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1853-1

10 ORDERS
OF
THE COURT OF CHANCERY,
FOR DEFINING AND REGULATING THE
PRACTICE AND PROCEEDINGS OF THE
COUNTY COURTS OF UPPER CANADA,

UNDER "THE COUNTY COURTS EQUITY EXTENSION ACT."

SECOND EDITION,

Price 2s. 6d.

TORONTO:
HENRY ROWSELL,
KING STREET.

ORDERS OF THE COURT OF CHANCERY,

FOR DEFINING AND REGULATING THE PRACTICE AND PROCEEDINGS OF
THE COUNTY COURTS OF UPPER CANADA, UNDER "THE COUNTY
COURTS EQUITY EXTENSION ACT."

DECEMBER 1853.

THE JUDGES of the Court of Chancery do hereby, in pursuance of the authority and power conferred by an Act of the Legislature of this Province, passed in the sixteenth year of the reign of Her present Majesty, intituled "An Act to confer Equity Jurisdiction upon the several County Courts in Upper Canada, and for other purposes therein mentioned," order and direct that all and every the rules, orders and directions hereinafter set forth shall henceforth be, and for all purposes be deemed and taken to be, general orders and rules for defining and regulating the practice and proceedings of the several County Courts in Upper Canada under the jurisdiction conferred upon them by the said act:—

I. All pleadings and affidavits filed in the County Courts under the provisions of the said Act, are to be intituled as follows:—

"In the County Court of the County of _____ Intituling pro-
Equity Side." proceedings.

Counsel need not sign pleadings. Sec. 2.—No pleadings shall require the signature of counsel.

Claim.—Contents of. Sec. 3.—The claim is to contain :

- (1.) The name and description of each party plaintiff.
- (2.) The name of each party defendant.
- (3.) A statement of the plaintiff's case in clear and concise language.
- (4.) A prayer for the specific relief to which the plaintiff supposes himself entitled; but the prayer for general relief may be added.

Form of. Sec. 4.—In the several cases enumerated in schedule A, the claim may be in the form, or to the effect set forth in that schedule, as applicable to the particular case; and in cases not enumerated in that schedule, forms similar in principle may be adopted, wherever a more detailed statement is not necessary for the clear and intelligible statement of the case.

Sec. 5.—It must appear upon the face of the claim that the subject matter thereof is within the jurisdiction of the County Court.

To be filed and entered by clerk, Sec. 6.—Upon the claim being brought to the clerk's office to be filed, it shall be his duty to file the same of the day on which it may be so brought in, and to enter the same in a book to be by him kept for that purpose; such entry to contain the names of parties plaintiffs and defendants, and the date of the filing of such claim.

Mode of service of Sec. 7.—It shall not be necessary to serve the defendant with a summons or other process to notify him to answer the claim; but, in lieu thereof, a copy of the claim is to be personally served upon him, with

an indorsement thereon in the form, or to the effect set forth in schedule B. In making such service it shall not be necessary to produce the original claim.

PARTIES TO SUITS.

II. It shall not be competent to any defendant in any suit to take any objection for want of parties to any suit in the County Court, in any case in which such objection could not be taken in the Court of Chancery, in case such suit had been instituted therein.

Parties — no objection for want of, in certain cases;

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

But the judge may require other persons to be added as.

In such cases, the persons who, according to the practice of the Court of Chancery previous to the third day of June 1853, would be necessary parties to the suit are to be served with a copy of the decree; and after such service, they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit; and upon service of notice upon the plaintiff, they may attend the proceedings under the decree. Any party so served may apply to the judge to vary or add to the decree, within fourteen days from the date of such service.

How added, and effect of.

In all suits concerning real or personal estate which is vested in trustees under a will, settlement or otherwise, such trustees shall represent the persons beneficially interested under the trust in the same manner, and to the same extent, as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such

Trustees of real or personal estate shall represent those beneficially interested who need not be parties.

personal estate; and in such case it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit; but, on the hearing, the judge, if he shall think fit, may order such person or persons, or any of them, to be made parties.

Where demand is joint and several; who need be made defendants.

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

AMENDMENT.

AMENDMENT ordered on proceipio before answer.

III. Orders of course to amend a claim may be obtained at any time before answer, upon proceipio.

Service of order may be dispensed with in certain cases.

Sec. 2.—Service upon any defendant of an order of course to amend before answer may be dispensed with, upon an application *ex parte*, where the judge is satisfied that such an order may be made without prejudice to the defendants' rights; and where service upon any defendant of an order to amend has been dispensed with, the course as to such defendant is to proceed as if the claim had been originally filed in the amended form.

To correct error in name, &c., at any time.

Sec. 3.—An order to amend the claim only for the purpose of rectifying a clerical error in names, dates or sums, may be obtained at any time upon proceipio.

Order may be made by judge at any time in furtherance of justice.

Sec. 4.—The judge may, at any time, in furtherance of justice, and on such terms as he may think proper, permit an amendment of the claim and of every proceeding relating thereto, by adding or striking out the name of any party, by correcting errors, by inserting allegations material to the case, or by conforming such claim or proceeding to the facts proved, when the

amendments shall not substantially change the nature or form of the suit; and such amendments may be in respect of any matter arising or occurring after, as well as before the institution of the suit, and before final decree, and as well where by the occurring of such matter the suit abates or becomes defective as otherwise.

Such order is to be applied for by motion to the judge; and notice thereof, stating the proposed amendment, is to be served upon the defendant or his attorney, unless dispensed with by the judge. How obtained.

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

Upon pronouncing such order for amendment, the judge is to give such direction, as to the future conduct of the suit, in relation to service upon new parties defendants, in relation to answering such amendments, as also in regard to the evidence taken or to be taken, and in all other respects, as the circumstances of the case may require. Directions to be given by judge in such cases.

Sec. 5.—A plaintiff having obtained an order to amend his claim is to amend the same within two days from the date of such order, otherwise the order to amend becomes void, and the case, as to dismissal, stands in the same situation as if such order had not been made. Amendment must be made within two days.

Sec. 6.—When a suit becomes defective or abates, by any event occurring after final decree or order, any party entitled to revive the same may do so by a petition in the cause, which is to state the petitioner's title to the relief sought. The petition must be verified by affidavit; it is to be served upon the attorneys for all ABATEMENT—in case of; how suit revived.

parties, or in case any party has no attorney, then upon such party.

GUARDIAN AD LITEM.

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

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

Sec. 2.—A party desirous of appointing a guardian for himself to defend a suit, may go before the judge with the proposed guardian, and the judge may appoint such guardian if he shall think fit so to do. But he must be satisfied by affidavit that such proposed guardian is a fit person, and has no interest adverse to that of the person of whom he is to be the guardian in the matter in question; and if the affidavit is not sufficient for this purpose, he may examine the proposed guardian, or the person making the affidavit, *viva voce*, or require further evidence to be adduced until he is satisfied of the propriety of the appointment.

APPEARANCE.

V. No appearance is to be entered in any suit either by the defendant, or by the plaintiff on his behalf. No appearance to be entered.

ANSWER AND DEMURRER.

VI. All defences to the plaintiff's claim are to be made by answer or demurrer, or by both, according to circumstances. Defences - how made.

DEMURRER.

VII. A defendant may demur to a claim at any time within ten days after service upon him of a copy thereof. Upon the filing of a demurrer by a defendant, either party is at liberty to set down the same for argument immediately, to be heard in the following term, or at such other time as the judge shall appoint. Defendant must demur within 10 days after service of claim. When demurrer to be argued.

ANSWER.

VIII. Answers may be in a form similar to the form set out in schedule C. The answer is to be in the first person, and is to consist of a clear and concise statement of such defence or defences as the defendant may desire to make. The silence of the answer as to any statement contained in the claim is not to be construed into an implied admission of its truth; and any allegation introduced into an answer for the purpose of preventing such implied admission is to be considered impertinent. Answers--form of.

Sec. 2.—A defendant served with a copy of a claim is to answer or demur to any original claim, or claim amended before answer, within ten days after service of such claim, or of notice of the amendment thereof, as the case may be. Must be made within ten days

Sec. 3.—The answer is to be signed by the defendant, and is to be verified by his oath; and the jurat is to be in the form set forth in schedule C. Must be signed and sworn.

Sec. 4.—An answer may be filed without oath or signature, by written consent without order.

Unless upon written consent.

JUDGE MAY GIVE RELIEF TO DEFENDANT UPON ANSWER PROPERLY FRAMED.

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

Relief may be given to defendant on case made by answer.

SUPPLEMENTAL ANSWER.

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

Supplemental answer may be permitted by judge.

No answer, supplemental answer, or demurrer, is to be deemed as filed, for the purpose of the computation of time, until a copy thereof has been served.

When to be deemed filed.

CLAIM BEING TAKEN AS CONFESSED BY DEFAULT OF DEFENDANT.

XI. When any defendant, not appearing to be an infant or a person of weak or unsound mind, unable of himself to defend the suit, has been personally served with a copy of such claim, and has neglected to answer or demur thereto within ten days from the time of such

Pro Confesso—proceedings to take claim.

service, the clerk is, upon the proœcipe of the plaintiff, to make an entry in his said book in the following form or to the following effect—"The plaintiff's claim is taken as confessed, for default of the defendant in not answering thereto," upon being satisfied by affidavit that a copy of such claim has been personally served, and upon finding that no answer or demurrer has yet been filed. Such entry not to be made by the clerk without the order of the judge, except when application is made to him within one month from the time of such service; and after the expiration of such month, the judge may order such entry to be made, if he think fit, upon being satisfied by affidavit of such due service aforesaid, and that a demurrer or answer has not been filed by such defendant. Such entry shall have the same effect as an order to take a bill *pro confesso* in the Court of Chancery.

It shall be competent to the plaintiff to move for a decree after the expiration of ten days from the date of such entry, such motion to be *ex parte* and to be made in the following term, or at such other time as the judge may appoint.

Decree may be moved for in ten days thereafter.

Sec. 2.—An entry of a claim being taken as confessed by a defendant who, at the time of such service or of such entry, is an infant or a person of weak or unsound mind, unable of himself to defend the suit, is irregular and of no validity.

Such entry to be invalid in case defendant is an infant, &c.

After such entry all further proceedings in the cause may be *ex parte* as to the defendant in respect of whom such entry is made, unless the judge order otherwise.

Subsequent proceedings to be *ex parte*.

Sec. 3.—A plaintiff may move *ex parte* for leave to amend his claim, without prejudice to the entry of the same being taken as confessed; and when the judge is satisfied that the rights of the defendant will not be prejudiced by granting such motion, he may direct the same accordingly.

Amendment may be made without prejudice to such entry.

After entry de-
fendant may be
permitted to au-
swer.

the judge is to be at liberty to permit the defendant to answer, upon such terms, as to evidence and otherwise, as he may think just, upon being satisfied, by affidavit, that granting such permission will be in furtherance of justice. •

Defendant may
appear at hear-
ing.

A defendant against whom such entry has been made is to be at liberty to appear at the hearing of the motion for decree; and if he waive all objection to such entry, but not otherwise, he may be heard to argue the case upon the merits, as stated in the claim.

And may require
notice of proceed-
ings.

Sec. 4.—A defendant shall be entitled to be served with notice of such motion, notwithstanding such entry, upon serving the plaintiff or his attorney with notice of his desire to be so served, within five days after such entry; and notice of motion must be served four days before the day for hearing the same.

What decree
thereon.

Upon the hearing of a cause in which a claim has been taken as confessed in manner aforesaid such a decree is to be made as the judge may think just.

Judge may order
receiver or se-
questration.

Sec. 5.—In pronouncing the decree the judge, either upon the case stated in the claim, or upon that case and a petition presented by the plaintiff for the purpose, as the case may require, may order a receiver of the real and personal estate of the defendant against whom the claim has been taken as confessed to be appointed, with the usual directions; or direct a sequestration of such real and personal estate to be issued; and may, if it appear to be just, direct payment to be made out of such real and personal estate of such sum or sums of money as at the hearing or any subsequent step in the cause the plaintiff may seem to be entitled to.

Sec. 6.—The rights and liabilities of any plaintiff or defendant under a decree made upon a claim taken as

confessed extend to the representatives of any deceased plaintiff or defendant, at the time when the decree was pronounced; and with reference to the altered state of parties, and any new interests acquired, the judge may, upon motion, supported by such evidence as under the circumstances of the case the judge deems sufficient, permit any party, or the representative of any party, to adopt such proceedings as the nature and circumstances of the case may require, for the purpose of having the decree duly executed, or for the purpose of having the matter of the decree and the rights of the parties duly ascertained and determined; notice of such motion to be served in such manner as the judge may direct.

Rights of parties extend to representatives.

PRODUCTION OF BOOKS AND PAPERS.

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

Production of papers—order for, obtained on proœcipe.

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

Affidavit of party served.

Sec. 3.—Such order shall not require personal service. If the party required to obey the same shall

Order for production need not be personally served.

have an attorney it shall be sufficient to serve the same upon such attorney; but any writ or writs of attachment to be issued for disobedience to such order must be obtained by orders *nisi* and absolute, and the order *nisi* must be personally served.

Judge may order production at trial.

Sec. 4.—Upon any trial before a jury, the judge shall have the like powers, in respect of the production of deeds, papers, writings or documents, as is possessed by judges of county courts in Upper Canada upon the trial of issues in causes on the common law side of such courts.

MOTION FOR DECREE OR DECRETAL ORDER AFTER TIME FOR ANSWERING HAS EXPIRED.

Motion for decree when and how to be made and how to be opposed.

XIII. The plaintiff in any suit, at any time after the period allowed to the defendant for answering has expired, may move the court for such decree or decretal order as he may think himself entitled to; and the plaintiff and defendant respectively may file affidavits in support of, and in opposition to such motion, and may use the same at the hearing thereof; and when such motion is made after an answer filed in the cause, the answer, for the purposes of the motion, is to be treated as an affidavit.

Sec. 2.—Notice of the motion is to be served upon the defendant or defendants at least ten days before the day to be named in such notice for the making of the application.

Sec. 3.—Within five days from the service of the notice, the defendant must file his affidavits in answer.

Sec. 4.—Within three days after the expiration of such five days, the plaintiff is to file his affidavits in reply; and, except so far as such last mentioned affidavits are in reply, they are not to be regarded by the judge, unless upon the hearing of the motion the judge

shall give the defendant leave to answer them; and in that case, the costs of such affidavits, and of the further affidavits consequent upon them, are to be paid by the plaintiff, unless the judge order otherwise.

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

Sec. 5.—Upon hearing the application, the judge, in his discretion, may either grant or refuse the motion, or may give such directions for the examination of either parties or witnesses, or for the making of further enquiries, as the circumstances of the case may require, and upon such terms, as to costs and otherwise, as he may think right.

Such motion is to be heard in the following term, or at such other time as the judge may appoint.

MOTION FOR DECREE OR DECRETAL ORDER BEFORE
TIME FOR ANSWERING HAS EXPIRED.

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

Judge may permit notice of motion for decree to be given before time for answering has expired.

Sec. 2.—Upon the hearing of the motion for a decree or decretal order, the judge, in his discretion, may either grant or refuse the application, or may give such directions for the examination of either parties or witnesses, or for the making of further enquiries, or for a

Upon hearing the motion, judge may give certain directions.

jury trial, or with respect to the further prosecution of the suit, as the circumstances of the case may require, and upon such terms, as to costs and otherwise, as he may think right.

ISSUE AND PROCEEDINGS THEREUPON, AND DISMISSAL FOR WANT OF PROSECUTION.

XV. Upon the filing of an answer, or the last of several answers, or of answer by one or more defendants, and of entry for taking claim as confessed as to others, or after the time allowed for answering an amended claim has expired, the cause is to be deemed at issue.

When cause to be at issue.

Under what circumstances defendants may move to dismiss.

Sec. 2.—When the plaintiff has not obtained an order to amend, he is either to apply to the judge for a trial by a jury, as provided for by order XXII; or, in the event of the defendant not having made the like application, he is to give notice of motion for decree within ten days after the cause is at issue, otherwise any defendant may move to dismiss the plaintiff's claim for want of prosecution, unless the judge shall in the meantime have given to the plaintiff further time to take such proceedings.

Sec. 3.—When the plaintiff has obtained an order to amend his claim after answer, he is to amend the same within two days after such order being granted, and thereupon he is either to apply for a trial by jury, or in the event of not receiving notice of the like application on the part of the defendant, he is to give notice of motion for decree or decretal order, within the times following; and in default thereof any defendant may move to dismiss the claim for want of prosecution:—

- (1.) When the plaintiff amends his claim and no answer is put in thereto, and no notice of application for further time to answer is served within seven days after the service of the notice of amend-

ment, then after such seven days, but within ten days from the time of the service of such notice.

- (2.) Where the plaintiff amends his claim after answer, and a defendant, within seven days after service of notice of the amendment, serves notice of an application for further time to answer the amendments, but such application is refused, then within seven days after such refusal.
- (3.) When a defendant puts in an answer to amendments, then within seven days after the filing of such answer, unless the plaintiff obtain in the meantime an order for leave to re-amend his claim.

Sec. 4.—In every case where the plaintiff is delaying the suit unreasonably, any defendant may apply to the judge upon notice, that the claim may be dismissed with costs for want of prosecution after the expiration of ten days from the time of filing his answer, in case the plaintiff not having obtained an order to enlarge the time does not give notice of proceeding in manner aforesaid within the time above limited in respect thereof, or in case the plaintiff should make unreasonable delay in the further prosecution of his suit to a decree; and upon the hearing of such motion the judge is to make such order for the dismissal of the claim, or for the expediting of the suit, or as to the costs, as under the circumstances of the case may seem just.

PROOF OF EXHIBITS BY AFFIDAVIT.

XVI. Any exhibit which according to the practice of the Court of Chancery may be proved by the affidavit of a witness, may be in like manner proved by affidavit: Exhibits may be proved by affidavit.
an order having been taken out for that purpose.

AFFIDAVITS BY PARTICULAR WITNESSES OR AS TO PARTICULAR FACTS.

XVII. When the facts in issue are at the instance of either party to be tried by a jury, in such case

Facts in issue may be proved by affidavit, by consent or leave of judge.

affidavits of particular witnesses, or affidavits as to particular facts or circumstances, may be taken by consent or by leave of the judge; and such consent may be given on behalf of married women, or infants, or other persons under disability, with the approbation of the judge.

WITNESSES MAKING AFFIDAVIT SUBJECT TO
CROSS-EXAMINATION.

Witnesses making affidavits may be cross-examined.

XVIII. Any witness who has made an affidavit to be used upon any application other than an affidavit of service, is to be subject to oral cross-examination before the judge, in the same manner as if the evidence given by him in his affidavit had been given by him orally; and such witness is to attend before the judge upon being served with a writ of *subpœna ad testificandum* or *subpœna ad testificandum et duces tecum*; and the expenses attending such cross-examination and re-examination are to be paid by the parties respectively, in like manner as if the witness to be cross-examined were the witness of the party cross-examining, and are to be deemed costs in the cause of such parties respectively, unless the judge think fit to direct otherwise.

Forty-eight hours' notice of such cross-examination to be given.

Sec. 2.—Any party desiring to cross-examine a witness who has made an affidavit in any cause is to give forty-eight hours notice to the party on whose behalf such affidavit has been filed, or to the party intending to use the same, of the time and place of such intended cross-examination, in order that such party may, if he think fit, be present thereat.

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

Sec. 3.—In case any witness making such affidavit, and for whose cross-examination notice shall have been served, shall reside without the county, it shall be

competent to the judge, at the instance of either party, if he think fit, to certify, that in his judgment it is reasonable that such witness should be cross-examined in the county where he resides; and upon production of such certificate to the registrar of the Court of Chancery, he is to issue a writ of *subpœna ad testificandum* or *subpœna ad testificandum et duces tecum*, requiring such witness to attend before the master, or a deputy master, or examiner of the Court of Chancery, for the purpose of such cross-examination; and such witness is to attend accordingly; and the party obtaining such certificate shall give notice thereof to the opposite party, and, if he be the cross-examining party, notice also of the time and place of such intended cross-examination.

Mode of proceeding where witnesses reside without the county.

Notwithstanding the granting of such certificate, witnesses residing without the county may be cross-examined before the judge at the instance of any party willing to pay the extra expense, if any, thereby incurred, and such party shall be entitled to such subpœnas aforesaid from the registrar of the Court of Chancery, and the witness shall be bound to attend before the judge in obedience thereto.

Sec. 4.—Any party requiring the attendance of witnesses or other parties, for the purpose of examination, who may reside without the county, for the purpose of evidence at a jury trial, shall be entitled to such subpœnas aforesaid for that purpose; and such witnesses and parties shall be bound to attend accordingly.

FORM OF AFFIDAVITS, &c.

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

Affidavits to be in the first person.

Otherwise no costs to be allowed.

No costs are to be allowed in respect of any affidavit not drawn in conformity with this order.

Officer to read over affidavit.

Every affidavit in support of, or in opposition to any application other than an affidavit of service, is to be read over to the deponent by the officer who is required to administer the oath; and the officer is to inform such witness that he is liable to be cross-examined touching the matter of such affidavit; and when the witness desires to qualify or add to his deposition, the officer is to vary the same accordingly; and the jurat is to be in the form or to the effect set forth in schedule E.

COMPELLING ATTENDANCE OF WITNESSES FOR PURPOSES OF MOTIONS, &c.

Witnesses may be compelled to attend before judge, &c., for purposes of a motion, &c.

XX.—Any party in any cause depending may, by a writ of *subpœna ad testificandum*, or *subpœna ad testificandum et duces tecum* require the attendance of any witness before the judge, or before a deputy master, or before an examiner, and examine such witness orally, for the purpose of using his evidence upon any motion, petition, or other proceeding before the court; and such witness shall be bound to attend for the purpose of being cross-examined on being served with such writ; but the judge, nevertheless, in his discretion, may act upon the evidence before the court at the time, and may make such *interim* order, or otherwise, as may appear necessary to meet the justice of the case.

Forty-eight hours' notice thereof to be served on opposite party.

Sec. 2.—Any party in any cause or matter who requires the attendance of any witness, whether a party to the cause, or not, for the purpose of his being examined with a view to his evidence upon any motion, petition, or other proceeding before the court, is to give to the opposite party or parties forty-eight hours' notice at least, of his intention to examine such witness, and of the time and place of such examination, unless the court think fit in any case to dispense with such notice.

Sec. 3.—The cross-examination in such case is to follow immediately upon the examination, and is not to be deferred to any future time.

EXAMINATION OF PARTIES.

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

Parties to the cause may be examined as witnesses by party adverse in point of interest.

Sec. 2.—Any party defendant may be examined as a witness on behalf either of the plaintiff or of a co-defendant upon any points as to which the party to be examined is not interested; and any party plaintiff may be examined under similar circumstances by a co-plaintiff or by a defendant. Provided, that where any party having an interest has been examined under this order such evidence is not to be used on behalf either of the examining party or of the examinant, but may be struck out at the hearing of the motion at the instance of any party affected thereby; but such examination is not to preclude the judge from making a decree either for or against the party examined.

Or upon any points in which party examined is not interested.

Sec. 3.—Evidence taken under the first section of this order may be rebutted by adverse testimony; and any party examined as therein provided may be further examined on his own behalf in relation to any matter

Where party interested is examined, may be further examined on their own behalf.

And parties jointly interested may be examined on their own behalf.

respecting which he has been examined in chief. And where one of several plaintiffs or defendants, who are joint contractors, or are united in interest, have been so examined, any other plaintiff or defendant so united in interest may also be examined on his own behalf, or on behalf of those united with him in interest, to the same extent as the party actually examined. Provided nevertheless, that such explanatory examination must be proceeded with immediately after the examination in chief, and not at any future period, except by leave of the judge.

Party admitting deeds, &c., to be in his possession may be ordered to produce them

Sec. 4.—Any party to the record who admits upon his examination that he has in his custody or power any deeds, papers, writings, or documents relating to the matters in question in the cause, is to produce the same for the inspection of the party examining him, upon the order of the judge; and for that purpose a reasonable time is to be allowed. But no party shall be obliged to produce any deed, paper, writing, or document which would be protected under the practice of the Court of Chancery.

Party refusing to attend may be punished as for contempt, or claim may be taken as confessed.

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

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

When part of examination is used, entire evidence may be put in by other side.

Sec. 7.—Any party plaintiff examined under the first section of this order may be so examined at any time after answer; and any party defendant may be examined at any time after answer, or after the time for answering has expired, as the case may be.

When party may be examined.

JURY TRIAL.

XXII.—It shall be competent to the plaintiff, instead of giving notice of motion for a decree in manner hereinbefore provided, to apply to the judge upon notice, for an order that the facts in issue in the cause, or that certain of such facts, be tried by a jury; and it shall in like manner be competent to the defendant, at any time within five days after filing his answer, to make the like application; and upon the hearing of such application, the judge, if he thinks fit to grant the same, is to settle, as nearly as conveniently may be, what facts are to be tried by a jury, and whether any, and if any, what affidavit evidence may be used upon such trial; and in the event of such application being granted, such jury trial is to be had, and a decree may thereupon be made in manner directed by the said act; and such application may be granted upon such terms as the judge may deem just, and he is to be at liberty to make such interlocutory order, upon such application or otherwise, as he may think fit, upon affidavits or other evidence.

Parties may apply for facts in issue to be tried by a jury.

FOREIGN COMMISSIONS.

XXIII.—A commission may be obtained for the examination of witnesses not residing within Upper Canada, upon affidavit by the party applying that

Foreign commissions may be issued.

certain witnesses (naming them) reside at or about a place to be specified in such affidavit, and that the evidence of such witnesses is, as he believes, material and necessary to his case.

MISJOINDER OF PLAINTIFFS.

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

Suits not to be dismissed for misjoinder of plaintiffs; but judge may order necessary amendment at hearing.

CONDITIONAL ORDER.

XXV.—In all cases where a person or party obtains an order from the judge upon condition and fails to perform or comply with such condition, he is to be considered to have waived or abandoned such order, as far as the same is beneficial to himself, and any other party or person interested in the matter, on the breach or non-performance of the condition, may either take

Party failing to perform condition on which he obtains order may be treated as having waived it.

such proceedings as the order in such case may warrant, or such proceedings as might have been taken if no such order had been made.

PAYMENT OF MONEY INTO COURT.

XXVI.—Money ordered to be paid into court is to be paid with the privity of the clerk into such bank or bank agency in the county town as the judge may appoint, and if there be no bank or bank agency therein, then into such bank or bank agency in Toronto as the judge may appoint: the attorney or party paying in the same is to furnish the bank with a correct copy of so much of the order directing such payment as relates thereto, with the names of the parties to the suit and the date of the order. ^{Payment of money in}

Sec. 2.—All sums of money to be paid out of court are to be so paid upon the cheque of the clerk, countersigned by the judge, and not otherwise. ^{And out of court.}

SUITS FOR FORECLOSURE AND REDEMPTION.

XXVII.—In any suit for the foreclosure of the equity of redemption in any mortgaged property, or for redemption, the mortgagor may be ordered to deliver up possession of the mortgaged premises upon the final order for foreclosure or for dismissal of the claim as the case may be. ^{On final order in foreclosure or redemption suits, possession may be ordered to be delivered.}

Sec. 2.—In any suit for the foreclosure of the equity of redemption in any mortgaged property, the judge, upon the request of the mortgagee, or of any subsequent incumbrancer, or of the mortgagor, or any person claiming under them respectively, may direct a sale of such property, instead of a foreclosure of such equity of redemption, on such terms as the judge may think fit to direct, and, if the judge think fit, without previously determining the priority of incumbrancers, or giving the usual or any time to redeem; but if such request be made by any such subsequent incumbrancer, ^{Sale instead of foreclosure may be directed.}

or by the mortgagor, or by any person claiming under them respectively, the judge is not to direct any such sale without the consent of the mortgagee or the person claiming under him, unless the party making such request deposit in court a reasonable sum of money, to be fixed by the judge, for the purpose of securing the performance of such terms as the judge may think fit to impose.

And any balance ordered to be paid.

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

Surety for mortgage debt may be made party and ordered to pay.

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

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

In foreclosure suits on default of payment of instalment or interest, defendant may move to stay proceedings on payment into court of sum due and costs.

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

When an application is made to stay the proceedings under this section, the decree may afterwards be

enforced, by order of the judge, upon any subsequent default in the payment of any further instalment of the principal or of interest. Decree may be enforced on subsequent default.

Sec. 7.—When a motion is made for a decree after entry made to take the claim as confessed, in a suit for the foreclosure of the equity of redemption in any mortgage property, the plaintiff is to produce at the hearing: Proceedings on motion for decree after entry pro confesso.

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

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

INDORSEMENT OF NAMES OF ATTORNIES OR PARTIES.

XXVIII.—Upon every writ sued out, and upon every claim, demurrer, and answer, or other proceeding, there shall be endorsed the name, or firm and place of business of the attorney or attorneys by whom such writ has been sued out, or such pleading or other proceeding has been filed; and when such attorneys Name of attorney or party to be endorsed on pleadings &c.

are agents only, then there shall be further endorsed thereon the name, or firm and place of business of the principal attorney or attorneys.

When party acts in person, and resides more than three miles distance, address for service to be given.

Sec. 2.—Every party suing or defending in person is to cause to be endorsed or written upon every writ which he sues out, and every claim, demurrer, answer, or other proceeding, his name and place of residence, and also, (when his place of residence is more than three miles from the office where such pleading or other proceeding is filed) another proper place, to be called his address for service, not more than three miles from the said office, where writs, notices, orders, appointments and other documents, proceedings and communications, may be left for him.

COPIES OF PLEADINGS &c.

Copies of pleadings, &c., to be demanded in writing.

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

And to be delivered within 48 hours.

Sec. 2.—When an application is made for a copy of any pleading or affidavit, it is to be delivered within forty-eight hours from the time of such demand; and any further time which may elapse before the delivery thereof is not to be computed against the party demanding the same.

No costs allowed for, unless legibly written.

Sec. 3.—Copies of pleadings and affidavits are to be written on paper of convenient size, in a legible manner, and unless so written, the attorneys furnishing them are not to be paid for the same.

TRANSMISSION OF PAPERS BY MAIL.

Mode of transmitting papers to clerk, &c.

XXX. All documents, of whatever nature, required to be transmitted to the clerk of the court, or the deputy master, may be so transmitted through the post

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

ORDERS OF COURSE.

XXXI. All orders of course are to be drawn up by the clerk upon præcipe. Orders of course obtained on præcipe.

APPOINTMENT OF RECEIVERS.

XXXII. Receivers are to be appointed in the following manner:—The party prosecuting the order for a receiver is to obtain an appointment from the judge, and to serve the same on all necessary parties, naming in the copy thereof served the proposed receiver and his sureties. At the time appointed, the party prosecuting the order is to bring into the judge's chambers the recognizance or bond proposed as security. The bond or recognizance is to be to the judge. Any other party desirous of proposing another person as receiver, is to serve notice of his intention so to do upon the other parties, naming in such notice the person proposed by him as receiver and his sureties; and is then in like manner to bring into the judge's chambers the recognizance or bond proposed by him as security. At the time named in the appointment, the judge is, in the presence of the parties, or of those who attend, to consider of the appointment of the receiver, and to determine respecting the same, and to

settle and approve the proposed security; and the judge is to appoint such receiver by signing a written appointment to the following effect:—"In the county court of the county of — Equity Side. (Style of cause.) I hereby appoint (receiver's name), receiver "in this cause." (Signature of judge). Which appointment is to be signed without any appointment or attendance for that purpose; when signed it is to be filed by the party who has procured the person named by him as receiver to be appointed, but the same is not to be filed until after the execution and filing of the securities settled and approved by the judge.

NOTICES OF MOTION.

Service of notice of motion after claim filed. XXXIII. A notice of motion, by any party to the suit, may be served at any time after claim filed, without the leave of the judge.

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

EVIDENCE UPON MOTIONS AND INTERLOCUTORY PROCEEDINGS.

Interlocutory proceedings, affidavits and mode of proceeding. XXXIV. Admissions of the service of a notice of motion or other paper, upon the opposite attorney, need not be verified by affidavit.

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

Sec. 3.—Any party who requires a copy of an affidavit to be used upon any application is to demand the

same from the attorney of the party by whom such affidavit has been filed, or on whose behalf it is to be used, and such copy is to be ready for delivery within forty eight hours from the time of such demand, or within such other time as the judge may in any case direct.

TAKING ACCOUNTS AND MAKING INQUIRIES.

XXXV. When it shall, in the opinion of the judge, be necessary or proper that accounts be taken, or inquiries made, and when the judge shall not think fit that the same be taken before himself, they may be referred to the master or to a deputy master of the Court of Chancery, or to the clerk of the county court, in the discretion of the judge; and in case of such reference being ordered, the decree or order referring the same shall be carried into the office of the master, deputy master, or clerk, as the case may be, within ten days after the decree or order shall have been pronounced, by the party having the carriage of the same; otherwise any other party to the cause, or any party having an interest in the reference, may apply to the judge as he shall be advised, that the prosecution of such decree or order may be committed to him, or otherwise, for the purpose of expediting the prosecution thereof.

Judge may order reference to master or clerk of County Court.

Sec. 2.—Upon the bringing in of every decree or order, the attorney bringing in the same is to take out an appointment (unless the officer to whom the reference is made shall dispense therewith) appointing a time, which is to be settled by him, for the purpose of taking into consideration the matters referred by such decree or order, and is to serve the same upon the parties or their attorneys, unless such officer shall dispense therewith; and upon the return of such appointment, or upon the bringing in of the reference when no such appointment shall have been issued, the officer

Mode of proceeding thereon.

is to proceed to regulate in all respects the manner of proceeding with such reference, and the manner in which each of the accounts and inquiries is to be prosecuted.

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

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

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

And he is to fix a time at which to proceed to the hearing and determining of such reference, appointing a day in the meantime, if he shall think fit, for the purpose of entering into the accounts and inquiries, with a view to ascertaining what is admitted and what is contested between the parties, and such directions may be afterwards varied or added to, as may be found necessary; and in giving such directions, and in regulating the manner of proceeding before him, the officer is to devise and adopt the simplest, most speedy, and least expensive method of prosecuting the reference, and every part thereof. And any party directed by him to bring in any account, or do any other act, is to be held bound to do the same in pursuance of the direction in that behalf, without any written direction being served upon him for that purpose.

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

Party improperly refusing to admit items of account, to be charged with costs of proving.

Sec. 4.—The officers are each to keep in his office a book, to be called the "Reference Book," in which, upon the bringing in of any decree or order of refer-

Officers to keep Reference Book in office.

ence, is to be entered, the style of the cause, the name of the attorney prosecuting the reference, the date of the decree or order being brought in, and an entry of the proceedings then taken, and the officer shall enter therein from time to time the proceedings taken before him, and the directions which he may give in relation to the prosecution of the reference, or otherwise.

No state of facts, &c., to be brought in.

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

Accounting party to bring in account in form of Dr. & Cr.

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

When accounting party is sought to be further charged, notice to be given.

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

References to be proceeded with *de die in diem*.

Sec. 8.—Every reference appointed to be heard, as by section 2. of this order provided, is to be called on and proceeded with at the day and time so fixed, unless the officer shall in his discretion think fit to postpone the same; and in granting any application to postpone the hearing of such reference, he may make such order as to the costs consequent upon such postponement, as

he may think just. And so soon as he shall have entered upon the hearing of such reference, he is to proceed therewith to the conclusion without interruption, where that is practicable; and when any reference cannot be finished in a single day, he is to proceed *de die in diem* without any fresh appointment, unless he shall be of opinion that an adjournment other than *de die in diem* would be proper, and conducive to the ends of justice: and when any such adjournment shall be ordered, he is to note in his book the time and reason thereof; and in no case is any matter to be discontinued or adjourned for the mere purpose of proceeding with any other matter, unless such course shall have become necessary.

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

Officer to certify state of proceedings.

Sec. 10.—Where a party actually prosecuting a decree or order, does not proceed before the officer with due diligence, the officer is at liberty, upon the application of any other party interested, either as a party to the suit, or as one who has come in and established his claim before him under the decree or order, to commit to him the prosecution of such decree or order, and from thenceforth neither the party making default nor his attorney is to be at liberty to attend him as the prosecutor of such decree or order.

In case of unreasonable delay, carriage of decree may be committed to other person interested

Sec. 11.—Advertisements for creditors are to appoint a day and hour at which creditors are to come in and present and prove their claims; for this purpose no state of facts shall be necessary, but the claims are to be duly verified by affidavit. At the time and place named in such advertisement, the officer is to proceed

Advertisements for creditors—whose claims to be proved by affidavit.
Proceedings thereon.

Costs of, may or may not be allowed to creditors.

on the claims brought in before him without further notice, and may examine any parties as witnesses in relation thereto at such time or thereafter, as he may see fit; and he is to allow or disallow or adjourn the same, as to him may seem just. The costs of proving such claims are, in the discretion of the officer, to be allowed to the creditors proving the same, and added to their debts respectively, or to be disallowed. And in case of their being allowed, they may be allowed in gross, in place of taxed costs.

Officers' reports, how to be made.

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

In taking accounts in officer's office, what course he may pursue.

Sec. 13.—In the taking of accounts in the officer's office, it shall be within his cognizance to take the same with rests or otherwise; to take account of rents and profits received, or which, but for wilful neglect or default, might have been received; to set occupation rent; to take into account necessary repairs and lasting improvements, and costs and other expenses properly incurred otherwise, or claimed so to be; and generally, in the taking of accounts, to inquire and adjudge as to all matters relating thereto, as fully as if the same had been specifically referred; subject, nevertheless, to the revision of the judge upon appeal from the report. And it shall not be necessary to the taking of such accounts, that any of the matters aforesaid should have been stated in the pleadings, or that evidence thereof should have been given before the decree or order of reference, or that such decree or order should contain any specific direction in respect thereof.

Where not stated in the pleadings.

Under order of reference, foreign commission may issue.

Sec. 14.—Under any order of reference witnesses may be examined before any examiner of the Court of

Chancery; and upon the certificate of the officer to whom the reference is made foreign commissions may issue for the examination of witnesses without the jurisdiction of the court, the officer is to be at liberty to cause parties to be examined, and to produce books, papers and writings as he shall think fit, and to determine what books, papers and writings are to be produced, and when and how long they are to be left in his office; or, in case he shall not deem it necessary that such books, papers or writings should be left or deposited in his office, then he may give directions for the inspection thereof by the parties requiring the same, at such time and in such manner as he shall deem expedient. He is also to be at liberty to cause advertisements for creditors, and if he shall think it necessary, Creditors advertised for. but not otherwise, for heirs or next of kin, or other unascertained persons, and the representatives of such as may be dead to be published, as the circumstances of the case may require; and in such advertisements to appoint a time within which such persons are to come in and prove their claims, and within which time, unless they so come in, they are to be excluded from the benefit of the decree. And in taking any account *of a deceased's personal estate, under any order of reference*, he is to inquire and state to the judge, what, if any, of the deceased's personal estate is outstanding or undisposed of; and is also to compute interest on the deceased's debts from the date of the decree, and on legacies from the end of one year after the deceased's death, unless any other time of payment is directed by the will; and under any order whereby any property is ordered to be sold, the same is to be sold to the best purchaser that can be got for the same, and either in one lot or in parcels, as the officer shall direct; and all proper parties are to join therein as the officer shall direct. And under every order whereby the delivery of deeds is ordered, or the execution of conveyances is directed, the officer is to give directions as Without special directions. to the delivery of such deeds, and to settle conveyances

In taking account of personal estate of a deceased person, what inquiries officer may make

where the parties differ, and to give directions as to the parties thereto, and the execution thereof; and for the special purposes herein enumerated no special order shall be necessary.

May direct copy of decree to be served on persons interested, not parties-- effect of.

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

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

When hearing before officer completed, how he is to proceed.

Sec. 16.—So soon as the hearing of any matter pending before the officer shall have been completed, he shall so inform the parties to the reference then in attendance, and shall make a note to that effect in his book, and after such entry no further evidence shall be received or proceedings had, without his special permission; but he shall proceed to prepare his report or certificate without further appointment, unless he shall see fit to make an appointment to settle the same, which shall in such case be served on the parties as he shall direct. So soon as the report or certificate shall have been prepared, it shall be delivered out to the party prosecuting the reference, or in case he shall decline to take the same, then, in the discretion of the officer, to any other party applying therefor, and a common attendance shall be allowed to the party taking the same.

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

Reports become absolute in 10 days, without order.

Appeal may be made within 10 days.

Sec. 18.—Where accounts are directed to be taken, or inquires to be made, by any decree or order, each direction is to be numbered, so that, as far as may be, each distinct account and inquiry may be designated by a number; and such order may be in the form set forth in schedule G., with such variation as the circumstances of the case may require.

Directions in decree to be numbered.

Sec. 19.—When the judge shall in his discretion think fit that such inquiries be made or accounts taken before himself, he may give such special directions, if any, as he may think fit, as to the mode in which the account is to be taken or vouched; and in cases where he shall think fit so to do, he may direct that in taking the accounts the books of account, in which the accounts required to be taken have been kept, or any of them, shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

Inquiries made, or accounts taken, before judge.

Sec. 20.—An accounting party is to bring in his account in the form of debtor and creditor, and verify the same by affidavit, unless the judge shall otherwise

Accounts to be brought in form of Dr. & Cr.

direct. The items on each side of the account are to be numbered consecutively, and the account is to be referred to by the affidavit as an exhibit, and not to be annexed thereto, and is to be left at the judges' chambers.

And mode of proceeding thereon. Sec. 21.—Any party seeking to charge any accounting party beyond what he has by his account admitted to have received, is to give notice thereof to the accounting party, stating, as far as he is able, the amount sought to be charged, and the particulars thereof, in a short and succinct manner.

Sec. 22.—In the taking of accounts before the judge he is to be at liberty to give such direction, as to the mode of proceeding, as to parties, as to costs and otherwise, as he may see fit, and as to him may appear to be just; and in points as to which he may give no direction the mode of proceeding is to be the same, *mutatis mutandis*, as upon a reference.

SALES OF PROPERTY UNDER THE DIRECTION OF THE JUDGE.

Sales under decree or order.

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

- (1.) No copy of the decree or order, or any part thereof, is to be brought before the judge, or into the master's, deputy-master's or clerk's office, but the original decree or order is to be used, unless the judge or officer require such copy.
- (2.) An appointment is to be obtained from the judge or officer, and served upon all necessary parties.
- (3.) At the time appointed thereby, the party having the conduct of the sale is to bring before the judge or officer a draft advertisement, but no particulars or conditions of sale, or any draft or copy thereof.

- (4.) Such draft advertisement is to contain the following particulars, viz. :—1st. The style of the cause : 2nd. That the sale is in pursuance of the order or decree of the judge ; 3rd. The time and place of sale ; 4th. A short and true description of the property to be sold ; 5th. The manner in which the property is to be sold, whether in one lot or several, and if in several, in how many, and what lots ; 6th. What proportion of the purchase money is to be paid down by way of deposit, and at what time or times, and whether with or without interest the residue of such purchase money is to be paid ; 7th. Any particular or particulars in which the proposed conditions of sale differ from the standing conditions.
- (5.) At the time named in such appointment, the judge or officer is, in the presence of all parties served, or of such of them as attend to settle such advertisement, to fix the time and place of sale, to name an auctioneer, where one is to be employed, and to make every other necessary arrangement preparatory to the sale, so that nothing may remain to be done but to insert the advertisement ; and all the before-mentioned matters must be done at one meeting—namely, upon the return of the appointment, where it is practicable ; and no adjournment of such meeting is to take place, and no new meeting is to be appointed for the aforesaid purposes, unless it is unavoidable.
- (6.) The advertisement is to be inserted by the party conducting the sale, at such times and in such manner as the judge or officer shall have appointed at the meeting before mentioned.
- (7.) The judge or officer may fix an upset price or reserved bidding, where it is thought expedient, ^{Upset price may be fixed.}

Advertisements
of sale.

without further order; but this must be done at the meeting before mentioned, and it must be notified in the conditions of sale; the officer is to conduct the sale, where no auctioneer is employed; the deposit is to be paid to the vendor, if present, or if not, to his solicitor, at the time of sale, and is to be forthwith paid by him into court; biddings need not be in writing, and all parties, except the one having the conduct of the sale, may bid thereat, provided it be notified in the conditions of sale; a written agreement is to be signed by the purchaser at the time of sale; after the sale is concluded, the auctioneer, where one is employed, is to make the usual affidavit according to the practice of the Court of Chancery; and where no auctioneer is employed, the officer is to certify to the judge to the same effect, but is to make no report allowing the purchaser in any case.

Contract to be signed by purchaser.

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

(Purchaser's signature)

"Witness."

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

After 10 days, sale confirmed.

- (9.) The signed contract, with the printed copy of particulars, and affidavit or certificate annexed as aforesaid, is to be filed by the vendor's attorney; and if such sale is not objected to within ten days

from the time of such filing, it is thenceforth to stand absolutely confirmed.

- (10.) Such sale must be objected to by motion to the judge to set aside the same; and notice of such motion must be served upon the purchaser and the other parties to the cause.
- (11.) At any time after the confirmation of the sale, the purchaser may pay his purchase money and interest, or the balance thereof, into court, without further order, but with the privity of the clerk, and upon notice to the party having the conduct of the sale; and shall thereupon be entitled to be let into possession of the estate, and may then proceed, in the usual way, to obtain possession thereof; or, if such possession be wrongfully withheld from him, may, at his own expense, obtain an order against the party in possession for the delivery thereof to him. Purchaser may then pay money into court.
- (12.) When an inquiry into title has been directed by the judge, the vendor is to deliver an abstract of the title to the purchaser; and if the purchaser does not object to the title, and obtain and serve an appointment to consider the same, within ten days after the delivery of such abstract, he is to be deemed to have accepted such title. At the time of serving the appointment the purchaser must deliver to the vendor a written notice of the objections to the title; at the time appointed a duplicate of such notice is to be brought into the judges' chambers by the objecting party, and such objections are to be argued before the judge, who is to allow or disallow such objections. Mode of proceeding when inquiry into title directed.
- (13.) The standing conditions of sale are to be those set forth in schedule H. attached to these orders.

XXXVII.—The judge, in any stage of the cause, and the master, deputy-master or clerk, upon any

Judge, master,
or clerk, may
obtain assistance
of accountants,
&c.

inquiry or taking of account before him, may obtain the assistance of accountants, merchants, engineers, actuaries or other scientific persons, in such way as he may think fit, the better to enable him to determine any matter in issue in any cause or proceeding, and may act on the certificate of such persons.

EVIDENCE ON CLAIM *PRO INTERESSE SUO*.

Pro interesse suo.

XXXVIII.—Any person who, according to the practice of the Court of Chancery previous to the 6th day of June 1853, might have moved to be examined *pro interesse suo*, may apply to the judge, upon motion, for such relief as he may think himself entitled to.

Sec. 2.—Motions under this order are to be governed by the practice prescribed by the XIII order, in relation to motions for a decree.

How proceeded
with.

Sec. 3.—On hearing the motion, the judge, in his discretion, may either grant or refuse the motion, or may give such directions for the examination of parties or witnesses, or for the making further inquiries, or for the institution of any suit or action, as the circumstances of the case may require.

Sec. 4.—When it can be made to appear to the judge that it would be conducive to the ends of justice to permit a notice for such purpose to be served for some day earlier than that prescribed by the XII. order, leave may be obtained for that purpose, upon an *ex parte* application to the judge in the manner prescribed by the XIV. order.

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

Decree to admin-
ister estate may
be made without
claim filed.

XXXIX.—Any person claiming to be a creditor, or a specific, pecuniary or residuary legatee, or the

next of kin, or the heir, or a devisee, interested under the will of any deceased person, may apply to the judge upon motion, without claim filed, or any other preliminary proceeding, for an order for the administration of the estate, real and personal, of such deceased person.

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

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

How obtained,
and proceedings
thereon.

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

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

extend to applications by an executor or administrator under the present section.

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

INJUNCTIONS TO STAY WASTE, &c.

Injunctions may be granted. XL.—The judge may, in his discretion, grant such injunction *ex parte*, or upon notice, and may, in a proper case, direct notice to be served for such day as he may think proper, and order in the meantime an *interim* injunction.

Sec. 2.—The injunction may be in the form set forth in schedule K., and there is to be a notice or memorandum in the margin thereof to the effect set forth in the same schedule.

PROCESS FOR ENFORCING DECREE OR ORDER.

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

further order, to a commission of sequestration against the estate and effects of the disobedient party.

Sec. 2.—Commissions of sequestration are to be directed to the sheriff, unless some good reason exists to the contrary.

Sec. 3.—Every order or decree, requiring any party to do any act thereby ordered, shall state the time after service of the decree or order within which the act is to be done, and upon the copy of the order or decree which shall be served upon the party required to obey the same there shall be endorsed a memorandum, in the words, or to the effect following—namely, “If you, the within named (here insert the name of the party) neglect to obey this order or decree by the time therein limited, you will be liable to be arrested by the sheriff, and you will also be liable to have your estate sequestered, for the purpose of compelling you to obey the same order or decree, without further notice.”

Sec. 4.—The party prosecuting any decree or order for the delivery of possession, upon filing with the clerk an affidavit of the service of the same, and of non-compliance therewith, shall be entitled, without further order, to a writ of assistance.

Sec. 5.—Every person not being a party in any cause, who has obtained any order, or in whose favor an order has been made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the cause; and every person not being a party in any cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such order as if he were a party to the cause.

Sec. 6.—Orders and decrees for the payment of money may be enforced in the same manner as any

judgment of a County Court, on the common law side of such court.

COMPUTATION OF TIME.

Computation of time.

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

Months: lunar months.

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

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

Sec. 4.—Where, by these orders, a time is limited for making an application to the judge, any time during which a party is prevented by the absence, on circuit, of the judge, from making such application, is not to be reckoned against him in computing such time.

REMOVAL OF SUIT INTO COURT OF CHANCERY.

XLIII.—The application for the removal of a cause into the Court of Chancery is to be made by motion in chambers to one of the judges of the said court; and

in case such judge shall be of opinion that any pleadings, documents, or evidence should be transmitted from the County Court to the Court of Chancery for the purpose of hearing and determining such application, he is to direct the same; and such pleadings, documents or evidence are to be transmitted accordingly.

How suits removed from County Court into Court of Chancery.

Sec. 2.—Upon making such application, the party making the same shall file in the Court of Chancery an affidavit in the form or to the effect set forth in schedule L.

Sec. 3.—The affidavits and other papers in relation to such application shall be intituled as follows: “In Chancery, in the matter of the suit of A.B. against C. D., in the County Court of the county of——.”

Sec. 4.—It shall not be competent for any plaintiff by whom such suit has been instituted to apply for the removal of the same into the Court of Chancery.

Plaintiff cannot remove.

APPEAL.

XLIV.—Any party desiring to appeal from any decree or order shall, within four weeks from the day on which such decree or order shall be pronounced, file in the clerk’s office a bond, with an affidavit of the due execution thereof, together with an affidavit of justification by the sureties in such bond, and shall serve upon the opposite party, his attorney or agent, a notice to the following effect: “The plaintiff (or defendant, as the case may be) intends to appeal from the decree (or order) pronounced in this cause on or about the day of last, and has filed with the clerk of the County Court a bond for the due prosecution of such appeal, with an affidavit of justification by the sureties thereto.”

Appeals—how made.

Security to be given.

Sec. 2.—The security to be given on appeals shall, unless otherwise specially ordered by the judge of the County Court, be by bond to the respondent in the sum of £20, which bond shall be executed by the appellant or appellants, or one of them, and by two sufficient sureties (or if the appellants or appellant be absent from Upper Canada, then by three sufficient sureties), and the condition thereof shall be to the effect that the appellant shall and will effectually prosecute his appeal, and pay such costs and damages as shall be awarded in case the decree or order appealed from shall be affirmed or in part affirmed. The bond may be in the form set forth in schedule M.

Sureties to justify

Sec. 3.—The parties to such bond as sureties shall by affidavit each make oath that he is a resident householder or freeholder in Upper Canada, and worth the sum mentioned in such bond over and above what will pay and satisfy all his debts.

Ten days allowed for objection to bond.

Sec. 4.—Such bond shall stand allowed, unless the respondent shall, within ten days after service of the notice required by the first section of this order, move the judge to disallow the same.

When appeal to be argued.

Sec. 5.—The petition of appeal shall be filed in the office of the registrar of the Court of Chancery within five weeks from the day on which the decree or order appealed from shall have been pronounced, and a copy thereof, together with an appointment for the hearing of the appeal, to be obtained from the Court of Chancery or a judge thereof, is to be served upon the respondent, his attorney or agent, at least three weeks before the time appointed for the hearing of the appeal; the time to be appointed for the hearing of the appeal is to be not more than five weeks from the day of filing the petition of appeal, unless the court or judge making such appointment shall think proper to appoint a more

distant time, under the circumstances. The petition of appeal shall be in the form or to the effect set forth in schedule N.

Sec 6.—The appeal and the perfecting the security thereupon shall stay proceedings in the court appealed from in the following cases, upon the terms provided in respect thereof, that is to say :

In what cases appeal and perfecting the security will stay proceedings in court below.

- (1.) When the appeal is from an order or decree directing the payment of money, unless the party appellant shall have further given security to the satisfaction of the judge that if the decree or order or any part thereof be affirmed the appellant will pay the amount directed to be paid by the decree or order, or the part of such amount as to which the same shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant on the appeal.
- (2.) Where the decree or order appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment or decree shall not be stayed by the perfecting of the security hereinbefore firstly required, unless the things directed to be assigned or delivered be brought before the judge or placed in the custody of such officer or receiver as the judge shall appoint ; or, unless security be given to the satisfaction of the judge, and in such sum as the judge shall direct, that the appellant will obey the order of the Court of Chancery on the appeal.
- (3.) Where the decree or order appealed from directs the execution of a conveyance or other instrument, the execution of the order or decree shall not be stayed by the appeal until the instrument shall be executed and deposited with the proper officer of the County Court, to abide the judgment of the Court of Chancery.

- (4.) Where the decree or order appealed from directs the sale or delivery of possession of real property or chattels real, the execution of the same shall not be stayed, unless proper security be entered into to the satisfaction of the judge, that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon; and that if the decree or order be affirmed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, the amount of which said security shall be fixed by the said judge.
- (5.) When the decree or order is for the sale of property, and the payment of any deficiency arising upon the sale, the security shall also provide for the payment of such deficiency.

In the cases above provided for, proceedings in the County Court shall not be stayed except upon the order of the judge, which he may grant *ex parte* or upon notice, as he may see fit.

In other cases proceedings are not to be stayed except by order of the Court of Chancery or a judge thereof, to be applied for by motion, and to be granted by such court or judge *ex parte* or upon notice, and upon such terms as such court or judge may think proper.

Sec. 6.—Upon the perfecting of the security for the appeal, it shall be the duty of the County Court judge, at the instance and at the expense of the appellant, to cause the pleadings, evidence and documents filed or deposited in his court, to be transmitted to the registrar of the Court of Chancery by mail or otherwise, as he may think expedient, provided that if the parties consent that any documents be not sent to the

Court of Chancery as being not material to the matter appealed, it shall not be his duty to transmit the same; and in case he shall be clearly of opinion that certain documents are not material to the matter appealed, and that for any reason it is inexpedient to transmit the same, he may, instead thereof, certify his reasons for not transmitting the same: unless documents are retained for either of the reasons above set forth, the judge is to certify to his sending all the pleadings, papers, evidence and documents filed and deposited in his court.

XLV.—The foregoing orders are not to affect the course of proceeding pointed out in the County Court Equity Extension Act for the conduct of suits in County Courts, or in relation to the removal of causes therefrom to the Court of Chancery, or in relation to the appeals from such County Courts or otherwise, except in so far as the provisions of the said act may be inconsistent with the said orders.

These orders not to affect the course of proceeding as pointed out by statute, unless inconsistent.

Sec. 2.—In any matters not provided for by the said act or the foregoing orders the course of proceeding shall be the same as in the Court of Chancery for Upper Canada.

Reference to practice of Court of Chancery, when not provided for.

XLVI.—It shall be competent to the judge in any case in which he shall deem it right so to do to extend the time by these orders limited for the doing of any act or taking any proceeding in any suit in the said court, and also upon a proper case made to allow any act to be done or any proceeding to be taken, notwithstanding the lapse of the time by these orders limited in respect thereof, upon such terms as he may deem just.

Judge may extend time limited by orders for doing any act.

XLVII. The clerk shall keep, in his office, a book to be called "The Order Book"—in which shall be entered at length all orders, decrees, or decretal

Order book to be kept by clerk.

orders, made in the progress of any cause or matter pending in such court, on the equity side thereof.

INTERPRETATION.

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

- (1.) Words importing the singular number include the plural number, and words importing the plural number include the singular.
- (2.) Words importing the masculine gender include females.
- (3.) The word “person” or “party” includes a body politic or corporate.
- (4.) The word “affidavit” includes affirmation.
- (5.) The word “legacy” includes an annuity, and a specific as well as a pecuniary legacy.
- (6.) The word “legatee” includes a person interested in a legacy.
- (7.) The expression “residuary legatee” includes a person interested in the residue.
- (8.) The word “order” includes decree and decretal order.
- (9.) The word “county” imports the county or united counties in the County Court of which the cause may be pending.
- (10.) The words “County Court” import the County Court of the county or united counties in which the cause may be pending.

(11.) The word "judge" imports the judge of such County Court.

(12.) The word "clerk" imports the clerk of such County Court.

(13.) The word "schedule," with a letter following such word, refers to the schedule designated by such letter following these orders.

WHEN THESE ORDERS TO COME INTO OPERATION.

XLIX.—These orders are to come into operation and take effect on the first day of February 1854. When these orders come into operation.

WM. HUME BLAKE, *Chancellor.*

J. G. P. ESTEN, *V. C.*

J. G. SPRAGGE, *V. C.*

SCHEDULE A.

FORM OF CLAIMS.

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

In the County Court of the County of _____

_____ Equity side.

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

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

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

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

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

In the County Court of the County of ———

———— Equity side.

A. B. Plaintiff.

and

C. D. Defendant.

A. B., of the township of ——— in the said county, states that in ——— term, in the year ———, the said A. B. (or G. H., late of ——— deceased, of whom the said A. B. is the executor, or administrator or assignee, under an assignment, dated, &c., and made, &c., or of whose executor or administrator, or administrator de bonis non, the said A. B. is the assignee under, &c.,*) recovered a judgment in the court of ——— against C. D., the defendant herein named, for the sum of ——— in an action heretofore brought against the said C. D., which judgment was duly registered in the registry office of the county of ——— on the ——— day of ———, at which time the said C. D. had divers lands, tenements and hereditaments in the said county; and that the said C. D. is now the owner of the same lands, tenements and hereditaments, subject to the said

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

judgment. The said A. B., therefore, claims to be paid the amount of the said judgment, together with interest thereon, and his costs of this suit; or in default thereof that the said lands, tenements and hereditaments, or a competent part thereof, may be sold for the satisfaction thereof, and the proceeds of such sale applied accordingly; and for that purpose that all proper directions be given and accounts taken. And the said A. B. avers that the said defendant resides in the county of _____.

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

In the County Court of the County of _____
 _____ Equity side.

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

A. B., of the township of _____ in the said county, states that under and by virtue of an indenture (*or other document*), dated the _____ day of _____, and made between (*parties*), (*and the assurance hereinafter mentioned, that is to say, an indenture dated the _____ day of _____ the will of _____ dated the _____ day of _____*) the said A. B. is entitled to the equity of redemption of certain property therein comprised, being (*here describe the property shortly*) which was originally mortgaged (*or pledged*) for securing the sum of £ _____ and interest, and that C. D., the defendant hereto, is now, by virtue of the said indenture, dated the _____ day of _____ (*and of subsequent assurances*), the mortgagee of the said property (*or holder of the said lien*), and entitled to the principal money and interest remaining due upon the mortgage (*or lien*); and the said A. B. believes that the amount of the principal money and interest now due upon the said mortgage (*or lien*) is the sum of £ _____ or thereabouts; and he has made an application to the said C. D. to receive the said sum of £ _____ and any costs justly payable to

him, and to reconvey to the said A. B. the mortgaged property (*or property subject to the said lien*) upon payment thereof, and of any costs due to him in respect of this security; but that the said C. D. has not so done. The said A. B. therefore prays that he may be let in to redeem the said mortgaged property (*or property subject to the said lien*), and that the same may be reconveyed (*or delivered up*) to him upon payment of the principal money and interest, and costs due and owing upon the said mortgage (*or lien*), and for that purpose that all proper directions may be given and accounts taken; and the said A. B. avers that the said defendant resides in the county of A.

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

In the County Court of the County of _____
 _____ Equity side.

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

A. B., of the township of _____ in the said county, states, that from the _____ day of _____ down to the _____ day of _____ he and C. D., the defendant hereinafter named, carried on the business of _____ in co-partnership, under certain articles of co-partnership, dated the _____ day of _____, and made between (*parties*), or under a verbal agreement, made between the said A. B. and the said C. D., or through their respective agents (*E. F. and G. H.*) on the _____ day of _____, and he says that the said co-partnership was dissolved (*or expired, as the case may be,*) on the _____ day of _____. The said A. B. therefore prays that an account of the partnership dealings and transactions between the said A. B. and the said C. D. may be taken, and the affairs and business of the said partnership wound up and settled

under the direction of this court, and for that purpose that all proper directions may be given and accounts taken. And the said A. B. avers that the joint stock or capital of the said co-partnership hath not at any time exceeded the sum of £200. And the said A. B. avers that the said defendant resides in the said county of A.

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

In the County Court of the County of ———

———— Equity side.

Between A. B..... Plaintiff.

and

C. D..... Defendant.

A. B., of the township of ——— in the said county, states, that by agreement dated the ——— day of ——— and signed by C. D., the defendant hereinafter named, the said C. D., contracted to buy of the said A. B. (*or to sell to him*) certain freehold property (*or leasehold or other property, as the case may be,*) therein described or referred to, for the sum of £ ———; and that he has made or caused to be made to the said C. D., an application specifically to perform the said agreement on his part, but that he has not done so; the said A. B. therefore prays that the said agreement may be specifically performed, and for that purpose that all proper directions may be given; he, the said A. B., hereby offering to perform the said agreement specifically on his part. And the said A. B. avers that the present value of the said property does not, in his judgment and belief, exceed the sum of £50; and further, that the said defendant resides in the said county of A.

6. Claim for the specific performance of a parol agreement partly performed.

In the County Court of the County of _____
 _____ Equity side.

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

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

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

value of the said property does not, in his judgment and belief, exceed the sum of £50; and further, that the said defendant resides in the said county of A.

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

In the County Court of the County of _____

_____ Equity side.

A. B., of the township of _____ in the said county _____ states that under an indenture dated the _____ day of _____, and made between (*parties*), he is entitled to an equitable estate or interest in certain property therein described or referred to; and that C. D., the defendant hereinafter named, is a trustee for him of such property; and that being desirous to prosecute an action at law against _____ in respect of such property, he has made or caused to be made an application to the said defendant to allow him to bring such action in his name, and has offered to indemnify him against the costs of such action, but that the said defendant has refused or neglected to allow his name to be used for that purpose. The said A. B. therefore claims that he may be allowed to prosecute the said action in the name of the said defendant, he hereby offering to indemnify him against the costs of such action. And the said A. B. avers that the subject matter of the said action does not exceed in value the sum of £50; and further, that the said defendant resides in the said county of _____.

SCHEDULE B.

FORM OF ENDORSEMENT ON CLAIM.

Your answer is to be filed at the office of the clerk of the County Court of the county of _____ at the city (*or town*) of _____ in the said county _____. You are to answer within ten days from the service hereof.

If you fail to answer within the time above limited, you are subject to have such decree or order made against you as the court may think just, upon the plaintiff's own shewing,

and you will not be entitled to any further notice of the future proceedings in the cause.

NOTE.—This claim is filed by Messrs. A. B. and C. D. of the city (or town) of _____ (and where the party who filed the claim is agent add, agents of Messrs. E. F. and G. H., of _____.)

Where the plaintiff sues in person his place of residence is to be stated; and where that is more than three miles from the office where the claim is filed, an address for service must be designated in accordance with the provisions of section 2, order XXVIII.

SCHEDULE C.

FORM OF ANSWER.

In the County Court of the County of _____
 _____ Equity side.

A. B. Plaintiff.

and

C. D. & E. F. Defendants.

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

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

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

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

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

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

ENDORSEMENT.

This answer is filed by Messrs. A. B. and C. D. of the city (or town) of _____ (and where the party who filed the

answer is agent, add, agents of Messrs. E. F. and G. H. of
 _____.)

Where the party defends in person, the answer must be endorsed in conformity with sec. 2, order XXVIII.

FORM OF JURAT TO ANSWER.

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

IN THE CASE OF ILLITERATE PERSONS.

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

SCHEDULE D.

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

In the County Court of the County of _____
 _____ Equity side.

A. B..... Plaintiff.

and

C. D..... Defendant.

I _____ of _____ make oath and say as follows :

(1.) I say I have in my possession or power the documents relating to the matters in question in this suit, set

forth in the first and second parts of the first schedule hereto annexed.

- (2.) I object to produce the documents set forth in the second part of the said first schedule hereto.
- (3.) State upon what ground the objection is made, and verify the facts 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, (*state when.*)
- (6.) *State what has become of the last mentioned documents, and in whose possession they now are.*)
- (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 attorneys or agents, or in the possession, custody or power of any other person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the first and second schedules hereto.

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

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

SCHEDULE E.

JURAT OF AFFIDAVIT.

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

SCHEDULE F.

NOTICE TO BE ENDORSED ON AN OFFICE COPY OF A DECREE UNDER SEC. 15, ORDER XXXV.

To Mr. _____, (*the person upon whom service has been directed.*)

(*Set out the Order.*)

If you wish to apply to discharge the foregoing order, or to add to or vary the decree, you must do so within fourteen days from the service hereof. (*When the order fixes a time for the further proceedings, add*) And if you fail to attend at the time and place appointed, either in person or by your solicitor, such order will be made and proceedings taken in your absence as the judge may think just and expedient; and you will be bound by the same, 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 order.

SCHEDULE G.

The court doth order that the following accounts and enquires be taken and made, that is to say :

1st. An account of the personal estate not specifically bequeathed 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.

5th. An inquiry, 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, be applied in payment of his debts

and funeral expenses, in a due course of administration, and then in payment of his legacies.

And it is ordered that the following further accounts and inquiries be taken and made, that is to say:

6th. An inquiry what real estate the said testator was seised of or intitled 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.

And it is ordered, that the said testator's real estate be sold. And it is ordered, that the further consideration of this case be adjourned, and any of the parties are to be at liberty to apply.

SCHEDULE H, CONDITIONS OF SALE.

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

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

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

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

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

6th. If the purchaser shall fail to comply with the conditions aforesaid, or any of them, the deposit and all other

payments made thereon shall be forfeited, and the premises may be resold, and the deficiency, if any, by such resale, together with all charges attending the same or occasioned by the defaulter, shall be made good by the defaulter.

SCHEDULE I.

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

In the County Court of the County of _____
_____ Equity side.

In the matter of John Thomas, late of the township of
_____ in the said county, deceased.

Joseph Wilson,
against
Thomas Cochrane.

To Thomas Cochrane, executor of John Thomas, deceased.

Take notice, that Joseph Wilson, of the township of _____ in the said county, merchant (*or other proper description of the party*), who claims to be a creditor upon the estate of the above named John Thomas, will apply to the judge of the County Court of the County of _____ in the city (*or town*) of _____ on the _____ day of _____ at the hour of _____ for an order for the administration of the estate, real and personal, of the said John Thomas by the said court.

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

SCHEDULE K.

UPPER CANADA.

In the County Court of the County of _____
_____ Equity side.

Victoria by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith.

To C. D., of the township of _____, his servants, workmen and agents, greeting:

Whereas it has been represented to our judge of our County Court of the County of _____ on the part of A. B., of the

township of _____ in the said county, that you are committing waste (*or trespass, as the case may be*) in and upon certain property wherein the said A. B. is interested, as set forth in his certain claim and affidavit filed in our said County Court on behalf of the said A. B. We therefore, in consideration thereof, do strictly command you, the said C. D. 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 do absolutely desist and refrain from cutting down, removing or destroying any timber or other trees, growing or being upon lot No. _____ in the _____ concession of the township of _____ in the said county _____.

Witness E. F., Esquire, judge of our said County Court, this _____ day of _____ 185 , and in the _____ year of our reign.

Plaintiff's attorney.

This injunction will remain in force for one month from the date hereof, unless sooner dissolved on an application to the Court of Chancery at Toronto, but the injunction may be extended and the suit further prosecuted to judgment or otherwise in the said Court of Chancery.

SCHEDULE L.

In Chancery.

In the matter of the suit of

A. B.

v.

C. D.

in the County Court of the County of A.

I, A. B., of _____, the above named defendant, (*or attorney or agent of the above named defendant*) make oath and say, that (*state shortly the grounds upon which the removal of the cause is sought*), and further, that the removal of the said cause is not sought for the purpose of delay, or of increasing the expense of prosecuting the said suit, or for any vexatious or improper purpose whatever; but because in

my judgment and belief, such removal would be conducive to the ends of justice.

Sworn, &c.

SCHEDULE M.

BOND TO BE GIVEN BY APPELLANT.

Know all men by these presents, that we, A. B., of &c., C. D., of &c., and E. F., of &c., are jointly and severally held and firmly bound unto G. H., of &c., in the penal sum of £—— of lawful money of Canada, for which payment to be well and truly made, we bind ourselves, and each of us by himself, our and each of our heirs, executors and administrators firmly, by these presents, sealed with our seals, this —— day of ——.

Whereas (*the appellant*) alleges and complains that he is aggrieved by a certain decree (*or order*) pronounced by the judge of the County Court of the County of —— made on or about the —— day of —— last; wherefore he desires to appeal therefrom to the Court of Chancery.

Now the condition of this obligation is such, that if the said (*the appellant*) shall effectually prosecute his appeal and pay such costs and damages as shall be awarded in case the said decree (*or order*) shall be affirmed, then this obligation to be void, otherwise to remain in full force.

SCHEDULE N.

FORM OF PETITION OF APPEAL.

In hancery.

In the matter of the suit of

A. B.

v.

C. D.

in the County Court of the County of ——.

TO THE HONOURABLE THE JUDGES OF THE COURT OF
CHANCERY.

The humble petition of the above named (*appellant*), sheweth :

That a decree (*or order*) was lately, and on or about the —— day of —— last, pronounced by the judge of

the County Court aforesaid in the above named cause, whereby he feels aggrieved; and he hereby appeals therefrom, and humbly prays that the same may be reversed or varied, or that such other order or decree may be made in the premises as may be just.

And your petitioner will ever pray, &c.

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16 VICTORIA, CHAP. CXIX.

An Act to confer Equity Jurisdiction upon the several County Courts in Upper Canada, and for other purposes therein mentioned.

[Assented to 23d May, 1853.]

WHEREAS it is expedient to extend the jurisdiction of the several County Courts in Upper Canada to certain matters cognizable in the Court of Chancery of Upper Canada: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the jurisdiction of the said County Courts respectively shall extend to the several matters hereinafter enumerated, and that the said County Courts respectively shall possess the like power and authority in respect of the matters hereinafter enumerated as by law is now possessed by the Court of Chancery of Upper Canada.

II. *And be it enacted*, That it shall be lawful to and for any person seeking equitable relief, to enter (personally or by attorney) a claim against any person from whom such relief is sought, with the clerk of the County Court of the county within which such last mentioned person resides, in any of the following cases, that is to say:

1. A person entitled to an account of the dealings and transactions of a partnership (the joint stock or capital not having been over two hundred pounds,) dissolved or expired, seeking such account.

2. A creditor upon the estate of any deceased person, such creditor seeking payment of his debt (not exceeding

fifty pounds) out of the deceased's assets (not exceeding two hundred pounds.)

Legatees. 3. A legatee under the will of any deceased person, such legatee seeking payment or delivery of his legacy (not exceeding fifty pounds in amount or value) out of such deceased person's personal assets (not exceeding two hundred pounds.)

Residuary legatees. 4. A residuary legatee, or one of the residuary legatees of any such deceased person seeking an account of the residue and payment or appropriation of his share therein (the estate not exceeding two hundred pounds.)

Administration of personals. 5. An executor or administrator of any such deceased person seeking to have the personal estate (not exceeding two hundred pounds) of such deceased person, administered under the direction of the judge of the County Court for the county within which such executor or administrator resides.

Foreclosure of mortgages. 6. A legal or equitable mortgagee whose mortgage is created by some instrument in writing, or judgment creditor having duly registered his judgment, or person entitled to a lien for security for a debt, seeking foreclosure or sale or otherwise to enforce his security, where the sum claimed as due does not exceed fifty pounds.

Redemption of mortgages. 7. A person entitled to redeem any legal or equitable mortgage or any charge or lien, seeking to redeem the same, where the sum actually remaining due does not exceed fifty pounds.

Equitable relief generally. 8. Any person seeking equitable relief for, upon or by reason of any act, matter or thing whatsoever, where the subject matter involved, does not exceed the sum of fifty pounds.

Injunctions to restrain commission of waste. 9. Injunctions to restrain the committing of waste or trespass to property by unlawfully cutting, destroying or removing trees or timber, may be granted by the judge of any County Court, which injunction shall only remain in force

for a period of one month unless sooner dissolved on an application to the Court of Chancery; *Provided always*, that the power to grant such injunction shall not authorize ^{Proviso.} the prosecuting of the suit in the County Court, but the injunction may be extended and the suit further prosecuted to judgment or otherwise in the superior court, in the like manner as if the same had originated in that court.

III. *And be it enacted*, That such claim in the several ^{Form of claim.} cases enumerated above, may be similar in principle to the form set forth in Schedule A* to this act.

IV. *And be it enacted*, That upon entering such claim ^{Proceedings on the filing of claim.} with the clerk of a County Court, the same shall be numbered and filed by such clerk according to the order in which it shall be entered, and thereupon a summons, briefly stating the nature of the claim and bearing the number of the claim on the margin thereof, shall be issued under the seal of the court, requiring the person against whom such claim is made, on some day in the next ensuing term of such County Court, or (upon special order of the judge of the County Court,) on a day to be therein named, to appear before the judge of the said court, to shew cause, if he can, why such relief as is claimed by the plaintiff should not be had, or why such order as shall be just with reference to the claim shall not be made.

V. *And be it enacted*, That such writ of summons may be in the form or to the effect in that behalf set forth in ^{Form of writ of summons.} Schedule B* to this act, with such variations as circumstances may require, and shall be sealed with the seal of the court from which it issues, and that, when necessary, *alias* and *pluries* writs may be issued.

VI. *And be it enacted*, That a copy of the said writ of summons, to which shall be attached a certified copy of the ^{Copy of writ and claim to be served.} plaintiff's claim so entered as aforesaid, shall be served on the defendant ten days at least before the day appointed in the said writ of summons for showing cause.

* Schedules A. & B. are omitted, in consequence of the provisions of the orders rendering them inapplicable.

Hearing on claim; evidence, examination of parties, &c.

VII. *And be it enacted*, That at the time appointed for showing cause as aforesaid the defendant shall appear personally or by attorney, and show cause, if he can, (and if necessary by affidavit) why such relief as is claimed by the plaintiff should not be had against him; and each party may, on giving five clear days' notice in writing prior to any hearing of his intention so to do, examine the other party upon the matters relating to such claim; and the judge, on hearing the claim, and what the plaintiff alleges in support thereof, and such other evidence, whether oral, or written, or by affidavit, as he may produce in that behalf, and what may be alleged on the part of the defendant, and such evidence, whether oral or written or by affidavit as he may produce in that behalf, or on production of an affidavit that the writ of summons and copy of claim aforesaid have been duly and personally served on such defendant, may, if he shall think fit, make an order granting or refusing the relief claimed, or directing any accounts or inquiries to be taken or made, (such accounts or inquiries to be taken or made before the judge if he shall deem such course proper or expedient, or before the clerk of such court, at days or times to be appointed by the judge for that purpose,) or may direct such other proceedings to be had for the purpose of ascertaining the plaintiff's title to the relief claimed, or make such other order as according to the nature and circumstances of the case shall seem to be just and proper; and further, the judge may direct such persons or classes of persons, as he may think necessary or fit, to be summoned or ordered to appear as parties to such claim, or on any proceedings with reference to any account or inquiries directed to be taken or made, or otherwise; and all oral evidence given by any person before such judge relating to such claim, shall be upon the oath of the person giving the same, to be administered by or before said judge; and further, in default of the appearance of either of the parties, the said judge may make such order as to the payment of costs by the party in default, as to him may seem meet.

Order to be made.

Oral evidence to be on oath.

Defaults.

County judge to be the sole judge.

VIII. *And be it enacted*, That the said judge of the County Court shall be the sole judge in all actions brought in the

said County Courts respectively under the jurisdiction given by this act, and shall determine in a summary manner all questions of law or equity as well as of fact arising therein, unless the said judge shall think it proper to have any fact or facts controverted in the action tried by a jury, or either party shall apply to have such facts tried by a jury; and upon order made allowing a trial by jury, such trial shall take place at the then next ensuing sittings of such County Court, and be conducted in the same manner as other trials by jury in the said court are conducted; and the judge may, unless a new trial be moved for within ten days after verdict rendered, proceed to make such order and decree on the verdict of such jury as according to the nature and circumstances of the case shall seem just and proper.

Unless a jury be applied for to try the facts: as it may be.

New trial.

IX. *And be it enacted*, That the rules of decision in the said County Courts respectively, in respect to the matters aforesaid, shall be the same as govern the said Court of Chancery, (when not otherwise provided for by or under the authority of this act) so far as the same may be held to be applicable to a court of summary jurisdiction. And the said County Courts respectively shall possess full power and authority to enforce and compel obedience to their orders, judgments, and decrees, in respect to all and singular the matters hereinbefore and hereinafter set forth and contained; and that all sheriffs, gaolers, coroners, constables, and other peace officers, shall be aiding, assisting, and obeying the said County Courts respectively, in the exercise of their jurisdiction, when required by the County Court so to do.

Rules of decision to be as in Chancery.

Certain powers vested in the Court.

X. *And be it enacted*, That the judge of the said County Court may at any time, in furtherance of justice and on such terms as he may think proper, amend such claim so filed as aforesaid, and any and every proceeding relating thereto, by adding or striking out the name of any party, or a mistake in any other respect, or by inserting other allegations material to the case, or by conforming such claim or proceeding to the facts proved, where the amendments shall not change substantially the form of the action; and may also, in any

Judge may amend the claim in furtherance of justice.

stage of the proceedings, disregard any error or defect which shall not affect the substantial rights of the adverse party, and may make any order for granting time to the plaintiff or defendant to proceed in the prosecution or defence of his suit that to such judge may seem necessary for the ends of justice.

How orders
may be en-
forced.

XI. *And be it enacted*, That every order by the judge of the County Court, made upon the hearing of any such claim as aforesaid, or in respect to such claim and suit, or in respect to the matters hereinbefore or hereinafter mentioned, may be enforced in the same manner as any judgment or any order of a County Court is or may be enforced in the said County Court, under the existing provisions of law in relation to the said courts, so far as such provisions are applicable, or in such other manner as may be prescribed by rules to be made in the manner hereinafter mentioned.

Judge to
have the
same power
as Court of
Chancery to
order pro-
duction of
books, adver-
tisements,
&c.

XII. *And be it enacted*, That the judge, before or upon any hearing or trial, or upon taking any accounts or making any inquiries, shall have the same powers and authority to order the parties to produce books, papers and writings, as is possessed by the Court of Chancery, and may cause advertisements for creditors and next of kin, or other unascertained persons, and the representatives of such as may be dead, to be published in the usual forms or otherwise, as the circumstances may require; and in such advertisements, appoint a time within which such persons are to come in and prove their claims, and within which time, unless they so come in, they are to be excluded from the benefit of the order.

No order,
&c., to be
quashed for
want of form.

XIII. *And be it enacted*, That no order, direction, verdict, decree or judgment, or other proceeding made concerning any of the matters aforesaid, shall be reversed, quashed or vacated for want of form.

Summons,
when to be
served.

XIV. *And be it enacted*, That every summons (except the summons at the commencement of the action), order, notice or other proceedings, shall be served ten days at least before

the day on which the same is returnable, or the action thereunder intended, except where otherwise directed by the said judge.

XV. *And be it enacted*, That the costs in every action or proceeding brought or had under the authority of this act in the said County Courts respectively, shall be paid by or apportioned between the parties in such manner as the judge shall think fit, and that in default of any special directions the costs shall abide the event of the action or proceeding. Costs.

XVI. *And be it enacted*, That all affidavits to be used in the said County Courts respectively may be sworn before any judge or clerk of the said courts, or before any commissioner for taking affidavits in the superior courts at Toronto. Affidavits.

XVII. *And be it enacted*, That any claim as aforesaid entered in a County Court under the provisions of this act, shall be removable by either party into the Court of Chancery by order of the said court, to be obtained on a summary application by motion or petition supported by affidavit, of which reasonable notice shall be given to the opposite party, and the said order shall be made on such terms as to payment of costs, giving security in respect to the relief claimed and costs, or upon such other terms as to the said Court of Chancery shall seem reasonable, just and proper; but no claim shall be so removed as aforesaid, unless the said Court of Chancery shall be of opinion that the same is of such a nature as to render it proper that the same should be withdrawn from the jurisdiction of the said County Court, and disposed of in the said Court of Chancery. Claims may in certain cases be removed into Chancery.

XVIII. *And be it enacted*, That either party may appeal to the said Court of Chancery against any order or decree made by the judge in any County Court under the provisions of this act; and the said Court of Chancery shall make such order thereupon in respect to costs or otherwise, or for referring back the same matter to the judge before whom the same has been first heard, as shall be just and proper. Appeal given to Chancery.

Provided always, That before the County Court judge shall be called on to certify the said order or other matter appealed against to the said Court of Chancery, the party appealing shall enter into a recognizance, with sufficient bail to the satisfaction of the said judge, to pay the sum decreed in case no relief shall be had on such appeal, or to obey the said order (or as the case may be); and that when the party appealing appears by attorney, an affidavit shall be made by such attorney that the appeal is not intended for delay, as he believes, and that there is in his opinion probable cause for reversing the order or decree against which the appeal is made; and the said Court of Chancery shall specially make the necessary regulations for the practice to be observed in proceedings under this and the next preceding section.

Chancery may make regulations.

XIX. And in order that procedure under this act may be fully traced out, and from time to time be improved and rendered as simple, speedy and cheap as may be—*Be it enacted,* That it shall be the duty of the judges of the said Court of Chancery, and they are hereby authorized and empowered to frame such general rules and orders and all such forms as to them shall seem expedient, for and concerning the practice and proceedings in the said County Courts in relation to the powers conferred on such courts by this act, and for the execution of the orders and process under this act, and in relation to any of the provisions thereof as to which there may arise doubts; and from time to time to alter and amend such rules, orders and forms, and also the forms and mode of procedure prescribed by this act; and such rules, and orders and forms as shall be made and framed by the said judges or any two of them (of whom the Chancellor of Upper Canada shall be one), shall from and after a day to be named therein, be in force in every County Court in Upper Canada, and shall be of the same force and effect as if the same had been embodied in this or some other act of parliament.

Chancery to frame general Rules and orders for carrying this act into effect.

And may amend the same.

Their effect.

XX. *And be it enacted,* That there shall be payable on every proceeding for equitable relief or other proceeding

Fees payable to fee fund.

under this act in the said County Courts respectively, the fees which are set down for such proceeding respectively in the schedule to this act marked C, and that the clerks of the said County Courts respectively shall keep a separate account of such fees, and shall render an account to the Receiver General of fees in his county, and shall pay over the amount of such fees to such Receiver General, under the same liabilities, securities and conditions, and to be accounted for in like manner as the present general fee fund of the county, How to be accounted for, &c. and that the several provisions of the act passed in the eighth year of Her Majesty's reign and intituled, *An Act to amend, consolidate and reduce into one Act the several laws now in force, establishing or regulating the practice of District Courts in the several Districts of that part of this Province formerly Upper Canada*, in relation to the receiving, accounting for and paying over fees, and in relation to the responsibilities and duties of county treasurer and clerks, shall apply to the fees under this act as fully as if the said provisions were herein contained and re-enacted. s v. c. 13.

XXI. *And be it enacted*, That there shall be payable to the clerk of every County Court, and to the sheriff of every county respectively, the fees which are set down for such proceedings respectively in the schedule to this act annexed marked D, and that the scale of costs to be paid to attorneys and counsel in the said County Courts, as between party and party, for proceedings under this act, shall be according to schedule E to this act annexed. Other fees.

XXII. *And be it enacted*, That if any action or proceeding be commenced in the said Court of Chancery after this act shall come into force, for any cause or claim which might have been entered in a County Court under this act, no costs shall be taxed against the defendant in such action or proceeding, and the defendant, if he shall succeed in his action, shall be entitled of right to a decree against the plaintiff for his costs, as between attorney and client, unless the said Court of Chancery shall be of opinion that it was a fit cause or claim to be withdrawn from a County Court and entered in the said Court of Chancery. No costs to plaintiff proceeding in Chancery instead of under this act. Exception.

This act incorporated with other County Court acts.

XXIII. *And be it enacted*, That this act, and the several acts of Parliament now in force relating to County Courts, or affecting in any way their powers or practice, shall be read and construed as one act, as if the several provisions therein contained, not inconsistent with the provisions of this act, or inapplicable to an equitable jurisdiction, were repeated and re-enacted in this act.

Interpretation clause.

XXIV. *And be it enacted*, That in construing this act and the schedules thereto, the following words shall have the several meanings hereby assigned to them over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction, viz :
 The words "person" or "party" shall be understood to mean a body politic or corporate as well as an individual; and every word importing the singular number shall, when necessary to give full effect to the enactments herein contained, be understood to mean several persons or things as well as one person or thing; and every word importing the masculine gender shall, when necessary, be understood to mean a female as well as a male; and the word "affidavit" shall include affirmation, and the word "legacy" shall include an annuity and a specific as well as a pecuniary legacy; the word "legatee" shall include a person interested in a legacy; and the words "residuary legatee" shall include a person interested in the residue; and the word "County" shall include any two or more Counties united for judicial purposes.

Person.

Singular number.

Gender.

Affidavit.

Leg. cy."

Legatee, &c.

County.

Short Title of this act.

XXV. *And be it enacted*, That in citing this act in other acts of Parliament, and in legal instruments and other proceedings, it shall be sufficient to use the expression, "The County Courts Equity Extension Act."

Commencement of Act.

XXVI. *And be it enacted*, That this act shall commence and take effect on the Thirty-first day of December next after the passing hereof.

SCHEDULE C.

FEEES TO BE RECEIVED BY THE CLERK AND TO BELONG TO
AND TO BE PAID OVER TO THE FEE FUND.

Every claim filed.....	£0	1	3
Every Writ of Summons, or other Writ under the Seal of the Court	0	1	3
Every order or application for order.....	0	1	3
Every hearing	0	5	0
To be increased in the discretion of the Judge to a sum not exceeding	0	10	0
Every oath administered in court	0	1	0
Every certificate under seal of Court.....	0	1	3
Every sitting in taking an account, or other sittings....	0	5	0

SCHEDULE D.

FEEES TO THE CLERK.

Receiving and filing claim.. ..	0	0	4
Every writ of summons, or other writ.....	0	1	0
Filing every separate paper.....	0	0	3
Preparing order.....	0	1	0
And for every folio over three.....	0	0	4
Taking any affidavit other than oath in open court.....	0	1	0
Every search.....	0	0	6
Recording every final order or decree.....	0	1	0
Other orders	0	0	6
Every certificate not exceeding three folios.....	0	1	0
Every special writ, writ of execution or other special document (per folio).....	0	0	8
Taxing costs	0	1	0
Every attendance on reference.....	0	5	0
Every verdict taken.....	0	2	6

FEEES TO THE SHERIFF.

Every summons or order served, including return.....	0	2	6
Every jury sworn.....	0	2	6
Every execution or judgment order received.....	0	1	3
Return thereof, money made, or party arrested.....	0	1	3
Necessary mileage, actually travelled, per mile	0	0	4
And for other services, a sum to be fixed by order of the Judge not exceeding the present allowance by Statute for similar services.			

SCHEDULE E.

ATTORNEY AND SOLICITOR.

Instructions to sue or defend.....	0	2	6
Drawing claim	0	2	6

Fee on every writ or order	0	1	3
Common affidavits.....	0	1	0
Common notice or appointment.....	0	1	0
Every necessary attendance.....	0	0	6
Special affidavits and other special documents, per folio	0	0	8
Fee on Common motions.....	0	1	3
Copy of every paper when necessary, half the amount allowed for the original.			
Bill of costs.....	0	1	0
Postages actually paid.			

C O U N S E L .

Fee on special applications, arguments, hearings, &c....	0	10	0
To be increased at the discretion of the Judge to....	1	5	0