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ORDERS

FOR

THE REGULATION

OF THE

PRACTICE AND PROCEEDINGS

OF

THE COURT OF CHANCERY

OF UPPER CANADA.

FROM THE ESTABLISHMENT OF THE COURT,
IN MARCH, 1837.

TORONTO:
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1846.

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Wm. D. Reid

ORDERS IN CHANCERY.

1st JUNE, 1837.

HIS HONOUR THE VICE CHANCELLOR OF UPPER CANADA, doth hereby order and direct in manner following, that is to say :

Subpœna returnable immediately.

I. That every Plaintiff shall, on filing a Bill, be entitled to a Subpœna, returnable immediately; but such Subpœna is to be without prejudice to the Defendant's right, if residing within the Home District, to Eight days, and if residing in any of the other Districts, to Fourteen days from the service thereof, to enter his appearance: and after appearance the answer shall be put in, where the Defendant resides in the Home District, within Eight days, and in other cases, within Fourteen days after his appearance; unless, in either case, the time be enlarged by order of the Court.

Subpœna to be sued out for each Defendant.

II. That a Writ of Subpœna to appear, or to appear and answer, shall be sued out for each Defendant, except in the case of Husband and Wife Defendants.

Time for Delivering Exceptions to Answer.

III. That the Plaintiff shall be allowed, in the Home District, Fourteen days, and in the other Dis-

tricts, One month, to deliver Exceptions to an answer; but if the Exceptions be not delivered within the Fourteen days, the answer shall thenceforth be deemed sufficient.

Reference of Exceptions to Answer for insufficiency.

IV. That where Exceptions taken to an answer for insufficiency are not submitted to, the Plaintiff may, at the expiration of Eight days after the Exceptions are delivered, but not before unless in injunction causes, refer such answer for insufficiency; and if he do not refer the same within the next six days, he shall be considered as having abandoned the Exceptions, in which latter case such answer shall be thenceforth deemed sufficient.

Time for putting in further Answer.

V. That if upon a reference of Exceptions, the Master shall find the answer insufficient, he shall fix the time to be allowed for putting in a further answer, and shall specify the same in his report, from the date whereof such time shall run; and it shall not be necessary for the Plaintiff to serve a Subpœna for the Defendant to make a better answer: and any Defendant who shall not put in a further answer within the time so allowed, shall be in contempt, and be dealt with accordingly.

Period from which Answer to be deemed sufficient.

VI. That if upon a reference of Exceptions, the answer be certified sufficient, it shall be deemed to be so from the date of the Master's report; and if the Defendant submit to answer without a report

from the Master, the answer shall be deemed insufficient from the date of the submission.

Exceptions for Scandal or Impertinence, and reference thereof.

VII. That no order shall be made for referring any Pleading or other matter depending before the Court for Scandal or Impertinence, unless Exceptions are taken in writing and signed by Counsel, describing the particular passages which are considered to be scandalous or impertinent, nor unless such order be obtained within six days after the delivery of such Exceptions.

Time for procuring report on reference for Scandal or Impertinence.

VIII. That when any order is made for referring an answer for insufficiency, or for referring an answer or other pleading or matter depending before the Court for Scandal or Impertinence, the order shall be considered as abandoned, unless the party obtaining the order shall procure the Master's report within a fortnight from the date of such order, or unless the Master shall, within the fortnight, certify that a further time, to be stated in his certificate, is necessary, in order to enable him to make a satisfactory report, in which case the order shall be considered as abandoned, if the report be not obtained within the further time so stated; and where such order relates to alleged insufficiency in an answer, such answer shall be deemed sufficient from the time when the order is to be considered as abandoned.

Amendment after Answer and before Replication.

IX. That after an answer has been filed, the Plaintiff shall be at liberty, before filing a Replica-

tion, to obtain, upon motion or petition, without notice, one order for leave to amend the Bill; but no further leave to amend shall be granted after an answer and before Replication, unless the Court shall be satisfied by affidavit that the Draft of the intended amendments has been settled, approved and signed by Counsel, and that such amendments are not intended to be made for the purpose of delay or vexation, but because the same are considered to be material to the case of the Plaintiff; such affidavit to be made by the Plaintiff, or one of the Plaintiffs where there are more than one, and his, her or their Solicitor, or by such Solicitor alone, in case the Plaintiff or Plaintiffs, from being abroad or otherwise, shall be unable to join therein; but no order to amend shall be made after answer and before Replication, either without notice or upon affidavit, in manner hereinbefore mentioned, unless such order be obtained within One month after the answer, if there be only one Defendant, or after the last of the answers if there be two or more Defendants, is to be deemed sufficient; but this order shall not extend to amendments which are made only for the purpose of rectifying some clerical error or errors in the names, dates or sums, in which cases the order to amend may be obtained upon motion or petition without notice.

Time within which amendments shall be made.

X. That every order for leave to amend the Bill shall contain an undertaking by the Plaintiff to amend the Bill, within Ten days from the date of the order; and in default thereof, such order shall become void,

and the cause shall, as far as relates to any motion to dismiss the Bill for want of prosecution, stand in the same situation as if such order had not been made.

Amendment after Replication.

XI. That after a Replication has been filed, the Plaintiff shall not be permitted to withdraw it and to amend the Bill without a special order of the Court for that purpose, made upon a motion of which notice has been given; the Court being satisfied by affidavit that the matter of the proposed amendment is material, and could not, with reasonable diligence, have been sooner introduced into the Bill.

Dismissal for want of prosecution.

XII. That where the Answer of a Defendant is to be deemed sufficient, if the Plaintiff or Plaintiffs shall not proceed in the cause, the Defendant shall be at liberty, after the expiration of Twenty-one days, to move, upon notice, that the Bill be dismissed with costs for want of prosecution; and the Bill shall accordingly be dismissed with costs, unless the Plaintiff or Plaintiffs shall appear, upon such motion, and give an undertaking to file a Replication, and serve a Subpœna to rejoin; and in case a Commission to examine Witnesses shall be requisite, he or they shall obtain and serve an order for such Commission, within one week from the date of such undertaking; or unless the Plaintiff or Plaintiffs, without filing such Replication, shall appear upon such motion, and give an undertaking that the cause shall be heard, as against the Defendant making the motion, upon Bill

and Answer: or unless it shall appear that the Plaintiff or Plaintiffs is or are unable to proceed in the cause by reason of any other Defendant or Defendants not having sufficiently answered the Bill, and that due diligence has been used to obtain a sufficient Answer or Answers from such other Defendant or Defendants; in which case the Court shall allow to the Plaintiff or Plaintiffs such further time for proceeding in the cause as shall appear to be reasonable. And in case the Plaintiff or Plaintiffs do appear upon the motion to dismiss, and give the undertaking to file a Replication, and take the other proceedings consequent thereon, then all the rules and regulations with respect to the Commission and the return thereof, and the setting down the cause for hearing, and the rights of the Defendant with respect to the Commission, in case of any default on the part of the Plaintiff, which are particularly expressed in the next order, shall apply to all cases under this order.

Subpœna to rejoin—Order for and return of Commission—Setting down
the cause.

XIII. That when the Plaintiff files a Replication without having been served with a notice of motion to dismiss the Bill for want of prosecution, he shall serve the Subpœna to rejoin; and in case he shall require a Commission to examine Witnesses, shall obtain and serve an order for such Commission within One week from the filing of the Replication; and such Commission shall, at the latest, be returnable within One month from the date thereof: And after the return, the Plaintiff shall set down his cause for hearing, and duly serve a Subpœna to hear judgment,

returnable within One week from the day on which the office copies of the evidence shall have been delivered out by the Registrar of the Court : and if the Plaintiff shall make default herein, then, upon application by the Defendant, upon notice of motion, the Plaintiff's Bill shall stand dismissed, with costs, unless the Court shall make special order to the contrary ; and in case the Plaintiff serves a Subpœna to rejoin within Seven days after filing the Replication, but does not obtain and serve an order for a Commission to examine Witnesses within that time, then the Defendant shall be at liberty, without notice, to obtain an order for a Commission to examine Witnesses, returnable at the like period as the Plaintiff is entitled to, pursuant to this order ; and if the Plaintiff obtains an order for and sues out a Commission, and neglects to execute and return the same at or within the time stated in this order, the Defendant shall be entitled to an order, as before stated, for a Commission, returnable after a like period as is provided in the case of the Plaintiff.

Service of Subpœna on Solicitor.

XIV. That service on the Solicitor of any Subpœna to rejoin, or to answer an amended Bill, or to hear Judgment, shall be deemed good Service.

Order *Nisi* for confirming Report.

XV. That the order *Nisi* for confirming a Report may be obtained either upon petition or by motion ; and that service thereof upon the Solicitor of any party shall be deemed good service upon such party.

Service of notice of Motion and Petition.

XVI. That every notice of Motion, and every Petition, notice of which is necessary, shall be served at least Two clear days before the hearing of such Motion or Petition.

Order *Nisi* for dissolving common injunction.

XVII. That the order *Nisi*, for dissolving the common injunction, may be obtained upon petition as well as by motion: and that every such order be served two clear days at least before the day upon which cause is to be shown against dissolving the injunction.

Acceptance from a Defendant in contempt for want of answer of the costs thereof.

XVIII. That where a Defendant in contempt for want of answer, obtains upon filing his answer, the common order to be discharged as to his contempt, on payment or tender of the costs thereof, or the Plaintiff accepts the costs without order, he shall not, by such acceptance, be compelled, in the event of the answer being insufficient, to re-commence the process of contempt against the Defendant, but shall be at liberty to take up the process at the point to which he had before proceeded.

Notice of Witness to be examined.

XIX. That before any Witness be examined in a cause, a notice in writing containing the name and description of such Witness shall be served upon the Solicitor for the opposite party.

Costs of separate proceedings by Defendants who appear by the same Solicitor. &

XX. That where the same Solicitor is employed for two or more Defendants, and separate answers shall have been filed, or other proceedings had by or for two or more Defendants separately, the Master shall consider in the taxation of such Solicitor's bill of costs either between party and party or between Solicitor and Client, whether such separate answers or other proceedings were necessary or proper; and if he be of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

Costs of setting down cause, where it is struck out of the paper through neglect of Plaintiff.

XXI. That when a cause which stands for hearing is called on to be heard, but cannot be decided by reason of a want of parties or other defect on the part of the Plaintiff, and is therefore struck out of the paper, if the same cause is again set down, the Defendant or Defendants shall be allowed the taxed Costs occasioned by the first setting down, although he or they do not obtain the Costs of the Suit.

Abstract of pleadings for use of the Court.

XXII. That whenever a cause is set down for hearing, the Solicitor for the Plaintiff shall leave with the Registrar, for the use of the Court, a short statement of the pleadings, including a full copy of the prayer of the Bill, two clear days before such hearing.

1ST JULY, 1837.

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 Before whom answers, &c., shall be taken.

XXIII. That all Answers, Affidavits, Depositions and Examinations, to be made in any cause or proceeding by a party residing in the City of Toronto, or within twenty miles thereof, shall be taken before a Master in Ordinary of this Court; and all Answers, Affidavits, Depositions and Examinations, to be made in any cause or proceeding by a party residing in this Province, beyond the limits aforesaid, shall be taken before a Master Extraordinary of this Court.

Mode of taking answers.

XXIV. That in the case of Answers, the following oath or affirmation shall be administered to the party, by the Master or Master Extraordinary:

“ You do swear (or affirm, as the case may be), that you have read (or heard read) this your answer subscribed by you, and that you know the contents thereof, and that the same is true of your own knowledge, except as to matters which are therein stated upon your information and belief, and as to those matters you believe it to be true.”

That the Master, or Master Extraordinary, shall then subscribe or indorse on the Answer, a Jurat, in the following form:

“ The Defendant, C. D., on the — day of — in the year of our Lord, &c., appeared before me, at my chambers in the — of — in the district of —, and answered that he had read the foregoing answer, and signed the same in my presence, and thereupon was sworn (or affirmed) before me, that he had read (or heard read) the foregoing answer subscribed by him, 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 own information and belief, and as to those matters, he believed it to be true.”

That in the case of an illiterate Defendant, the Jurat shall run thus:—

“ The Defendant, C. D., not being able to read or write, E. F., Solicitor for the said Defendant, was sworn 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, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information, and as to those matters, he believes it to be true.”

That the Master, or Master Extraordinary, shall fold the Answer and bind it with tape, and set his seal at the several meetings or crossings of the tape, endorse his name on the outside, and direct it thus—  
 “To William Hepburn, Esquire, Registrar of the Court of Chancery, City of Toronto.” The Master, or Master Extraordinary, shall immediately deposit the packet so directed in the nearest Post Office, and endorse thereupon “Deposited in the Post Office at — this — day of —, by me, A. B., a Master, or Master Extraordinary,” as the case may be; and he shall enclose at the same time the Registrar’s fee of two shillings and six pence, for filing the Answer. The postage and fee shall be paid by the Defendant or his Solicitor.

#### Attendance Fees.

XXV. That for every necessary common attendance by a Solicitor at the Registrar’s or Master’s Office, such as to obtain Writs and Orders, &c. from, or to file Petitions and Motion Papers, &c. with the Registrar, or to obtain from or leave papers with the Master in Ordinary, such Master shall, on taxation of costs, allow to the Solicitor the sum of one shilling and three pence, and no more; and for every attendance on the Master, at which progress is made by the Solicitors concerned in the business referred to him, he shall be at liberty, if he shall so think fit, to allow, on taxation of costs, to each Soli-

citor in attendance, the sum of five shillings; and in such case the Master shall, at the conclusion of such attendance, mark his Attendance Book accordingly; but if not so marked, the common attendance fee only shall be allowed.

Abatement or compromise of a cause after it is set down.

XXVI. That when any Cause shall become abated, or shall be compromised after the same is set down to be heard, the Solicitor for the Plaintiff shall certify the fact to the Registrar of the Court, who shall cause an entry thereof to be made in his Cause Book, and the Solicitor for the Plaintiff shall be allowed a fee of two shillings and six pence for such certificate, if he shall certify the fact as soon as the same shall come to his knowledge.

Security for Costs.

XXVII. That the penal sum in the Bond to be given as a security to answer costs by any Plaintiff, who is out of the jurisdiction of the Court, shall be seventy pounds.

Deposit upon and Costs of Exceptions to a Report.

XXVIII. That the Deposit upon Exceptions to a Master's Report, shall be five pounds, to be paid to the adverse party if the Exceptions are overruled, in which case the Exceptant shall also pay the further taxed costs occasioned by such Exceptions, unless the Court shall otherwise order; but in case the Exceptant shall in part succeed, the Deposit shall be dealt with, and costs shall be paid as the Court shall direct.



Solicitor at the request of any person to procure certificate of proceedings.

XXIX. That for the purpose of enabling all persons to obtain precise information as to the state of any Cause, and to take the means of preventing improper delay in the progress thereof, any Solicitor shall, at the request of any person, whether a party or not in the suit or matter enquired after, procure and furnish a certificate from the Register Office, specifying therein the dates and general description of the several proceedings which have been taken in any Cause in the said office, whether such Solicitor be or not concerned as Solicitor in the Cause, and that the Registrar shall be entitled to receive the sum of two shillings for such certificate, and no more.

Service upon the Solicitor of a Person who is not a party.

XXX. That whenever a person, who is not a party, appears in any proceeding, either before the Court or before the Master, service upon the Solicitor in the City of Toronto, by whom such party appears, whether such Solicitor act as principal or agent, shall be deemed good service, except in matters of contempt requiring personal service.

Correction of clerical and accidental Errors in Orders and Decrees.

XXXI. That clerical mistakes in Decrees or decretal Orders, or errors arising from any accidental slip or omission, may, at any time before enrollment, be corrected upon petition, without the form and expense of a re-hearing.

Delay in bringing any Decree or Order into the Master's Office.

XXXII. That when any Decree or Order referring any matter to the Master, is not brought into

the Master's Office within twenty-one days after the same Decree or Order is pronounced, then any party to the Cause, or any other party interested in the matter of the reference, shall be at liberty to apply to the Court by motion or petition, as he may be advised, for the purpose of expediting the prosecution of the said Decree or Order.

Master's Register of proceedings.

**XXXIII.** That the Master shall enter in a Book, to be kept by him for that purpose, the name or title of every Cause or matter referred to him; and the time when the Decree or Order is brought into his Office; and the date and description of every subsequent step taken before him in the same Cause or matter; and the attendance or non-attendance of the several parties on each of such steps, so that such Book may exhibit at one view the whole course of proceeding which is had before him in each particular Cause and matter.

Warrant to consider Decree.

**XXXIV.** That upon the bringing in of every Decree or Order, the Solicitor bringing in the same shall take out a Warrant appointing a time, which is to be settled by the Master, for the purpose of the Master taking into consideration the matter of the said Decree or Order, and shall serve the same upon the Solicitors of the respective parties.

Master to Regulate the manner of the Execution of the Decree or Order.

**XXXV.** That at the time so appointed for considering the matter of the said Decree or Order,

the master shall proceed to regulate, as far as may be, the manner of its execution: as for example, to state what parties are entitled to attend future proceedings; to direct the necessary advertisements, and to point out which of the several proceedings may be properly going on *pari passu*; and as to what particular interrogatories for the examination of the parties appear to be necessary; and whether the matters requiring evidence shall be proved by affidavit, or by examination of witnesses: and in the latter case, if necessary, to issue his certificate for a Commission; and if the Master shall think it expedient so to do, he shall then fix a certain time or times within which the parties are to take any certain proceeding or proceedings before him.

The Master may fix a time within which any Proceeding before him shall be taken.

XXXVI. That upon any subsequent attendance before him in the same Cause or matter, the Master, if he think it expedient so to do, shall fix a certain time or certain times, within which the parties are to take any other proceeding or proceedings before him.

Master may proceed *ex parte*.

XXXVII. That when some or one, but not all, the parties do attend the Master at an appointed time, whether the same be fixed by the Master personally, or upon a Warrant, then the Master shall be at liberty to proceed *ex parte*, if he thinks it expedient, considering the nature of the case, so to do.

Review of *ex parte* proceedings.

XXXVIII. That where the Master has proceeded *ex parte*, such proceeding shall not in any manner be reviewed in the Master's Office, unless the Master, upon a special application made to him for that purpose, by a party who was absent, shall be satisfied that he was not guilty of wilful delay or negligence, and then only upon payment of all costs occasioned by his non-attendance: Such costs to be certified by the Master at the time, and paid by the party or his Solicitor, before he shall be permitted to proceed on the Warrant to review.

Costs occasioned by the Non-attendance of Parties.

XXXIX. That where a proceeding fails by reason of the non-attendance of any party or parties, and the Master does not think it expedient to proceed *ex parte*, then the Master shall be at liberty to certify what amount of costs, if any, he thinks it reasonable to be paid to the party or parties attending, by the absent party or parties, or by his or their Solicitor or Solicitors, personally, as the Master in his discretion shall think fit; and upon motion or petition, without notice, the Court will make order for payment of such costs accordingly.

Course to be followed where a Party prosecuting a Decree does not proceed with due diligence.

XL. That when the party actually prosecuting a Decree or Order, does not proceed before the Master with due diligence, then the Master shall be at liberty, upon the application of any other party interested, either as a party to the Suit, or as one who has come

in and established his claim before the Master, under the Decree or Order, to commit to him the prosecution of the said Decree or Order; and from thenceforth, neither the party making default, nor his Solicitor, shall be at liberty to attend the Master as the prosecutor of the said Decree or Order.

Master's Certificate of Proceedings.

XLI. That upon any application made by any person to the Court, the Master, if required by the person making the application, shall, in as short a manner as he conveniently can, certify to the Court the several proceedings which shall have been had in his Office in the same Cause or matter, and the dates thereof.

Master may proceed *de die in diem*.

XLII. That the Master shall be at liberty, without order, to proceed in all matters *de die in diem*, at his discretion.

Warrant for attendance peremptory.—Time of and fees for attendance.

XLIII. That every Warrant before the Master shall be considered as peremptory; and the Master shall be at liberty to continue the attendance beyond the hour during such time as he thinks proper; and shall be empowered to increase the fee for the Solicitor's attendance to any sum not exceeding ten shillings; and in case the Master shall not be attended by the Solicitor, or a competent person on the behalf of the Solicitor, of any party, the Master shall, in such case, disallow any fee for the Solici-

tor's attendance, taking care either in allowing an increased fee, or disallowing any fee, to mark his determination in his Attendance Book, and also on the Warrant for attendance.

*Production and inspection of papers, &c.*

XLIV. That when by any Decree or Order of the Court, Books, Papers or Writings are directed to be produced before the Master, for the purposes of such Decree or Order, it shall be in the discretion of the Master to determine what Books, Papers or Writings are to be produced, and when and for 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.

*Mode of bringing in and proceeding on accounts.*

XLV. That all parties accounting before the Master, shall bring in their accounts in the form of Debtor and Creditor; and any of the other parties who shall not be satisfied with the accounts so brought in, shall be at liberty to examine the accounting party upon interrogatories as the Master shall direct.

*Accounts to be entered in a book.*

XLVI. That all accounts, when passed and settled by the Master, shall be entered in a Book to be kept for that purpose in the Master's Office, with proper indexes, in order to be referred to as occasion may require.

## Receivers.

XLVII. That the Master shall be at liberty, upon the appointment of a Receiver, or at any time subsequent thereto, in the place of annual periods for the delivery of the Receiver's accounts and payment of his balances, to fix either longer or shorter periods at his discretion; and when such other periods are fixed by the Master, the regulations and principles established by the practice of the Court of Chancery in England shall, in all other respects, be applied to the said Receiver.

## Directions on the appointment of a Receiver.

XLVIII. That in every Order directing the appointment of a Receiver of a landed estate, there be inserted a direction that such Receiver shall manage, as well as set and let, with the approbation of the Master; and that in acting under such an order, it shall not be necessary that a Petition be presented to the Court in the first instance, but the Master, without special order, shall receive any proposal for the management or letting of the estates from the parties interested, and shall make his report thereon, which report shall be submitted to the Court, for confirmation, in the same manner as is done with respect to reports on such matters made upon special reference; and until such report be confirmed, it shall not give any authority to the Receiver.

## Affidavits used before the Master.

XLIX. That all affidavits which have been previously made and read in Court upon any proceeding in a Cause or matter, may be used before the Master.

Further affidavits in reply to former affidavits.

L. That where, upon an enquiry before the Master, Affidavits are received, then no Affidavit in reply shall be read, except as to new matter which may be stated in the Affidavits in answer, nor shall any further Affidavits be read, unless specially required by the Master.

Conclusion of Evidence before the Master.

LI. That the Master shall not receive further evidence as to any matter depending before him, after issuing the Warrant on preparing his Report; but that he shall not issue such Warrant without previously requiring the parties to shew cause why such Warrant should not issue.

Review of proceedings.

LII. That no Warrant to review any proceeding in the Master's Office, shall be allowed to be taken out, except by permission of the Master, upon special grounds to be shewn to him for that purpose; and the costs of such review, when allowed, shall be in the discretion of the Master, and shall be paid by and to such persons, and at such time as he shall direct.

Witnesses may be examined before the Master *viva voce*.

LIII. That the Master shall have power, at his discretion, to examine any Witness *vivâ voce*; and in such case, the Subpœna for the attendance of the Witness shall, upon a note from the Master, be issued from the Register Office, and that the evidence upon such *vivâ voce* examination shall be taken down by the Master, or by the Master's Clerk, in his pre-



sence, and preserved in the Master's Office, in order that the same may be used by the Court, if necessary.

Separate Reports.

LIV. That in all matters referred to him, the Master shall be at liberty, upon the application of any party interested, to make a separate Report or Reports, from time to time, as to him shall seem expedient: the Costs of such separate Reports to be in the discretion of the Court.

The Master may certify with respect to the state of assets.

LV. That when a Master shall make a separate Report of Debts or Legacies, then the Master shall be at liberty to make such certificate as he thinks fit, with respect to the state of the assets; and every person interested shall thereupon be at liberty to apply to the Court, as he shall be advised.

May examine a Creditor or other person claiming either upon interrogatories or *vivâ voce*.

LVI. That the Master shall be at liberty to examine any Creditor or other person, coming in to claim before him, either upon written interrogatories or *vivâ voce*, or in both modes, as the nature of the case may appear to him to require, the evidence upon such examination being taken down at the time by the Master, or by the Master's Clerk, in his presence, and preserved, in order that the same may be used by the Court, if necessary.

Scandal or impertinence in proceedings before the Master.—Insufficiency of examination.

LVII. That if any party wish to complain of any matter introduced into any state of facts, affidavit or

other proceeding, before the Master, on the ground that it is scandalous or impertinent, or that any examination taken in the Master's Office is insufficient, he shall be at liberty, without any order of reference by the Court, to take out a Warrant for the Master to examine such matter; and the Master shall have authority to expunge any such matter which he shall find to be scandalous or impertinent.

Materiality of statements to be considered.

LVIII. That the Master, in deciding on the sufficiency or insufficiency of any answer or examination shall take into consideration the relevancy or materiality of the statement or question referred to.

Sales in the Country.

LIX. That in cases where estates or other property are directed to be sold before the Master, the Master shall be at liberty, if he shall think it for the benefit of the parties interested, to order the same to be sold in the country at such place and by such person as he shall think fit.

Settlement of Conveyances.—Taxation of Costs.

LX. That when the Master is directed to settle a Conveyance, or to tax Costs, in case the parties differ about the same, then the parties claiming the costs, or entitled to prepare the Conveyance, shall bring the Bill of Costs; or the draft of the Conveyance into the Master's Office, and give notice of his having so done to the other party; and at any time within six days after such notice, such other party shall have liberty to inspect the same without fee, and may take

a copy thereof if he think fit ; and at or before the expiration of the six days, or such further time as the Master shall in his discretion allow, he shall then either agree to pay the Costs or adopt the Conveyance, as the case may be, or signify his intention to dispute the same ; and in case he dispute the same, the Master shall then proceed to tax the Costs, or settle the Conveyance, according to the practice of the Court.

Master may require parties to appear by distinct Solicitors.

LXI. That whenever in any proceeding before the Master, the same Solicitor is employed for two or more parties, such Master may, at his discretion, require that any of the said parties shall be represented before him by a distinct Solicitor, and may refuse to proceed until such party is so represented.

Proceedings where the Crown is interested.

LXII. That in all cases where the Crown is either directly or incidentally interested in the subject matter of a suit, the Plaintiff shall serve the Attorney General with an office copy of the bill ; and it shall not be necessary for the Plaintiff, by petition of right or other more formal proceeding, on his part, to bring the interests of the Crown before the Court.

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26TH AUGUST, 1837.

Absent Defendants.

LXIII. That whenever a Defendant has left this Province, or is resident elsewhere, by reason whereof such Defendant cannot be served with the process of

Subpœna to appear and answer the Plaintiff's bill, the Plaintiff shall be at liberty, on motion supported by affidavit of the fact to the satisfaction of the Court, in the form or to the effect hereinafter set forth, to obtain an order requiring the Defendant to cause his or her appearance to be entered with the Registrar, and notice thereof to be served on the Plaintiff's Solicitor within two months from the date of such order, if the Defendant reside in the Province of Lower Canada; within four months from the date of such order, if the Defendant reside in any part of the United States of America; and within nine months from the date of such order, if the Defendant reside in any part of the United Kingdom of Great Britain and Ireland or elsewhere; and the Defendant shall accordingly appear and cause his or her answer to the Bill to be filed, and an office copy thereof to be served on the Plaintiff's Solicitor, at or before the expiration of the respective periods aforesaid, as the case may be; and in default thereof the Bill shall be taken as confessed by the Defendant: Provided, nevertheless, that the Plaintiff's Solicitor do, on obtaining such order as aforesaid, either cause a copy thereof to be published in such newspapers as the Court may direct, such publication to be continued in such newspapers at least once in each week for eight weeks in succession; or in case the Defendant shall come to this Province, do cause a copy of such order to be personally served on the Defendant, at least twenty days before the time prescribed above, for appearing and putting in his or her answer. And in cases where the place of residence of the Defendant is known to the Plaintiff,

he shall, in addition to causing the publication of the Order in the newspapers in the manner hereinbefore directed, also cause a copy of such Order to be transmitted by post to the Defendant, addressed to him at his place of residence. That the Court shall be satisfied, by affidavit or otherwise, that the aforesaid several provisions have been complied with on the part of the Plaintiff, and that no appearance has been entered by the Defendant with the Registrar, before an Order shall be entered taking the Bill as confessed by such Defendant, in manner hereinbefore provided. That the affidavit above referred to shall be in the following form or to the like effect, that is to say,—

“ IN CHANCERY. *Between, &c.*

“ A. B., of &c, maketh oath and saith that a Writ of Subpœna, to appear and answer in the above named suit, was issued out of and under the seal of this honourable Court, directed to the above named Defendant, C. D. (a copy whereof is hereunto annexed), and was delivered to this Deponent to be served, but this Deponent could not find the said C. D. to serve him therewith [and if the Defendant can so state, he shall proceed to add]; that he, this Deponent, well knows that the said Defendant did formerly reside at — in this Province, but has since left the same, and now resides at — [But if these facts are not within the Deponent’s knowledge, then the affidavit must proceed thus]. And he, this Deponent, was informed by [here state the name of the Informant and his connection with the absent Defendant, that the Court may judge how far the information given may be relied on] that he knew the Defendant, C. D., and that he formerly resided at — in this Province, but has since left the same, and now resides at — in the Province of Lower Canada, or at — in the United States of America [if the Deponent can so depose upon the information given, or, generally, if he be unable to state the particular place in the United States of America] or at — in England, Scotland, Ireland, or elsewhere, as the case may be. [If the Defendant have never resided in this Province, the affidavit must be varied accordingly.]”

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6TH SEPTEMBER, 1838.
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Return of Subpœna.

LXIV. That the first of the General Orders of this Court, dated 1st June, 1837, be rescinded,

and the following be substituted in lieu thereof—  
That every Plaintiff shall, on filing a Bill, be entitled to a Subpœna returnable immediately, but such Subpœna is to be without prejudice to the Defendant's right, if residing within the Home District, to eight days, and if residing in any other District, to fourteen days, from the service thereof, to enter his appearance; and after appearance the answer shall be put in, where the Defendant resides in the Home, Niagara, or Gore Districts, within fourteen days; and where the Defendant resides in any other District, within one month after appearance entered, unless in any case the time be enlarged by order of the Court, upon notice given.

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13TH NOVEMBER, 1838.

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Alimony.

LXV. That whereas it is expedient to define and declare the form of proceeding to be adopted in matters of Alimony.

It is Ordered, that the same shall be by Libel and Plea; such Libel to be sworn before the same shall be filed by the Registrar: and that the mode of bringing the Defendant before the Court, and the time for appearance and pleading, the mode of taking the evidence, as well as the course of proceeding in the cause generally, shall be the same as those established by the Rules and Practice of the Court upon Bills in Equity. It is further Ordered, that the Libel and Plea shall be signed by Counsel.

## Absent Defendants.

LXVI. That in order to remove doubts which have arisen upon the construction of the Order of the 25th of August, 1837, whether the same applies to proceedings on the Common Law side of the Court: His Honour doth Order, that the same course of proceedings shall be adopted on the Common Law side of the Court, with respect to Defendants out of the jurisdiction thereof, as by the said Order is prescribed with reference to proceedings on the Equity side *mutatis mutandis*.

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15TH FEBRUARY, 1839.

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Setting down cause.

LXVII. That, whereas the time limited by the 13th Order of the Court for setting down the Cause, and for return of the Subpœna to hear Judgment, in cases where a Commission has been issued for the Examination of Witnesses, has been found inconvenient, it is ordered that so much of the said Order as respects the matters aforesaid be, and the same is hereby, rescinded.

And it is further ordered, that, in all cases, whether the evidence be taken by Commission or otherwise, the Party desiring to set down the Cause to be heard shall set down the same for hearing, and duly serve a Subpœna to hear Judgment, returnable not sooner than the expiration of three weeks from the day on which the Office Copies of the Evidence shall be

ready to be delivered out by the Registrar of the Court, when the Interrogatories and Depositions shall not be referred to the Master for scandal or impertinence, or otherwise; but when such reference shall be made, such party as aforesaid shall set down the Cause to be heard, and duly serve a Subpœna to hear Judgment, returnable not sooner than the expiration of three weeks from the date of the Master's final report on such reference, or from the day on which, according to the Order of Court, such reference is to be considered as abandoned, if such report be not obtained by the party making such reference as the case may be.

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8TH MARCH, 1839.
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State of Facts in case of absent Defendants.

LXVIII. That, in all cases within the order of the 25th August, 1837, relative to Defendants out of the Jurisdiction, after any State of Facts shall have been carried into the Master's Office, pursuant to the reference directed by the Decree, the Warrant, on leaving such State of Facts, henceforth shall be discontinued, and the Plaintiff shall be at liberty immediately to apply for, and obtain, a Warrant to proceed on the State of Facts.

Time for putting in Answers.

LXIX. That, whereas the period limited by the Order of 6th September, 1838, for putting in Answers by Defendants residing in the Home, Niagara, and Gore Districts has been found too short and incon-



venient, it is, therefore, ordered, that the time for putting in Answers by Defendants resident as aforesaid shall be extended from fourteen days to one month after appearance entered, exclusive of the day of such appearance.

Examination of Witnesses in the Country.

LXX. That, in cases where an Order shall be obtained by any party for the examination of Witnesses before a Master Extraordinary and Examiner in the country, the Solicitor of such party, or his Agent, shall, fourteen days previously to proceeding upon such examination, serve the Solicitor of the opposite party, or his Agent, with a notice in writing, containing the name and place of residence of the Master Extraordinary and Examiner, before whom such examination is to be taken, so that the Solicitor of such opposite party, or his Agent, may have an opportunity of attending the same, if he should so think fit.

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15TH APRIL, 1839.

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Transmission of Papers to Registrar.

LXXI. That every Answer, Deposition, or other Proceeding in a Cause which, by the Rules or Practice of the Court, are required to be transmitted to the Registrar by post, by the Officer of the Court taking the same, may, in future, be forwarded in a sealed envelope to the Registrar by a Messenger, or deposited in the Post Office as may be most convenient; provided, nevertheless, that in case such

Answer, Examination, Deposition, or other proceeding as aforesaid, shall be transmitted by a Messenger, such Messenger shall make oath before the Registrar that he received the same from the hands of the Officer of the Court, and that it has not been out of his possession since he so received it, and that the same is in the like state and condition as when it was placed in his hands for transmission; and the Registrar shall forthwith endorse and sign a Memorandum on the envelope, containing the name, place of residence, and description of such Messenger, and the date when such oath was so administered.

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21ST MAY, 1839.

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Sittings in Equity.

LXXII. That whereas the existing regulations for His Honour the Vice-Chancellor to sit twice in each week, for the determination of causes and other matters, has not only not been attended with that dispatch of business which was expected, but is productive of practical inconvenience to Counsel and Solicitor, and His Honour having advised with several members of the Profession, has determined to establish "Sittings in Equity," to be held at the time hereinafter mentioned, His Honour therefore doth hereby give notice, that he will hold Sittings in Equity after each Term, for the hearing and adjudication of Causes, Pleas and Demurrers, such sittings to commence on third Monday next after each and every Term, and to close on the Saturday of the following week. The first of such

sittings to commence on the third Monday next after the end of Trinity Term, now next ensuing, and to be held daily, at 11 o'clock, A. M.

His Honour will sit on Thursday, at eleven o'clock, in each week (except during the sittings), to hear Motions, Petitions, Exceptions, further Directions, and all matters except causes, pleas and demurrers, unless by consent.

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27TH AUGUST, 1839.

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Paying Money into Court.

LXXIII. That upon paying money into Court, the Solicitor shall furnish the Bank with a correct copy of so much of the Order of Court as shall relate to such payment, which copy shall contain the names of the parties to the suit, and the date of such order. And it is further Ordered, that all sums of money to be paid out under any order of Court, shall be so paid out upon a cheque to be drawn out and signed by the Registrar, and counter-signed by the Master, but not otherwise.

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23RD DECEMBER, 1839.

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Examination of Witnesses.

LXXIV. Whereas it is apprehended that the present mode of examining witnesses may lead to the introduction of improper testimony, and it is expedient to amend the same: It is therefore Ordered, that the Solicitor or Agent of the party proceeding to examine witnesses, shall give to the opposite party's Solicitor

or Agent, fourteen days' notice of the time and place of examination, and before whom to be taken, exclusive of the day on which such notice shall be served: And it is further Ordered, that interrogatories in chief for the examination of Witnesses shall be in writing, filed with the Registrar, and a copy made and delivered by the Solicitor or Agent of the party filing the same, to the Solicitor or Agent of the opposite party, on or before the day on which the notice of the time and place of examination, shall be served as hereinbefore directed.

And it is further Ordered, that interrogatories for the cross-examination of Witnesses shall be in writing, filed with the Register, and a copy made and delivered by the Solicitor or Agent of the party filing the same, to the Solicitor or Agent of the opposite party, within one week after the copy of the interrogatories in chief shall be delivered, as hereinbefore directed, exclusive of the day of delivery thereof.

And it is further Ordered, that after the examination of Witnesses shall have commenced, the parties, their Counsel, Solicitors or Agents, shall not be at liberty to file exhibit, or use any additional, original or cross interrogatory, ~~without~~ special leave of the Court first obtained upon notice.

And it is further Ordered, that the Registrar shall, at the request of the Solicitors or Agents of the parties, transmit in a sealed envelope the Interrogatories filed with him, either to the Vice Chancellor, the Master in Ordinary and Examiner, or the Commis-

sioners in the country, as the case may be, according to the written instructions to be given to him by the Solicitors or Agents of the parties for that purpose. And it is further Ordered, that all objections either to the Interrogatories or Depositions shall be taken, not at the time of the examination but after publication, according to the existing rules and practice of the Court.

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 20TH APRIL, 1840.
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Bill pro confesso—Endorsement on Subpœna—Sequestration to follow attachment *non est*—Formal parts in pleadings to be omitted—Exceptions.

LXXV. That whereas it is expedient, as far as it can be done consistently with due protection of the rights of parties, to abridge and simplify the course of proceedings in Chancery, his Honour the Vice Chancellor doth hereby order and direct—

1. That in all cases where the Plaintiff shall personally serve the Defendant with the Writ of Subpœna to appear and answer the Bill, and the Defendant shall make default in appearance at the time limited by the practice of the Court, the Plaintiff shall be at liberty to enter an appearance for such Defendant; and if the Defendant shall not answer the Bill within the time limited by the Court in that behalf, the Bill may be ordered to be taken “pro confesso,” and a decree made and enforced against him accordingly; unless the Court, on special circumstances disclosed by affidavit, shall allow further time to the Defendant to answer, in which case no such order shall be entered until the expiration of

such further time allowed: Provided, nevertheless, that the following statement shall be added to the notice at present endorsed on the said Writ of Subpœna, and signed by the Solicitor for the Plaintiff, that is to say,—

“And you will take notice that unless such appearance, as before mentioned, shall be entered, an appearance will be entered for you; and if you do not answer the said Complainant’s Bill, at or before the expiration of twenty-eight days from and exclusive of the day on which such appearance shall be entered for you, you will be considered as confessing the truth of the matters alleged in the said Bill of Complaint, and a Decree will be made and enforced against you.”

2. That it shall in no case be necessary to issue an attachment with proclamations or a commission of rebellion; but that in case of a return of “non est inventus” to a Writ of Attachment, the parties may at once proceed to a Sequestration.

3. That the insertion of the ordinary prayer of process of Subpœnâ in a Bill, and the common preamble in an answer, which pretends to reserve all advantage to be derived from excepting to the Bill, and the common conclusion which professes to traverse such parts of the Bill as have not been answered, shall in practice be discontinued; but shall, for all the purposes of decision, be deemed to be contained in such pleadings respectively; and if either of the matters aforesaid be inserted in the Bill or Answer, they shall be deemed impertinence and dealt with accordingly.

4. That until otherwise ordered, exceptions to an Answer shall be set down to be argued before the Court, instead of before the Master; and the several Orders of the Court, which, according to the existing

practice, relate to the proceedings on a reference of Exceptions to the Master, and the consequences attending the same, shall apply *mutatis mutandis* to proceedings before the Court.

5. That where, upon Exceptions to an Answer, it becomes necessary to put in an amended Answer, in case such amended Answer be not put in within due time, it shall not be necessary for the Plaintiff to proceed by Attachment, but he shall be at liberty to give notice of motion that the Bill be taken "pro confesso," unless the amended Answer be put in within fourteen days after the service of such notice; and in case the amended answer be not put in within the time, the Bill may be ordered to be taken "pro confesso:" Provided always, that this Order shall not apply to cases where the Defendant shall reside out of the jurisdiction of the Court.

6. That these Orders shall take effect on and after the 30th day of June next, and not before.

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25TH AUGUST, 1840.
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Examination of Witnesses.

LXXVI. That, whereas it is apprehended that the present mode of examining Witnesses may lead to the introduction of improper testimony, and it is expedient to amend the same, it is, therefore, ordered, that Interrogatories in Chief for the examination of Witnesses shall be in writing filed with the Registrar, and a copy made and delivered by the Solicitor or Agent of the party filing the same to the Solicitor or

Agent of the opposite party, on or before the day on which the notice of the time and place of the examination shall be served as hereinafter directed.

And it is further ordered, that the Solicitor or Agent of the party proceeding to examine Witnesses shall give to the opposite party's Solicitor or Agent twenty-eight days' notice of the time and place of examination, and before whom to be taken, exclusive of the day on which such notice shall be served.

And it is further ordered, that Interrogatories for the cross examination of such Witnesses shall be in writing, filed with the Registrar, and a copy made and delivered by the Solicitor or Agent of the party filing the same to the Solicitor or Agent of the opposite party within one week after the copy of the Interrogatories in Chief shall be delivered as hereinbefore directed, exclusive of the day of the delivery thereof.

And it is further ordered, that the opposite party, if he intend to examine Witnesses in Chief, shall, in like manner, file Interrogatories in writing with the Registrar, and make and deliver a copy thereof as aforesaid within fourteen days after the Interrogatories in Chief of the opposite party shall be delivered as aforesaid, exclusive of the day of the delivery thereof. And that Interrogatories for the cross-examination of such last mentioned Witnesses shall be, in like manner, filed, and a copy made and delivered within one week after the copy of the last mentioned Interrogatories in Chief shall be delivered as hereinbefore directed, exclusive of the day of the delivery thereof.



And it is further ordered, that after the examination of Witnesses shall have commenced, the Parties, their Counsels, Solicitors, or Agents shall not be at liberty to file exhibits or use any additional, original, or cross Interrogatories, without special leave of the Court first obtained upon notice.

And it is further ordered, that the Registrar shall, at the request of the Solicitors or Agents of the parties, transmit in a sealed envelope the Interrogatories filed with him, either to the Vice Chancellor or the Master in ordinary and Examiner in town, or the Master Extraordinary and Examiner, or the Commissioners in the country, as the case may be, according to the written instructions to be given to him by the Solicitors or Agents of the parties for that purpose.

And it is further ordered, that all objections, either to Interrogatories or Depositions, shall be taken, not at the time of examination, but after publication, according to the existing rules and practice of this Court.

And, lastly, it is ordered, that this Order do take effect on and after the first day of November, now next ensuing, and do apply to all suits, save and except those in which notice of the examination of Witnesses shall have been served previously to that day under the existing Order of the Court, relating to the examination of Witnesses, which, on and after the said first day of November next, shall be, and the same is hereby, rescinded.

25TH AUGUST, 1840.

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Vacation.

LXXVII. That whereas, it having been proposed by the Profession, and approved of by the Vice Chancellor, that there should be a yearly vacation in this Court, notice is hereby given, that His Honour doth Order and Direct, that such vacation shall commence yearly, from and after the expiration of one week from the termination of the Equity sittings, after Michaelmas Term in each year, and shall continue until the 1st day of November, then next ensuing, during which period the Court will not sit, and the Master's and Registrar's Offices shall be respectively closed, and all business suspended, until the said first day of November, when the said offices shall be re-opened; except that the Registrar's Office may at any time during the said vacation be opened, for all purposes of making applications for special Injunctions.

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12TH JULY, 1841.~~~~~  
Alimony.

LXXVIII. That whereas, the Orders requiring proceedings for alimony to be by Libel and Plea is attended with inconvenience, and it is expedient to alter the same;

It is therefore Ordered, that suits for alimony shall henceforth be by Bill for Discovery and Relief, or either; and answer and other proceedings in the same manner as other suits in this Court.

Provided, nevertheless, that each discovery shall be subject to the same objections as any other matters of discovery are, by the Rules and practice of the Court.

Deposit on Bill of Review.

**LXXIX.** That whereas the sum of fifty pounds, required by the Rules of Practice in England, to be deposited on a Bill of Review, is unsuitable to the circumstances of this Province, and it is expedient to reduce the same; It is therefore Ordered that henceforth it shall be sufficient to deposit with the Registrar of this Court, on every Bill of Review, the sum of twenty-five pounds Halifax currency.

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19TH JULY, 1841.
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Before whom Answers, &c., shall be Sworn.

**LXXX.** That the 23rd Order of this Honourable Court be rescinded, and that in future all Answers, Affidavits, Depositions and Examinations, in any cause or proceeding in the said Court, to be taken in the Town of Kingston, or within twenty miles thereof, shall be taken before a Master in Ordinary of the said Court: and that all such Answers, Affidavits, Depositions and Examinations taken beyond the limits aforesaid may be taken before a Master in Ordinary or before a Master Extraordinary of the said Court.

1ST AUGUST, 1841.

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 Deposit on Petition of Re-hearing.

LXXXI. That whereas the sum of twenty pounds, required by the rules of practice in England to be deposited on Petitions of Re-hearing, is unsuitable to the circumstances of this Province, and it is expedient to reduce the same; It is therefore Ordered, that henceforth it shall be sufficient to deposit with the Registrar of this Court, on every Petition of Re-hearing, the sum of ten pounds Halifax currency.

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22ND SEPTEMBER, 1841.

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 Town and Country causes.

LXXXII. That from and after the twenty-second day of May last, all causes in which either the Plaintiff or Defendant shall reside in the Home District, shall be deemed country causes; and that all causes in which either the Plaintiff or Defendant shall reside in the Midland District, shall be deemed town causes. And that, from and after the date hereof, the time for the appearance of Defendants residing in the Home District shall be within fourteen days, and in the Midland District within eight days, after the service of the Writ of Subpœna *ad respondendum*, exclusive of the day of such service, any former rule or order of this Court to the contrary notwithstanding. And it is further Ordered, that the Master of this Court shall, in the taxation of costs in such causes, be guided by this order accordingly.

And it is further Ordered, that the Plaintiff shall be allowed, in the Midland District, fourteen days, and in the other districts one month, to deliver Exceptions to an Answer; but if the Exceptions be not delivered within the fourteen days or month, as the case may be, the Answer shall thenceforth be deemed sufficient, any former rule or order of this Court to the contrary notwithstanding.

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3RD DECEMBER, 1841.  
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Return of Subpœna where evidence is taken—Office Copy of Depositions.

LXXXIII. That whereas, by an Order bearing date the fifteenth day of February, 1839, it is, amongst other things, ordered, that in all cases, whether the evidence be taken by commission or otherwise, the party desiring to set down the cause to be heard shall set down the same for hearing, and duly serve a Subpœna to hear judgment, returnable not sooner than the expiration of three weeks from the day on which the office copies of the evidence shall be ready to be delivered by the Registrar of the Court.

And whereas it is desirable that the practice, in respect of Office Copies of Depositions taken before the Master in Ordinary and Examiner of this Court, should be assimilated to the practice in the like case in the High Court of Chancery in England; It is therefore Ordered, that henceforward office copies of all depositions taken in the office of the Master in Ordinary shall be furnished from the same office, duly authenticated by the Master's signature; and that

the Subpœna to hear judgment shall be returnable not sooner than the expiration of three weeks from the day on which such office copies of evidence shall be ready to be delivered out; and in cases where office copies of evidence are to be delivered out, some by the Master in Ordinary and others by the Registrar, then such Subpœna to hear judgment shall be returnable not sooner than three weeks from the day on which such office copies shall be last ready to be delivered out in the like cases in the said order set forth.

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1ST JANUARY, 1842.  
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Names of Solicitors and Agents to be entered with Registrar.

LXXXIV. That all Solicitors practising by Agents, residing in the town or township of Kingston, and all Solicitors not residing in the Midland District, shall enter their names in a book to be called the "Solicitors' Book," and to be kept publicly at the Register Office, to be there inspected without fee or reward, in which book the Solicitors shall respectively specify the name of an Agent residing in the town or township of Kingston, by whom the Principal transacts his Court business, and upon whom all Writs, Notices, Orders, Warrants, Rules and other documents, proceedings, and written communications may be served.

Service on Solicitor or Agent.

LXXXV. That all Writs, Notices, Orders, Warrants, Rules, and other documents, proceedings and written communications which do not require

personal service upon the party to be affected thereby, shall be deemed sufficiently served, if such document, or a copy thereof, as the case may be, shall be served on the Solicitor or his Agent, to be specified, in the manner mentioned in the first Order, by the Solicitor of the party serving the same or his Agent; and if any Solicitor shall neglect to cause such entry to be made as is required by the said first Order, then the leaving a copy of any such Writ, Notice, Order, Warrant, Rule or other document, proceeding or written communication for the Solicitor so neglecting as aforesaid in the Register Office, shall be deemed sufficient service on him, unless the Court shall under special circumstances think fit to direct otherwise.

Order to compel Appearance not required.

LXXXVI. That no Order shall hereafter be made, for a Messenger or for the Sergeant-at-Arms to take the body of the Defendant, for the purpose of compelling him to appear to the Bill.

Sequestration for not Answering.

LXXXVII. That upon the Sheriff's return *non est inventus* to an attachment issued against the Defendant for not answering the Bill, and upon Affidavit made, that due diligence was used to ascertain where such Defendant was at the time of issuing such Writ, and in endeavouring to apprehend such Defendant under the same, and that the person suing forth such Writ verily believed at the time of suing forth the same, that such Defendant was in the district into which such Writ was issued, that the Plaintiff shall be entitled to a Writ of Sequestration.

Service of Order to have the effect of Writ of Execution.

LXXXVIII. That no Writ of Execution, nor any Writ of Attachment, shall hereafter be issued for the purpose of requiring or compelling obedience to any order or decree of this Court, but that the party required by any such Order to do any act shall, upon being duly served with such Order, be held bound to do such act in obedience to the Order.

Compulsory process for refusing obedience to Orders.

LXXXIX. That, if any party who is by an Order or Decree ordered to pay money, or do any other act in a limited time, shall, after due service of such Order, refuse or neglect to obey the same according to the exigency thereof, the party duly prosecuting such Order shall, at the expiration of the time limited for the performance thereof, be entitled to an order for a Sergeant-at-Arms, and such other process as he was formerly entitled to upon a return *non est inventus* by the Commissioners named in a Commission of Rebellion issued for non-performance of a Decree or Order.

Notice of liability for non-performance of Order, &c.

XC. That every order or Decree requiring any party to do an act thereby ordered shall state the time after service of the Decree or Order within which the act is to be done; and that upon the copy of the Order 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, viz: "If you, the within-named A. B., neglect to perform this Order by the time therein limited you will be liable

to be arrested by the Sergeant-at-Arms attending the High Court of Chancery, and also be liable to have your estate sequestered for the purpose of compelling you to obey the same Order.”

Writ of Assistance.

XCI. That upon due service of a decree or order for delivery of possession, and upon proof made of demand, and refusal to obey such order, the party prosecuting the same shall be entitled to an order for a Writ of Assistance.

Persons interested but not parties to the Cause.

XCII. That every person, not being a party in any cause, who has obtained an order, or in whose favour an order shall have 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 the 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 in the cause.

Defendants to answer only when specially interrogated.

XCIII. That a Defendant shall not be bound to answer any statement or charge in the Bill unless specially and particularly interrogated thereto, and a Defendant shall not be bound to answer any interrogatory in the Bill except those interrogatories which such Defendant is required to answer; and where a Defendant shall answer any statement or charge in the Bill to which he is not interrogated, only by stat-

ing his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.

Interrogatories to be numbered as applicable to each Defendant.

XCIV. That the interrogatories contained in the interrogating part of the Bill shall be divided as conveniently as may be from each other, and numbered consecutively 1, 2, 3, &c., and the interrogatories which each Defendant is required to answer shall be specified in a note at the foot of the Bill in the form or to the effect following, that is to say: "The Defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3, &c." And the office copy of the Bill taken by each Defendant shall not contain any interrogatories, except those which such Defendant is so required to answer, unless such Defendant shall require to be furnished with a copy of the whole Bill.

Note specifying the application of the interrogatories to form part of the Bill.

XCV. That the note at the foot of the Bill specifying the interrogatories which each Defendant is required to answer shall be considered and treated as part of the Bill; and the addition of any such note to the Bill or any alteration in or addition to such note, after the Bill is filed, shall be considered and treated as an amendment of the Bill.

Form of Preface to Interrogatories.

XCVI. That instead of the words of the Bill now in use preceding the interrogating part thereof and beginning with the words "To the end therefore" there shall hereafter be used words in the form or to the effect following:—

“To the end therefore that the said Defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer: that is to say.

“1. Whether, &c. 2. Whether. &c.”

Time for submitting to plea or demurrer.

XCVII. That in every case of plea or demurrer filed, the Plaintiff shall have ten days to submit before the Defendant shall be at liberty to set down the same for argument, unless such period shall prevent such plea or demurrer being set down at the then next sittings, in which case the Plaintiff shall either accept a Subpœna to hear judgment on such Plea or Demurrer, returnable in two days, or shall undertake upon receiving two clear days previous notice in writing that the same may be argued in vacation.

Proceeding with the cause when answer, &c., not put in.

XCVIII. That after the expiration of the time allowed to a Defendant to plead, answer or demur (not demurring alone) to an original Bill, if the Defendant shall have filed no plea, answer or demurrer, the Plaintiff shall be at liberty to file a note at the Register Office, to the following effect:—“The Plaintiff intends to proceed with his cause as if the Defendant had filed an answer traversing the case made by the Bill, and the Plaintiff had replied to such answer and served a subpœna to rejoin;” and that a copy of such note shall be served on such Defendant in the same manner as a subpœna to rejoin is now served; and such note, when filed, (a copy thereof being so served,) shall have the same effect as

if the Defendant had filed an answer traversing the whole of the Bill; and the Plaintiff had filed a replication to such answer, and served a subpoena to rejoin: and after such note shall have been so filed, and a copy served as aforesaid, the Defendant shall not be at liberty to plead, answer or demur to the Bill without the special leave of the Court.

Proof of service of Subpœna. before proceeding without answer.

XCIX. That the Plaintiff shall not be at liberty to file a note under the preceding Order, unless an affidavit be produced to the Registrar, distinctly proving that the Defendant has been served with a subpoena to appear and answer the Bill, and also that the time allowed to the Defendant to plead, answer or demur (not demurring alone) has expired.

Parties against whom no direct relief is sought.

C. That where no account, payment, conveyance, or other direct relief is sought against a party to a suit, it shall not be necessary for the Plaintiff to require such party, not being an infant, to appear to and answer the Bill, but the Plaintiff shall be at liberty to serve such party, not being an infant, with a copy of the Bill, whether the same be an original or amended or supplemental Bill, omitting the interrogating part thereof; and such Bill as against such party, shall not pray a subpoena to appear and answer, but shall pray that such party, upon being served with a copy of the Bill, may be bound by all the proceedings in the cause; but this order is not to prevent the Plaintiff from requiring a party against whom no

account, payment, conveyance or other direct relief is sought, to appear to and answer the Bill or from prosecuting the suit against such party in the ordinary way, if he shall think fit.

Memorandum of service of copy of the Bill to be entered.

CI. That where a Plaintiff shall serve a Defendant with a copy of the Bill, under the preceding Order, he shall cause a memorandum of such service, and of the time when such service was made, to be entered in the Registrar's Office, upon producing to the Registrar an affidavit of a copy of the Bill having been so served, and of the time when the service was made.

When Party neglecting to appear shall be bound by proceedings.

CII. That where a Defendant shall have been served with a copy of the Bill under the 100th order, and a memorandum of such service shall have been duly entered, and such Defendant shall not, within the time limited by the practice of the Court for that purpose, enter an appearance in common form, or a special appearance under the 100th order, the Plaintiff shall be at liberty to proceed in the cause as if the party served with a copy of the Bill were not a party thereto; and the party so served shall be bound by all the proceedings in the cause in the same manner as if he had appeared to and answered the Bill.

Formal parties entitled at their own cost to have suit prosecuted.

CIII. That where a party shall be served with a copy of the Bill under the 100th order, such party, if he desires the suit to be prosecuted against himself

in the ordinary way, shall be entitled to have it so prosecuted, and in that case he shall enter an appearance in the common form, and the suit shall then be prosecuted against him in the ordinary way; but the costs occasioned thereby shall be paid by the party so appearing, unless the Court shall otherwise direct.

Special appearance in order to receive notice of proceedings.

CIV. That where a party shall be served with a copy of the Bill under the 100th order, and shall desire to be served with a notice of the proceedings in the cause (but not otherwise to have the same prosecuted against himself) he shall be at liberty to enter a special appearance under the following form (that is to say):—"A. B. appears to the Bill for the purpose of being served with notice of all proceedings therein;" and thereupon the party entering such appearance shall be entitled to be served with notice of all proceedings in the cause, and to appear thereon, but the costs occasioned thereby shall be paid by the party entering such appearance, unless the Court shall otherwise direct.

Conditions on which special appearance allowed.

CV. That a party shall not be at liberty to enter such special appearance under the preceding order after the time limited by the practice of the Court for appearing to a Bill in the ordinary course, without first obtaining an order of the Court for that purpose, such order to be obtained on notice to the Plaintiff; and the party so entering such special appearance shall be bound by all the proceedings in the cause prior to such special appearance being so entered.

Costs of proceedings against parties against whom relief not sought.

CVI. That where no account, payment, conveyance or other relief is sought against a party, but the Plaintiff shall require such party to appear to and answer the Bill, the costs occasioned by the Plaintiff having required such party so to appear and answer the Bill, and the costs of all proceedings consequential thereon, shall be paid by the Plaintiff, unless the Court shall otherwise direct.

Trustees of Real Estate to be made parties without joining persons beneficially interested.

CVII. That in all suits concerning Real Estate which is vested in Trustees by devise, and such Trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such Trustees shall represent the persons beneficially interested in the estate, or the proceeds of the rents and profits, in the same manner and to the same extent as the Executors or Administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such Real Estate or rents and profits parties to the suit, but the Court may, upon the consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

When heir-at-law be party in suit to execute trusts of will.

CVIII. That in suits to execute the trusts of a Will it shall not be necessary to make the heir-at-law a party, but the Plaintiff shall be at liberty to make

the heir-at-law a party where he desires to have the Will established against him.

Persons against whom joint and several demands exist.

CIX. That 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.

Plea of Demurrer overruled, and answer not required.

CX. That where a demurrer or plea to the whole Bill shall be overruled, the Plaintiff, if he does not require an answer, shall be at liberty immediately to file his note in manner directed by the 98th order, and with the same effect, unless the Court shall, upon overruling such demurrer or plea, give time to the Defendant to plead, answer or demur; and in such case, if the Defendant shall file no plea, answer or demurrer within the time so allowed by the Court, the Plaintiff, if he does not require an answer, shall, on the expiration of such time, be at liberty to file such note.

Periods from which Demurrer held to have been submitted to.

CXI. That where the Defendant shall file a demurrer to the whole Bill, the demurrer shall be held sufficient and the Plaintiff be held to have submitted thereto, unless the Plaintiff shall, within twelve days from the expiration of the time allowed to the Defendant for filing such demurrer, cause the same to be set down for argument; and where the demurrer

is to part of the Bill, the demurrer shall be held sufficient, and the Plaintiff be held to have submitted thereto, unless the Plaintiff shall, within three weeks from the expiration of the time allowed for filing such last mentioned demurrer, cause the same to be set down for argument.

Time after which plea held to be submitted to.

CXII. That where the Defendant shall file a plea to the whole or part of a Bill, the plea shall be held good to the same extent and for the same purposes as a plea allowed upon argument, unless the Plaintiff shall, within three weeks from the expiration of the time allowed for filing such plea, cause the same to be set down for argument, and the Plaintiff shall be held to have submitted thereto.

Demurrer or plea not bad for covering less than it might.

CXIII. That no demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the Bill as it might by law have extended to.

Demurrer or plea not bad because answer extends to part.

CXIV. That no demurrer or plea shall be held bad and overruled upon argument, only because the answers of the Defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

Defendant may decline to answer parts to which he might have demurred.

CXV. That a Defendant shall be at liberty, by answer, to decline answering any interrogatory or

part of an interrogatory, from answering which, he might have protected himself by demurrer, and that he shall be at liberty so to decline, notwithstanding he shall answer other parts of the Bill from which he might have protected himself by demurrer.

Proceedings on objections for want of parties.

CXVI. That when the Defendant shall by his answer suggest that the Bill is defective for want of parties, the Plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only, and the purpose for which the same is so set down shall be notified by an entry to be made in the Registrar's Book, in the form or to the effect following, that is to say: "Set down upon the Defendant's objection for want of parties," and that where the Plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not at the hearing of the cause, if the Defendant's objection shall then be allowed, be entitled as of course to an order for liberty to amend his Bill by adding parties, but the Court, if it thinks fit, shall be at liberty to dismiss the Bill.

Decree saving the rights of absent parties.

CXVII. That if a Defendant shall at the hearing of a Cause object that a Suit is defective for want of parties, not having by plea or answer taken the objection, and therein specified by name or description the parties to whom the objection applies, the

Court (if it shall think fit) shall be at liberty to make a decree, saving the rights of absent parties.

Costs of Cross Bill, &c., when discovery only sought.

CXVIII. That where a Defendant in Equity files a Cross Bill against the Plaintiff in equity for discovery only, the costs of such Bill and of the answer thereto, shall be in the discretion of the Court, at the hearing of the original cause.

Answer to Cross Bill for discovery only

CXIX. That where a Defendant in equity files a Cross Bill for discovery only against the Plaintiff in equity, the answer to such Cross Bill may be read and used by the party filing such Cross Bill, in the same manner and under the same restrictions as the answer to a Bill praying relief may now be read and used.

Exhibit may be proved by affidavit.

CXX. That in cases in which any exhibit may by the present practice of the Court be proved *vivâ voce* at the hearing of a cause, the same may be proved by the affidavit of the Witness who would be competent to prove the same *vivâ voce*, at the hearing.

Decree absolute against party making default at the hearing.

CXXI. That where a Defendant makes default at the hearing of a cause, the decree shall be absolute in the first instance, without giving the Defendant a day to show cause, and such decree shall have the same force and effect as if the same had been a decree *nisi* in the first instance, and afterwards made absolute in default of cause shewn by the Defendant.

Report as to outstanding personal Estate.

CXXII. That every decree for an account of the personal estate of a testator or intestate, shall contain a direction to the Master to inquire and state to the Court what parts (if any) of such personal estate are outstanding or undisposed of, unless the Court shall otherwise direct.

Reference for further directions to follow Report in Foreclosures against absent Defendants.

CXXIII. That in all cases of Foreclosure against absent Defendants, the Master in making his Report shall calculate interest on the principal money found due to the Plaintiff, up to the period of twelve calendar months next after the date of his Report, and direct the same to be paid, together with the principal, interests and costs, at the time he shall by the said Report appoint for redemption of the premises. And he shall by his report direct such premises to be sold, or the Mortgagor to stand foreclosed, as in his judgment he shall think fit: and it shall not be incumbent on the Plaintiff to apply to the Court for further directions in the cause in respect to the matters aforesaid; but such Sale or Foreclosure shall take place pursuant to the Report, as if the same were made under an order of the Court, unless on exceptions to such Report, it shall be otherwise ordered.

Interest on Debt from period of its proof.

CXXIV. That a Creditor whose debt does not carry interest, who shall come in and establish the same before the Master under a decree or order in a

suit, shall be entitled to interest upon his debt at the rate of six per cent. from the date of decree, out of any assets which may remain after satisfying the costs of the suit, the debts established, and the interest of such debts as by law carry interest.

Costs of Establishing Debts.

CXXV. That a Creditor who has come in and established his debt before the Master under a decree or order in a suit, shall be entitled to the costs of so establishing his debt, and the same shall be taxed by the Master, and added to the debt.

Documents not to be recited in Master's Report.

CXXVI. That in the Reports made by the Master of the Court, no part of any state of facts, charge, affidavit, deposition, examination or answer, brought in or used before them, shall be stated or recited, but such state of facts, charge, affidavit, deposition, examination or answer, shall be identified, specified and referred to, so as to inform the Court what state of facts, charge, affidavit, deposition, examination or answer, was so brought in or used.

Original Pleadings not to be set out in Bill of Revivor, &c.

CXXVII. That it shall not be necessary in any Bill of Revivor or Supplemental Bill to set forth any of the statements in the pleadings in the original suit, unless the circumstances of the case require it.

Petition of Rehearing not to set out proceedings anterior to Decree, &c.

CXXVIII. That in any Petition of rehearing of any decree or order of the Court, it shall not be

necessary to state the proceedings anterior to the decree or order appealed from or sought to be reheard.

Time from which Orders to take effect.

CXXIX. That the foregoing Orders, dated the 1st of January, 1842, shall take effect as to all suits, whether now depending or hereafter commenced from and after the last day of the sittings after Easter Term, 1842.

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21ST NOVEMBER, 1842.  
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General Orders in consequence of the Removal of the Court from Kingston to Toronto.

CXXX. That all Answers, Affidavits, Depositions, and Examinations in any cause or proceeding in the said Court, to be taken in the City of Toronto, or within twenty miles thereof, shall be taken before the Master in Ordinary of the said Court, and that all such answers, depositions, affidavits and examinations, taken beyond the limits aforesaid, may be taken before the Master in Ordinary, or before a Master Extraordinary of the said Court.

Town and Country Causes.

CXXXI. That all causes in which either the Plaintiff or Defendant shall reside in the Home District, shall be deemed Town Causes and that all causes in which neither the Plaintiff nor Defendant shall reside in the Home District, shall be deemed Country Causes, and that the time for the appearance of Defendants residing in the Home District shall be within eight days, and the time for the appearance of Defendants residing without the said Home District,

and within the jurisdiction of this Court, shall be within fourteen days after the service of the Writ of Subpœna *ad respondendum*, exclusive of the day of such service.

Solicitors' Agents Names to be entered on Solicitors' Book.

CXXXII. That all Solicitors practising by Agents, having offices in the City of Toronto, and all Solicitors practising in the said Court, not having an office in the said city, shall enter their names in a book to be called the Solicitors' Book, and to be kept publicly at the Registrar Office, to be there inspected, without fee or reward; in which book the Solicitors aforesaid shall specify the name of an Agent, being a Solicitor of this Court, and having an office of business, as such Solicitor, in the said City of Toronto, by whom such Principal proposes to transact his Court business, and upon whom all writs, notices, orders, warrants, rules and other documents, proceedings and written communications may be served.

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14TH MARCH, 1843.  
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Explaining Order of 20th April, 1840, (No. 75) ante p. 34.

CXXXIII. That doubts having been entertained in respect of the construction of the 75th Order of this Court, of the twentieth day of April, 1840, whether the matters therein directed to be discontinued in practice, and the insertion whereof was thenceforth to be deemed impertinence, were to be disallowed upon taxation of costs, without the same being actually expunged under the direction of the Court:

It is Ordered, that the insertion of such matter shall be disallowed upon taxation, without other direction than the said General Order, and this Order of Court: And further, that in case any costs shall be occasioned to the opposite party, by the insertion in pleadings of such impertinent matter, such costs shall be taxed against the party inserting such matter in his pleading.

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3RD MARCH, 1843.  
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Office copies of Pleadings and Proceedings to be made by Registrar.

CXXXIV. That whereas, heretofore it has been the practice for the Registrar of the Court to supply office copies of all proceedings and pleadings filed in his office, and it is convenient and desirable that such practice should be altered: It is therefore Ordered, that in future, copies of all proceedings and pleadings to be made and delivered by the Solicitor or Agent with whom the draft or drafts thereof shall originate, and that such copies, before being delivered, shall be examined and certified by the Registrar, for doing which, the Solicitor or Agent procuring such certificate and examination shall, until further order be made in respect thereof, satisfy the Registrar therefor; the same, however, not to be allowed in taxation of costs. Provided, nevertheless, that this order shall not apply to office copies of minutes, decrees, orders, depositions reports and certificates, in respect whereof the practice shall continue as heretofore.

No answer, plea or demurrer to be deemed filed until copy served.

CXXXV. That henceforth no answer, plea or demurrer shall be deemed or considered as duly filed until a copy thereof authenticated as in the preceding order mentioned shall have been served on the solicitor or agent of the Plaintiff in the cause.

Affidavits, and office copies thereof.

CXXXVI. That from henceforth the original, or originals, of any Affidavit in support of, or in opposition to, any application by motion, petition or otherwise to this Court may be read at the hearing thereof, instead of office copies as heretofore; and that any party requiring a copy of any such Affidavit, or Affidavits, shall be entitled to demand and receive the same duly authenticated by the Registrar in manner before mentioned from the party filing such Affidavit or Affidavits, who shall be obliged to furnish the same within such time, or times, as by the present practice the same may be obtained from the Registrar.

Office copies of Affidavits of service not necessary.

CXXXVII. That from henceforth, it shall not be necessary to file any Affidavit of the service of a Notice of Motion, or any Affidavit which proves the service of a paper, and to take an office copy thereof for use; but the original Affidavit may be read and used in the same manner as an office copy would be, and the said original shall be filed on the occasion of reading or using the same.

Delivery of office copies.

CXXXVIII. That in case the Solicitor or Agent from whom any office copy of a pleading or proceed-

ing may be spoken shall not deliver the same upon or before the expiration of two clear days from the day of the same being so bespoken (as on Thursday if bespoken on the Monday preceding), any further time that may elapse before the delivery of the same shall not be computed against the party to whom such office copy is due; and such office copies shall be written in a clear legible character, and in manner as now practised in the Registrar's office.

No further costs in consequence of preceding orders as to office copies.

CXXXIX. That no further fees or disbursements, by way of attendances, postages or otherwise, shall be taxed or allowed in consequence of such altered practice in respect of office copies, than are now taxable under the present practice.

Costs of amendment in case of a re-engrossment.

CXL. - That where a Bill is amended, and a re-engrossment thereof filed, and a copy of such re-engrossment served on the opposite party, under the foregoing orders, it shall not hereafter be necessary for the Plaintiff to pay such opposite party the usual sum of twenty shillings, unless a further answer be required.

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20TH APRIL, 1843.  
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Evidence of accounts not necessary before reference.

CXLI. That in all cases where, according to the course and practice of the Court of Chancery, accounts are taken under the direction of the Court, it shall not be necessary for the purpose of having

such accounts taken with rests, or for the purpose of obtaining allowance for moneys expended in necessary repairs or lasting improvements, or for moneys properly expended, or claimed to be properly expended otherwise, and which ought to be credited to the party expending the same, that any evidence should be given in relation thereto before the taking of such accounts shall be referred to the Master's office.

Accounts to be taken without specific directions.

CXLII. That in the taking of accounts in the Master's office, it shall be within the cognizance of the Master to take the same according to the laws and practice of the Court of Chancery, without any specific direction in the decree or order referring such accounts to the Master, and therein to take the same with rents or otherwise ; to take account of rents and profits received, or that, but for wilful neglect or default, might have been received ; to set occupation rent ; to take into account necessary repairs and lasting improvements, and expenses properly incurred otherwise, or claimed to be so ; and generally in the taking of accounts to enquire and adjudge as to all matters relating thereto as fully as if the same had been specifically referred ; subject, nevertheless, to the revision of the Court upon exceptions to the Master's report upon the matters aforesaid.

Provided nevertheless, that no claim for improvements shall be entertained in the Master's office, unless the party making such claim, shall upon the pleadings have made such a case in respect thereof, as was necessary under the previous practice of the Court.

23RD SEPTEMBER, 1843.

Answers &c., to be taken in absence of Master.

CXLIII. That in order to prevent any inconvenience to Suitors, during any absence of the Master in Ordinary from the seat of the Court,—It is Ordered, that during any such absence, all answers, affidavits, depositions and examinations, ordinarily taken before the said Master, may be taken before any Master Extraordinary for the Home District.

8TH DECEMBER, 1843.

Infant Defendants.

CXLIV. That, for the purpose of facilitating proceedings in suits against infant Defendants, it is ordered that, in order to compel an appearance or an answer from an infant Defendant, residing beyond twenty miles from the city of Toronto, and within the jurisdiction of this Court, it shall not be necessary that such infant Defendant be brought to the bar of the Court for the purpose of appointing for him a guardian ad litem; but that, in all cases in which such infant Defendant shall fail to appear and answer by his guardian, the Plaintiff shall be entitled to have such guardian appointed by commission, which commission may be directed to a Master Extraordinary of this Court, and may be issued without order upon the Præcipe of the Plaintiff's Solicitor after attachment sealed, and the proceedings in relation to such commission shall be (*mutatis mutandis*) according to the present practice of the

Court in the case of proceedings in relation to commissions issued for the like purpose, at the instance of infant Defendants.

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24TH FEBRUARY, 1844.  
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Examination of prisoner in contempt.

CXLV. That, in the case of any person committed to prison upon any attachment or other process issued from this Court for a contempt or otherwise in not paying costs or any other sum of money directed or decreed to be paid by this Court, in case the party at whose instance such person shall have been so committed shall exhibit interrogatories in pursuance of the 7th section of an act of Parliament of this Province, passed in the seventh year of the reign of her Majesty Queen Victoria, entitled "An Act to abolish Imprisonment in Execution for Debt; and for other purposes therein mentioned;" and in case the party exhibiting such interrogatories shall desire that such person be examined personally upon such interrogatories, he shall be at liberty to have him so examined, upon obtaining an order for that purpose within the period allowed by the statute for exhibiting such interrogatories, which order may be issued upon petition or motion of course, and shall be served without any unnecessary delay upon such prisoner, his Solicitor or Agent, and thereupon such prisoner shall be at liberty to apply to the Vice Chancellor or to the officer of the Court before whom such examination is to take place for an appointment for that purpose, which appointment shall be served upon the Solicitor

or Agent of the opposite party, and such examination shall not be proceeded with *ex parte* unless it shall appear to the person before whom such examination shall take place, that such appointment was so served a sufficient time before such examination to allow of the opposite party attending the same; and it shall be the duty of the person in whose custody such prisoner may be to attend with such prisoner at such examination; and the service upon him of such order and appointment aforesaid shall be a sufficient warrant to him for that purpose; and such examination may be continued *de die in diem* as the person before whom such examination shall take place shall think fit.

And lastly, it is ordered, that in case such prisoner shall be in custody in the Home District, such examination may be had before the Vice Chancellor or before the Master in Ordinary of this Court; and in case such prisoner shall be in custody elsewhere than in the Home District, such examination may be had before a Master Extraordinary of this Court in the district in which such prisoner may be in custody.

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28TH MARCH, 1844.  
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Fieri facias or sequestration for costs.

CXLVI. That every person to whom, in any cause or matter pending in this Court, any costs have been, or shall be hereafter, awarded to be paid, shall be entitled to sue out one or more writ or writs of fieri facias or sequestration, in the form hereinafter stated, (see Appendix), and that it shall not be necessary to issue any writ of subpoena for the payment of such costs.

Return of fieri facias against goods and lands.

CXLVII. That every writ of fieri facias against goods and chattels, and every writ of sequestration, shall be made returnable in two months from the date thereof, and every writ of fieri facias against lands and tenements shall be returnable in thirteen months from the date thereof.

Writs to be delivered to sheriff.

CXLVIII. That such writs, when sealed, shall be delivered to the sheriff or other officer to whom the execution of the like writs issuing out of the Court of Queen's Bench belongs, and shall be executed by such sheriff or other officer as nearly as may be in the same manner in which he doth or ought to execute such like writs.

Issue of writs of fieri facias, and of sequestration.

CXLIX. That the writ of fieri facias against goods and chattels and the writ of sequestration may be issued at the same time, and the writ against lands and tenements shall be issued after the return of the said writ against goods and chattels.

Writ of venditioni exponas.

CL. That if it shall appear, upon the return of any such writ of fieri facias as aforesaid, that the sheriff or other officer hath, by virtue of such writ, seized, but not sold, any goods or lands of the person ordered to pay such costs as aforesaid, the persons to whom such costs are payable shall, immediately after such writ, with such return, shall be filed as of record,

be at liberty to sue out a writ of venditioni exponas in the form hereinafter stated.

Endorsement of writ.

CLI. That upon every such writ of fieri facias or sequestration so to be issued as aforesaid there shall be endorsed the calling and place of residence of the party against whom such writ shall be issued; and also the name and residence or place of business of the Solicitor at whose instance the same shall be issued; and that every such writ shall be endorsed for the sum to be levied, according to the form used upon the like writs issuing out of the Court of Queen's Bench.

Sittings of the Court and vacation.

CLII. That for the purpose of appointing the sittings of the Court, and the long vacation at more convenient periods, than heretofore. It is ordered that hereafter, the sittings in equity shall be held as follows: the first thereof to commence on the first Monday in March, the second on the fourth Monday in May, the third on the third Monday in July, the fourth on the first Monday in December, and each of the said sittings shall close on the Saturday of the week, next after the commencement thereof.

The next sittings of this Court to commence on the fourth Monday in May next. Ordered, that hereafter the long vacation shall commence on the first day of September, and end on the fifteenth day of October, following.

10TH JULY, 1844.

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Causes set down for hearing may be heard during vacation.

CLIII. Whereas causes and matters set down for hearing at the sittings of the Court, have in many instances been postponed to the vacation by consent, and such practice has been found to produce irregularity and delay, in the hearing of causes and matters so set down. It is therefore ordered, that hereafter causes and matters set down for hearing at the sittings of the Court be not heard during vacation, either by consent of parties or otherwise.

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15TH AUGUST, 1844.

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Order of 10th July, 1844, dispensed with.

CLIV. It having been represented by several practitioners of the Court, that the order of the tenth day of July last, providing that thereafter "causes and matters set down for hearing at the sittings of the Court, should not be heard during vacation, either by consent of parties or otherwise," has in respect to certain causes set down for hearing at the last Equity Sittings, taken parties by surprise in consequence of the same having been published a short period only before such sittings, and such Practitioners being desirous that they may be allowed during the present vacation to hear by consent, causes set down to be heard, but not heard during the last Equity Sittings, have prayed the Court that the operation of the said order may be dispensed with, as respects the causes aforesaid, and the same is for the reasons aforesaid, ordered accordingly.

29TH AUGUST, 1844.

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Dispatch of business.

CLV. For the dispatch of such business of the Court as can be proper by and conveniently disposed of at other periods than during the Equity Sittings. The Vice Chancellor will sit on Tuesday and Friday in each week, except during the sittings and the long vacation, or other vacation of the Court, for the hearing of Motions, Petitions, Further directions, Hearing of causes set down to be taken pro-confesso, Matters in Bankruptcy, and in all other matters except the ordinary hearing of Causes, Pleas and Demurrers. The Vice Chancellor will also upon either of the above days hear applications for setting down Injunction causes to be heard in vacation, and upon sufficient ground being shewn, will grant an order for setting down any such cause to be heard in vacation, and will hear such cause on either of the above days accordingly.

28TH JANUARY, 1845.

For the further facilitating the administration of Justice in the Court of Chancery, and the reduction of expense and delay in suits and proceedings therein, his Honour the Vice Chancellor, with the advice and approbation of the Commissioners appointed to consider and report upon the practice and pleadings in the said Court, doth order as follows:—

Exceptions.

CLVI. That in future where a Plaintiff desires to except to an answer for insufficiency, he shall not copy the interrogatory to which the answer is considered insufficient; but shall instead thereof in his exception refer to the interrogatory, by its number, as it stands in the Bill. And further, that no copies shall be allowed either for the Court or the parties, their Counsel or Solicitor, on the argument of Exceptions, that such Exceptions shall not require Counsel's signature, and shall be argued before the Master.

Replication.

CLVII. That no subpoena to rejoin shall be issued in any case, but the cause shall be deemed and taken to be at issue upon the Replication being filed and served, and which may be in the form following, viz:—

In Chancery.

A. B.	and	<i>Plaintiff.</i>
C. D.		<i>Defendant.</i>
E. F. <i>Sol. for Plff.</i>		

The Plaintiff replies to the Defendant's answer.

And in the taxation of costs, the Plaintiff shall be allowed the sum of three shillings for Replication, copy and service thereof.

Setting down cause, plea or demurrer

CLVIII. That no Subpœna to hear judgment shall be sued out in any case; but the party setting down the plea or demurrer to be argued, or the cause to be heard, shall give a notice in writing stating that the plea or demurrer or the cause has been entered in the Cause Book with the Registrar, for argument or hearing, and stating the day on which the same is to be argued or heard. And that such notice shall be served eight days before the day of argument or hearing, and that it shall be the duty of the party entering such plea or demurrer or cause to be argued or heard, at the time of entering thereof to furnish the Registrar with the day on which the same is to be argued or heard, in order that the same may be entered in the Cause Book.

Warrant.

CLIX. That in all cases the Master shall have a discretion to dispense with the Warrant to consider the Order or Decree brought into his office, and may grant the Warrant to proceed in the first instance, and the Master may also exercise his discretion whether or not to grant a Warrant to shew cause why he should not report; and in no case shall any warrant on leaving be sued out unless there be some person concerned in the matter upon whom to serve such warrant.

Schedule of Accounts.

CLX. That, upon a reference to the Master to take accounts between parties, in all cases where there have been Schedules of the accounts by the accounting party annexed to the answer, there shall be no Warrants taken out to bring in any accounts, except such accounts as are subsequent to the time of the Schedules annexed to the answer.

Charge and Discharge.

CLXI. That the party wishing to proceed with the reference shall bring in his charge, or at once file interrogatories for the examination of the accounting party; and thereupon bring in his Charge, and the Schedules to the answer shall be used to substantiate the Charge in the same way that is now the practice with respect to the accounts brought into the Master's Office in the shape of debtor and creditor, and the discharge shall be brought in and shall be dealt with in the same manner as is now done in respect of the debtor and creditor account brought into the Master's Office.

Order on filing Report.

CLXII. That the orders *nisi* and *absolute* to confirm the Master's Report shall be abolished, and in place thereof an Order, which shall be obtained upon a Præcipe only shall, upon the filing of the Report, be obtained, stating that the Report will stand confirmed in ten days after the service thereof, unless cause be shown to the contrary, and if no cause be shown, the Report shall stand confirmed without further Order.

Petitions.

CLXIII. That in all cases of application to the Court by Petition, either in a matter or a cause, whether the Petition be supported by affidavit, or the pleadings or evidence, it shall be in the following form :

“ The humble petition of, &c., prayeth, that upon the facts appearing by the affidavit filed in support hereof, (or by the pleadings and evidence in this cause,) your Honour will be pleased to order that, &c.”

Sheriffs to perform the duties of messenger.

CLXIV. That the Sheriff in each District in that part of this Province formerly constituting Upper Canada shall, within the limits of his District, perform the duties which, according to the practice of the Court heretofore, have been performed by the Messenger or Sergeant-at-arms, and all writs or process of the Court, which, by the law or practice of the Court, have been directed to the Messenger or Sergeant-at-arms shall be directed to the Sheriff of the District where the same is to be executed, and in no case shall the Sheriff, in executing such writ or process, bring the party to the Bar of the Court ; but he shall, instead thereof, commit the party to the Gaol of the District, and the party so committed shall be dealt with according to the course and practice of the Court, as if he were brought to the Bar of the Court, and as provided for, or as may be provided for, by any order of this Court.

Enrolment of Decree

CLXV. That in no case shall the enrolment of any interlocutory Order in a cause be deemed necessary for any purpose ; and that there shall be no enrolment of any proceedings or Orders in any case,

until after the final decree in the cause be pronounced ; and then, after the expiration of thirty days from the time of the final decree being entered by the Registrar in the Order Book, the date of which entry the Registrar shall state in the margin of such book opposite the entry thereof, if no Petition for a rehearing shall have been presented ; upon being required by any party in the cause, the Registrar shall attach together the Bill, pleadings and other proceedings filed in the cause, and shall annex thereunto a fair engrossed copy of the decretal Order or Decree of the Vice Chancellor, signed by him and countersigned by the Registrar, and the papers and proceedings so annexed and signed shall then be filed by the Registrar, and shall remain of record in his office, and such filing shall be deemed and taken to be an enrolment of the Decree and proceedings, and shall have the same force and effect in every respect as the former method of enrolling decrees.

Foreclosure and Redemption Suits.

For the purpose of rendering suits for the foreclosure and for the redemption of Mortgages more expeditious and simple, and of lessening the costs thereof, it is ordered,

Form of Bill for foreclosure or redemption.

CLXVI. That in all cases of suits for redemption or foreclosure between the Mortgagor and Mortgagee, the Bill may be in the form contained in the Schedule hereto subjoined, or in any other concise form which the Vice Chancellor may hereafter deem it expedient to prescribe. But that in case of any change of pro-

perty on either side, the necessary facts in relation thereto may be stated and interrogated to, and in such cases it shall be in the discretion of the Master to allow any additional matter that he may consider to have been properly inserted.

SCHEDULE.

That by an Indenture bearing date, &c., and made, &c., the hereditaments therein described have been conveyed by the said &c., to the said &c., and his heirs, subject to redemption or payment by the said &c., his heirs, executors or administrators, to the said &c., his executors, administrators or assigns, of the sum of £ with interest, on the day of which said sum and interest were not then paid (but remain due or otherwise as the case may be). To the end therefore &c. (Then an interrogatory as to the execution of the Mortgage with the prayer, the Mortgagor being entitled, in a Bill to redeem, to state all payments and interrogate as to them.)

Where no answer required.

CLXVII. That in all cases provided for by the foregoing Order the Plaintiff, if he shall require no answer from the Defendant, shall be at liberty to endorse the Subpœna *ad respondendum* with a notice in the following form:—

“ You are served with this process to the intent that you may, either in person or by your solicitor, appear in her Majesty’s Court of Chancery at Toronto, by filing your appearance with the Registrar of the said Court within days after the service hereof upon you, exclusive of the day of service, and that you may answer a Bill of complaint filed against you by for the foreclosure (or redemption as the case may be) of a certain mortgage, made by you (or C. D. as the case may be,) to the said (or E. F. as the case may be) bearing date the day of 18 and you will take notice, that, unless you enter such appearance, an appearance will be entered for you by the Plaintiff at the expiration of the said days, and unless you answer the said bill at or before the expiration of twenty-eight days after such appearance shall have been entered by or for you, you will be considered as confessing the truth of the several matters alleged in the said Bill of Complaint, and a decree of foreclosure will be made against you, and thereupon it will be referred to the Master of the Court to take an account of the moneys due upon such mortgage, (and in cases of Bills for foreclosure, to tax the Plaintiff his costs) of which proceedings before the Master you will be previously notified.”

A copy of which Subpœna, with such endorsement, shall be served upon the Defendant personally. And if, at the expiration of the period limited for the entry

of such appearance, no appearance shall have been filed by the Defendant, the Plaintiff shall, upon producing to and filing with the Registrar an affidavit of the personal service upon the Defendant of such Subpœna so endorsed as aforesaid, be at liberty to enter an appearance for the said Defendant, and proceed upon the said Bill as hereinafter provided.

Where no answer filed.

CLXVIII. That in all cases provided for by the foregoing orders, if, after the expiration of twenty-eight days from the time of entering such appearance, no answer be filed, the Defendant shall be deemed to have admitted the execution of the mortgage, and such other matters as are sufficiently alleged in the Bill to entitle the Plaintiff to a decree, but not to have admitted any particular or specific amount to be due upon such mortgage, and the Plaintiff shall be entitled to a decree for the foreclosure or redemption (as the case may be) of such mortgage without a formal hearing of the cause, and the decree shall thereupon be drawn up by the Registrar, upon the Præcipe of the Solicitor for the Plaintiff.

Answer.

CLXIX. That where the Defendant shall elect to put in an answer in cases provided for by the foregoing Orders, and he shall admit the statements in the Bill, or such of the statements as he may be interrogated unto, he may admit the same in short form, and such answer may be filed upon signature without oath, and may be in any form of words to the following effect:—"I admit the allegations con-

contained in the Plaintiff's Bill, and submit that an account may be taken as therein prayed."

Decree.

CLXX. That in cases in which the Defendant shall put in his answer to the Plaintiff's Bill, and upon which answer the Plaintiff would, according to the present practice, be entitled at the hearing to a decree of foreclosure or redemption, as the case may be, and of a reference to the Master to take an account, the Plaintiff shall be entitled to the like decree without a formal hearing, in like manner as is provided in the case of no answer being filed.

Costs.

CLXXI. That in all cases in which a Mortgagor Defendant to a Bill of foreclosure shall appear to and answer the Bill unnecessarily, that is, without thereby establishing any claim which would not otherwise have been allowed, the costs occasioned to the Plaintiff thereby shall not be, as in ordinary cases, added to the principal and interest, but shall be paid by the Defendant to the Plaintiff, who shall be entitled to a decree for the payment thereof, as in other cases where the Plaintiff is decreed his costs.

Warrant to proceed.

CLXXII. That in all cases provided for by the foregoing Orders the Plaintiff, upon bringing into the Master's office such decree or order as aforesaid, shall thereupon at once be entitled to the Master's Warrant to proceed, which Warrant shall be underwritten thus—

“At which time the Master will proceed to take an account of what is due upon the Mortgage mentioned in the Plaintiff’s Bill, and to tax the Plaintiff’s costs, and the Master’s report will stand confirmed in ten days after the filing thereof, unless you file exceptions thereto, or present a Petition of Review.”

And the Master shall, by the said Warrant, appoint in his discretion a day to proceed, and shall state in the said Warrant how many days before the return thereof he requires the same to be served, which Warrant, together with a copy of the decree and of the Plaintiff’s charge, shall be served upon the Defendant, and at the return of such Warrant, upon affidavit of the due service thereof, so underwritten as aforesaid, and of a copy of the decree, and of the Plaintiff’s charge, the Master shall be at liberty to proceed in taking such account, and to tax costs.

State of Facts.

CLXXIII. That in all cases provided for by the forgoing Orders, it shall not be necessary for the Plaintiff to set forth in his state of facts anything more than the date of the Mortgage; the principal sum secured thereby; assignments thereof, (if any) and from what date interest is claimed, together with any payments which may have been, or may be admitted to be made in discharge thereof, and if anything more be stated, and which shall appear to the Master to be unnecessary, the same shall be disallowed in taxation of costs.

Defendant’s appearance in Master’s Office.

CLXXIV. That, notwithstanding the Defendant may not have appeared or put in any answer to the Plaintiff’s Bill, he may appear in the Master’s Office at the return of the said warrant, and may contest

the Plaintiff's claim made on account of the said Mortgage, and in case the said Defendant shall appear to contest such claim, the Master shall then direct how and in what manner the said account or claim shall be contested or proved, and generally with respect to any circumstances connected with the said reference, and shall direct how and in what manner future Warrants shall be served.

Master's Report.

CLXXV. That if the Defendant do not appear at the return of the said Warrant to contest the said account, the Master shall at once proceed to take an account of what is due upon the mortgage, and to tax the Plaintiff's costs, and may make his report without any further Warrant except the Warrant to settle the same, which report shall stand confirmed in the same manner as is now provided for, or hereafter to be provided for, by any General Order respecting the confirmation of reports.

Vexatious proceedings in Master's Office.

CLXXVI. That in all cases where in the Master's Office either party shall unnecessarily and vexatiously contest the account of the other or any part thereof, the Master shall, before making his report, proceed to tax such costs occasioned thereby as shall appear to him reasonable and just, either against the Plaintiff or Defendant, as the case may be, and shall state in his report the amount of such costs, and by whose unnecessary and vexatious conduct the same were occasioned, and the party to whom such costs are to be paid shall be entitled, upon the confirmation of

the report, 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 in the cause is the party ordered to pay such costs as aforesaid, he shall be at liberty to deduct such costs as aforesaid from such general costs, provided such general costs and such interlocutory costs as aforesaid are between the same parties.

Warrants to consider, &c., dispensed with.

CLXXVII. That in all cases provided for by the foregoing Orders in the taking of the account in the Master's Office upon Mortgage, the Master shall be at liberty to dispense with warrants to consider the decree, to show cause why he should not Report, on preparing, and to sign the Report, and such Report may be signed at the expiration of the time at which the same could be signed if such warrant to sign had been taken out, and the party taking such Report shall be allowed a common attendance only in respect thereof.

7TH JUNE, 1845.

Absent Defendants.

CLXXVIII. Whereas, in the case of Defendants residing without the jurisdiction of this Court, but whose place of residence is known, and who may, therefore, be served personally with the process of this Court, to compel such Defendants to appear to and answer the Plaintiff's Bill, it is deemed advisable to allow Plaintiffs to proceed against such absent Defendants by personal service of such process in

cases where the same can be effected instead of according to the present mode of proceeding against absent Defendants.

It is, therefore, ordered, that upon motion in open Court, founded upon affidavit or affidavits, and such other documents or evidence if required or proper as may be applicable for the purpose of ascertaining the residence of any Defendant or Defendants residing without the jurisdiction of the Court, and the particulars material to identify such Defendant or Defendants, and his or their place or places of residence; it shall be competent for the Court to order and direct that service of a subpoena to appear and answer upon such terms and in such manner, and at such times as to the said Court shall seem reasonable, (or in cases where the Court shall deem fit, upon the Receiver, Steward, Bailiff, Agent, or other person receiving or remitting rents of lands and premises, if any, in the suit mentioned, or otherwise, acting on behalf of such Defendant or Defendants, in relation to the matter or matters which are the subject of such suit, returnable at such time as the Court shall direct,) together with a copy of such order, and of the prayer of the Plaintiff's Bill, shall be deemed good service upon such Defendant or Defendants, such order to direct also in what mode such service may be authenticated in cases where such service may be effected without the jurisdiction of this Court; and in case such Defendant or Defendants shall, after such service, make default in appearance by the time limited by such order and process aforesaid, the Plaintiff shall

be at liberty to enter an appearance for such Defendant or Defendants, upon filing with the Registrar an affidavit of such service, sworn as in such order directed; and if the Defendant shall not answer the Plaintiff's Bill within the time limited by such order, the Plaintiff shall be entitled to an order to set down the cause for hearing, in order that the Bill may be taken *pro confesso* against such Defendant or Defendants, upon filing with the Registrar his præcipe for that purpose; and thereupon a decree may be made and enforced against such Defendant or Defendants accordingly, unless the Court on special circumstances disclosed by affidavit shall allow further time to such Defendant or Defendants to answer the Plaintiff's Bill; provided, nevertheless, that the following notice, or such other notice as the Court may in any case direct, shall, in such cases, be endorsed on the said writ of subpoena, and signed by the Solicitor for the Plaintiff.

Ordinary Notice, to be endorsed ad respondendum in absent Defendant Cases.

"You are served with this process to the intent that you may, either in person or by your solicitor, appear in her Majesty's Court of Chancery, at Toronto, by filing your appearance with the Registrar of the said Court within _____ after the service hereof upon you, exclusive of the day of such service, and that you may answer a Bill of Complaint filed against you by _____ a copy of the prayer of which said Bill is served upon you herewith; and you will take notice that unless you enter such appearance, an appearance will be entered for you by the Plaintiff, at the expiration of the said _____. And unless you answer the said Bill at or before the expiration of _____ after such appearance shall have been entered by you or for you, you will be considered as confessing the truth of the several matters alleged in the said Bill of Complaint, and a Decree will thereupon be made and enforced against you."

Ordered, that in case the Court shall think fit so to direct, it shall be competent for the Court to order that the Plaintiff be at liberty either to proceed

against such absent Defendant by such personal service of process, or by publication of order by advertisement, according to the previous practice of the Court in that behalf; and in such case the Plaintiff shall be at liberty, for the purposes of such advertisement, to take the usual order in absent Defendant cases, under the previous practice as aforesaid, without any further application to the Court in respect thereof.

29TH MAY, 1845.

Order in relation to the admission of Solicitors in Chancery.

CLXXIX. It is hereby declared and directed by the Vice Chancellor, that from and after Monday, the ninth day of June next, no persons be admitted to practice as Solicitors of the Court of Chancery except Solicitors of the said Court already admitted, or who may be hereafter admitted, as such Solicitors and Attornies of the Court of Queen's Bench admitted and sworn in before the said ninth day of June next. Persons admitted Attornies of the Court of Queen's Bench after that period to be sworn in and admitted Solicitors of the Court of Chancery before they can practice as Solicitors of that Court, either as principals or through agents.

21ST OCTOBER, 1845.

Sittings of the Court and Vacation.

CLXXX. Whereas by the provisions of an Act of the Legislature of this province passed during the

last session thereof, the times for holding the terms of the Court of Queen's Bench are fixed at periods which interfere with the present arrangement for holding the sittings of this Court; it is, therefore, desirable, for the convenience of the profession and the dispatch of business, to make such alterations in the periods for holding the sittings of this Court as to obviate the inconvenience which will otherwise occur; it is, therefore, ordered, that hereafter the Sittings in Equity shall be held as follows:—

The first thereof to commence on the second Monday in January.

The second thereof to commence on the second Monday in April.

The third thereof to commence on the first Monday in July.

The fourth to commence on the first Monday in December.

And each of the said sittings shall close on the Saturday of the week next after the commencement thereof.

Ordered, that hereafter the long vacation shall commence on the fifteenth day of August, and end on the first day of October following.



APPENDIX.

I. Schedule of Fees in Chancery.

By the Vice Chancellor of Upper Canada, and the Judges of Her Majesty's Court of Queen's Bench, under the authority of an Act of the Parliament of the late Province of Upper Canada, passed in the first year of the reign of Her Majesty Queen Victoria, entitled, "An Act to amend an Act entitled 'An Act to establish a Court of Chancery in this Province.'"

It is Ordered, that the fees hereinafter set down and no more shall and may be taken by Solicitors, Counsel, Master, and other Officers of the said Court of Chancery, for or in respect of any business to be done or transacted in the said Court, from and after this present Term of Easter, in the eighth year of Her Majesty's reign, in all matters and things, causes and proceedings, now or hereafter depending in the said Court of Chancery.

SOLICITOR.

Instructions for Bill or Answer	£0	7	6
Letter of Notice before filing Bill	0	2	6
Instructions for Petition where no Bill filed	0	5	0
Drafting Bills, Answers or other Pleadings, Petitions, Special Affidavits and Interrogatories, including copy to keep, per folio	0	1	0
Engrossing same, and making other copies when necessary (other than office copies to be authenticated by Registrar), per folio	0	0	6
Office copies to be authenticated by Registrar, per folio	0	0	5
Affidavits of service or other common affidavits, including attendance	0	2	0
Præcipe for Subpœna or other process entering appearance, including attendance	0	1	3
<i>Note.</i> —One subpœna only allowed to each district, which shall include the names of all the defendants in such district.			
Every necessary attendance to serve process or for other purposes	0	1	3
Special attendance on the Master's Warrant, or on Examination of Witnesses, or on Hearing of Cause, Plea or Demurrer, or Special Motion	0	5	0
Instructions for Brief and for Interrogatories	0	5	0
Brief, per folio, including fair copy, subject to be reduced by the Master if the same contain superfluous matter or be of unnecessary length	0	0	6
Copy of Brief for second Counsel, when required, per folio ..	0	0	6
Copy of Orders, Petitions, or other papers or documents (not office copies), required to be served, per folio	0	0	6
Fee on settling Minutes of Decree or Special Order, and attending the Registrar: and fee on passing same	0	5	0
Drawing Bill of Costs and attending taxation	0	5	0
Postages actually paid			

Note.—The folio to consist of 100 words.

COUNSEL.

Fee to Counsel for settling and signing Pleadings, Petitions, or Interrogatories.....	0	10	0
Fee on Common Motions and Motions of Course	0	10	0
Special Applications, Arguments, Hearing, &c.	1	5	0
To be increased, at the discretion of the Master, to (being the highest fee allowed by the statute)	2	2	0

MASTERS AND MASTERS EXTRAORDINARY.

Every Summons or Warrant	0	1	3
Administering Oath or taking Affirmation	0	1	0
Marking every Exhibit.....	0	1	0
Drawing Depositions, Reports, or Deeds, per folio	0	1	0
One fair copy, when necessary, per folio	0	0	6
Copy of papers given out, when required, per folio	0	0	6
Every attendance upon a reference	0	5	0
For each additional hour.....	0	5	0
Preparing, Engrossing and Signing, each Advertisement.....	0	5	0
Every Certificate	0	2	6
Filing each Paper	0	0	4
Taxing Costs, including attendance	0	5	0
Making up and forwarding Answers and Depositions	0	1	3
Every necessary special attendance out of office, within two miles	0	5	0
Every additional mile above two	0	1	0

REGISTRAR.

Entering parties names and filing Bill, Answer, Plea or Demurrer	0	2	6
Entering and filing all other Pleadings, Interrogatories and Depositions, or other evidence	0	1	0
Filing and registering Affidavits, Exhibits, or other papers ...	0	0	4
Entering appearance	0	2	6
Every Subpœna	0	3	0
Special Writ, Writ of Execution or Commission.....	0	5	0
Office copy of papers required to be given out, per folio.....	0	0	6
Examining and authenticating same when office copy prepared by Solicitor, per folio.....	0	0	1
Attendance on appointment of Guardian.....	0	2	6
Amendment of Record when re-engrossment not necessary, per folio	0	1	0
Drawing Fiat to Petition	0	1	0
Attending the Vice Chancellor for his signature to any docu- ment or paper, or on leaving abstract of proceedings ...	0	1	3
Making up and forwarding Interrogatories.....	0	1	3
Setting down cause.....	0	2	6
Certificate of pleadings being filed.....	0	2	0
Certificate of state of cause	0	2	6
Drawing Minutes of Decree or Special Order, per folio	0	1	0
Drawing Decree or Order, per folio	0	1	0
Entering same, per folio.....	0	0	6
Receiving and paying out Deposit.....	0	5	0

**II. Forms of Writs referred to in the Orders of the 28th
March, 1844.**

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CANADA.

In Chancery.

VICTORIA, by the grace of God, of the United Kingdom of
Great Britain and Ireland, Queen, Defender of the
Faith.

To the Sheriff of the

District.

Greeting:

We command you, that of the goods and chattels of in your
district, you cause to be made the sum of for certain costs which
were lately before our Court of Chancery, at Toronto, in a certain cause
or certain causes (as the case may be), wherein Plaintiff, and
Defendant, or in a certain matter therein depending, entitled, "In the
matter of" (as the case may be), by a decree or order (as the case
may be) of our said Court, bearing date the day of decreed or
ordered (as the case may be) to be paid by the said to and
which costs have been taxed and allowed by the Master of our said Court,
as appears by his certificate, dated the day of and that of the
goods and chattels of the said in your district, you cause to be
made interest on the said sum of and that you have that money
and interest before our Vice Chancellor, in our said Court, at Toronto,
immediately after the execution hereof, to be paid to the said in
pursuance of the said decree or order (as the case may be), and in what
manner you shall have executed this writ make appear to our Vice
Chancellor, in our said Court, at Toronto, in two months from the date
hereof, and have then there this writ.

Witness the Honourable Robert Sympson Jameson, our Vice Chan-
cellor of our Court of Chancery, at Toronto, the day of in the
year of our reign, and in the year of our Lord, 1844 .

—
CANADA.

In Chancery.

VICTORIA, by the grace of God, of the United Kingdom of
Great Britain and Ireland, Queen, Defender of the
Faith.

To the Sheriff of the

District.

Greeting:

Whereas, by our writ, we lately commanded you that of the goods and
chattels, or lands and tenements (as the case may be) of (here
recite the fi. fa.) you returned to our Vice Chancellor, in our said Court
of Chancery, that by virtue of the said writ to you directed, you had
taken goods and chattels, or lands and tenements (as the case may be) of
the said to the value of the money and interest aforesaid, which
said goods and chattels, or lands and tenements (as the case may be)
remained unsold in your hand for want of buyers. Therefore, we being
desirous that the said should be satisfied, his money and interest

aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels or lands and tenements of the said by you in form aforesaid taken and every part thereof for the best price that can be gotten for the same, and have the money arising from such sale before our Vice Chancellor, in our said Court, immediately after the execution hereof, to be paid to the said and in what manner you shall have executed this writ make appear to our Vice Chancellor, in our said Court, at Toronto, in one month (in case of fi. fa. against goods and chattels, or in case of lands and tenements, three months) from the date hereof; and have you then there this writ.

Witness the Honourable Robert Sympson Jameson, our Vice Chancellor of our Court of Chancery, at Toronto, this day of in the year of our reign, and in the year of our Lord 184 .

CANADA.

In Chancery.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of the

District.

Greeting:

Whereas, lately, before our Court of Chancery, at Toronto, in a certain cause or causes (as the case may be), wherein is Plaintiff, and is Defendant, or in a certain matter therein depending, entitled, "In the matter of" (as the case may be) by a decree or order (as the case may be) of our said Court, bearing date the day of it was decreed or ordered (as the case may be) that should pay unto his costs, and which costs have been taxed and allowed by the Master of our said Court, as appears by his certificate, dated the day of .

We do therefore command you, and have given, and by this writ do give to you full power and authority to enter upon all the messuages, lands, tenements and real estate, whatsoever, of the said and to take, collect, receive and sequester, into your hands, not only all the rents and profits of the said messuages, lands, tenements and real estate, but also all his money, debts, credits and assets, whatsoever, sufficient to pay the amount endorsed upon this writ, and that you do, at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements and real estate, of the said and that you do collect, take and get into your hands, not only the rents and profits of all his said real estates, but also all his money, debts, credits and effects, to such amount as aforesaid, and keep the same under sequestration in your hands until our Court of Chancery shall make further order respecting the same. And in what manner you shall have executed this writ make appear to our Vice Chancellor, in our said Court, at Toronto, in two months from the date hereof, and have then there this writ.

Witness the Honourable Robert Sympson Jameson, our Vice Chancellor of our Court of Chancery, at Toronto, the day of in the year of our reign, and in the year of our Lord 184 .

CANADA.

In Chancery.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of the

District.

Greeting:

We command you, that of the lands and tenements of in your district, you cause to be made the sum of for certain costs which were lately in our Court of Chancery, at Toronto, in a certain cause or certain causes (as the case may be), wherein is Plaintiff, and is Defendant, or in a certain matter therein, entitled, "In the matter of" (as the case may be) by a decree or order (as the case may be) of our said Court, bearing date day of ordered to be paid by the said to the said and which costs have been taxed and allowed by the Master of our said Court, as appears by his certificate, dated the day of and that of the lands and tenements of the said in your district, you cause to be made interest on the said sum of and that you have that money and interest before our Vice Chancellor, in our said Court, at Toronto, immediately after the execution hereof, to be paid to the said in pursuance of the said decree or order (as the case may be), and in what manner you shall have executed this writ make appear to our Vice Chancellor, in our said Court, in Toronto, in thirteen months from the date hereof; and have then there this writ.

Witness the Honourable Robert Sympson Jameson, our Vice Chancellor of our Court of Chancery, at Toronto, this day of in the year of our reign, and in the year of our Lord 184 .

~~~~~

### III. Orders in Bankruptcy.

Whereas the Order in Bankruptcy issued by the Lord High Chancellor of England, on the 12th day of August, 1809, intended to guard against the evil arising from the prosecuting of petitions on behalf of persons who afterwards denied having given their authority for the same, does not necessarily apply to the circumstances of this country, or the practice in Bankruptcy in the Court of Review in this Province, and the strict enforcement of such order would generally be productive of considerable expense, and in some cases operate to the obstruction of justice.

It is therefore Ordered, that in lieu thereof it shall be sufficient, if signatures to such petitions be attested by any Solicitor of the said Court of Chancery, in case such Petitioner reside within the same, such signature and attestation to be duly verified by the affidavit of the person attesting such petition.

It is Ordered, that any person applying to a Judge or Commissioner or other officer, having the custody of papers in matters of Bankruptcy within that part of this province formerly Upper Canada, for copies of any proceedings had before such Judge or Commissioner, up to the issuing of the commission of Bankruptcy, shall be entitled thereto at any period of such proceedings, or afterwards upon payment of the usual fees.

It is Ordered, that costs awarded in this Court in Bankruptcy may be recovered in like manner and by the same process as other costs awarded in the Court of Chancery.

#### IV. Schedule of Fees in Bankruptcy.

Whereas it is provided by the Statute 7th Victoria, chap. 10, sec. 68, that the Court of Chancery in and for that part of this province formerly Upper Canada shall and may regulate the costs to be allowed in all cases and matters of Bankruptcy, not otherwise provided for by the said statute, I, the Honourable Robert Sympson Jameson, Vice Chancellor of Upper Canada, exercising the judicial powers of the said Court, do Order that the fees hereinafter expressed shall and may be taken and allowed to be taken by any Commissioner or Judge of the Court of Bankruptcy in that part of this province formerly Upper Canada, Solicitor, Attorney, Clerk, or Sheriff, or other officer, for the services respectively rendered by them,

#### FEEES TO SOLICITOR OR ATTORNEY.

|                                                                                                                                                                                    |   |    |   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|---|
| Attending and taking instructions to procure a commission, or to summon a debtor, or to oppose a summons, including attending witnesses, and to search for prior commission..      | 0 | 7  | 6 |
| Drawing affidavit of debt to procure a commission or a summons, and all other affidavits as to acts of bankruptcy or of the trading, and all other papers and documents, per folio | 0 | 1  | 0 |
| Fair copy thereof, per folio.....                                                                                                                                                  | 0 | 0  | 6 |
| Other copies thereof, when required or necessary .....                                                                                                                             | 0 | 0  | 6 |
| Drawing and engrossing Petition for Commission .....                                                                                                                               | 0 | 5  | 0 |
| Attending the Judge or Commissioner with the Affidavits and Petition to bespeak the Commission .....                                                                               | 0 | 5  | 0 |
| Attending upon proving debt, and every special attendance upon meetings for the choice of Assignees, and all other special attendance.....                                         | 0 | 5  | 0 |
| Every notice, including copy and service .....                                                                                                                                     | 0 | 3  | 6 |
| Fee on every Warrant of Attachment or Special Writ granted by the Judge or Commissioner .....                                                                                      | 0 | 5  | 0 |
| For preparing and engrossing Bond on Debtor, being summoned and attending execution .....                                                                                          | 0 | 10 | 0 |
| For preparing and engrossing every Bond of Arbitration and attending execution.....                                                                                                | 0 | 10 | 0 |
| For drawing every admission of debt (per stat.).....                                                                                                                               | 0 | 1  | 3 |
| All common affidavits of services of papers, including the attendance .....                                                                                                        | 0 | 2  | 6 |
| All common attendances.....                                                                                                                                                        | 0 | 1  | 3 |
| Writing general letters, each .....                                                                                                                                                | 0 | 2  | 6 |
| For every Bill of Costs, and attending taxation of same.....                                                                                                                       | 0 | 5  | 0 |

#### ON PETITION OR MOTION IN THE COURT OF REVIEW.

|                                                                       |   |   |   |
|-----------------------------------------------------------------------|---|---|---|
| Attending and taking instructions for Petition or Motion.....         | 0 | 5 | 0 |
| <i>Note.</i> —No instructions to oppose a petition or motion allowed. |   |   |   |
| Drawing Notice of Motion, per folio.....                              | 0 | 1 | 0 |
| Fair copy to serve, per folio.....                                    | 0 | 0 | 6 |
| Drawing Special or Common Petition, per folio .....                   | 0 | 1 | 0 |
| Copy of Petition to present, per folio.....                           | 0 | 0 | 6 |

*Note.*—No fee allowed to Counsel for settling, unless in very special cases.

|                                                              |   |   |   |
|--------------------------------------------------------------|---|---|---|
| Attending and reading over and attesting each signature .... | 0 | 5 | 0 |
|--------------------------------------------------------------|---|---|---|



|                                                                  |   |   |   |
|------------------------------------------------------------------|---|---|---|
| Attending to present and to procure an appointment to hear ..    | 0 | 2 | 6 |
| Copy of Petition to serve, per folio .....                       | 0 | 0 | 6 |
| Service of the Petition or Notice of Motion.....                 | 0 | 2 | 6 |
| Instructions for Affidavit in support of the Petition.....       | 0 | 5 | 0 |
| Drawing and engrossing Affidavits, per folio.....                | 0 | 1 | 0 |
| Copy thereof when required or necessary, per folio .....         | 0 | 0 | 6 |
| Brief of Petition and of Affidavits for Counsel, per folio ..... | 0 | 0 | 6 |
| Observations thereon .....                                       | 0 | 5 | 0 |
| Fees to Counsel.....                                             | 0 | 0 | 0 |
| Attending Court when Petition or Motion heard.....               | 0 | 5 | 0 |
| Attending upon and settling Minutes of Order.....                | 0 | 5 | 0 |

## COSTS OF THE DAY.

|                                                                    |   |   |   |
|--------------------------------------------------------------------|---|---|---|
| If one Counsel only is instructed, then to each solicitor's client | 2 | 0 | 0 |
| If two Counsel, then to each .....                                 | 4 | 0 | 0 |

## ABANDONED NOTICE.

|                                           |   |   |   |
|-------------------------------------------|---|---|---|
| Costs of Notice of Motion abandoned ..... | 2 | 0 | 0 |
|-------------------------------------------|---|---|---|

*Note.*—If the party to whom such costs are to be paid may have incurred further costs, the Court of Review to be at liberty to order the payment thereof.

## FEES TO THE JUDGE OR COMMISSIONER.

|                                                                  |   |    |   |
|------------------------------------------------------------------|---|----|---|
| For every Commission (per stat.).....                            | 2 | 0  | 0 |
| Filing every Affidavit or other paper.....                       | 0 | 0  | 4 |
| For every Summons issued or appointment .....                    | 0 | 1  | 3 |
| Swearing Affidavits or administering Oaths.....                  | 0 | 1  | 0 |
| Taking Examinations <i>viva voce</i> , per folio .....           | 0 | 1  | 0 |
| Copies thereof, when required or necessary, per folio .....      | 0 | 0  | 6 |
| Copies of all Proceedings, when required or necessary, per folio | 0 | 0  | 6 |
| Certificates of State of Proceedings, or correctness of Minutes  |   |    |   |
| of Proceedings before the Judge or Commissioner, when            |   |    |   |
| required, and all other usual Certificates.....                  | 0 | 2  | 6 |
| Taxing costs .....                                               | 0 | 2  | 6 |
| For every Sitting under the Commission, but if more than         |   |    |   |
| one on the same day, then the same to be apportioned             |   |    |   |
| (per stat.).....                                                 | 0 | 10 | 0 |
| For every Warrant of Attachment for disobedience of Order        |   |    |   |
| or Summons, every Execution for Costs, and all other             |   |    |   |
| Special Writs or Warrants.....                                   | 0 | 5  | 0 |
| For every Instrument appointing Assignees, executed in           |   |    |   |
| duplicate.....                                                   | 0 | 10 | 0 |
| For approving of Bond, with Sureties.....                        | 0 | 5  | 0 |
| For every Bankrupt's Certificate .....                           | 0 | 10 | 0 |
| For every Special Attendance not otherwise provided for ....     | 0 | 5  | 0 |
| For marking Exhibits produced, each .....                        | 0 | 1  | 0 |

## CLERK TO COMMISSIONERS.

|                                                               |   |    |   |
|---------------------------------------------------------------|---|----|---|
| For Filing every Paper or Document .....                      | 0 | 0  | 4 |
| For every Sitting under the Commission, per day, to be appor- |   |    |   |
| tioned if more than one on the same day (per stat.).....      | 0 | 10 | 0 |

|                                                                 |   |   |   |
|-----------------------------------------------------------------|---|---|---|
| For Copies of all Papers, when required or necessary, per folio | 0 | 0 | 6 |
| Fee for Keeping Record of Proceedings in each Case.....         | 0 | 5 | 0 |
| For any List of Debts proved at First Meeting .....             | 0 | 2 | 6 |
| For every List of Debts proved, if made at Second Meeting       | 0 | 2 | 6 |

## SHERIFF.

|                                                                                                                                                                       |   |    |   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|---|
| For Seizure of Estate and Effects under the Commission ....                                                                                                           | 0 | 10 | 0 |
| For Advertisements, each paper.....                                                                                                                                   | 0 | 2  | 6 |
| Actual Disbursements for Advertising .....                                                                                                                            |   |    |   |
| Actual Disbursements for taking charge of the Estate until delivered to the Assignees to be subject to the discretion of the Judge or Commissioner .....              |   |    |   |
| For taking an Inventory of the Estate.....                                                                                                                            | 0 | 10 | 0 |
| If the same exceeds ten folios, extra per folio .....                                                                                                                 | 0 | 1  | 0 |
| Copy thereof to be handed over to the Assignees, per folio...                                                                                                         | 0 | 0  | 6 |
| Service of Summons on Bankrupt, or other Summons required by the Judge or Commissioner to be served, mileage in all cases per mile distance from the Court House..... | 0 | 0  | 6 |
| Executing every Warrant of Attachment .....                                                                                                                           | 0 | 5  | 0 |
| Poundage and Fees upon Executions for Costs, the same as levied and allowed on like Executions from the Court of Queen's Bench.                                       |   |    |   |

*Note.*—The folio to consist in all cases of one hundred words.

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