgment and belief the said estates will be sold to the most advantage, and will be likely to realize the best prices, if the scheme of division and allotment set forth in the said paper writing marked A. be adopted.

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939. Affidavit of fitness of proposed auctioneer, and as to time and place of sale.

(*Formal parts: see ante, No.* 300.)

1. I have for —— years last past known and been well acquainted with L. M., of (*Residence and addition*), auctioneer and land and estate agent; and during all that time the said L. M. has carried on business as an auctioneer and land and estate agent at —— aforesaid (*or as may be*).

2. I have on several occasions employed the said L. M. as an auctioneer and land valuer; and am also acquainted with several persons who are in the habit of employing him in that capacity; and he has invariably given entire satisfaction to me, and I believe also to such other persons.

3. The said L. M. is a person of respectability and

integrity, and of considerable ability as an auctioneer and land and estate agent; and in my judgment he is a fit and proper person to be employed to sell the estates situate at ——, in the county of ——, proposed to be sold in this cause [*Or*, matter].

4. That the —— hotel, in the Village of ——, is the place where auction sales of lands are most usually held in the said village, and I believe that it is the best and most convenient place at which to offer the lands in question in this cause for sale; and I further say that ——day is the most usual day in the week for holding such sales at the said village.

(*Formal parts: see ante, No.* 300.)

940. Affidavit as to the amount to be fixed for the reserved bidding.

1. I have carefully examined and surveyed the estates particularly described in the printed particulars of sale marked A., now produced and shown to me, in order to form an opinion as to the value thereof, and the amounts which the said estates ought to realize on the sale thereof advertised to take place on the —— day of ——, 18—.

2. I have, in the paper writing marked B., now produced and shown to me, set forth in the first column the number of the lots into which the said estates have been divided for the purposes of the said sale; and in the second column, opposite the numbers of the said lots respectively, the full values of the said lots respectively; and in the third column, opposite the said numbers respectively, the amounts which, in my judgment and belief, should be fixed as the reserved biddings for the said lots respectively on the said sale.

B.

In Chancery.

(*Short title.*)

941. Valuation (B) referred to in No. 940.

This paper writing marked B. was produced and shown to L. M., and is (*proceed as in heading of No.* 925, *ante.*)

No. of Lot.	Value.	Proposed reserved bidding.
	$	$
1	2,000	1,850
2	500	450

L. M.

942. Notice of motion for leave to bid at the sale.

(*Formal parts: see ante, No.* 384.)
on the part of the plaintiff [*Or*, of the defendant—(*Or, other party having conduct of sale*)], that he may be at liberty to bid at the sale directed by the decree [*Or*, order] dated the —— day of ——, 18—, of the estates therein mentioned. And take notice (*as in No.* 382.)

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943. Conditions of sale referred to in Order 379, being Schedule P. mentioned in that order.

1. No person shall advance less than $10 at any bidding under $500, nor less than $20 at any bidding over $500, and no person shall retract his bidding.

2. 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.

3. The parties to the suit, with the exception of the vendor (and, *naming any parties, trustees, agents, or others, in a fiduciary situation*), are to be at liberty to bid.

4. 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, ——, (*a*) 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 sale, to sign an agreement for the completion of the purchase.

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

6. If the purchaser fails 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, are to be made good by the defaulter.

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944. Directions to auctioneer, as to the conduct of a sale in several lots, where there are reserved biddings.

Mr. L. M., the person appointed to sell the estates advertised for sale in this cause [*Or*, matter], is requested to attend to the following directions:

R. M., *Master*.

The sale is to be conducted in accordance with the accompanying printed particulars and conditions. This [print] is to be carefully preserved, and returned to my Chambers: with the affidavit of the result of the sale.

(*a*) State with or without interest, as may be.

The sale is to be subject to the reserved bidding specified in the accompanying note. This note is not to be opened till the time of sale. The reserved bids are not to be divulged to any person, either at, or at any time after, the sale.

In case there is no bidding for any lot equal to, or higher than, the reserved bid, the person appointed to sell is to declare that such lot is not sold, but has been bought in on account of the persons interested in, or entitled to, the property.

The accompanying bidding-paper is to be carefully filled up. The highest sum bid, whether the lot is sold or not, is to be inserted in the second column. In the event of no person bidding for any lot, the words "no bidding" are to be written in the second column, opposite the number of such lot. When, although there is a bidding, the lot is not sold, the words "not sold" are to be written in the third column. The purchasers are to sign their names to the contract at the foot of the printed conditions of sale, and any person who purchases as agent for another must so sign: otherwise he must be treated as the purchaser. The purchaser's address and quality are to be fully stated at the foot of the contract.

When the purchaser's signature is not plain, or initials are used, a note must be put at the foot of the contract, as follows: "The name of the purchaser of lot — is ——."

In Chancery.

(*Short style of suit.*)

945. Note of the reserved biddings.

The reserved biddings fixed by the Master at ——, to which the sale in this cause [*Or*, matter] is to be subject, are as follows, viz.:

For Lot 1	$800	
For Lot 2	$250	

In Chancery.

(*Short style of cause.*)

945a. Bidding Paper.

Bidding Paper of lands sold in this cause on the —— day of, &c.

For Lot 1	$900	
For Lot 2	$200	Not sold.

For Lot 3	No bidding.	
For Lot 4	$710	

946. Conditions of sale, and contract by purchaser.

In Chancery.

(*Short style of cause.*)

The Conditions of Sale are those in No. 943, *ante, to clause* 6 *inclusive; then add as follows:*

I agree to purchase the property or lot —— mentioned in the annexed particulars for the sum of ——, and upon the terms set forth in the above conditions.

Dated this —— day of ——, A.D. 18—.

(*Name and address of purchaser.*)

Witness:

——

947. Affidavit of auctioneer as to result of sale.

(*Formal parts: see ante, No.* 300.)

I, A. B., of the —— of ——, in the county of ——, the auctioneer appointed by the Master of this Honourable Court at ——, to sell the lands and premises comprised in the particulars hereinafter referred to, make oath and say:

1. That I did, according to the appointment of the said Master, at the time and place, in the lots, and subject to the conditions specified in the particulars and conditions of sale hereunto annexed, marked respectively A. and B., &c., offer for sale by public auction the lands and premises described in the said particulars, and that the results of such sale are as appear from the several signed contracts appearing at the foot of the said conditions of sale, marked respectively B., C., &c.

2. That the sums set forth in the said several contracts are the highest sums bid for the respective lots therein respectively mentioned, and that —— of ——, and —— of ——, being the persons whose names are respectively subscribed to the said several contracts, were respectively declared by me to be the highest bidders for, and became the purchasers of, the lots respectively mentioned in the said several contracts, at the prices or sums of —— and —— respectively, being the prices or sums in the said several contracts respectively mentioned.

3. That the several lots numbered respectively one, two, &c., in the said particulars, were not sold, no person having bid a sum higher than or equal to the reserved biddings fixed for the same respectively by the said Master: the highest sums bid for such last-mentioned lots were those appearing opposite the numbers of said lots respectively in the second column of the paper now shown to me, and marked E.

4. That no person bid any sum whatever for either of the lots numbered respectively four and five, in the said particulars.

5. That the said sale was conducted by me in a fair, open and proper manner, and according to the best of my skill and judgment.

Sworn, &c.

(*Formal parts: see ante, No.* 300.)

948. Affidavit of insertion of advertisements and publication of posters.

1. That a true copy of the advertisement now produced and shown to me, marked A., was published in the issues of the ——— newspaper published at ——— on the —— days of ——, and the —— day of ——, being once in each week for the four weeks immediately preceding the —— day of ——, being the day of the sale in this cause, (*or as the case may be.*)

2. I have examined copies of the said —— newspaper published on each of the said days.

3. On the —— day of —— I posted up fifty copies of the posters now shown to me, marked B., in conspicuous places, in different parts of the township (*town or city*) of ——, and the adjacent country and villages (*or as the case may be.*)

4. That I also posted up twenty-five of the said bills or posters during the fourth week immediately preceding the said sale in conspicuous places in taverns adjacent to the said land, and fifty others of the said bills and posters I also during the third week preceding the said sale, posted up in conspicuous public places in different parts of the said township (*town or city*) of ——, and the adjacent country and villages (*or as the case may be*), and twenty-five others of the said bills or posters I distributed to the auctioneer and the solicitors of the various parties interested in this cause.

Sworn, &c.

949. Affidavit of execution of contract by purchaser.

(*Formal parts: see ante, No.* 300.)

1. The annexed contract of sale, attached to the conditions and advertisement of sale in this cause, and marked A., was signed in my presence by B. C., of the township of ———, in the county of ———, yeoman [*if signed by an agent, say* by D. E., as agent for B. C., of, &c.]; that the signature "B. C." (*or as the case may be*), set and subscribed to the said contract, is the proper handwriting of the said "B. C.," and that the signature "F. G.," set and subscribed as a witness thereto, is my own proper handwriting.

Sworn, &c.

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950. Report on sale, referred to in Order 387, being Schedule Q. mentioned in that order.

In Chancery.

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

Pursuant to the decree [*Or*, order] of this Honourable Court, bearing date the —— day of ——, and made in this cause, I have, under the General Orders of this Court, in the presence of [*Or*, after notice to] all parties concerned, settled an advertisement and particulars and conditions of sale for the sale of the lands mentioned or referred to in the said decree [*Or*, order], and such advertisement having, according to my directions, been published in the (*naming the newspaper or newspapers*), once in each week for the —— weeks immediately preceding the said sale (*or as the case may be*), and bills of the said sale having been also, as directed by me, published in different parts of the township (*town or city*) of ———, and the adjacent country and villages (*or as the case may be*), the said lands were offered for sale by public auction, according to my appointment, on the —— day of ——, by me [*Or*, by Mr. ——, of ——, appointed by me for that purpose, auctioneer], and such sale was conducted in a fair, open, and proper manner, when ——, of ——, was declared the highest bidder for, and became the purchaser of the same, at the price or sum of $——, payable as follows (*Set out shortly the condition of sale as to payment of the purchase money*).

All which having been proved to my satisfaction by proper and sufficient evidence, I humbly certify to this Honourable Court.

Dated ———.

In Chancery.

(*Short style of cause.*)

951. Demand of abstract of title (*a*).

I hereby require you forthwith to furnish me with an abstract of title to [lot 15 in the 1st con. of York], being the lands purchased by Mr. C. D., at the sale in this cause, on the —— day of —— instant.

Dated, &c.

Yours, &c.,

A. B.,

Solicitor for C. D.

To Messrs. A. & B.,

Solicitors for

[*party having conduct of sale.*]

In Chancery.

(*Short style of cause.*)

952. Abstract of title.

ABSTRACT of title of [*vendors*] to lot 15 in the 1st con. of York, being the parcel of land purchased by Mr. C. D., at the sale in this cause, on the —— day of ——, &c.

5 Jan., 1835. Patent. By a grant from the King to A. D., of ——, yeoman: in consideration of £100 the sd King did give and grant unto the sd A. D., his heirs and assns, all and singr lot 15 in the 1st con. of the Tp of York, in the County of York.

TO HOLD the same to the said A. D., his heirs and assns forever.

SAVING and reservg to the sd King, his heirs and successors, all white pine trees then or thereafter growing on sd lands.

PROVISO: that no part of sd land shd be within any reservn theretofore made for the sd King, his heirs or successors, by the Surveyor-General.

PROVISO: for performance of settlement duties by sd A. D.

PROVISO: that A. D. shd take oath of allegiance.

Executed by Sir Jno. Colborne, Lieutenant-Governor of Upper Canada.

6 March, 1836. Will. THE sd A. D., by his will of this date, after directing his debts and funeral expenses to be paid, gave and bequeathed

All the rest, residue and remainder of his est, both real and personal, of what nature and kind soever,

(*a*) See 29 Vic., c. 28, s. 20.

UNTO C. D., his heirs and assns, forever. (*a*)

EXECUTED by testator, and attested by John Black, Thomas Reid and Mary Ward.

PROVED 5th June, 1840, in the Surrogate Court of the County of ——. Registered 25th July, 1840.

Death of testator. 14 May, 1840. The testator, A. D., died.

Deed of B. & S. 7 July, 1841. INDRE OF BARGAIN AND SALE. BETWEEN C. D., &c., of the 1st pt, M. D., his wife, of the 2nd pt, and R. P., of ——, gentleman, of the 3rd pt.

RECITING the before abstracted will of sd A. D.

IT IS WITNESSED that C. D., in consn of $——, did bargain and sell unto the sd R. P., his heirs and assns,

ALL the before abstracted premises,

TO HOLD the same to the sd R. P., his heirs and assns forever.

COVENANT by the said C. D., that he had a right to convey, for quiet enjoyment, against incumbrances, and for further assurce.

IT IS ALSO WITNESSED the said M. D. barred her dower in the said premises.

EXECUTED by said C. D. and M. D., and attested, and

RECEIPT for consn indorsed.

REGISTERED 17 July, 1841.

Mortgage. 8 Jan., 1844. INDENTURE OF MORTGAGE between R. P., of ——, gentleman, of the 1st pt, A. P., his wife, of the 2nd pt, and R. F., of &c., farmer, of the 3rd pt.

RECITING the before abstracted deed of 7 July, 1841.

IT IS WITNESSED that in consn of £150 the sd R. P. did grant unto the sd R. F., his heirs and assns,

ALL the before abstracted premises,

TO HOLD unto the sd R. F., his heirs and assns for ever.

(*a*) Unless the will be long, an exact copy of the whole should be furnished, but where the length renders this inconvenient, extract the material parts in the precise words of the testator, which is better than attempting a statement of the effect, the correctness of which often depends upon the right application of very difficult rules of construction. A codicil should be abstracted in connection with the will to which it is annexed, but where anything took place in the interval between the making of the will and codicil, the latter should be again referred to in the order of its date.

PROVISO for redemption, on payment of principal and int.

COVENANTS for payt of prinl and int, and for the title, &c.

IT IS ALSO WITNESSED that sd A. P. thereby barred her dower in sd prems.

EXECUTED by said R. P. and A. P., and attested.

REGISTERED 10 Jany., 1844.

9 June, 1845. DEED POLL indorsed on last abstracted indre. Deed poll.

RECITING that within mentd principal sum was owing with £10 for intr thereon.

THE SD R. F., IN CONSN of £160 paid by W. B., of ———, farmer, did bgn, sell, assn, transfer and set over unto sd W. B., his heirs, exors, admors and assns,

THE SD INDRE OF MORTGE, and

THE afsd prems, principl and int.,

AND all his estate, &c.,

TO HOLD unto sd W. B., his heirs, exors, admors and assns for ever,

SUBJECT to right of redemption by sd R. P.

COVENANT by sd R. F. that he had done no act to incumber.

EXECUTED and attested.

RECEIPT for considn indorsed, signed and attested.

11 Feb., 1846. Certificate whereby W. B., of ———, did certify that R. P., of ———, gentleman, had paid and satisfied all money due or to grow due on the mortgage made by him the sd R. P. to R. F., of ———, farmer, dated 8 January, 1844, and assigned by the said R. F. to the said W. B. by deed dated 9 June, 1845, and which said mtge is therein stated to have been registered in the Registry Office of the County of York, at ten minutes past one of the clock in the afternoon of the 10 Jany., 1844. Certificate of discharge of mortgage.

ATTESTED by two witnesses.

REGISTERED 11 Feb., 1846.

12 March, 1847. R. P., of ———, gentleman, died intestate, leaving him surviving R. C. P., his eldest son and heir-at-law (*a*). Death of grantee intestate.

15 April, 1858. INDRE OF MORTGE made betn R. C. P., of ———, yeoman, of the 1st part, and L. M., of ———, merchant, of the 2nd part. Mortgage.

(*a*) Where the alleged heir-at-law is a more remote connection of the intestate, it is advisable to set out the pedigree showing his relationship.

WHEREBY, in consn of £100, the sd R. C. P. did grant unto the sd L. M., his heirs and assns,

ALL the before abstracted premises,

SUBJECT to a proviso for redemptn on paymt of principal and int.

EXECUTED by both parties and attested.

REGISTERED 15 Apl., 1858.

Mortgage of equity of redemption. 2 June, 1860. MORTGE made betn R. C. P., of ——, yeoman, of the 1st pt, M. P., his wife, of the 2nd pt, and V. B., of ———, saddler, of the 3rd pt.

WHEREBY in consn of £—— the sd R. C. P. did grant unto the sd V. B., his heirs and assns, the E. ½ of said lot No. 15.

PROVISO for redempt on paymt of £—— and intr.

Death of mortgagor intestate. 5 Nov., 1864. The said R. C. P. died intestate, leaving him surviving his widow M. P. and A. P., R. W. P. and G. P., his sole heirs and heiresses-at-law.

Letters of administration. 20 Dec., 1864. LETTERS OF ADMINISTRATION to the estate of the said R. C. P.,

Whereby administn of the sd estate was committed unto the sd M. P. as sole administratrix by the Surrogate Court of ———.

Decree for sale. 5 Oct., 1870. DECREE OF THE Court of Chancery, made in a certain cause wherein L. M. is plaintiff,

and

M. P., A. P., R. W. P. and G. P., defendants.

Whereby it was ordered and decreed that all necessary enquiries be made, accts taken, costs taxed, and proceedings had for redemption or sale of the land in question in the sd suit, being the sd lot, and for these purposes the said cause was thereby referred to the Master of the sd Court at ———.

Final order. 10 June, 1871. FINAL ORDER made by sd Court in said cause, V. B. having been added as a pty deft thereto in the Master's office :

WHEREBY it was ordered that the lands in qn in the sd suit shd be sold as by the sd decree directed.

Dated, &c.

A. & B.,
Solicitors for vendors.

(*See next Form*).

In Chancery.

(*Short style of cause.*)

953. Notice to be indorsed upon the abstract delivered.

Take notice, that if you have any objection to make to the sufficiency of the within abstract, you must serve the same in writing within seven days from the service hereof upon you, and if no such objection be served within the time above named, you will be deemed to have accepted the said abstract as sufficient.

Dated, &c. A. & B.,
Solicitors for Vendors.

To Mr. A. B.,
Solicitor for Mr. C. D.

In Chancery.

(*Short style of cause.*)

954. Objections as to sufficiency of abstract.

Objections to the sufficiency of the abstract of title to lot ——, in the —— concession of ———, purchased by Mr. C. D. at the sale in this cause.

1. It is not shown by the abstract that A. D. ever acquired title to the said lot.

2. It does not appear by the abstract that the will of C. D. was sufficiently executed to pass real estate in this Province.

3. Upon searching the Registry Office, I find that R. P. executed a mortgage to one N. F., dated 5th July, 1842, which mortgage appears afterwards to have been assigned by deed to one R. L. This mortgage and assignment do not appear upon the abstract, neither is it shown how the interest of R. L. is bound by the decree under which the sale to C. D. took place.

4. It does not appear by the abstract that J. D. died intestate as to the land in question.

5. The deed from M. W. to A. F., dated 15th January, 1865, is not sufficiently abstracted.

Dated, &c. A. B.,
Solicitor for Mr. C. D.

To Messrs. A. & B.,
Solicitors for Vendors.

In Chancery.

(*Short style of cause.*)

955. Notice to be indorsed.

Take notice, that you are hereby required to answer the within objections within fourteen days from the service thereof. And take notice, that in case you make default in answering the said objections within the said time, or in case the answers (if any) made by you shall be unsatisfactory, I shall apply to the Master of this Court (at

———) for a warrant to consider the abstract delivered to me as Solicitor for Mr. C. D. herein.

Dated, &c. A. B.,
To Messrs. A. & B., *Solicitor for Mr. C. D.*
Vendors' Solicitors.

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956. Answers to objections to the sufficiency of abstract.

In Chancery.

(*Short style of cause.*)

Answers to objections to the sufficiency of the abstract of title to lot ——, in the —— Concession of York.

1. In answer to objections 1, 3 and 4, we deliver herewith a supplemental abstract.

2. In answer to objection 2, we admit that the will of C. D. was insufficiently executed to pass real estate; but the deed from C. D. to R. F., the devisee named in the said will, dated ——, is made by the heir-at-law of C. D., as appears by the abstract delivered.

3. In answer to objection 5, we say that the deed from M. W. to A. F. is lost, and we are unable to give any further abstract of that deed, and we submit that the abstract furnished is sufficient.

Dated, &c. A. & B.,
To A. B., Esq., *Vendors' Solicitors.*
Solicitor for Mr. C. D.

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957. Supplemental abstract of title.

The supplemental abstract should be in the same form and endorsed with the same notice as No. 952, *except that in the heading it should be styled* "Supplemental Abstract of Title, &c."

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958. Certificate of Master of sufficiency of abstract to be written at the foot or on the back of the abstract.

I certify that the (within *or* foregoing) abstract is perfect, *or* as perfect as the vendor is able to make the same.

Dated, &c. (Signed) A. B.,
Master.

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959. Notice by purchaser's solicitor to vendors to verify abstract.

In Chancery.

(*Short style of cause.*)

Take notice, that I hereby require you forthwith to appoint a time and place for the verification of the abstract of title delivered to me herein as solicitor for Mr. C. D., the purchaser of lot ——, in the —— Concession of ———, at the sale in this cause.

Dated, &c. A. B.,
To Messrs. A. & B., *Solicitor for Mr. C. D.*
Solicitors for Vendors.

In Chancery.

(*Short style of cause.*)

960. Notice by vendors' solicitors of their readiness to verify abstract.

Take notice, that we will, on the —— day of ——, at o'clock in the ——noon, attend at our office, in the City of ——, and be then and there prepared to verify the abstract of title [and supplemental abstract, *if any*], delivered to you, as solicitor for Mr. C. D., the purchaser of lot —— in the —— con. of ——, at the sale in this cause.

Dated, &c.

A. & B.,
Vendors' Solicitors.

To A. B., Esq.
Solicitor for Mr. C. D.

In Chancery.

(*Short style of cause.*)

961. Notice by vendors to purchaser after verification.

Take notice, that if you have any objections or requisitions to make respecting the title to lot ——, in the —— con. of ——, purchased by Mr. C. D., in this cause, you are hereby required to deliver the same within seven days from the service hereof upon you. And take notice, that if no such objections or requisitions be delivered within the time above limited, the said C. D. will be presumed to have accepted the title to the said land.

Dated, &c.

A. & B.,
Vendors' Solicitors.

To A. B., Esq.,
Solicitor for Mr. C. D.

In Chancery.

(*Short style of cause.*)

962. Objections and requisitions to title.

Objections and requisitions of Mr. C. D. to the title to lot —— in the —— con. of ——, purchased by him in this cause.

1. Evidence required to show the death and intestacy of C. W.

2. Evidence required to show that A. W. was the eldest son and heir-at-law of C. W.

3. It appears that A. F. was married at the time of the execution of the deed from him to R. L., dated ——; but the dower of his wife was not then barred. A release of dower must be obtained from her, or evidence given showing that she is not now entitled to dower in the land in question.

4. The legacy bequeathed to C. F. by the will of T. F. appears to be a charge upon the land. Evidence is

required to prove its payment, or a release must be obtained from the legatee.

5. The proceedings in this suit appear to be defective in the following respects:—

(*a*) M. D., the second mortgagee named in the abstract, does not appear to be a party.

(*b*) The decree under which the sale took place was a decree *nisi*, and does not appear to have been made absolute prior to the sale.

Dated, &c. A. B.,
To Messrs. A. & B., *Solicitor for C. D.*
Vendors' Solicitors.

(*See next Form*).

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963. Notice to be endorsed.

Take notice, that you are hereby required to answer the within objections and requisitions within fourteen days from the service thereof; and take notice, that in case you make default in answering the said objections and requisitions within the said time, or in case the answers (if any) made by you shall be unsatisfactory, I shall apply to the Master of this Court (at ———) for a warrant to consider the within objections and requisitions and your answers, if any, thereto.

Dated, &c. A. B.,
To Messrs. A. & B., *Solicitor for Mr. C. D.*
Vendors' Solicitors.

SECTION VI.—*Master's Certificates.*

964. Certificate of Master of proceedings in his office.

In Chancery.

(*Shortened style of cause.*)

I certify that the following and no other proceedings have been had before me upon the reference now pending before me under the decree [*Or*, order] herein, dated the —— day of ——, 18—, as by my books appears.

5th June, 1872.—Decree brought in by plaintiff's solicitor. Copy filed. Issued warrant to consider same; returnable 8th June, 1872, at 10 a.m.

8th June, 1872.—The plaintiff's solicitor attended, no one appearing for defendants. Warrant and affidavit of service thereof on defendants filed. Considered decree. Warrant issued for defendants to bring in accounts directed by decree, duly verified by affidavit, on the 18th June, 1872; and I appointed the 19th June, 1872, to proceed thereon, at 11 a.m.

19th June, 1872.—Issued certificate to plaintiff's solicitor of defendants' default in bringing in accounts.

20th June, 1872.—Defendants' accounts and affidavit filed.

Dated, &c.

A. B.,
Master at ———.

In Chancery.

(*Shortened style of cause.*)

965. Certificate of Master for commission.

I certify that it is necessary that a commission should issue in this cause, directed to Mr. A. B., of ———, in the State of ———, Counsellor at Law, to take the evidence of the witnesses for [the plaintiff and defendant], residing at ———, upon the reference now pending before me herein.

Dated, &c.

A. B.,
Master at ———.

(*Formal parts: see ante, No.* 964.)

966. Certificate of Master of default: (1) If warrant served.

I certify that I did by my warrant, dated the —— day of ——, *&c.*, direct that the [defendant A. B.] should [*here state act required to be done, e. g.*] bring in and file in my office an account, duly verified by affidavit, in answer to the inquiries [*Or*, the 5th and 6th inquiries—*or as may be*] directed to be made by me under the decree made in this cause, and dated the —— day of, *&c.*, on ——, the —— day of, *&c.*, at —— of the clock, *&c.*, and that my said warrant was duly served upon the said A. B., but that he hath not [brought in or filed in my office any account, or any affidavit in relation thereto], as required by my said warrant, as by my books appears.

Dated, &c.

A. B.,
Master.

(2) If no warrant served.

I certify that I did, on the —— day of ——, 18—, in the presence of [the defendant A. B., *Or*, the solicitor of the defendant A. B.—*or as may be*], direct that the said A. B. should, on the —— day of, *&c.*, (*here state act required to be done, as above* [1]); but the said A. B., although he had due notice of my said direction, hath not (*here negative the doing of the act required to be done, as above*), as by my books appears.

Dated, &c.

A. B.,
Master.

(3) Of default of witness.

I certify that A. B. did not attend in my office on the —— day of, *&c.*, for the purpose of being examined as a witness in this cause, although duly required so to do, as by writ of Subpœna *ad Testificandum*, and the affidavit of service thereof filed in my office, and my books, appears.

A. B.,
Master.

SECTION VII.—*Master's Reports.*

967. Master's report on Mortgage Decree for foreclosure where no parties are added in his office.

In Chancery.

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

1. In pursuance of the Decree made in this cause, bearing date the ———, I was attended by the plaintiff's solicitor; and it appearing to me by the respective certificates of the Sheriff and Registrar of the county of ——— that no party or parties other than the said plaintiff ——— hath or have any lien, charge, or encumbrance upon the lands and premises embraced in the mortgage security of the said plaintiff in the bill and in this cause mentioned subsequent thereto:

(*If the defendant have filed a traversing note, add:*)

2. And it subsequently appearing to me that notice of this proceeding had been duly served upon the said defendant:

(*If he had answered, insert, instead of this, the following:*)

And it subsequently appearing to me that the proper warrant, giving the defendant notice of this proceeding, had been duly served upon him,

I proceeded to hear and determine the matters referred to me by the said Order, and thereupon I was attended by the respective solicitors for the said plaintiff and the said defendant (*if the fact be so*)—*Or*, I was attended by the solicitor for the said plaintiff (no one attending on the part of the said defendant, though duly notified as aforesaid):

3. And I find that at the date of this my Report, there is due to the said plaintiff, for principal money, interest and costs, and that there will accrue due to him for subsequent interest upon his said mortgage security, up to the day hereinafter appointed for payment, the sums following, viz.:

I.

CLAIM OF THE SAID PLAINTIFF.

Balance of principal money due on the mortgage in the bill in this cause mentioned, dated 1st January, 1862, given by the said defendant to the said plaintiff, securing $1,000 and interest	$700 00
Interest on $700 from 1st January, 1866, (up to which time I find the interest has been paid), to 1st January, 1869 (*date of report*)	126 00
	$826 00
Six calendar months' subsequent interest on $700 from 1st January, 1869, to 1st July, 1869	21 00
	$847 00
Costs taxed and revised at	41 50
Total due Plaintiff 1st July, 1869.....	$888 50

4. And I appoint the said sum of $888 50 to be paid by the said defendant into the Agency Office in the ——— of ——— of the Canadian Bank of Commerce (*or as may be*), to the joint credit of the said plaintiff and the Accountant of this Honourable Court, between the hours of ten of the clock in the morning and one of the clock in the afternoon of the said first day of July next, being six calendar months next after the making of this my Report.

All which I humbly certify and submit to this Honourable Court.

Dated at —— this —— day of ——, 18—.

———

In Chancery.

Between—A. B.....Plaintiff,

and

C. D. (By Bill), and E. F. and G. H., made parties in the Master's office Defendants.

968. Master's Report on Mortgage Decree for foreclosure, where subsequent encumbrancers are made parties in his office, but do not prove any claim.

1. In pursuance of the Decree made in this cause, as originally entitled, bearing date the —— day of ——, 18—, I was attended by the plaintiff's solicitor; and it appearing to me by the respective certificates of the Sheriff and Registrar of the County of ——, that the said E. F. and

G. H., not before —— parties to this suit, have some lien, charge or encumbrance upon the lands and premises embraced in the mortgage security of the said plaintiff in the bill in this cause mentioned subsequent thereto, and ought to be made parties, I did, on the —— day of ——, order that they should be made parties to this suit, according to the Consolidated General Orders of this Court.

2. And it subsequently appearing to me that the Notice in accordance with Schedule T., referred to in Order 444 of the said General Orders, had been duly served upon each of the said E. F. and G. H., and that the proper warrant giving the defendant C. D. notice of this proceeding had been served on him (*a*), I proceeded to hear and determine the matters referred to me by the said Order, and thereupon I was attended by the solicitor for the said plaintiff (no one attending on the part of the said C. D., E. F. or G. H., though duly notified as aforesaid):

3. And I find that at the date of this my Report, there is due to the said plaintiff, for principal money, interest and costs, and that there will accrue due to him for subsequent interest upon his said mortgage security, the sums following, viz.:

I.

CLAIM OF THE SAID PLAINTIFF.

(*Set out claim as in No.* 967.)

4. And I certify, that although notified as aforesaid, no one of the said parties above designated as parties made in the Master's office, hath attended before me, or proved before me any subsisting lien, charge, or encumbrance upon the said lands and premises, whereby they have under the said Consolidated General Orders disclaimed and are foreclosed of all interest in the said lands and premises; and I hereby declare them foreclosed accordingly.

5. And I appoint the said sum of $888 50 to be paid by the said C. D., into the Agency Office in the —— of —— of the Canadian Bank of Commerce (*Or, as may be*) to the joint credit of the said plaintiff and the Accountant of this Honourable Court, between the hours of ten of the clock in the morning and one of the clock in the afternoon of the said —— day of ———, being six calendar months next after the making of this my Report.

All which I humbly certify and submit to this Honourable Court.

Dated at —— this —— day of ——, 18—.

(*a*) See *McCormack* v. *McCormack*, 6 Pr. C. 208.

In Chancery.

A. B. ..... Plaintiff,

and

C. D. (By Bill), and E. J., G. H., and J. K., made parties in the Master's office, ... Defendants.

969. Master's Report on mortgage Decree for foreclosure, where subsequent encumbrancers are made parties in his office, and one proves his claim.

1. In pursuance of the Decree made in this cause, as originally entitled, bearing date the —— day of ——, 18—, I was attended by the plaintiff's solicitor; and it appearing to me by the respective certificates of the Sheriff and Registrar of the County of ———, that the said E. J., G. H., and J. K., not before parties to this suit, have some lien, charge or encumbrance upon the lands and premises embraced in the mortgage security of the said plaintiff in the bill in this cause mentioned subsequent thereto, and ought to be made parties, I did, on the —— day of —— order that they should be made parties to this suit, according to the Consolidated General Orders of this Court.

2. And it subsequently appearing to me that the Notice in accordance with Schedule T., referred to in Order 444 of the said General Orders, had been duly served upon each of the said E. J., G. H. and J. K., and that the proper warrant giving the defendant C. D. notice of this proceeding had been served on him, I proceeded to hear and determine the matters referred to me by the said Order, and thereupon I was attended by the respective solicitors for the said plaintiff, and the said E. J. (no one attending on the part of the said C. D., G. H. and J. K., though duly notified as aforesaid):

3. And I find that at the date of this my Report, there is due to the said plaintiff, and to the said E. J., for principal money, interest and costs, and that there will accrue due to them for subsequent interest upon the mortgage security and the judgment hereinafter mentioned, the sums following, viz.:

I.

4. CLAIM OF THE SAID PLAINTIFF.

(*Set out Plaintiff's claim as in No.* 967.)

II.

CLAIM OF THE SAID E. J.

5. Amount of a judgment recovered by the said E. J. against the said C. D., in the Court of ———, on the first day of July, 1865 (on which a *fi. fa.* against the

lands of the said C. D. was placed in the hands of the Sheriff of the county of ———, on the first day of September, 1866, which was duly renewed (*if the fact be so*) on the —— day of ——, and on the —— day of ——), for $1,000 true debt, and $50 taxed costs.....$1,000 00
Costs taxed at law 50 00

$1,050 00

Interest thereon from 1st July, 1865, to January 1st, 1869 ..... 220 50

$1,270 50

Fi. fas. $10 00
Sheriff's fees ..... 15 00—— 25 00

$1,295 50
Costs allowed on this claim 9 00

Total due on this claim, 1st January, 1869 ....$1,304 50

6. And I certify, that although notified as aforesaid, no one of the said parties above designated as parties made in the Master's office, excepting the said E. J., hath attended before me, or proved before me any subsisting lien, charge or encumbrance upon the said lands and premises, whereby they have under the said Consolidated General Orders disclaimed, and are foreclosed of all interest in the said lands and premises; and I hereby declare them foreclosed accordingly.

7. And I have settled the priorities between all the said parties to this suit who have proved their claims before me as aforesaid, and find that such priorities are in accordance with the order in which the said claims are hereinbefore mentioned and set forth.

8. And I further certify that of the said plaintiff and the said defendants, the said plaintiff and the said E. J. only having attended before me in respect of the matters aforesaid, appear to me, to be of them the only encumbrancers upon the said lands and premises affected by the plaintiff's said mortgage.

9. And I appoint the said sum of $888.50 to be paid by the said E. J. (*a*) into the Agency Office in the —— of —— of the Canadian Bank of Commerce (*or as may be*) to the joint credit of the said plaintiff, and the Accountant of this Honourable Court, between the hours of ten of the

(*a*) If there be more than one subsequent encumbrancer who proves a claim, one day is given to all to redeem. In case they all fail to redeem, a new account is taken, and the mortgagor is then allowed three months' further time to redeem. Where a subsequent encumbrancer redeems the plaintiff for form of subsequent report, See *post*, No. 976.

clock in the morning and one of the clock in the afternoon of the said —— day of ——, 18—, being six calendar months next after the making of this my report.

All which I humbly certify and submit to this Honourable Court.

Dated at ——, this —— day of ——, 18—.

Master at ——.

Same as No. 967.

970. Master's report on mortgage decree for sale, where no parties are added.

excepting that the words "subsequent thereto" at the end of the first paragraph of the form are omitted in a report on a sale decree.

Same as No. 968.

971. Master's report on mortgage decree for sale, where parties are added, but none prove.

excepting that the words "subsequent thereto" towards the end of the first paragraph of the form are omitted in a report on a sale decree.

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972. Master's report on mortgage decree for sale, where encumbrancers are added, some of whom prove.

In Chancery.

A. B. ..... Plaintiff

and

C. D. (By Bill), and E. F., G. H., J. K. and S. M., made parties in the Master's office ..... Defendants.

1. In pursuance of the Decree made in this cause, as originally entitled, bearing date the —— day of ——, I was attended by the plaintiff's solicitor; and it appearing to me by the respective certificates of the Sheriff and Registrar of the County of —— that the said E. F., G. H., J. K. and S. M. —— not before parties to this suit, had some lien, charge or encumbrance upon the lands and premises embraced in the mortgage security of the said plaintiff in the Bill in this cause mentioned, and ought to be made parties, I did, on the —— day of —— order that they should be made parties to this suit, according to the Consolidated General Orders of this Court.

2. And it subsequently appearing to me that the Notice in accordance with Schedule T., referred to in Order 444 of the said General Orders, had been duly served upon each of the said E. F., G. H., J. K. and S. M., and that the proper warrant giving the defendant, C. D., notice of this proceeding, had been served on him.

3. I proceeded to hear and determine the matters referred to me by the said Order, and thereupon I was attended by the respective solicitors for the said plaintiff,

and the said E. F. and G. H. (no one attending on the part of C. D., J. K. or S. M., though duly notified as aforesaid):

4. And I find that at the date of this my Report, there is due to the said plaintiff, and to the said E. F. and G. H. —— for principal money, interest and costs; and that there will accrue due to them for subsequent interest upon the mortgage securities and the judgment hereinafter mentioned, the sums following, viz.:

I.

5. CLAIM OF THE SAID PLAINTIFF.

(*Insert plaintiff's claim as in No.* 967.)

II.

6. CLAIM OF THE SAID E. F.

(*Insert E. F.'s claim as in No.* 969.)

(*adding six months' interest*).

III.

CLAIM OF THE SAID G. H.

7. Balance of principal due on a mortgage, dated 1 July, 1866, registered 1 October, 1866, given by the said C. D. to this claimant, securing $1,000 00, and interest at 8 %.....	$500 00
Balance of interest due 1 January, 1869.....	50 00
	$550 00
Six months' subsequent interest on $500 from 1 January, 1869, to 1 July, 1869.....	20 00
	$570 00
Costs allowed on this claim	9 00
Total due on this claim 1 July, 1869	$579 00

8. And I certify that, although notified as aforesaid, no one of the said parties above designated as parties made in the Master's office, excepting the said E. F. and G. H. ——— hath attended before me, or proved before me any subsisting lien, charge, or encumbrance upon the said

lands and premises, whereby they have, under the said Consolidated General Orders, disclaimed and are foreclosed of all interest in the said lands and premises: and I hereby declare them foreclosed accordingly.

9. And I have settled the priorities between all the said parties to this suit who have proved their claims before me as aforesaid, and find that such priorities are in accordance with the order in which the said claims are hereinbefore mentioned and set forth.

10. And I further certify that of the said plaintiff and the said defendants, the said plaintiff and the said E. F. and G. H., only having attended before me in respect of the matters aforesaid, appear to me to be of them the only encumbrancers upon the said lands and premises affected by the plaintiff's said mortgage.

11. And I appoint the said respective sums of $888 50, $1,336 00 and $579 00 to be paid by the said C. D. into the Agency Office in the ——— of ——— of the Canadian Bank of Commerce (*or as may be*) to the joint credit respectively of the said plaintiff, the said E. F. and the said G. H., and the Accountant of this Honourable Court, between the hours of ten of the clock in the morning and one of the clock in the afternoon of the said —— day of ——, being six calendar months next after the making of this my report.

All which I humbly certify and submit to this Honourable Court.

Dated at —— this —— day of

Master at ——

In Chancery.

(*Style of suit.*)

973. Master's report on taking a subsequent account under a foreclosure decree; or under an order directing a new day of payment.

1. In pursuance of the [decree in this cause, as originally entitled], bearing date the —— day of ——, I have been attended by the respective solicitors for the said plaintiff, and the said (*such parties, if any, as have attended: and if any parties have been served with warrants and have not attended, that fact should be stated: see ante, No.* 968): and having heard the evidence adduced, and considered of the matters thereby to me referred, I find as follows.

2. That having by my Report made in this cause, bearing date the —— day of ——, found to be due to the said plaintiff for principal, interest and costs, subsequent interest and subsequent costs (*if the fact be so*), upon his mortgage security in the bill in this cause mentioned, up to the —— day of ——, the sum of $——,

3. I have now proceeded to take an account of subsequent interest, and have taxed to the plaintiff his subsequent costs: all of which appears as follows, viz.:

(*Set out account as in forms ante, Nos.* 967, 969, 972.)

And I appoint the said sum of $—— (*as in form No.* 969, *with such alterations as the form may require.*)

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974. Master's report under a decree for redemption.

In Chancery.

A. B. . . . . Plaintiff,

and

C. D. . . . . Defendant.

1. In pursuance of the decree made in this cause, bearing date the —— day of ——, A. D. 18—, I have been attended by the respective solicitors for the said parties, and having heard the evidence adduced and considered of the matters thereby to me referred, I find as follows, viz.:

2. That there is now due and will accrue due to the said defendant by the said plaintiff upon the mortgage in the pleadings mentioned for principal, interest, subsequent interest and costs the sums following, viz.:

(*Set out claim as in form ante No.* 967)

3. And I appoint the said sum of —— to be paid by the plaintiff into the Agency Office in the City of Hamilton of the Canadian Bank of Commerce, to the joint credit of the said defendant and the Accountant of this Honourable Court, between the hours of ten of the clock in the morning and one of the clock in the afternoon of the said —— day of ——, being six calendar months next after the making of this my report.

All which I humbly certify and submit to this Honourable Court.

Dated at Hamilton this —— day of ——, 18—.

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975. Master's report in suit by derivative mortgagee for foreclosure. (*a*)

See Forms ante, Nos. 967, 968 *and* 969.

(*a*) The Master first takes an account of the amount due to the plaintiff and to the derivative mortgagor, and a day is appointed, six months from the making of the report, for the original mortgagor to pay the plaintiff the amount found due him, not exceeding the sum found due to the derivative mortgagor, and the balance (if any), after deducting the amount of the plaintiff's claim from the amount found due to the derivative mortgagor, is directed to be paid to the latter. On the original mortgagor being foreclosed by a final order, the Master takes a subsequent account between the plaintiff and his mortgagor, and appoints a day three months thereafter for the latter to redeem.

In Chancery.

(*Style of suit.*)

976. Master's Report after the plaintiff has been redeemed by a subsequent encumbrancer.

1. In pursuance of the decree made in this cause, as originally entitled, bearing date the —— day of ——, I have been attended by the solicitor for the said E. F. (*the encumbrancer*), no one attending on the part of the said C. D. (*the mortgagor*) although duly notified (*if the fact be so*)—and having heard the evidence adduced, and considered of the matters thereby to me referred, I find as follows, viz.:

2. That having by my Report made in this cause, bearing date the —— day of ——, found to be due to the said plaintiff for principal, interest, and costs, and for subsequent interest up to the —— day of ——, upon his mortgage security in the bill in this cause mentioned, the sum of $——,

3. And having also in and by the said Report found to be due to the said E. F., for principal, interest, and costs, upon his judgment (*or mortgage, as the case may be*) in the said Report set forth, up to the —— day of ——, the sum of $——,

4. And the said E. F. having redeemed the said plaintiff by paying to him the said sum of $——,

5. I have now proceeded to take an account of subsequent interest, on foot of the said claim of the said plaintiff and the said E. F., and have taxed to the said E. F. his subsequent costs; all of which appears as follows, viz.:

I.

Amount paid to redeem the said plaintiff on the —— day of ——.....$

Interest thereon from the —— day of —— (*date of payment*) to the —— day of —— (*date of Report*).....

$

II.

Amount found due to the said E. F., by the said Report .....$

Interest on $—— from the —— day of —— to the —— day of —— (*date of Report*).....

$

Amount of redemption money as above .....
Three calendar months' subsequent interest on the sum of $ —— + $ —— = $ ——, from the —— day of —— to the —— day of —— ..
Subsequent costs, taxed and revised at —— ....

Total due to E. F. on the —— day of —— ....$

And I appoint the said sum of $—— to be paid by the said C. D. (*a*) (*the Mortgagor*) into the Agency Office in the —— of —— of the —— Bank, to the joint credit of the said E. F. and the Accountant of this Honourable Court, between the hours of ten of the clock in the morning and three of the clock in the afternoon of the said —— day of ——, being three calendar months next after the making of this my Report.

All which, *&c.*

Dated at, *&c.*

A. B.,
Master at ——.

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977. Master's report on mortgage decree for foreclosure where a defendant by bill is also an encumbrancer requiring service of appointment T., under Order 446 (*b*).

In Chancery.

Between—A. B.....Plaintiff,
and
C. D. and E. F. (By Bill), and G. H. and J. K. made parties in the Master's office.....Defendants.

1. In pursuance of the Decree made in this cause, as originally entitled, bearing date the —— day of ——, 18—, I was attended by the plaintiff's solicitor; and it appearing to me by the respective certificates of the Sheriff and Registrar of the County of —— that the said G. H. and J. K., not before —— parties to this suit, had some lien, charge or encumbrance upon the lands and premises embraced in the mortgage security of the said plaintiff in the bill in this cause mentioned subsequent thereto, and ought to be made —— parties, I did, on the —— day of ——, order that they should be made —— parties to this suit, according to the Consolidated General Orders of this Court, of June, 1868.

2. And it subsequently appearing to me that the Notice in acccordance with Schudule T., referred to in Order 444

(*a*) If there are other encumbrancers subsequent to the encumbrancer who redeemed the plaintiff, they should now be appointed to redeem, and so on, on each successive redemption; and when all the encumbrancers failing to redeem have been foreclosed, then the mortgagor should be appointed to redeem.

(*b*) This appointment is served where a defendant by bill, interested in the equity of redemption, is also an encumbrancer. The most familiar instance of this is, where a mortgagor assigns to a trustee for the benefit of creditors—the trustee having a claim either by subsequent mortgage or *fi. fa.* In such a case he must be served with the appointment under Order 446, and also with a warrant.

of the said General Orders, had been duly served upon each of the said G. H. and J. K.: and that the appointment in accordance with Schedule T. referred to in Order 446 of the said Orders, together with the proper warrant, had been duly served upon the said defendant by bill, E. F., and that the proper warrant giving the defendant C. D. notice of this proceeding had also been served on him,

I proceeded to hear and determine the matters referred to me by the said Order, and thereupon I was attended by the respective solicitors for the said plaintiff and the said E. F. (no one attending on the part of the said C. D., G. H., or J. K., though duly notified as aforesaid): (*Proceeding as in the forms already given, ante, Nos.* 967, *et seq.*)

In Chancery.

(*Style of suit.*)

978. Master's report on passing a Receiver's accounts.

1. In pursuance of the decree made in this cause, bearing date the —— day of ——, 18—, I have been attended by A. B., receiver of the rents and profits of the real estate of C. D. in the pleadings in this cause named, and of the profits of his personal estate, also therein named, and by the respective solicitors for the said parties (*Or*, for the said E. F., G. H., and J. K. (*as the case may be*); and the said receiver having brought before me an account of the rents and profits of the said real and personal estate, and of his payments and allowances thereout for taxes, repairs, and other proper disbursements for the year commencing on and ending on , I have in the presence of the said receiver, as also in the presence of the said solicitors, proceeded to take the said account:

2. And I find that the said receiver hath received by and out of the said rents and profits for that year the sum of $1,000 00

And that he hath allowed to several tenants of the said real estate, for taxes and repairs (*or as the case may be*), in the aggregate the sum of 100 00

Leaving a balance of $900 00

And I have allowed to him 5% on the said sum of $1,000, being 50 00

as and for his salary as such receiver, during the above mentioned period.

3. And I have taxed to the said receiver his costs of passing his said accounts, and they have been revised at

the sum of $20, which two last mentioned sums of $50 and $20, being taken from the said sum of $900, leave the final sum of $830 as cash in the hands of the said receiver to the credit of the said estate on the said day of (*the day above mentioned, being the day up to which the account is made up.*)

All which I humbly certify and submit to this Honourable Court.

Dated at —— this —— day of ——, 18—.

A. B.,
Master at——.

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979 Master's report in an Administration Suit, under Order 589.

In Chancery.

Between

A. B. and others .....Plaintiffs,

and

C. D. and others .....Defendants.

Pursuant to the Order [*Or* Decree] herein made, dated the —— day of ——, 18—, having caused an office copy thereof to be served upon [*Give the names of persons served under Order* 60, *and also the names of those upon whom service has been dispensed with, and the reason for dispensing with service*], I proceeded to dispose of the matters referred to me, and thereupon was attended by the solicitors for all parties interested [*or as the case may be*]:

[*If the Master has appointed a guardian ad litem for any of the parties, this should be so stated, and the reason why such appointment was made.*]

and I find as follows:—

1. The personal estate not specifically bequeathed of the testator come to the hands of the executors, and wherewith they are chargeable, amounts to the sum of $——, and they have paid, or are entitled to be allowed thereout, the sum of $——, leaving a balance due from them [*Or*, "to them," *as the case may be*] of $— on that account;

[*If no personal estate, say:* No personal estate has come to the hands of the executors, nor are they chargeable with any.]

2. The creditor's claims sent in, pursuant to my advertisement in that behalf (published in —— issues of the newspaper called ——), and which have been allowed, are set forth in the first schedule hereto, and amount to $——.

[*If no creditors, say:* No creditor has sent in a claim, pursuant to my advertisement in that behalf, nor has any such claim been proved before me.]

3. The funeral expenses of the testator, amounting to $——, have been paid by the executors, and are allowed to them in the account of personal estate.

4. The legacies given by the testator are set forth in the second schedule hereto, and with the interest therein mentioned, remain due to the persons named (*or as the case may be.*)

5. The personal estate of the said testator outstanding or undisposed of is set forth in the third schedule hereto.

[*In this third schedule the personal estate specifically bequeathed should be set forth separately from the other personalty outstanding or undisposed of. If there is no specific bequest it should be so stated in the body of the report.*

6. The real estate which the said testator was seized of or entitled to, and the encumbrances (*if any*) affecting the same, are set forth in the fourth schedule hereto.

7. The rents and profits of the testator's real estate received by the said executors, or with which they are chargeable, amount to $——, and they have paid, or are entitled to be allowed thereout the sum of $——, leaving a balance due from [*Or* to] them of $——, on that account.

[*If no rents, &c., received, say :* No rents and profits have come to the hands of the said executors, nor are they chargeable with any.]

8. I have allowed to the said executors the sum of $—— as a compensation for their personal services in the management of the said estate.

The first Schedule referred to in the foregoing Report.

No.	Names of Creditors.	Principal.	Interest Allowed.		Costs at law (if any) subsequent to Judgment.	Costs of this Suit.	Total.
			Rate per Cent.	Amount to date of Report.			
		$ c.		$ c.	$ c.	$ c.	$ c.
	[*Distinguish any which are secured by mortgage, lien, or otherwise entitled to any priority.*]						

[*No general form can well be framed for the other Schedules, but in all cases brevity is to be studied. Where particulars are given, they should show merely the general character of the things described; as, for instance, the*

Schedule of outstanding personalty may say: A number of book debts outstanding, amounting in the aggregate to $——; a quantity of household furniture and effects, valued at $——: and the like short particulars should be given in other cases. Lands should be described without setting forth metes and bounds.]

979a. Report on sale.

See ante, No. 950.

979b. Report in partnership suit.

See ante. No. 930.

CHAPTER XVI.

SOLICITORS.

SECTION I.—*Authority to Prosecute or Defend—Consent to act as Relator, Next Friend, or Guardian ad litem.*

980. Authority by an adult, to prosecute a suit or proceeding.

I, A. B., of (*Residence and addition*), authorise Mr. C. D., of (*Place of business*), to commence and prosecute a suit [*Or*, such proceedings as may be necessary and proper], on my behalf, in the Court of Chancery, for [*State, succinctly, the object; as thus:* the administration of the estate of E. F., deceased]. Dated this —— day of ——, 18—.

Witness. A. B.

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981. The like; by indorsement on bill, or originating notice.

I, the within named A. B., authorise Mr. C. D., of (*Place of business*), to file this bill [*Or*, issue this notice], and to prosecute on my behalf the suit [*Or*, proceeding] to be commenced thereby.

Dated, *&c.*

Witness. A. B.

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982. Authority by an adult, to defend a suit or proceeding.

In Chancery.

(*Short title.*)

I, (the defendant) A. B., of (*Residence and addition*), authorise Mr. C. D., of (*Place of business*), to appear to, and defend this suit on my behalf.

Or, to appear and act on my behalf on the hearing of the petition presented by [*Or*, order taken out on behalf of] E. F. in this matter—*or as may be.*

Dated, *&c.*
Witness. A. B.

---

983. Authority by the relator in an information, to use his name.

I, A. B., of (*Residence and addition*), authorise Mr. C. D., of (*Place of business*), to use my name as relator in the information about to be filed in the Court of Chancery, for the purpose of (*State, succinctly, what*); and to prosecute the suit to be commenced thereby. Dated, *&c.*

Witness. A. B.

---

984. The like; by indorsement on the information.

I, the within named A. B., authorise Mr. C. D., of (*Place of business*), to use my name as relator in the within information about to be filed; and to prosecute the suit to be commenced thereby. Dated, *&c.*

Witness. A. B.

In Chancery.

(*Short title.*).

985. The like, in the place of a deceased relator.

I, A. B., of (*Residence and addition*), authorize Mr. C. D., of (*Place of business*), to use my name in this suit, as relator in the information therein, in the place of E. F., deceased; and to continue the prosecution of this suit.

Dated, *&c.*
Witness. A. B.

---

986. Authority by the next friend of a person under disability, to prosecute a suit or proceeding.

I, A. B., of (*Residence and addition*), authorise Mr. C. D., of (*Place of business*), to commence and prosecute a suit in [*Or*, to make an application to] the Court of Chancery, on behalf of E. F., an infant [*Or*, a person of unsound mind, not so found—*Or*, the wife of G. F., *&c.*], for [*State, succinctly, the object; as thus:* the administration of the estate of B. C., deceased—*Or*, for the appointment of a guardian of the person and estate of the said E. F., and an allowance for his maintenance]; and to use my name in such suit [*Or*, proceeding] as the next friend of the said E. F.

Dated, *&c.*
Witness. A. B.

987. Authority by the next friend of a person under disability by endorsement on the bill or notice.

I, the within named A. B., authorise Mr. C. D., of (*place of business*), to file this bill [*Or*, issue this notice], and to prosecute the suit [*Or*, proceeding], to be commenced thereby; and to use my name as the next friend of the within named E. F. therein.

Dated, &c. A. B.
Witness.

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988. Authority by new next friend, to use his name, and continue proceedings.

In Chancery.

(*Short title.*)

I, A. B., of (*Residence and addition*), consent to be appointed, and to act as, the next friend of the plaintiff [*Or*, applicant], C. D., in this suit [*Or*, proceeding], in the place of E. F. And I authorise Mr. G. H., of (*Place of business*), to use my name as such next friend, and to continue the prosecution of this suit [*Or*, proceeding].

Dated, &c. A. B.
Witness.

---

989. Consent of a married woman to a suit or proceedings in her name by a next friend.

I, E. F., of (*Residence*), the wife of G. F., of (*Residence and addition*), consent to a suit [*Or*, proceeding] being commenced and prosecuted in the Court of Chancery, on my behalf, by A. B., of (*Residence and addition*), as my next friend, for (*State, succinctly, the object; as thus:* the administration of the estate of B. C., deceased).

Dated, &c. E. F.
Witness.

---

990. Consent to act as guardian *ad litem* for a person under disability.

In Chancery.

(*Short title.*)

I, A. B., of (*Residence and addition*), consent to be appointed [*If so:* and to act, in the place of L. M.] as guardian *ad litem* of C. D., a defendant in this suit.

Or, who has been served with notice of the decree dated, &c., in this suit.

Or, of C. D., who has been served with the petition presented by—*Or*, order taken out on behalf of—E. F. in this suit—*Or*, matter—*or as may be.*

Dated, &c. A. B.
Witness.

The mark
+
of A. B.

This paper writing was read over by me to the above named A. B.; and he appeared perfectly to understand the same, and made his mark thereto in my presence:
X. Y., of (*Residence and addition*).

991. Attestation to retainer or consent by a marksman.

SECTION II.—*Change of Solicitor, or Agent.*

In Chancery.

(*Short style of cause.*)

Required an order appointing Mr. E. F., of (*Place of business*), as solicitor for the plaintiff (*or as may be*) in this cause [*Or*, matter], in the place of Mr. L. M.

Dated, *&c.*

992. *Præcipe* by client for order to change his solicitor, under Order 42.

To be endorsed with address of solicitor filing same.
See ante, Nos. 168–73.

In Chancery.

(*Short style of cause.*)

Required an order enabling the [plaintiff, *Or*, defendant C. D.] to prosecute [*Or*, defend] this cause [*Or*, matter] in person, instead of by Mr. A. B., his solicitor.

Dated, *&c.*

C. D.

993. Præcipe by client to act in person, instead of by a solicitor and agent.

This præcipe is filed by the plaintiff [*Or*, defendant C. D.] of (*giving address in person; where necessary, add:*) and his address for service is at (*giving address: see Con. Ord.* 44.)

994. Endorsement on præcipe.

In Chancery.

(*Short style of cause.*)

Required an order enabling the plaintiff A. B. to make an application respecting (*State what*), in this cause, separate from his co-plaintiffs therein, by Mr. G. H., of (*Place of business*), as his solicitor—*If so:* to act by his agent, Mr. L. M., of (*Place of business*), in place of Mr. C. D.— *If so:* who acts by his agent, Mr. E. F.

995. Præcipe by a co-plaintiff, to appoint a solicitor (and agent) for a separate application.

996. Præcipe by a solicitor to change his agent.

In Chancery.

(*Short style of cause.*)

Required an order enabling C. D., the plaintiff's solicitor, to change his agent in this cause [*Or*, matter], by appointing Mr. E. F., of (*Place of business*), as such agent, in the place and stead of Mr. G. H., who has lately acted as such agent.

---

997. Order to change solicitor.

(*Formal parts: see ante, No.* 338.)

It is ordered that the [plaintiff, *Or*, defendant C. D.] be at liberty to [prosecute, *Or*, defend] this suit [by Mr. E. F., as his solicitor, in the place and stead of Mr. L. M.] [*Or*, in person, instead of by Mr. A. B., as his solicitor.]

---

998. Notice of appointment of a solicitor, instead of one deceased—or instead of client acting in person.

In Chancery.

(*Short title.*)

Take notice, that I am now concerned as solicitor in this cause [*Or*, matter] for the plaintiff (*or as may be*), in the place and stead of Mr. C. D., now deceased [*Or*, instead of his acting in person.]

Dated this —— day of ——, 18—.

E. F., of (*Place of business.*)

To the Clerk of Records and Writs; and to Mr. G. H., the solicitor [*Or*, agent] for the defendant (*or as may be.*)

---

999. Notice of appointment of an agent, instead of one deceased.

In Chancery.

(*Short title.*)

Take notice, that I am now appointed agent in this cause [*Or*, matter] for Mr. A. B., of (*Place of business*), the solicitor therein for the plaintiff (*or as may be*), in the place and stead of Mr. E. F., now deceased.

Dated, *&c.*

To ——, *Defendant's Solicitor.* G. H.

1000. Notice by solicitor, that he is concerned for new plaintiffs.

(*Formal parts: see ante, No.* 999.)

Take notice, that I am now concerned as solicitor in this cause for A. B. and C. D., the now plaintiffs therein (*or as may be.*)

SECTION III.—*Striking off the Roll.*

1001. Petition by a solicitor to be struck off the roll.

In Chancery.

In the matter of A. B., a solicitor in this Court.

To the Honourable the Judges of the Court of Chancery.

The humble petition of the above named A. B., of (*Place of business*),

Showeth as follows:

1. In —— term, 18—, your petitioner was duly admitted a solicitor of this Honourable Court: and he is now on the roll of solicitors thereof.

2. Your petitioner is now desirous to have his name struck off the roll of solicitors of this Court.

Your petitioner therefore humbly prays, that he may be struck off the roll of solicitors of this Honourable Court.

And your petitioner will ever pray, &c.

1002. Affidavit in support of motion or petition.

In Chancery.

In the matter of A. B., a solicitor in this Court.

I, the above named A. B., of (*Place of business*), gentleman, make oath, and say as follows:

1. In —— term, 18—, I was duly admitted a solicitor of this Honourable Court.

2. I am now desirous to have my name struck off the roll of solicitors of this Honourable Court.

3. No application or other proceeding is now pending in this Honourable Court, or elsewhere, against me as such solicitor as aforesaid; and I do not expect or apprehend that any application or proceeding will be made or taken against me as such solicitor as aforesaid.

1003. Petition to strike a solicitor off the roll for non-payment of money (a).

(*Formal parts: see ante, No.* 1001.)

1. In ——— term, 18—, the above named A. B. was duly admitted a solicitor of this Honourable Court, and he is now on the roll of the solicitors thereof.

2. The said A. B. was employed by your petitioner as his solicitor [*show for what purpose, e. g.*, to collect the amount due to your petitioner upon a certain mortgage made by one C. D.]

3. The said A. B. accordingly took proceedings and recovered the amount due upon such mortgage, amounting to the sum of $——.

(a) See 37 Vic., cap. 7, s. 89, (O).

4. On the —— day of ——, your petitioner procured and order of this Honourable Court in the usual terms, for the delivery of the said A. B.'s bill of costs against your petitioner, and for the taxation of the same, and for the payment by the said A. B. of any balance which might appear to be due from him to your petitioner.

5. The said A. B., pursuant to the said order, delivered to your petitioner his bill of costs, and the same has been duly taxed, and the Master of this Honourable Court has certified that there is a balance of $—— due to your petitioner from the said A. B. in respect of the amount so recovered from the said C. D. by the said A. B. for your petitioner, after deducting the said A. B.'s costs, and all other sums with which the said A. B. is entitled to charge your petitioner.

6. The said Master's certificate of the amount due to your petitioner as aforesaid, has been duly served upon the said A. B., and your petitioner has demanded payment of the said amount, but the said A. B., without any just cause, wholly neglects and refuses to pay the same to your petitioner, although the time limited by the said order for payment of the said sum has elapsed.

1. Your petitioner therefore humbly prays, that the said A. B. may be struck off the roll of solicitors of this Honourable Court, and may be ordered to pay to your petitioner his costs of this matter.

2. Or that such other order may be made in the premises as to this Honourable Court shall seem just.

And your petitioner will ever pray, &c.

1003a. Evidence in support.

The allegations in the petition must be verified by affidavit, and by the production of the orders and certificates therein referred to.

SECTION IV.—*Delivery and Taxation of Bills of Costs, under Con. Sta. U. C., Chap.* 35.

1004. Præcipe by party chargeable, or third party, for the common order to tax a delivered bill where application made within a month from delivery.

In Chancery.

In the matter of A. B., gentleman, &c., &c. Required the common order to tax the said A. B.'s bill of fees and disbursements, delivered to C. D., the —— day of ——.

Dated, *&c.*

W. B.,
Solicitor for the said C. D.

In Chancery.

In the matter of A. B., one of the solicitors of this Court.

1005. Petition by solicitor, for the taxation of his delivered bill.

To the Honourable the Judges of the Court of Chancery.

The humble petition of the above named A. B., of (*Place of business*),

Showeth as follows:

1. Your petitioner was employed by C. D., of (*Residence and addition*), as his solicitor in (*State, shortly, what; as thus:*) a certain suit in this Court, in which the said C. D. was plaintiff, and E. F. was defendant, and in other matters—*Or*, in certain conveyancing business, and other matters, but not in any Court of Law or Equity—*or as may be.*

2. Your petitioner transacted such business; and on the —— day of ——, 18—, caused a bill of his fees, charges and disbursements for the same, subscribed with his proper handwriting (*Or*, enclosed in, or accompanied by a letter subscribed with his proper handwriting—referring to such bill), to be personally delivered to the said C. D. (*or as may be.*)

3. The said C. D. has not paid your petitioner's said bill, nor taken any steps to get the same taxed.

Your petitioner therefore humbly prays, that it may be referred to the Master of this Court to tax and settle the said bill: with the usual directions.

And your petitioner will ever pray, &c.

In Chancery, In Chambers. } ——, the —— day of ——, A. D. 18—.

1006. Order on petition of solicitor, to tax his delivered bill.

In the matter of ——.

Upon the humble petition of the above named ——, and upon hearing read the affidavit of ——, alleging that the petitioner was employed by —— in certain business of the said —— in a certain suit in this Court, in which ——, and in other matters; that the petitioner transacted the said business; and on the —— day of —— caused a bill of his charges, accompanied by a letter subscribed with his proper hand, to be —— to the said ——; that the said —— has not paid the petitioner's said bill, nor taken any steps to get the same taxed.

1. It is therefore ordered, that it be referred to the Master of this Court to tax and settle the said bill, and that the petitioner and the said —— do produce before

the said Master, upon oath, as he shall direct, all deeds, books, papers and writings in their custody or power, respectively, relating to the matters hereby referred or any of them; and that they be examined upon oath touching the same matters or any of them, as the said Master shall direct.

2. And it is ordered that the petitioner do give credit for all sums of money by him received, of or on account of the said ———, and be at liberty to charge all sums of money paid by him on account of the said ———.

3. And it is ordered that in case the said ——— shall attend upon such taxation, if the said bill when taxed be less by a sixth part than the said bill so delivered, the said Master do tax the costs of the said ——— of this reference; and if the said bill when taxed shall not be less by a sixth part than the said bill so delivered, the said Master do tax the petitioner's costs of this reference:

4. And it is ordered that the said Master do certify the amount due from the said ——— to the petitioner, or from the petitioner to the said ———, as the case may be, having regard to the costs of such reference if taxed as aforesaid.

5. And it is ordered that the said ——— do, within twenty-one days after the filing of the said Master's certificate of such taxation, pay to the said petitioner what (if anything) the said Master shall certify to be due to the petitioner upon such taxation; and upon such payment, or in case the said Master shall certify that there is nothing due to the petitioner, or that he has been overpaid, it is ordered that the said petitioner do deliver to the said ———, upon oath, all deeds, papers and writings in his custody or power belonging to the said ——— and relating to the said business; and if it appears that the said bill is overpaid, it is ordered that the said petitioner do refund and repay what shall appear to have been overpaid.

6. And it is ordered that no proceedings at law, or otherwise, in respect of the said bill, be taken by the petitioner against the said ——— pending such reference.

7. And it is ordered that a copy of this order be personally served upon the said ——— two weeks at least before the taxation of the said bill.

(*Title—and address : as in* No. 1005, *ante.*)

1007. Petition by party chargeable to tax a delivered bill before action brought, but after lapse of month from delivery.

The humble petition of C. D., of (*Residence and addition*),

Showeth as follows :

1. Your petitioner employed the above named A. B., of (*Place of business*), as his solicitor in (*State, shortly, what : see ante, No.* 1005.)

2. The said A. B., on the —— day of ——, 18—, delivered to your petitioner his bill of fees, charges and disbursements : which, as your petitioner is advised, contains many unreasonable and extravagant charges.

3. Your petitioner submits to pay to the said A. B. what shall appear to be due to him upon the taxation of his said bill.

Your petitioner therefore humbly prays, that it may be referred to the Master of this Court to tax and settle the said bill : with all usual directions. And that no proceedings at law may be commenced against your petitioner in respect of the said bill, pending such reference.

And your petitioner will ever pray, &c.

1008. Order on petition of party chargeable, to tax a delivered bill before action brought, but after lapse of month from delivery.

In Chancery, } ——, the —— day of ——, A. D. 18—.
In Chambers. } In the matter of ——.

1. Upon the humble petition of ——, and upon hearing read the affidavit of ——, and it appearing by the said affidavit that the petitioner employed the above named —— as his solicitor, in a certain suit in this Court in which ——, and in other matters ; that the said solicitor, on or about the —— day of ——, delivered unto the petitioner his bill of fees, charges and disbursements, which, the said petitioner is advised, contains many unreasonable and extravagant charges. That the petitioner submits to pay what shall appear to be due to the said solicitor on the taxation of his bill.

2. It is therefore ordered that it be referred to the Master of this Court to tax and settle the said bill ; and that the said petitioner, and also the said solicitor, do produce before the said Master, upon oath, as he shall direct, all deeds, books, papers and writings in their custody or power, respectively, relating to the matters hereby referred, or any of them ; and may be examined upon oath touching the same matters, or any of them ; as the said Master shall direct.

3. And it is ordered that the said solicitor do give

credit for all sums of money by him received, of or on account of the petitioner, and be at liberty to charge all sums of money paid by him to, or on account of, the petitioner.

4. And it is ordered that if the said bill when taxed be less by a sixth part than the said bill as delivered, the said Master do tax the costs of the petitioner of this reference, and if the said bill when taxed shall not be less by a sixth part than the said bill as delivered, the said Master do tax the costs of the said solicitor of such reference.

5. And it is ordered that the said Master do certify the amount due from the petitioner to the said solicitor, or from him to the petitioner, as the case may be, having regard to the costs of such reference so to be taxed as aforesaid, and any sum or sums of money which may have been so received or paid as aforesaid; and it is ordered that the amount so to be certified be paid within twenty-one days after the filing of the certificate of such taxation, by the party liable to pay such amount.

6. And it is ordered that upon payment by the petitioner to the solicitor of what may be certified to be due to him as aforesaid, or in case it shall appear that there is nothing due to him, that the said solicitor do deliver to the petitioner upon oath, all deeds, papers and writings in his custody or power belonging to the said petitioner, and relating to the said business.

7. And it is ordered that no proceeding at law, or otherwise, be commenced against the petitioner in respect of the said bill pending such reference, but the said Master is to make his certificate in a month, unless the said Master shall certify that further time is necessary to enable him to make his certificate, or this order is to be of no effect.

1009. Petition by party chargeable, to tax a delivered bill, after action brought.

Proceed as in No. 1005, *to the end of par.* 2; *and continue thus:*

3. The said A. B. has commenced an action against your petitioner in Her Majesty's Court of Queen's Bench (*or as may be*), to recover the amount of the said bill; and your petitioner has appeared thereto (*State, shortly, the subsequent proceedings, if any*).

4. Your petitioner submits to pay to the said A. B. what shall appear to be due to him upon taxation of his said bill.

Your petitioner therefore humbly prays, that it

may be referred to the Master of this Court to tax and settle the said bill: with all usual directions. And that all further proceedings at law may be stayed against your petitioner in respect of the said bill, pending such reference.

And your petitioner will ever pray, &c.

(*Formal parts: see ante, No.* 1008.)

1010. Order thereon.

It is therefore ordered that it be referred (*Direction to tax bill, and clause as to the cash account, and costs of reference: as in No.* 1008, *pars* 2, 3 *and* 4).

Costs of the action.

And in case it shall appear that there is anything due to the said solicitor, it is ordered that the said Master do tax the said solicitor his costs of the said action at law; and that such costs be added to the amount which shall be so found due.

And it is ordered that (*Clauses as to payment of ultimate balance: as in No.* 1008, *par.* 5).

Where special circumstances certified.

And it is ordered that the amount so to be certified be paid accordingly: unless the Court shall, upon special circumstances to be certified by the said Master, otherwise order, upon application to be made within one week after the date of the said Master's certificate by the party liable to pay such amount.

And it is ordered that (*Clause as to delivery up of deeds, &c.: as in No.* 1008, *par.* 6).

Action stayed.

And it is ordered that all further proceedings at law against the petitioner in respect of the said bill be stayed, pending such reference; but the petitioner is to carry this order, and the said bill of costs, into the office of the said Master on or before the —— day of ——; and in default thereof, the said solicitor is to be at liberty to proceed with the said action at law, as if this order had not been made.

Prosecution of order.

And it is ordered that either party be at liberty to prosecute this order: and the said Master is to make his report in a fortnight (unless the said Master shall certify that further time is necessary to enable him to make his report): or this order is to be of no effect.

Payment, where no special circumstance.

And in case the said Master shall not state any special circumstance in his said report, and shall certify that there is anything due from the petitioner to the said solicitor, it is ordered that the amount so certified be paid by the petitioner to the said solicitor; and in default of such payment being made, the said solicitor is to be at liberty,

Writs of execution.

at any time after two days from the filing of the said Master's report (without service of this order, or of the said report), to sue out execution against the petitioner by *fieri facias*, or otherwise, for the amount which may be so certified to be due as aforesaid.

1011. Præcipe for order of course, by party chargeable, for delivery of a bill and taxation.

(*Formal parts: see ante, No.* 1004.)

Required an order directing Mr. A. B., within a fortnight after notice thereof, to deliver to *applicant* a bill of all such fees, charges and disbursements as he claims to be due to him from *applicant;* and referring it to the Master of this Court to tax and settle the said bill: with all usual directions.

Dated, *&c.* (Signed) A. B. (*in person*),
(*Or, Solicitor for* ——.)

To the Clerk of Records and Writs.

1012. Order thereon.

(*Formal parts: as in No.* 1006.)

It is therefore ordered that the said solicitor do, within a fortnight after notice hereof, deliver to —— a bill of fees and disbursements in all suits, causes and other matters of business in which he has been employed as the attorney or solicitor for the petitioner. And that it be referred (*Conclude as in No.* 1008). (*a*)

1013. Præcipe for order of course, by a third party, for taxation of bill.

(*Formal parts: as in No.* 1011.)

Whereas Mr. C. D. employed the above named A. B. as his solicitor in and about the sale of certain land by the said C. D. to *applicant;* and it was part of the contract of sale that *applicant* should bear the costs of the said C. D., of making out his title to the said land, and of the assurance thereof to your petitioner.

Therefore an order is required directing the said A. B. (*Continue as in No.* 1011, *to the end of that form.*)

1014. Order on petition of course, by a third party, for taxation of bill.

(*Formal parts: as in No.* 1008, *varying recital in accordance with affidavit showing circumstances under which the petitioner is liable, e. g.*):

[That the petitioner some time since agreed to take a lease of certain premises of one C., who employed the above named A. B. as his solicitor to prepare such lease, and the petitioner is liable to pay the said B.'s bill for

(*a*) The order should be endorsed with the name and address of party issuing same. See *ante, Nos.* 168–73.

preparing the same.] *Recite delivery of bill, &c., as in No.* 1008, *par.* 1.

It is ordered, that it be referred (*Direction to tax bill, and costs of reference; and for production of books, &c.: as in No.* 1008, *pars.* 2 *and* 4.)

5. And it is ordered that the said Master do certify the amount due from the petitioner to the said solicitor: or from him to the petitioner, as the case may be: having regard to the costs of such reference so to be taxed as aforesaid.

And it is ordered that the amount so to be certified (*Direction to pay: as in No.* 1008, *par.* 5.)

And it is ordered that no proceeding (*Conclude as in No.* 1008, *par.* 7, *ante.*)

In Chancery.

In the matter of A. B., one of the solicitors of this Court.

1015. Notice of motion by a party beneficially interested, to tax a delivered bill, where more than a month has elapsed since its delivery.

(*Formal parts: as in No.* 384.)

1. That on the submission of the applicant to pay what, if anything, shall appear to be due to the above named A. B., of (*Place of business*), upon taxation of his bill hereinafter mentioned, it may be referred to the Master of this Court to tax and settle the bill of fees, charges and disbursements, amounting to the sum of $——, delivered by the said A. B. to C. D., as the trustee [*Or*, executor] of the will [*Or*, administrator of the personal estate] of G. H., deceased (*or as may be*); and which the said C. D. has paid [*Or*, claims to be entitled to pay] out of property in which the applicant is interested, with all usual directions as to costs, and otherwise.

And take notice that on such motion will be read (*&c., as in No.* 382.)

1016. Notice of motion for the taxation of an unpaid bill, after a year from delivery.

(*Formal parts: see ante, No.* 1015.)

1. That: upon the submission of the applicant to pay to the above-named A. B., of (*Place of business*), what shall appear to be due to him upon the taxation of his bill hereinafter mentioned: it may be referred to the Master of this Court to tax and settle the bill of fees, charges and disbursements, amounting to the sum of $——, delivered on or about the —— day of ——, 18—, to the applicant by the said A. B., as his solicitor: with all usual directions.

2. That no proceedings at law may be commenced against the applicant in respect of the said bill, pending such reference. And take notice (*&c., as in No.* 382.)

1017. Notice of motion for the taxation of a paid bill.

(*Formal parts: see ante, No.* 1015.)

1. That it may be referred to the Master of this Court to tax and settle the bill of fees, charges and disbursements, amounting to the sum of $——, delivered by the above-named A. B., of (*Place of business*), to the applicant, and paid by the applicant to the said A. B., on or about the —— day of ——, 18— (*or as may be*): with all usual directions.

2. That in case it shall appear upon such taxation that the said bill is overpaid, the said Master may be directed to certify the amount overpaid; and that in such case the said A. B. may be ordered, within twenty-one days after service of the order to be made hereon, and of the said Master's certificate to be made in pursuance thereof, to repay to the applicant what shall be certified to be the amount so overpaid by him.

3. That the said Master may be at liberty to state any circumstance specially, at the request of either party, as he shall think fit.

4. That the costs of this application, and of the said reference, may be dealt with in such manner as the Judge [*Or*, Referee in chambers] shall think fit to direct. And take notice (*&c., as in No.* 382.)

1018. Notice of motion for time to deliver bill of costs.

(*Formal parts: see ante, No.* 384.)

on the part of the above-named A. B., that the time allowed to the applicant to deliver his bill of fees, charges and disbursements, pursuant to the order dated the —— day of ——, 18—, may be enlarged until the —— day of ——, 18—. And take notice that on such motion (*&c., as in No.* 382).

CHAPTER XVII.

COSTS.

SECTION 1.—*Tariff of Fees; Lower Scale—under Order 553.*

In Chancery.

(*Title of cause or matter.*)

I hereby certify that, to the best of my judgment and belief, the Tariff of fees under the Orders of this Court of 10th September, 1869, is applicable to this case. 1019. Certificate to tax costs under Order 553.

Dated, *&c.*

A. B.
Solicitor for ——.

TARIFF.

(*Referred to in Order* 553.)

LOWER SCALE.

SOLICITOR.

Instructions for suit	$1	00
Instructions to defend	1	00
Instructions for petition where no bill is filed	1	00
Letter of notice before instituting suit	0	25
Drafting bill not exceeding twenty folios, including copy to keep	2	00
For every additional folio above 20, (to be allowed in the discretion of the Master) including copy to keep, per folio	0	20

1020. Tariff of Fees (Lower Scale) under Order 553.

[No greater sum than $3, 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	20

[No greater sum than $3, 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 an 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, Clerk of Records and Writs, or Deputy Registrar, for reading over or authenticating the same), per folio	$0 10
Copies of orders or other papers or documents required to be served, per folio	0 10
Office-copies authenticated by the Clerk of Records and Writs, or Deputy Registrar, per folio	0 08
Affidavits of service of bill, including attendance to swear	1 50
Affidavits of service, including attendance to swear.	0 20
Precipe for any process, including attendance	0 25
Special attendance on Master's warrant or appointment, or on examination of witnesses, or on hearing of cause or demurrer or special motion	0 50

[No such fee or any other costs of, and incidental to an appointment, is or are to be allowed by the Master to any party, either by consent, or on any ground whatever, as part of the costs of the cause, when the appointment was adjourned without being proceeded on, or where no substantial progress with the reference was made thereon. But the Master may order the payment of such costs as provided for by order 213.]

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 $2	$0 50
For every additional hour beyond one hour in the Master's office	0 50

[For attendance in the Master's office upon a warrant or appointment to hear and determine, the Master may increase the fee for such attendance to any sum not exceeding one dollar per hour, where, in the judgment of the Master, the matters to be heard and determined are of such special nature as to have required previous preparation, and where the Master finds that previous preparation has been bestowed thereupon, and that in his judgment such increased fee is reasonable and proper under the circumstances; but no such allowance is to be made for more than one day, unless the hearing is proceeded

with *de die in diem* to the conclusion thereof; or unless such proceeding be prevented by a party other than the one claiming the increased allowance: and the increased allowance is not to be made unless the same is noted at the time in the Master's book.]

For every additional hour in the examination of witnesses where no counsel employed..... $0 50

[The fee on the attendance of a Solicitor, where the Solicitor attends in person, and no counsel is employed, may in special cases be increased in the discretion of the Judge, or Officer before whom the examination is had, to one dollar, and where the examination occupies more than one hour, then one dollar for every additional hour which is so occupied, and during which the Solicitor is present in attendance thereupon, provided the same is noted at the time in the Registrar's book, or in the book of the Master, or other Officer, as the case may be.]

Attending consultations of Counsel, per hour..... $0 50

[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 50

For every hour's attendance before the Registrar by his appointment, on settling minutes, the same being noted by the Registrar..... 0 50

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 50

[The fee on settling minutes and on passing decrees or orders may be increased in the discretion of the Registrar, in special cases, to one dollar, where the Solicitor attends personally on each settling or passing.]

Where minutes settled, or decree or special order approved of or passed between the Solicitors after appointment issued by the Registrar.... $0 50

[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 orders and writs of Court to the party obtaining the same..... $0 50

Instructions for brief..... 0 50

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 10

Observations or other original matter in brief, per folio..... 0 20

[A brief of depositions or special affidavits to be allowed only where fee and brief for second counsel is taxed.]

Drawing special minutes when prepared by the Solicitor per folio	$0 20
Advertisement for sale of real or personal estate under the direction of the Court, including all copies, except for printing	0 50
Copies for printing—per folio	0 10
Fee on conducting sale—including arrangements with auctioneer, correcting proof sheets (if any,) and attending sale	2 50
For every hour beyond three occupied at such sale	0 50
Drawing bill of costs and attending taxation	0 50
Drawing Judge's appointment, and attending for his signature, and to serve	0 50
Every necessary attendance	0 25
Necessary agency letters in the course of a cause or matter, to be allowed on taxation between party and party, as attendances,	
Postages—the amount actually disbursed.	

[The sum allowed for copying and briefing shall be ten cents per folio, except where authenticated by the Clerk of Records and Writs, or read over by the Master; but the same shall not in any case exceed one half of the amount allowed for drawing what shall be so copied or briefed.]

COUNSEL.

On argument in Chambers in cases proper for the attendance of Counsel, to be increased at the discretion of the Judge	$1 00
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	1 00
On consultations	2 00
On special applications to the Court, arguing demurrer or other special argument, or at the hearing of a cause	5 00

[To be increased in the discretion of the Master, to a sum not exceeding $20 to senior counsel, and $10 to junior counsel, in suits of a special and important nature; but more than one counsel fee is not to be allowed in any case not of a special and important nature. Where two counsel fees or an increased fee is allowed by a Local Master, he is to forward to the Taxing Officer with the bill, upon transmitting it for revision, such information as

may enable the Taxing Officer to judge of the propriety of the fee or fees allowed.]

MASTER.

Every summons or warrant	$0 10
Administering oath, or taking affirmation	0 20
Marking every exhibit	0 10
Drawing depositions, reports or orders, per folio	0 20
One fair copy when necessary, per folio	0 10
Copy of papers given out when required, per folio.	0 10
Every attendance upon a reference	0 50
For each additional hour	0 50
Every certificate	0 20
Filing each paper	0 10
Taxing costs, including attendance	0 50
Making up and forwarding answers and depositions	0 10
Every special attendance out of office, within two miles	0 50
Every additional mile above two	0 10
Reading affidavit—per folio	0 02
Matter added, per folio	0 20
Searching files in office	0 10

REGISTRAR.

Drawing minutes of decree or special order—per folio	0 20
Drawing decree or order—per folio	0 20
Entering same—per folio	0 10
Fee on payment of money into Court	0 10
Fee on payment of money out of court	0 10

JUDGES' SECRETARY. (*a*)

On every application in Chambers (including the order thereon, if made), for a decree against infants, for the administration of an estate, for a vesting order, for final order of foreclosure for sale, for foreclosure after abortive sale, or to extend time for payment of mortgage money	$0 50
On every other application [including the order thereon, if made]	0 20
For other services, the like fees as are payable to the Master.	

(*a*) This office is abolished, but the fees payable under this section are now payable to the Referee in Chambers.

SPECIAL EXAMINERS.

Every summons or warrant	$0 10
Administering oath, or taking affirmation	0 20
Marking each exhibit	0 20
Drawing depositions—per folio	0 20
Copy for Solicitor, when required—per folio	0 10
Every attendance out of office, when within two miles	0 50
Every attendance out of office above two miles, extra per mile	0 10
Every certificate	0 25
Making up and forwarding answers and depositions	0 10
Every attendance upon an appointment, when solicitor or witnesses do not attend, and examiner not notified	0 50

CLERK OF RECORDS AND WRITS, AND DEPUTY REGISTRARS.

Entering parties' names and filing bill, answer or demurrer	$0 50
Entering and filing all other pleadings, interrogatories, depositions or other evidence, filing and registering affidavits, exhibits or other papers	0 10
Entering note *pro confesso*	0 20
Subpœna, including filing præcipe	0 20
Special writ, writ of commission	0 50
Office copy of papers required to be given out—per folio	0 10
Examining and authenticating same, when office copy prepared by solicitor—every three folios	0 05
Amendment of record, when re-engrossment not necessary—per folio	0 10
Making up and forwarding interrogatories	0 10
Setting down cause other than for hearing *pro confesso*	1 00

[The fee payable to a deputy registrar on setting down a cause for hearing to be $4.]

Setting down cause *pro confesso*	$0 20
Certificate of pleadings being filed	0 20
Certificate of state of cause	0 20
Searching files in office	0 10

SHERIFFS.

Receiving, filing, entering, and endorsing every paper	$0 10
Return of all process and writs except subpœnas	0 25

Warrant to bailiff, on writ not executed by sheriff or deputy	$0 25
Serving each office copy bill, including affidavit of service	0 50
Serving each warrant, notice, certificate, subpœna, or other paper	0 50
Writ of arrest—arrest on	1 00
Attachment—arrest on	1 00
Sequestration—upon seizure of estate and effects under writ of sequestration	1 00
Schedule of goods taken in execution, including copy for defendant, if not exceeding five folios	0 50
Each folio above five	0 10
Removing or retaining property, reasonable or necessary disbursements, allowance to be made by the Master, or by order of the Court or Judge.	
Poundage upon sequestration, followed by sale	5 per cent.
For services not specified—The like charges as are allowed by County Court tariff for analogous service.	

Section II.—Tariff of Disbursments—Higher Scale.

1. *Tariff of Fees payable under Higher Scale, to the Registrar, Referee in Chambers, Accountant, and Clerk of Records and Writs, under Con. Ords.* 309 *and* 551, *and C. S. U. C., caps.* 12 *&* 33.

Registrar.

Under Con. Ord. 309, (*payable in stamps*).

Drawing minutes of decree or special order, per folio	$0 20
Drawing decree or order, per folio	0 20
Entering same, per folio	0 10
Fee on admission of solicitor	1 00
Commission appointing Local Master or Deputy Registrar	2 00
Attendance on appointment of guardian	0 50

1021. Tariff of disbursements—Higher Scale—to Registrar, Referee, Accountant, and Clerk of Records and Writs.

Under C. S. U. C., c. 33, *s.* 6, (*payable in stamps.*)

On passing and entering every decree or decretal order	1 00

REFEREE IN CHAMBERS.

(Payable in stamps.)

On every application in Chambers (including the order thereon, if made), for a decree against infants, for the administration of an estate, for the sale of an infant's estate, to declare a person a lunatic, for *interim* alimony, for a vesting order, for final order of foreclosure or sale, for foreclosure after abortive sale, to extend time for payment of mortgage money, or for taxation	$1 00
On every other application (including the order thereon, if made)	0 50
For other services, the like fees as are payable to the Master (*i. e.*, under tariff prescribed by Order 309, which were as follow:—)	
Every summons or warrant	0 30
Administering oath or taking affirmation	0 20
Marking every exhibit	0 20
Drawing depositions, reports or orders, per folio	0 20
One fair copy when necessary, per folio	0 10
Copy of papers given out when required, per folio.	0 10
Every attendance upon a reference	1 00
For each additional hour	1 00
Every certificate	0 50
Filing each paper	0 10
Taxing costs, including attendance	1 00
Making up and forwarding answers and depositions	0 30
Every special attendance out of office, within two miles	1 00
Every additional mile above two	0 20
Reading affidavit, per folio	0 02
Matter added, per folio	0 20
Searching files in office	0 20

ACCOUNTANT.

(Payable in stamps.)

Fee on payment of money into Court	$0 30
" " out of Court	0 30
Every certificate	0 50
Every filing	0 10

CLERK OF RECORDS AND WRITS.

Under Con. Ords. 309 & 551 (*payable in stamps*).

Entering parties' names, and filing bill, answer or demurrer (*and see additional fees, below*)....	$0 50
Entering and filing all other pleadings, interrogatories and depositions, or other evidence	0 20
Enrolling order.....	0 50
Drawing of order, per folio.....	0 20
Entering same, when necessary, per folio.....	0 10
Entering certificate of title or conveyance, per folio	0 10
Every certificate for registration (*and see below*)..	0 50
Filing and registering affidavits, exhibits or other papers	0 10
Entering note *pro confesso*.....	0 50
Subpœna, including filing *præcipe* (*and see below*)	0 50
Special writ, writ of commission (*and see below*)..	1 00
Office-copy of papers required to be given out, per folio	0 10
Examining and authenticating same, when office-copy prepared by solicitor, every three folios..	0 05
Amendment of record, when re-engrossment not necessary, per folio	0 20
Making up and forwarding interrogatories	0 30
Setting down cause other than for hearing *pro confesso*.....	2 00
Setting down cause *pro confesso*	0 50
Certificate of pleadings being filed (*and see below, as to Bills*)	0 40
Certificate of state of cause.....	0 50
Searching files in office	0 20

Under C. S. U. C., c. 12, *s.* 73, (*payable in cash.*)

On filing every bill, answer or demurrer	0 10

Under C. S. U. C., c. 33, *s.* 6, (*payable in stamps*).

On filing every bill (*a*)	2 40
On every certificate of bill filed, on every certificate of decree or decretal order made, on every subpœna, and on every other writ or certificate issued under the seal of the Court.....	0 50

(*a*) See 39 Vic., c. 7, s. 1, (*O*).

2. *Tariff of the Fees payable under Higher Scale to the Master in Ordinary, the Local Masters, the Deputy Registrars, the Sheriffs, the Special Examiners, &c., under Con. Ord.* 615, *and C. S. U. C., caps.* 12 *&* 33.

SHERIFF.

1022. Tariff of disbursements, Higher Scale, to Masters, Deputy Registrars, Sheriffs and Special Examiners.

Receiving, filing, entering and endorsing every paper	$0 25
Return of all process and writs except subpœnas	0 50
Return of subpœnas, orders, notices of motion, warrants or other papers	0 25
Warrant to bailiff on writ not executed by Sheriff or deputy	0 75
Service of office-copy of bill (including affidavit and oath): stamped form of affidavit to be furnished by solicitor	1 50
Each additional party served	0 50
Serving each warrant, notice, certificate, subpœna or other paper	0 75
Each additional party served	0 50
Actual and necessary mileage from the Court House to the place where service of any bill, process, paper or proceeding is made, per mile	0 13
Writ of arrest, arrest on, where amount does not exceed $200	2 00
Ditto $400	4 00
Ditto over $400	6 00
Mileage going to arrest when made, per mile	0 13
Ditto conveying party arrested from place of arrest to the gaol, per mile	0 13
Attachment, arrest on (besides mileage and expenses)	4 00
Sequestration upon seizure of estate and effects under writ of sequestration	4 00
Schedule of goods taken in execution (including copy for defendant), if not exceeding five folios	1 00
Each folio above five	0 10
Removing or retaining property, reasonable and necessary disbursements and allowances to be made by the Master, or by order of the Court or Judge.	
Poundage upon sequestration followed by sale (*a*)	

(*a*) Where a plaintiff had obtained a decree against the defendants, by which money was ordered to be paid, and on which the plaintiff issued execution and lodged it in the hands of a sheriff. After seizure under the writ, but before the money was levied, the defendant moved for and obtained leave to re-hear the cause, and a stay of the execu-

or collection, or on execution, where amount made shall not exceed $1,000, six per cent.; over $1,000 but under $4,000, three per cent. on whatever exceeds $1,000, in addition to the poundage allowed up to $1,000. When the sum is over $4,000, 1½ per cent. on whatever exceeds $4,000, in addition to the sum allowed up to $4,000, exclusive of mileage for going to seize and sell, and except all disbursements necessarily incurred in the care and removal of property—to be allowed by the Master in Ordinary in his discretion.	
Executing writ of assistance (besides mileage and expenses)	$5 00
Every search, not being by a party to a cause or his solicitor	0 30
Certificate of result of search—when required [a search for a writ against lands of a party shall include sales under writ against same party, and for the then last six months]	0 75
Drawing every affidavit when necessary and prepared by sheriff	0 25
Notice of appointment for ballot of jury	0 50
Notice to Clerk of the Peace of such appointment	0 50
Fee on balloting jury	5 00
Fee on striking	2 50
Serving each juror, besides mileage at 13 cents per mile	0 50
Keeping and checking pay list of jurors' attendance in each case	1 00
Every jury sworn	1 00

CORONERS.

The same fees shall be taxed and allowed to Coroners for services rendered by them in the service, execution and return of process, as allowed to Sheriffs for the same services above specified.

CRIER.

Calling every case, with or without jury	0 60
Swearing each witness or constable	0 15

tion, on the terms of paying the money into Court, which was done: *Held*, that the sheriff, not having actually levied the money under the execution, was not entitled to poundage, but to fees only for services actually rendered, to be settled by a Judge in Chambers. *Winters* v. *Kingston*, P. B. Sy. 1 Cham. R. 276.

Allowance to Witnesses.

To witnesses residing within three miles of the Court House, per diem	$1 00
To witnesses residing over three miles from the Court House, per diem	1 25
Barristers and attorneys, physicians and surgeons, when called upon to give evidence, in consequence of any professional service rendered by them, or to give professional opinions, per diem	4 00
Engineers and surveyors, when called upon to give evidence of any professional service rendered by them, or to give evidence depending upon their skill or judgment, per diem	4 00

If the witnesses attend in one cause only, they will be entitled to the full allowance.

If they attend in more than one case, they will be entitled to a proportionate part in each cause only.

The travelling expenses of witnesses over ten miles shall be allowed, according to the sums reasonably and actually paid, but in no case shall exceed one shilling per mile one way.

Master.

(*Payable in stamps to Master in Ordinary, but in cash to Local Masters.*)

Filing and entering decree in Master's book	$0 20
Every summons, warrant or appointment	0 50
Administering oath or taking affirmation	0 20
Marking every exhibit	0 20
Drawing depositions, reports or orders, per folio	0 20
Fair copy, per folio (when necessary)	0 10
Copy of papers given out when required, per folio.	0 10
Every attendanee upon a reference	1 50
For each additional hour	1 50
Fee on report signed (only one to be allowed in each suit)	2 00
Every certificate, *if not longer than two folios*	0 50
For each folio over two	0 20
Filing each paper	0 10
Taxing costs, per hour	1 00
Making up and forwarding depositions, bills of costs and proceedings in Master's office	0 50

Every special attendance out of office within two miles	$2 00
Every additional mile above two	0 20
Every attendance on application to a Master in Chambers	1 00
Searching files in office, same allowance as to Deputy Registrar.	

Special Examiner.

(Payable in cash.)

Every appointment	$0 50
Administering oath or taking affirmation	0 20
Marking every exhibit	0 20
Taking depositions, per hour	1 50
Fair copy for solicitor, per folio (when required)	0 10
Every attendance out of office when within two miles	2 00
Every attendance over two miles out of office—extra per mile	0 20
Every certificate	0 50
Making up and forwarding answers, depositions, &c., including filing præcipe	0 50
Every attendance upon an appointment, when solicitor or witnesses do not attend, and examiner not previously notified	1 00

Deputy Registrar.

(Payable in cash.)

Entering parties' names and filing bills (and see additional fees below)	0 50
Filing answer or demurrer	0 50
Entering and filing all other pleadings, affidavits on production, interrogatories, and depositions or other evidence	0 20
Filing other papers	0 10
Entering note, *pro confesso*	0 75
Subpœna, including filing præcipe (see additional fee below)	0 50
Fi. fas. and other writs	1 00
Copy of papers required to be given out, per folio	0 10
Examining and authenticating same, when office copy prepared by solicitor, every 3 folios	0 05
Amendment of record when re-engrossment not necessary, per folio	0 20

Forwarding papers from Deputy Registrar's office, including bills of costs	$0 50
Setting down a cause for hearing	8 00
Certificate, if not more than 2 folios (*a*)	0 50
For each additional folio	0 20
Searching files in office (if within one year)	0 20
Over one year and within two years	0 30
Every search over two years, or a general search in one cause	0 50
Marking every exhibit produced on the examination of witnesses	0 20
Swearing each witness	0 20
Taking account on præcipe decree	1 00
Taxing costs on same	1 00
Attending on opening commission	1 00
Stamping affidavit of service in each suit	0 10
Attending on inspection of documents produced, with affidavits on production, per hour	1 00

Under C. S. U. C. cap. 1, *s.* 73, (*payable in cash.*)

On filing every bill, answer or demurrer	$0 10

(*Under C. S. U. C. cap.* 33, *s.* 6, *payable in stamps.*)

On filing every bill	$2 40
On every certificate of bill filed On every certificate of decree or decretal order made On every subpœna And on every other writ or certificate issued under the seal of the Court	0 50
On passing and entering every decree	1 00

SHORT-HAND REPORTER.

On the certificate of the Judge before whom the examination of a witness or witnesses takes place, the Master may allow, on taxation, a reasonable sum for the expense of a short-hand reporter.

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3. *Tariff of Fees payable to the Referees and Inspector of Titles under Quieting Titles Act. See Con. Ords.* 512, 513, 514, 516, (*payable in stamps to officers in Toronto, but in cash to Local Referees.*)

1023. Tariff of disbursements under Q. T. Act.

For every deed in the chain of title, other than satisfied mortgages	$0 50

(*a*) (As to certificates *lis pendens* and certificates of decree, &c., see below for additional fees.)

For proceedings occasioned by any defects in the proof of title which shall be mentioned in the Referee's memorandum, referred to in *Ord.* 503, the same fees as are payable to the Master in respect of similar proceedings insuits (*a*).

To Referee who prepares certificate of title, for drawing and engrossing same in duplicate (*b*). $4 00

For proceedings in contested cases, occasioned by the contest, the same fees as are payable to the Master for the like proceedings in suits (*a*).

For entering petition with the Inspector of Titles, and for correspondence, examination of title, drawing and engrossing certificate or conveyance, and for every other matter or thing done by him under the petition..... 8 00

(*For fees payable to Clerk of Records and Writs, see ante, p.* 603.)

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4. *Tariff of Solicitors' and Counsel fees under Higher Scale referred to in Order* 608.

COUNSEL.

1024. Tariff of Solicitors' and Counsel fees, Higher Scale, under Order 608.

On argument in Chambers, in cases proper for the attendance of counsel (to be increased in the discretion of the Master or Referee not beyond $10, to be marked at the time)..... $2 00

Fee on settling pleadings, petitions, revivors, replications (when special), and advising whether cause should be heard on bill and answer, or on motion for decree, or set down for examination and hearing, and advising on evidence (to be increased in the discretion of the Master to not exceeding $10) 2 00

On special applications to the Court, only to be increased in the discretion of the Master in ordinary..... 5 00

Arguing demurrer or other special argument, or at the hearing of the cause, only to be increased in the discretion of the Master in ordinary... 10 00

Fee on drawing and settling allegations in *præcipe* for revivor in special cases, proper for the opinion of counsel (to be increased in the discretion of the Master to not exceeding $5).... 2 00

(*a*) *Semble*, these fees are payable according to the old tariff. See *ante*, p. 602, under head of Fees payable to the Referee in Chambers.

(*b*) This fee only appears to be payable when the title is referred for investigation to the Referee of Titles in Toronto.

Fee to be allowed on settling special affidavits used in Court (to be increased at the discretion of the Master to a sum not exceeding $5)	$2 00
On special and important points, and matters requiring the attendance of counsel, the Master, Special Examiner, or Referee may, in lieu of the fees for attendance, allow a counsel fee when counsel attend the same, to be noted at the time.	
Fee on consultations	5 00

Instructions.

Instructions for suit, or to defend, in mortgage or other ordinary suits or matters	3 00
In special suits or matters	4 00
For petition, or to oppose petition, when no bill filed	2 00
To be increased in special cases in Master's discretion to a sum not exceeding	4 00
For such important step or proceeding in the suit as the Master is satisfied warrants such a charge	2 00
For special affidavits when allowed by the Master.	1 00
Instructions for brief	1 00

Pleadings.

Drafting bill not exceeding 20 folios, including copy to keep	4 00
For every additional folio above 20, to be allowed in the discretion of the Master	0 20
Drafting answer or other pleading, petition or proceeding, per folio	0 20
Fee to plaintiff's solicitor perusing answer	1 00

Affidavits.

Drafting affidavits, per folio	0 20
Affidavit of service, including attendance to swear, copy and oath	1 00
Perusing copies of affidavits filed or served by the opposite party, per folio	0 05

Copies.

Engrossed copies to file, copies to serve, per folio	0 10
Copies of order or other documents required to be served, per folio	0 10

BRIEFS.

Brief, per folio, including briefing and fair copy of pleadings, depositions, affidavits and necessary documents, subject to be reduced by the Master if the same contain superfluous matter or be of unnecessary length, or if the dates thereof be omitted	$0 10
Observations or other original matter in brief, per folio	0 20

ORDERS.

Drawing special minutes, per folio, prepared by the solicitor	0 20
Appointment to settle or pass decree or order, copy and service	0 80
[When served on more than one party, the extra copies and services are to be allowed.]	
For every hour's attendance before the Registrar or Referee, by his appointment, on settling minutes, or passing decree or order, if noted by the Registrar or Referee, or otherwise proved	1 00
The fee on settling minutes and passing decree or order may be increased in the discretion of the Registrar or Referee in special cases to a sum not exceeding $5, where the solicitor attends personally on such settling or passing. When the minutes are settled, or decrees or orders passed between the solicitors, the Master shall have the same discretion as the Registrar or Referee, as to the amount to be allowed. Fee on all decrees and orders to the party obtaining the same	1 00
Fee on *præcipe* decree	4 00

PROCESS.

Præcipe for any process, including attendance with	0 70
Fee on all writs to the party obtaining the same	1 00

SALES.

Drawing advertisement for the sale of real or personal estate under the direction of the Court, including all copies except for printing	2 00

And for each folio over five, per folio	$0 20
[To be increased in the discretion of the Master to a sum not exceeding $10 when special information has been procured for the purpose of the sale.]	
Copies for printing, per folio	0 10
Attending and making arrangement with auctioneer	1 00
Each attendance on printer	0 50
Revising proof	1 00
Fee on conducting sale when held where solicitor resides	5 00
Fee on conducting sale, besides all necessary travelling expenses where solicitor attends with the approval of the Master previously given	10 00
If the solicitor is engaged for more than three hours, for every hour beyond that time	1 00
If the sale occupies more than one day, the Master may allow to him, in addition to his travelling expenses, *per diem*, a sum not exceeding	20 00
The Master may also allow to one other party to the suit his fees and expenses for attending sales, if in his opinion it is necessary or proper that he should attend.	

ATTENDANCES.

Attendance on Master's warrant or appointment, or before a Special Examiner, or Referee, on examination of witnesses, per hour	1 00
To be increased in the discretion of the Master to	2 00
[On special and important points and matters requiring the attendance of counsel, the Master, or Special Examiner or Referee, may, in lieu of the fees for attendance, allow a counsel fee, when counsel attend the same, to be noted at the time.]	
Solicitor's attendance in Court, on hearing of cause, demurrers, or special motions, for each hour occupied in the hearing thereof	2 00
Attending consultations of counsel, per hour, where the Master is satisfied such attendance is beneficial to the client	2 00
Attendance on taxation, per hour	1 00
[On revision of taxation the same fees are to be allowed as on taxation.]	
Every necessary attendance	0 50

Attending to make each copy of bill, not exceeding five, an office copy	$0 50

LETTERS.

Letter to each defendant before suit	0 50
Common letters in suit, each	0 50
Common letter between solicitor and client	0 50
With power to the Master in both cases to increase the fee for special letters to an amount not exceeding	2 00
[No letter is to be allowed unless the Master is satisfied of its necessity.]	
Necessary agency letters in the course of a cause or matter to be allowed on taxation between party and party as necessary attendances.	
Postages, the amount actually disbursed.	

MISCELLANEOUS.

Drawing bill of costs, including copy to keep, per folio	0 20
Copy to serve, per folio	0 10
Statement of issues in Master's office, when required by the Master	2 00
And for each folio over five, per folio	0 20
Fee thereon, in the discretion of the Master	2 00
Where it has been satisfactorily proved that proceedings have been taken by solicitors out of Court to expedite proceedings, save costs, or compromise suits, an allowance is to be made therefor in the discretion of the Master in Ordinary.	
Drawing Judge's appointment, and attendance for his signature, and to serve	1 00
When served on more than one party, the extra copies and services to be allowed.	

1025. Tariff of fees in Supreme Court.

SECTION III.—*Tariff of Fees and Disbursements in the Supreme Court of Canada, under Schedules C. and D. to Rules of Supreme Court.*

SCHEDULE C.

On entering every appeal	$10 00
On entering every judgment, decree or order in the nature of a final judgment	10 00
On entering every other judgment, decree or order	2 00

(1) Disbursements.

In other matters the fees shall be regulated by the tariff in force in the Exchequer Court of Canada in actions of the first class, and in every case not thereby provided for, the fees to be paid shall be in the discretion of the Registrar, subject to revision by the Court or a Judge.

SCHEDULE D.

(2) Fees to Counsel and Solicitors.

Tariff of Fees to be taxed between party and party in the Supreme Court of Canada.

On special case required by section 29 of the Act, when prepared and agreed upon by the parties to the cause, including attendance on the Judge to settle the same if necessary, to each party	$25 00
Notice of appeal	4 00
On consent to appeal directly to the Supreme Court from the Court of original jurisdiction	3 00
Notice of giving security	2 00
Attendance on giving security	3 00
On motion to quash proceedings under section 37, according to the discretion of the Registrar, to	25 00
Subject to be increased by order of the Court or of a Judge.	
On factums, in the discretion of the Registrar, to	50 00
Subject to be increased by order of the Court or of a Judge.	
Printed case, per folio of 100 words, including correcting, superintending printing and all attendances	0 30
On dismissal of appeal if case be not proceeded with, in the discretion of the Registrar, to	25 00
Subject to be increased by order of the Court or of a Judge.	
Suggestions, under sections 42, 43, 44, including copy and service	2 50
Notice of intention to continue proceedings under section 45	4 00
On depositing money under section 48 in controverted election cases	2 50
Notice of appeal in election cases, limiting the appeal to special and defined questions under section 48	6 00
Allowance to cover all fees to attorney and counsel for the hearing of the appeal, in the discretion of the Registrar, to	200 00

Subject to be increased by order of the Court or of a Judge.

On printing factums, the same fees as in printing the case.

Besides the Registrar's fees, reasonable charges for postages and disbursements necessarily incurred in proceedings in appeal, will be taxed by the Taxing Officer.

CHAPTER XVIII.

QUIETING OF TITLES—29 VIC., C. 25—1865.

As to the Petition.

In the heading the lands should be shortly described, to avoid expense in advertising, but a loose indefinite description, as "part of lot 2," without saying what part, is to be avoided. If the land is, and for some time past has been, in the occupation of any person, it may sometimes be proper to state, "now and for some time past occupied by ——." So also, if it adjoin any well-known farm or house, or has been long occupied by a well-known individual or Company, or a Bank, it may be advisable to say that it so adjoins on the north, or as the case may be. In the body of the Petition, however, the description should be as certain as a conveyance, both to identify the whole land claimed with the County Registrar's certificate, and in order that the Certificate of Titles may follow it, and for Registry purposes. For the same reasons also the Petition should properly describe the estate or interest claimed in the land. Moreover, with a view to notice, it is important that the Petition should be correct, for the Petition and the notice under it should not be for a larger interest than the petitioner has, as for instance, for a fee simple absolute, when the estate is a fee tail, or liable to be defeated by an executory devise over. In short, the petition should be so framed as that the Judge can grant what is therein prayed for.

In the following forms some of the cases put come under the 2nd section of the Act.

A mortgage in fee outstanding and unsatisfied will not prevent the application of the Act, but the consent of the mortgagee should be obtained, or he should be served with notice under the Act.

If an applicant find a difficulty in describing his inte-

rest by reason of the informality of any instrument, he may have to set out the material parts of it *verbatim*, and claim under it.

Petition under Quieting Title Act.

1026. Petition under the Quieting Titles Act.

In Chancery.

In the matter of (*see remarks above.*)

To the Honourable the Judges of the Court of Chancery.

The petition of ———, of ———, showeth :

1. That your petitioner is absolute owner in fee simple in possession (*or, as the case may be*) of the following property (*describing it with precision.*)

Or, if the estate be a present one, liable to be defeated by an executory devise over, or by limitations by way of shifting use contained in a deed, say, your petitioner is tenant in fee simple, in possession (*or as the case may be*) of the following property (*describing it*), determinable on (*set out the event whereon the devise over takes effect, or the use shifts, and referring to the instrument*); *or, if the estate be not in possession,* (*a*) *but a future estate dependent on the determination of a prior estate by executory devise or shifting use, say,* your petitioner is tenant in fee simple in reversion *or* remainder (*or as the case may be*) of the following property, &c., dependent and to take effect in possession on [*setting out the event and the instrument; or say,* on the determination of the estate thereby devised or granted to, *&c. If the event has happened whereon the devise over takes effect, or the use shifts, and is executed in possession, then claim as in an ordinary case of an absolute estate in possession. In the case of an estate tail, the issue in tail may have been barred, but not those in remainder or reversion, in which case the applicant may claim that he* "is entitled to a base fee," *or,* "is tenant in tail entitled to a base fee," *according to the fact,* "within the meaning of the Consolidated Statute of Upper Canada, chapter 83." *If neither issue in tail, or remainderman, or reversioner, have been barred, then claim* "as actual tenant in tail within the meaning," *&c. If the petitioner claims a term of years renewable from time to time in perpetuity or otherwise, state,* is tenant for a term of years expiring on ——, created by and subject to the

(*a*) The fact of an adverse claimant being in possession will prevent the investigation of the title until he shall have been ejected. Re *Mulholland*, 18 Grt. 528; Re *Bell*, 3 Chy. Ch. R. 256.

provisoes, rents, conditions, covenants and agreements contained in a certain Indenture between, &c., —— dated, &c., —— registered, &c., —— renewable as in the said Indenture specified.]

2. That there is no charge or other incumbrance affecting your petitioner's title to the said land [except an annuity to —— under the will of ——, *Or*, under an Indenture dated ——, between, &c., ——, *Or*, a Mortgage dated ——, between —— *Or*, the lien of (*a*) —— as a Vendor for purchase money].

(*If the incumbrances be many, it will be better to name them in the Schedule, as authorized by the Statutory form, rather than embody them in the petition.*

In case any charges or incumbrances, apparently existing, be not admitted, so that the petitioner is not willing to take a certificate subject thereto, and the petitioner denies the same, or claims paramount or adversely thereto, then the petition will be varied, and such charges, &c., will be set out as in the Statutory form "That the only persons claiming to have any claim or title upon, or to, the said lands adverse to your petitioner are," *&c. Thus, if a petitioner is willing to take a certificate subject to an incumbrance, he excepts it; if, however, he claims adversely to it, as, for instance, contending that the incumbrance is barred by time or by payment, and by presumption of reconveyance or otherwise, he sets forth the incumbrance as in the form, and those claiming under it will be regarded as adverse claimants, and on proper proceedings, and notice to them, they will be barred.*

If the names of parties having any estate or interest cannot be ascertained, as in case of absent heirs, it will suffice to describe them by nomen collectivum as the heirs at law of, *&c.*)

Your petitioner therefore prays that his title to the said land may be investigated and declared under "the Act for Quieting Titles to Real Estate in Upper Canada."

(Signed) A. B. *Or*, C. D.
Solicitor for A, B.

MEM. 1. The petition is to be signed by applicant or his solicitor; and a memorandum of address should be endorsed on the petition, so that the acting Referee may communicate with the petitioner or his solicitor by mail, if necessary.

(*a*) See 29 Vic., cap. 25, secs. 1, 2, 3, and Schedule A.

2. If the title is to be investigated by a local Master, the petition must be endorsed thus: "To be referred to the Master at ———, and to Mr. S———, Inspector of Titles." *Gen. Ord.* 495. Where no such memorandum is endorsed, the petition is referred to the Referee in Toronto. *Ord.* 496.

If the petitioner desires, he can refer the petition at once to the Toronto Referee, without the intervention of any local Master.

3. Where a local Master is selected as a Referee, the petition must be sent to the Inspector of Titles at Toronto, for entry, before filing. See *Ord.* 497.

After the petition has been entered with the Inspector, it is then to be filed in the office of the Clerk of Records and Writs, who issues the certificate of its filing for registration.

Certificate of filing of Petition for Registration.

1027. Certificate of filing petition for registration.

In Chancery.

[L. S.]

I certify that an application has been made by A. B., of ———, yeoman, to the Court of Chancery, under the Act for Quieting Titles to Real Estate in Upper Canada, for a certificate of title to the following lands (*describing them, as set out in the body of the petition.*)

A. H.,
Clerk of Records and Writs.

Registrar's Certificate under s. 3, sub-sec. 3, of the Act.

1028. Registrar's certificate under s. 3, sub-sec. 3, of the Act.

I, ———, Registrar (*or Deputy Registrar*) of ———, certify that the foregoing are true extracts of all the instruments or proceedings registered in the Registry Office for ——— affecting the (*describe the lands in the same manner as they will require to be set forth in Certificate of Title*) (a).

(Signed) ———.

MEM.—As to the necessity of this certificate, see sec. 5, sub-secs. 1, 2 and 3 of the Act. This certificate must be

(a) The Registrar must necessarily specify the land to which his certificate relates with particularity, and hence it will be seen that this is one reason why the petition must also do so, otherwise the petition and Registrar's certificate would not be identical.

obtained after the registry of the certificate of the filing of the petition.

In case a prior certificate or abstract has been given, the following form may be used:—

I certify that no instruments or proceedings have been registered in the Registry Office of ——— up to this date, affecting the (*describe land*), except as above mentioned, and except the following, which are registered since the date of the above certificate.

———

Affidavit of Petitioner in support of Petition.

In Chancery.

In the matter of ——— (*describe lands as in the title of the petition.*)

1029. Affidavit of petitioner.

I, ———, of ———, the petitioner in this matter, make oath and say:—

1. To the best of my knowledge and belief, I am the absolute owner in fee simple in possession (*or as the case may be, following the words of the petition*) of the following lands (*describing them*), being the lands mentioned in the petition in this matter.

2. There is no charge or other incumbrance affecting my title to the said land [except, *stating any incumbrances which may exist.*]

3. I am not aware of the existence of any claim adverse to or inconsistent with my own to any part of the land claimed by me, or to any interest therein [except, *specify the adverse claim, if any, giving the name and address of the claimant, if known, and stating how the claim arises.*]

4. The deeds and evidences of title which I produce in support of my application herein, and of which a list is contained in the schedule of particulars produced by me in support thereof (*a*), and now shown to me, and marked with the letter A, are all the title deeds and evidences of title relating to the said land which are in my possession or power.

5. The title deeds and evidences of title relating to the said land which are set out or mentioned in the schedule hereto marked as Exhibit B., are in the possession or power of ———, of ——— (*name of the person*).

6. I do not know where, or in whose possession or

(*a*) The Commissioner administering the affidavit should identify the schedule as usual.

power the title deeds and evidences of title set out as mentioned in the schedule hereto marked as Exhibit D. are. For the said last-mentioned title deeds and evidences of title I have caused the following searches to be made, namely (*set out the facts, showing sufficient to let in secondary evidence*).

7. I am [or John Doe, yeoman, is—*show under what claim or title*] (*a*) in possession of the land; and to the best of my knowledge possession has always accompanied the title under which I claim (*a*) since the year ——, in which year one ———, through whom I claim took possession, and prior thereto the land was in a state of nature. (*If possession has not always accompanied the title under which the petitioner claims, state correctly the facts as to the actual possession.*)

Or if the applicant cannot give a complete account as to possession, or can give none at all, let him show some sufficient reason therefor.

8. To the best of my knowledge, information and belief, this affidavit and the other papers produced herewith in support of my petition, and which are set forth in the said schedule of particulars, fully and fairly disclose all facts material to my title, and all contracts and dealings which affect the same or any part thereof, or give any right as against me.

9. There are no arrears of taxes due upon the said lands, nor have the said lands, or any part thereof, been sold for taxes during the past year, nor under execution during the past six months, and I do not know of any writs of execution in the hands of the sheriff against me, or affecting the said lands.

10. To the best of my knowledge and belief, no person or body corporate has any right of way, or of entry, or of damming back water, or of overflowing, or of placing or maintaining any erection, or of preventing the placing or maintaining, any erection, on, in, to or over the said lands, other than myself [except, *giving the names and addresses, if possible, of any parties having any easement or right, and state the nature thereof*], and the

(a) See *Ord.* 501. It will generally suffice to go back 20 years only as to possession going with the title.—Where possession does not accompany the right of possession, and some other than the person claiming has been in possession without or against the assent of the claimants or of any one through whom he claims, suspicion at once arises that such occupant had some claim or title.—Possession indeed is *prima facie* evidence of seizin in fee—the applicants, therefore, must displace any possession except under the chain of title; and if any has existed, account for it, and remove the suspicion which will otherwise exist in the mind of the Referee. Unless satisfactorily accounted for, it is probable that the Referee would require notice of the application to be given to the occupant.—Adverse possession at the time of applying will prevent the title being investigated under the Statute, until the adverse occupant shall have been ejected. *Re* Mulholland, 18 Grt. 528.

said land is not subject to any easement or dominant right whatever [except as aforesaid].

11. I am married, and the name of my wife is ——— (*or* I am not married).

In Chancery.

In the matter (*as to heading see ante, No.*-1026).

1030. Certificate of counsel, s. 5, clause 6, and s. 8, Quieting Titles Act.

——— I, ———, of ——— (Barrister *or* Attorney at Law), hereby certify that as (Counsel *or* Solicitor) for ——— in this matter, I have investigated his title set forth in his petition, and I believe him to be the owner of the estate which he claims in the petition [subject only to the charges and incumbrances therein set forth].

I further certify that I have conferred with the applicant on the subject of the various matters set forth in his affidavit in support of his petition, and believe the same to be true (*a*).

1031. Schedule of particulars under Quieting Titles Act.

(*Everything prodnced must be enumerated in the Sehedule, and shortly therein described; and on each deed, memorial, affidavit, &c., produced, should be endorsed an alphabetical letter, and the same letter should appear in the schedule, opposite to each*).

In Chancery.

In the matter of ———.

Schedule of Particulars.

1, A, Affidavit of John Doe.
2, B, Conveyance, Brown to Jones, dated
3, C, Letter, Jones to Robinson, dated
4, D, Probate Robinson's Will.

(*Petitioner to sign schedule, and Commissioner to identify it in the usual way, as it is an exhibit, and referred to as such in the affidavit of applicant*).

1032. Certificate of payment of taxes, sec. 16, Quieting Titles Act.

TREASURER'S OFFICE, CO. OF YORK,
TORONTO, Ontario, —— day of ——, 18—.

I certify that no charge for arrears of taxes appears at the date hereof in the books in this office against [Lot No. 27, in the first concession of the Township of Vaughan].

(*a*) The Counsel or Solicitor is of course not bound by the petition, and if any claim or charge or material fact or matter exists not set forth in the petition, he should mention it.—The petitioner in such case should reconsider the petition. The certificate should not be dated before the affidavit of the petitioner has been sworn.

And I certify that the return of lands in the Township of Vaughan in arrears for taxes for the year 18— has been made to this office, and I further certify that the said land has not nor has any part thereof been sold for taxes for eighteen months preceding the date hereof.

A. B., *Treasurer.*

If the Roll has not been carried in for the year preceding the date of the certificate, a similar certificate for the past year must be signed by the Township Treasurer, if the Roll has been returned to him; and if the Roll has not been returned to him, a receipt for the taxes for the past year by the collector of taxes will be sufficient, but the County Treasurer's certificate will be required to show that there are no previous arrears of taxes.

The certificate should bear date after the day of registering the certificate of the filing of the petition.

SHERIFF'S OFFICE, TORONTO,
County of York.

1033. Sheriff's certificate as to executions, under Quieting Titles Act.

I hereby certify that I have not at the date hereof in my office any writ of execution in against the lands of A. B., C. D., E. F., or any or either of them, and that I have not had any such writ for thirty days preceding the date hereof.

I further certify that I have not sold lot No. 27, in the first concession of Vaughan, in the County of York, under any writ of execution for six months preceding the date hereof.

A. B., *Sheriff.*

Dated the —— day of ——, 18—.

NOTE.—*The Court allows the Sheriff 30 cents for each search, and 75 cents for the certificate, in which all the names are to be inserted.*

The certificate should bear date after the day of registering the certificate of the filing of the petition.

1034. Affidavit of Crown debts, under Quieting Titles Act.

In Chancery.

In the matter of, &c. (*see ante, No.* 1026.)

I, A. B., of ———, make oath and say, that I have carefully searched the Register in the office of the Clerk of the Court of Queen's Bench, at Toronto, and I say that

there has not been registered therein any deed, bond, contract or other instrument, whereby any debt, obligation or duty, was incurred or created to Her Majesty on the part of Henry Thomas, the petitioner in this matter, or on the part of C. D., E. F., &c., (*a*) [save and except the several bonds or instruments named, and set forth in the Schedule hereunder written.]

The Schedule above referred to.

No. of Instrument.	Date of Instrument.	Instrument.	Penal Sum.	Name of obligor.	For what purpose executed.
7906	29th May, 1847	Bond.	£500	C. D.	Surety for A. B., Customs Officer, *or*, Division Court Clerk, *or other Officer.*
8111	25th Jan., 1850	Bond.	£1000	E. F.	The like.

(*Formal parts: see ante, No.* 1029.)

1035. Affidavit proving possession.

1. *Show deponent's knowledge of land in question, and length of time he has known same.*

2. *Show who have been in possession of same, and for what periods respectively.*

3. *Show in what manner possession was held by the several persons named, e. g. as by living on, or by cultivating the land, and that the possession of each party named extended to the whole of the land in question; or if it did not, then particularising the portions respectively held by them.*

4. *Show whether land is fenced in, and how long it has been so fenced; and if it be only partially fenced, show what part is fenced, and how possession has been held of unfenced portion.*

In Chancery.

In the matter of (*b*).

1036. Advertisement, s. 12, Quieting Titles Act, and Order No. 13 of 1867.

Notice is hereby given, that John Thomas, of the City of Toronto, Esquire, has made an application to the Court of Chancery for a Certificate of Title to the above mentioned property, under "The Act for Quieting Titles to

(*a*) Here name all persons who have had any estate in the land.
For necessity for Registry of Crown Debts, see Con. Stat. C., c. 5.
Since 15th August, 1866—29th and 30th Vic., c. 43. Crown debts thereafter incurred no longer bind the lands of the obligor as theretofore; and see 36 V., c. 6; s. 5 (O), as to Crown debts within jurisdiction of Provincial government.

(*b*) The Referee prepares the advertisement; see *Ord.* 504. He is not bound by the heading given by the Petitioner in his petition, if he thinks it does not sufficiently give notice to the world, and he should act accordingly.

Real Estate in Upper Canada," and has produced evidence, whereby he appears to be the owner thereof in fee, free from all incumbrances (except, *stating the incumbrances, if any*) (*the interest of the petitioner should be described, as it will be set out in the Certificate of Title*); wherefore, any other person, having or pretending to have any title to or interest in the said land or any part thereof, is required, on or before —— day, the —— day of —— now next ensuing, to file a statement of his claim verified by affidavit in my office at ———, and to serve a copy on the said John Thomas, or on ——, of ——, his Solicitor, at his office in the City of London (*or elsewhere as may be*), and in default every such claim will be barred, and the title of the said John Thomas become absolute and indefeasible at Law and in Equity, subject only to the reservations mentioned in the 17th section of the said Act therein mentioned, numbered one, two, three and four [and to the following charges and incumbrances.]

Dated this —— day of ——, 18—.

(Signed) _____

Referee of Titles.

1036a. Referee's direction for advertising, etc., to be endorsed.

To be inserted in the Canada Gazette on the 1st day of —— next, and in the —— on the 8th and 23rd days of the same month, or on the day of publication in the week ending nearest to those days, and to be put up and continued on the door of the Court House of the County, and in some conspicuous place in the Post Office nearest to the lands. (See *Order* 504.)

1037. Consent by person appearing to have an adverse claim.

In Chancery.

In the matter of (*as in petition.*)

I, ———, of ———, yeoman, do hereby consent that a Certificate of Title be granted to John Thomas, of ———, Esquire, declaring him to be the owner of the above mentioned lands, free from any right or claim on my part thereto [save and except only my rights as mortgagee under a certain indenture of mortgage dated the —— day of ——, and made by the said John Thomas to me for securing $2,000 and interest, as therein mentioned.]

Dated ——.

Witness. (Signed) C. D.

In Chancery.

In *Re* John Thomas, Petitioner.

1038. Analysis of Title by Master or acting Referee.

	Referee's Notes (*a*).
No. 1. Petition filed 1 June, 1857.	*Date of receipt by Referee.*
2. Affidavit of petitioner.	Paragraph 5 defective.
3. Schedule of Papers.	Must be signed by petitioner, and marked as Exhibit by Commissioner.
4. Certificate of Solicitor.	
5. Registrar's Abstract.	Must be carried down to registration of Certificate that petition is filed.
6. Sheriff's Certificate.	No Writs of Execution, and no sales under execution.
7. Treasurer's Certificate.	No taxes or sales for taxes. Roll returned.
8. Statement of facts.	
9. Affidavit as to Cr. Debts. (*Set out any other Affidavits as to possession, dower, &c.*)	This must specify the purpose for which the Bonds were executed.

Instruments of Conveyance.	Notes.
6th April, 1797. A. The Crown to Peter Lee, in fee.	Original not produced; a certified copy must be obtained and produced before the papers are laid before the Inspector.
28th April, 1845. B. Timothy Hespeler to David Scott, in fee.	The title must be deduced from the Patentee to the first grantor, say Hespeler, and possession must be shewn in Hespeler and the subsequent owners. If the deed was executed by Attorney, the power must be proved, and Hespeler must be shown to be living when the deed was executed under the power, and that he was not married, or that his wife's dower was barred.

(*a*) These notes are for the purpose of drawing the Referee's attention to the proof required.

	Instruments of Conveyance.	Notes.
C.	David Scott to Timothy Hespeler. *29th June*, 1867.	Redeemable. (*Means that it was a mortgage.*)
CC.	Timothy Hespeler to John Thomas, petitioner. *10th June*, 1845.	See below K.
D.	David Scott to Samuel Reed, in fee. *Same date.*	Was Scott married? If so, the dower of the wife must be shewn to be extinct, or it must be barred.
E.	Reed et ux. to David Scott. *1st June*, 1846.	Redeemable.
F.	Reed devised to Ross and others, as trustees, with power to sell. *2nd February*, 1847.	
EE.	David Scott to Robert Cathcart, Assignment. *3rd February*, 1847.	If mortgage be discharged, certified copy of discharge must be produced.
G.	Ross and others, trustees, sell and convey to Andrew Gray, in fee. *Same date.*	Deeds are not produced; they must be so, or good cause shewn.
H.	Gray et ux. to Ross and others. *27th December*, 1849.	Redeemable.
I.	Ross and others to Andrew Gray. *27th April*, 1850.	
K.	Gray et ux. to John Thomas, the Petitioner, in fee.	

The following is a further form, the first column giving the dates and parties, the second the remarks and defects, and the third showing how cleared up or disposed of. It will be found advisable to write across a foolscap sheet so as to give sufficient space, and to allow more space for the second and third than for the first column.

1039. Another form of Analysis.

Parties, Dates, &c.	Defects, Remarks.	How Disposed of.
1st January, 1840. A. Copy of Patent to John Doe, in fee.	Not certified as copy.	Certified copy produced.
6th January, 1841. B. Devise in fee, John Doe to Richard Roe.	Attestation clause does not show how will executed.	Heir at law has executed confirmation.—See *Deed D.*
10th June, 1850. C. Certified copy by Registrar of Memorial, Richard Roe to John Dunn, in fee, signed by grantor, and of affidavit of execution.	No evidence of proper search for original instrument.	Affidavits of A. B. and C. D. of proper search.
1st June, 1860. D. Robert Doe to John Dunn, in fee — Confirmation of devise.		

In Chancery.

In the matter of ————.

1040. Notice to a person apparently interested, s. 14 of Quieting Titles Act, and Order 505.

Take notice, that John Doe, of the City of Toronto, Esquire, hath made an application to the Court of Chancery for a certificate of his title to the above mentioned property, under "The Act for Quieting Titles to Real Estate in Upper Canada;" and take notice, that if you claim any interest therein, you must lodge your claim in writing, verified by affidavit, stating the particulars thereof, at my Chambers, in ———, on or before the —— day of —— now next ensuing, and serve a copy on the said John Doe (*give address*), or Richard Roe, his solicitor, at his office in (*give address*), and, in default thereof, any claim, right or interest you may have therein at law or in equity will be for ever barred and extinguished.

This notice is served on you because *(give briefly the reason why notice is served, e. g.)* from the evidence adduced before me it appears that you claim to be entitled to the said land, as heir at law of C. D., of ———, deceased, whereas the said John Doe claims to be entitled

to the said lands, free from any claim whatever on your part.

Dated this —— day of ——, 18—.

————,
Referee of Titles.

To (*name the parties to be served, with their addresses.*)

1041. Adverse claim under Quieting Titles Act, s. 19

In Chancery.

In the matter of (*as in the petition.*)

A. B., of ——— (*occupation*), claims to be owner of the said lands (*or of part of the said lands*) described as follows:—(*State briefly the nature of the claim, and the grounds of it.*) (*a*)

Dated ———. (Signed) A. B.

Or, C. D., Solicitor for A. B. (*give address.*)

This should be filed with the affidavit required by Section 20, with the Referee to whom the petition is referred. It is advisable at the foot to add the Post Office address of the party, or his solicitor, by whom it is filed.

1042. Affidavit verifying adverse claim, s. 20, Quieting Titles Act.

In Chancery.

In the matter of (*as in the petition.*)

I, A. B., of ———, make oath and say, that to the best of my knowledge and belief, I am the owner of the estate (*or interest*) which is claimed by me in my notice of claim in this matter, (*b*) now produced to me marked with the letter A., subject only to, *&c.* (*as the case may be.*)

Memorandum of finding of Master on defective proofs of Title, under Order 503, to be delivered to the Petitioner or his Solicitor.

1043. Memorandum of Master as to defects in proofs under *Ord.* 503.

In Chancery.

In the matter of Lot, *&c.*, *&c.*

I have perused this Title, and I find the proofs thereof defective in the following particulars (*set them forth shortly, in some such form as the following:*)—

1. The dower of Mary, the wife of James Harris, does not appear to be effectually barred, she not having executed the deed.

(*a*) The claim can be framed from the form of claim of an applicant. See form of petition, *ante*, No. 1026.

(*b*) This should be referred to as an exhibit, and marked by the Commissioner.

2. No receipt for consideration money is endorsed on deed from Jones to Smith, nor is there any acknowledgment of its receipt in the deed.

3. The discharge of the mortgage to Henry Brock is not produced.

4. There is no evidence that Isaac Brock was living when his conveyance by attorney to John Johnson was executed.

5. The will of Thomas Brock has not been produced.

6. It is not shown that John Ross was not married when he conveyed.

7. The estate descended to Mary, the wife of John Gray, as heiress of Thomas Gray, who became the wife of John Brigham. She conveyed, and the husband did not join; by this conveyance nothing passed; if the husband be living, a new conveyance must be obtained; or if she be dead, her heirs or devisees (if any) must convey, and the husband, if living, must release his tenancy by the curtesy.

8. The will of Abraham Oldham does not seem to pass a fee, but to create an estate tail, and this must be barred. (See Con. Stat. C. 83.)

9. There is no proof of the heirship of Joseph Styles.

A. B.,
Referee.

3rd January, 18—.

Form of Certificate where Petitioner entitled to Legal Estate.

In Chancery. No. 1044.

Form of certificate of title where petitioner is entitled to legal estate.

THESE ARE TO CERTIFY, under the authority of the Act for Quieting Titles to Real Estate in Upper Canada, that ———, of ———, in the County of ———, and Province of Ontario [*Esquire*], is the legal and beneficial owner in fee simple in possession of (*describing lands*); SUBJECT to the reservations mentioned in the seventeenth section of the said Act, and therein numbered respectively one, two, three and four.

AND to the taxes payable, or to become payable, in respect of the said parcel of land for the current year.

[AND SUBJECT, ALSO, to the rights, if any, of ———, the wife of the said ———, to dower in or out of the said parcel of land, in the event of her surviving her said husband.]

[AND SUBJECT, ALSO, to the rights of ———, as lessee, under an indenture of lease dated the —— day of ——, and made between ———.]

[AND SUBJECT, ALSO, to the rights, if any, of Her Majesty, in respect of the bond mentioned and set forth in the Schedule hereunto annexed.]

[AND SUBJECT, ALSO, to the rights of ——, under an agreement for the purchase of the said parcel of land, dated the —— day of ——.]

BUT free from all other rights, interests, claims and demands whatever.

IN WITNESS WHEREOF, the Honourable —— [Chancellor, *Or*, one of the Vice-Chancellors, of the said Court] has hereunto set his hand, and the seal of the said Court has been hereunto affixed, this —— day of ——, one thousand eight hundred and seventy ——.

A. G., Registrar. S. H. B., V. C. [L. S.]

Form of Certificate of Title where Legal Estate outstanding.

1045. Form of certificate of title where legal estate is outstanding.

In Chancery. No.

THESE ARE TO CERTIFY, under the authority of the Act for Quieting Titles to Real Estate in Upper Canada, that ——, of ——, in the County of ——, and Province of Ontario (*lumber merchant*), is the beneficial owner in fee simple in possession of (*describing lands*); SUBJECT to the reservations mentioned in the seventeenth section of the said Act, and therein numbered respectively one, two, three and four.

AND to the taxes payable, or to become payable, in respect of the said parcel of land for the current year.

[AND SUBJECT, ALSO, to a certain indenture of bargain and sale, by way of mortgage, dated the —— day of ——, one thousand eight hundred and ——, and made between ——, for securing the payment of —— and interest thereon, at the rate, and payable at the days and times therein mentioned.]

[AND SUBJECT, ALSO, to the rights, if any, of ——, the wife of the said ——, to dower in or out of the said parcel of land, in the event of her surviving her said husband.]

[AND SUBJECT, ALSO, to the rights of ——, as lessee, under an indenture of lease dated the —— day of ——, and made between ——, of ——, and ——, of ——.]

[AND SUBJECT, ALSO, to the rights, if any, of Her

Majesty, in respect of the bond mentioned and set forth in the Schedule hereunto annexed.]

[AND SUBJECT, ALSO, to the rights of ———, under an agreement for the purchase of the said parcel of land, dated the —— day of ——.]

BUT free from all other rights, interests, claims and demands whatever.]

AND THESE ARE FURTHER TO CERTIFY, that the legal ownership or estate in fee simple of and in the said parcel of land was conveyed to the said ——— by the said indenture of the —— day of ——.]

IN WITNESS WHEREOF, the Honourable ———, Chancellor of the said Court, has hereunto set his hand, and the seal of the said Court has hereunto been affixed, this —— day of ——, one thousand eight hundred and seventy- ——

———

Form of Chancery Deed, under secs. 33 and 34.

1046. Form of Chancery deed under secs. 33 and 34.

In Chancery. No.

The Court of Chancery for Ontario, under the authority of the Act for Quieting Titles to Real Estate in Upper Canada, doth hereby grant unto A. B., &c. (*here describe the premises sold*), to hold the same unto the said A. B., his heirs and assigns for ever (*as the case may be*), subject to the reservations mentioned in the seventeenth section of the said Act, and therein numbered respectively one, two, three and four, and to (*specifying, either by reference to a schedule or otherwise, any of the other charges or incumbrances, exceptions or qualifications to which the title of A. B. is subject*), but free from all other rights, interests, claims and demands whatever.

In witness whereof, ——— [Chancellor, *Or*, one of the Vice-Chancellors of the said Court] has hereunto set his hand, and the seal of the said Court has been hereto set this —— day of ——, in the year of our Lord ——.

A. G., Registrar. J. G. S., C. [L. S.]

This bill of costs is intended merely to serve as a guide to the profession, and that in simple cases only.

1047. Costs of petitioner under Quieting Titles Act.

In Chancery.

In the matter of lot No. 9, in the 3rd Concession of the Township of Oro.

The Petitioner's costs in obtaining Certificate.

Instructions for petition	$4 00
Drawing petition, per folio	0 20
Copy to file, per folio	0 10
Attending to enter petition with Inspector where necessary	0 50
Paid his fees	8 00
Attending to file petition with Clerk of Records and Writs	0 50
Paid filing	0 10
Attending to bespeak, and for certificate for registration	1 00
Paid for same	1 10
Attending to register	0 50
Paid Registrar	
Attending Registrar to bespeak, and for Abstract of Deeds and copies of Memorials of such as are not held by Petitioner	1 00
Paid Registrar's fees	
Attending Sheriff for Certificates	1 00
Paid Sheriff	
Attending to search for Crown debts against Crown debtors	
For each search	0 50
Paid Clerk of Queen's Bench for each search	0 50
For every necessary Affidavit as to Crown debts, dower, possession, loss of deeds, or other matter in support of Title, per fo	0 20
Engrossing each, per fo	0 10
Attending to swear, for each, 50 cents, paid 20 cents	
Attending County Treasurer for Certificate Taxes	1 00
Paid for same	
The like on Township Treasurer, where necessary	0 50
The like on Collector, where necessary	0 50
Drawing Petitioner's Affidavit and copy, per folio	0 20
Attending to swear, 50 cents, paid 20 cents	0 70
Drawing state of facts, where necessary: see Statute, sec. 5, sub-sec. 4, per folio	0 20

Copy thereof, per folio	$0 10
Drawing Schedule of Deeds and papers, per folio	0 20
Copy for Referee	0 10
Drawing Certificate of Solicitor or Counsel as to state of title and fee thereon	2 00
(To be increased according to the nature of the case.)	
Attending Referee with deeds and papers, and comparing same with Schedule	1 00
Attending Referee for advertisement and notice for service on parties who may have claims	0 50
Paid for same	
Copy of advertisement for Gazette	0 30
Writing with and forwarding	0 50
Paid for insertion and for Gazettes	
Copies for local newspaper and letter therewith, if ordered by Referee	0 80
Copy to affix to Court House door	0 30
Paid affixing	
Copy to be affixed in Post Office	0 30
Paid getting same affixed	
Affidavit as to insertion in Gazette, local newspaper, and as to affixing same on Court House door and at Post Office, each	0 50
Attending to swear, each	0 50
Paid swearing and Exhibits	
Copy notice to serve on each party [as directed]	0 30
Attending Sheriff with same to serve	0 50
Paid Sheriff, service and for mileage, 13 cents per mile	
Affidavit of service on each party, 40 cents, and oath and Exhibit	
Attending to file affidavits with Referee	0 50
Attending Referee when satisfied with Title to forward papers to Inspector	
Letter to Agent to wait upon Inspector	0 50
Paid Agent attending Inspector when title passed, and to bespeak and for certificate	1 00
Paid engrossing certificate in duplicate	
Attending compare engrossment	0 50
Attending Inspector with	0 50
Attending for, when signed	0 50
Attending Clerk of Records and Writs with, for entry	0 50
Attending him therefor	0 50
Paid his fees	
Paid Agent's letter forwarding	0 50

Attending County Registrar with certificate for registration	$0 50
Paid his fees	
Attending for same when registered	0 50
Paid postages throughout the matter	
Bill of costs and copy, per folio	0 30

For Tariff of disbursements: see ante, No. 1023.

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[N.B.—*The references are to the Nos., not to the pages.*]

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