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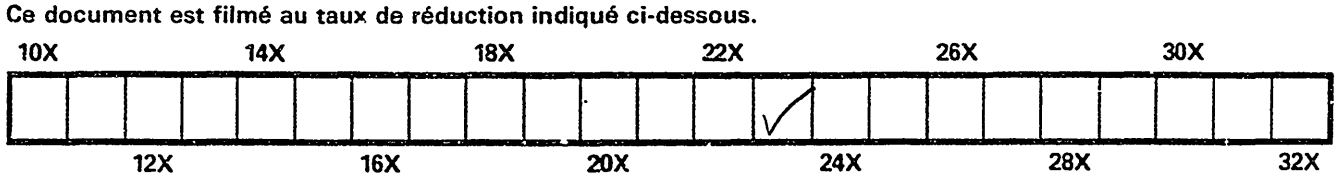

15

ORDERS

OF THE

COURT OF ERROR AND APPEAL,

AND SUCH OF THE

ORDERS OF THE COURT OF CHANCERY

PASSED PREVIOUS TO MAY, 1850,

AS ARE STILL IN FORCE.

TORONTO:
HENRY ROWSELL,
KING STREET.

Rowsell & Thompson, Printers, Toronto.

SUCH OF THE

ORDERS OF THE COURT OF CHANCERY

PASSED PREVIOUS TO MAY, 1850,

AS ARE STILL IN FORCE.

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.

June 1, 1837

Exceptions for scandal or impertinence, and reference thereof.

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.**

Time for procuring report on reference for *insufficiency* scandal or impertinence.

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* There are now no exceptions for *insufficiency*. See 30th order of May 1850. See also the 1st order of May, which abrogates all the previous orders and parts of orders inconsistent with the orders of May.

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 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.

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 and 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 the 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.

July 1, 1837.

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.

* See 45th order of May 1850, abolishing Sub. to rejoin.

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

"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 "county 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 sub-"scribed 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. Soli-"citor 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 that 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 the 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.

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 sixpence 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.

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 Registrar's 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.

XXXI. That clerical mistakes in decrees or decretal orders, or errors arising from any accidental

slip or omission, may at any time before enrolment, be corrected upon petition, without the form and expense of a re-hearing. Correction of clerical and accidental errors in orders and decrees.

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. Master may proceed *ex parte*.

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. Review of *ex parte* proceedings.

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, the court will make order for payment of such costs accordingly. Costs occasioned by the non-attendance of parties.

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, Course to be followed where a party prosecuting a decree does not proceed with due diligence

* See also 79th order of May 1850.

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.

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.

XLVI. That all accounts, when passed and settled by the Master, shall be entered in a book to be

* See 53rd order of May, 1850.

kept for that purpose in the Master's office, with proper indices, in order to be referred to as occasion may require. Accounts to be entered in a book.

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. Receivers.

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. Directions on the appointment of a receiver.

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. Affidavits used before the master.

L. That where, upon an inquiry 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 in reply to former affidavits.

further affidavits be read, unless specially required by the Master.

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 *viva 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.

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* See 53rd order of May 1850.

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. Sales in the country.

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. Settlement of conveyances. Taxation of costs

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. Master may require parties to appear by distinct solicitors.

LXXI. That every answer, deposition, or other proceeding in a cause which, by the rules or practice of the court, is 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 Ap. 13, 1839. Transmission of papers to registrar.

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.

Aug. 27, 1839. 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 check to be drawn out and signed by the registrar, and counter-signed by the Master, but not otherwise.

July 12, 1841 Alimony.

LXXVIII. Whereas the order 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 such discovery shall be subject to the same objections as any other matters of discovery are by the rules and practice of the court.

LXXXI. 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. Aug. 1, 1841. Deposit on petition of re-hearing.

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 Registrar's office, shall be deemed sufficient service on him, unless the court shall under special circumstances think fit to direct otherwise. Jan. 1, 1842. Service on solicitor or agent.

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. Service of order to have the effect of writ of execution.

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 Compulsory process for refusing obedience to orders.

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.

* See Order 164 post.

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.† Time for submitting to *plea or* demurrer.

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. Trustees of real estate to be made parties without joining persons beneficially interested.

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

CIX. That in all cases in which the plaintiff has a joint and several demand against several persons, Persons against whom joint and several demands exist.

* Pleas abolished to bills of relief. See 25th order of May, 1850.
† But see 26th order of May, 1850.

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.

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*.*

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 ob-

* See 25th order of May 1850, abolishing pleas to bills for relief.

jection, 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.

Exhibit may be proved by affidavit.

CXX. That in cases in which any exhibit may by the present practice of the court be proved *viva 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 *viva 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.

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 the decree [or order], 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 him, shall be stated or recited; but such state of facts, charge, affidavit, deposition, ex-

amination 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.

Petition of re-hearing not to set out proceedings anterior to decree.

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.

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 solicitor's book, and to be kept publicly at the Registrar's 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.

Mar. 3, 1843.

Office copies of pleadings and proceedings heretofore 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 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

* See 22nd order of of January, 1851, and schedule E.

† See 16th order of January 1851, as to solicitor and agent's book in office of deputy registrars.

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 proceeding may be bespoken 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 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.

Ap. 20, 1843.

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

* See also 76th order of May 1850.

of such accounts shall be referred to the Master's office.

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 rests 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. Accounts to be taken without specific directions.*

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.

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. Sep. 23, 1843. Answers, &c. to be taken in absence of Master.

* See also 10th order of January 1851.

Jan. 28, 1845.

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.

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.

* See 69th order of May 1850, authorizing the issuing of subpœnas *ad audiendum judicium.*

† See 25th order of May 1850, abolishing pleas in suits for relief.

‡ See 53rd order of May 1850.

CLXIV. That the sheriff in each district in that part of this province formerly constitutiug 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. Sheriff to perform the duties of messenger.

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 re-hearing 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 Enrolment of decree.

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.

May 29, 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.*

Jan. 27, 1846

Applications to amend and to answer &c., to be made to the Master.

CLXXXI. It is ordered, that the Master in ordinary of this court shall hear and determine all applications for time to *plead*, answer or demur, and for leave to amend bills, and for leave to withdraw replication and amend bills, and for enlarging publication; and either party shall be at liberty to appeal by motion to the Vice Chancellor from the order made by the Master upon such application.

Appeal to court.

[2.] That no such application shall be made to the Vice Chancellor except on appeal as hereinbefore provided.

How application to be made.

[3.] That such applications to the Master shall be made by taking out a warrant, which shall be underwritten, with the object of the application, and the same shall be served two clear days before the return thereof.

Master to direct how costs of the application to be paid.

[4.] That upon such applications aforesaid, the Master shall be at liberty to direct, and shall accordingly in the orders made thereon direct whether the

* See Pro. Stat. 12 Vic. ch. 63, sec. 45.

costs of the application shall be costs in the cause, or whether such costs or any part thereof shall be paid by any of the parties personally; and in the latter case, the Master shall in such order either fix the sum to be paid for such costs or tax the same at his discretion; and the party to whom such costs are directed to be paid, shall be entitled to sue out a subpœna for the same; or the Master may at his discretion award costs to neither party.

[5.] That the Master shall draw up the orders upon such applications aforesaid in a short form, and the same when signed by him shall be entered in a book to be kept for that purpose in the office of the Master, and such orders shall then be binding (unless reversed or varied on appeal), and shall be enforced in like manner as if made by the court, and the original order or any duplicate thereof (which the Master is to grant on the application of any party) shall be a sufficient warrant to every officer of the court to do the act therein mentioned, or to permit the same to be done, and each party shall be at liberty to inspect the entry of all such orders in the said entering book without fee. How orders giving leave are to be drawn up.

CLXXXIII. That upon a reference to the Master for the appointment of a receiver, *of a guardian*,* or of a committee of the estate of a lunatic, the party proposing such receiver, guardian or committee, shall bring into the Master's office a proposal for such appointment, and for the sureties of the person or persons so proposed; and the Master upon approving any such proposal shall (without first reporting such approval to the court), proceed in taking of the recognizances of such receiver, guardian or committee, and to report such appointment to the court in like manner as is now done after a report of the Feb. 19, 1847. Appointment of receiver, guardian, &c.

* See 21st order of May, 1850, as to the appointment of a guardian to an infant defendant.

Master's approval of such proposal, and the confirmation of such report by the court.

Advertisements for sale of estates.

CLXXXIV. That where advertisements are issued for the sale of an estate, for creditors, for next of kin, or otherwise, it shall not in future be necessary to issue first a general, then a peremptory advertisement, but that one advertisement only shall be necessary, which advertisement shall be peremptory. Provided nevertheless, that it shall be in the discretion of the Master to issue a general advertisement in the first instance, in cases where he shall deem it advisable so to do.

Proceedings before the Master in reference to sales of estates.

CLXXXV. That in proceeding before the Master for a sale by public auction, the party conducting such sale shall bring in before the Master a state of facts and proposal as to such sale, embracing therein a proposal for an auctioneer, or other person if considered necessary for conducting such sale, together with the particulars and conditions of sale which shall be contained in one state of facts and proposal, and be proceeded upon together, except in cases where the Master shall see fit to direct otherwise.* And further, that no report of the appointment of an auctioneer or other person to sell shall be necessary, but the Master shall, if required, certify that he has made such appointment, which certificate shall not require to be settled by warrants or otherwise.

Exceptions to answers for scandal.

CLXXXVI. That the portion of the 75th order of this court, passed on the 20th April 1840, which relates to the setting down of exceptions to an answer to be argued before the court, be rescinded; and that in future, exceptions to an answer, as well for impertinence and slander *as for insufficiency*,* be referred to the Master in like manner as before the passing of the said order; and further, that no copies of pleadings shall be allowed either for the Master's

* See 30th order of May 1850.

office or the parties, their counsel or solicitors, upon the argument of such exceptions.

Order for or against persons not parties to a cause, how enforced.

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

Jun. 29, 1847.

Sequestration, what is required to obtain.

CLXXXVIII. Before a sequestration will be granted on a return of *non est inventus* by the sheriff, acting under the authority of the 164th order of this court, passed the 28th January 1845, the party applying for such sequestration will be required to satisfy the court by affidavit that the party against whom the warrant was issued is resident out of the jurisdiction of this court, or that he hath absconded from Upper Canada, or is concealed within the same to avoid service or execution of process, or that he hath departed from Upper Canada for the purpose of residing out of the same, or that due diligence was used to ascertain the place where such party was at the time of issuing the warrant, and endeavoring to apprehend such party under the same, and that the party issuing forth such warrant verily believed at the time of suing forth the same that such party was in the *district* into which such writ was issued, and that in the case last aforesaid, either that the last known or usual place of residence in Upper Canada of the party against whom such writ had so issued, was either in the *district* to the sheriff of which such warrant was addressed, or in the *district* to the sheriff of which the writ of attachment previously

issued was directed, or that such party hath no place of residence in Upper Canada aforesaid.

July 20, 1847. Master may enlarge the time allowed for any proceeding.

CLXXXIX. That upon the Master allowing time to answer, he may allow the defendants such further time, and on such (if any) terms as to him may seem just.

In all cases where the Master is authorised to appoint the time for any proceedings, or to enlarge the time allowed for any proceeding by general order, he may further enlarge any time so appointed or enlarged by himself, and on such (if any) terms as to him may seem just; provided the application for such enlargement is made before the expiration of the time previously allowed; and provided he is satisfied that such enlargement is required for the purpose of justice and not of delay.

Warrants to proceed in foreclosure cases to be served on solicitors.

CXC. In order to remove doubts as to the course of proceeding in the Master's office in suits for the foreclosure or redemption of mortgages under the general orders of this court of the 28th January 1845, in cases where the defendant appears or answers by his solicitor,—it is ordered, that it shall be sufficient in such case to serve the warrant to proceed upon the solicitor for the defendant, or upon the agent of such solicitor; the warrant to settle the Master's report to be also served upon such solicitor or agent.

Oct. 12, 1849. Bills, &c., to be addressed to, and writs tested in name of Chancellor.

CXCII. Ordered that all *bills*,* petitions, &c., hereafter to be filed, shall be addressed to "The Chancellor of Upper Canada:"

That all writs shall be tested in the name of the Chancellor.

* See schedule A, orders of May 1850, and schedule A, orders of January 1851.

SCHEDULE OF FEES.

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	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
Note.—One subpœna only allowed to each county, which shall include the names of all the defendants in such county.			
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	6	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	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 on Petition	0	1	0
Attending the Vice Chancellor for his signature to any document 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

INDEX.

The figures refer to the numbers of the respective Orders.

ORDERS

OF THE

COURT OF ERROR AND APPEAL.

PASSED 3RD JULY, 1850.

Whereas, by an act passed in the twelfth year of her Majesty's reign, intituled, "An Act to make further provision for the Administration of Justice, by the establishment of an additional Superior Court of Common Law, and also a Court of Error and Appeal in Upper Canada, and for other purposes," it was enacted, that a Court of Judicature should be established in that part of this Province called Upper Canada, to be styled "The Court of Error and Appeal," and to be composed of the judges of the Court of Queen's Bench, the Court of Common Pleas, and the Court of Chancery; and that it should be lawful for the said judges of the Court of Appeal, at any time within two years, to make all such general rules and orders as to them might seem expedient for the purpose of adapting the said Court of Appeal to the circumstances of this province, as well in regard to the writs of Error or other process by which Appeals should be commenced, and the form and mode of suing out such process as in respect of the practice and proceedings of the said court, and also to regulate the allowance and amount of costs, and from time to time to make other rules and orders, amending, altering, or rescinding the same: Provided always, that no such rules or orders should have the effect of altering the principles or rules of

decision of the said court or any of them, or of abridging or affecting the right of any party to such remedy as before the passing of that act might have been obtained in the Court of Appeal thereby abolished; but might in all respects extend the manner of obtaining such remedy by regulating the practice of the said court in whatever way might to them seem expedient for better attaining the ends of justice; and that all such rules, orders or regulations should be laid before both houses of the Provincial Parliament, if then in session, immediately upon the making of the same, or if the Parliament should not be then in session, then within five days after the meeting thereof; and that no such rule, order or regulation should have effect until within six weeks after the same should have been so laid before both houses of the legislature, and that any such order so made should, from and after such time aforesaid, be binding and obligatory on the said court and all other courts in the said province of Upper Canada to which the same should be made expressly to extend.

It is therefore ordered—

I. That the first process in appeal from judgments of the Courts of Queen's Bench or Common Pleas, shall be by a writ of appeal, which may be in the following form:—

UPPER CANADA.

[L. S.] Victoria, &c.

To the Honorable —— Chief Justice of the Court of ——, *Greeting:*

Form of writ of appeal from Q. B. or C. P.

Whereas, in the record and proceedings, and also in the giving of judgment in a certain suit in our Court of our Bench for Upper Canada (or in the Court of Common Pleas) between A. B. and C. D., in a plea of trespass on the case (or as the case may be) as it is said manifest error hath intervened, as by the said (appellant) we are informed: We therefore, being willing that the error, if any there be, should, according to the laws of Upper Canada, be duly corrected, do command you that without delay you send under the seal of the said court the record and proceedings aforesaid, with all things concerning the same, to our Court of Error and Appeal, that the said Court of Error and Appeal (the record and proceedings aforesaid being seen and examined) may further cause to be done thereupon what of right and according to the laws aforesaid ought to be done.

Witness the Honorable ——, Chief Justice, &c.

In what cases writ to issue, and upon what security.

II. That such writ may issue in all cases where by law an Appeal lies to this court from the judg-

ment of either of the courts of Queen's Bench or Common Pleas, upon security being perfected as required by the statute in that behalf, and upon a certificate thereof signed by the chief clerk of the court appealed from, together with a *præcipe* for such writ being filed with the clerk of this court; such writ to be issued under the seal of this court and signed by the clerk thereof, and to be tested in the name of the Chief Justice or senior judge thereof for the time being on the day of the same issuing, and to be made returnable on the fifteenth day after the day on which the same shall issue.

III. That, unless otherwise specially ordered, such security shall be personal and by bond, and may be in the form prescribed in rule number five, and shall be filed in the principal office of the court appealed from. Nature of security.

IV. That the security for costs required by the statute 12 Vic. c. 63, sec. 40, shall be given by bond to the respondent or respondents in the sum of one hundred pounds, being the sum named in the statute, which bond shall be executed by the appellant or appellants, or one of them, and by two sufficient sureties, (or if the appellant or appellants be absent from or do not reside in Upper Canada, then by three sufficient sureties,) and the conditions thereof shall be to the effect that the appellant or appellants shall and will effectually prosecute his or their appeal, and pay such costs and damages as shall be awarded in case the judgment appealed from shall be affirmed or in part affirmed. The bond and conditions may be in the form given by rule number five. Security for costs under 12 V., ch. 63.

V. That the bond for securing costs shall be in the following form: Form of bond for security for costs.

Know all men by these presents that we, A. B. of ——, C. D. of—— and E. F. of —— are jointly and severally held and firmly bound unto G. H. of —— in the penal sum of —— lawful money of Canada, for

which payment well and truly to be made we bind ourselves and each of us by himself, our, and each of our heirs, executors and administrators respectively, firmly by these presents. Witness our hands and seals respectively, the —— day of —— in the year of our Lord ——.

Whereas the (appellant) alleges and complains that in the giving of judgment in a certain suit in her Majesty's Court of Queen's Bench, (or the Court of Common Pleas, as the case may be) in Upper Canada, between (the defendant) and (the appellant) in a plea of ——, manifest error hath intervened, wherefore the said (appellant) desires to appeal from the said judgment to the Court of Error and Appeal.

Now the condition of this obligation is such, that if the said (appellant) do and shall effectually prosecute such appeal and pay such costs and damages as shall be awarded in case the judgment aforesaid to be appealed from shall be affirmed or in part affirmed, then this obligation shall be void, otherwise shall remain in full force.

Amount of security.

VI. That when the judgment to be appealed from directs the payment of money, and the appellant desires to stay the execution thereof, then the bond or security aforesaid shall be double the amount of such judgment, unless the same shall be in debt or bond for a penal sum or upon a warrant of attorney or *Cognovit Actionem* or otherwise, exceeding in amount the sum really due, in which case the bond shall be in double the true or real debt and costs only; and the amount so recovered, and of such true and real debt and costs shall be stated in the condition or recital to the condition of the bond or security, immediately after the statement of the nature of the action, and the condition shall be to the effect that the said (appellant) shall effectually prosecute such appeal, and if the said judgment so to be appealed from or any part thereof shall be affirmed, shall pay the amount directed to be paid by the said judgment, or the part of such amount as to which the said judgment shall be affirmed (if it be affirmed only in part) and all damages which shall be awarded against the said appellant in the appeal: Provided always, that in cases where the security to be given shall be in a sum above five hundred pounds, it shall be in the discretion of the court appealed from, or of a judge thereof in vacation, to allow security to be given by a large number of obligors, apportioning the amount among them as shall appear reasonable.

In ejectment; VII. That when the judgment appealed from shall be in an action of ejectment, the security required by the last preceding rule shall be taken in double the yearly value of the property in question; and in cases where the matter in question shall relate to the taking of any annual or other rent, customary or other duty or fee, or any other such like demand of a general and public nature, affecting future rights, the amount in which security shall be taken in addition to the security required for costs shall be fixed by order of a judge of the court appealed from.

or question relating to rent, &c.

To be by bond, unless otherwise directed. VIII. That the security required by the two last preceding rules shall be given by bond, and the recitals and condition in such bond shall be such as shall conform to the provisions of the said two rules, with such further or other conditions, in cases where the judgmeut is not for the payment of a sum of money only, as the judge approving such security may think fit to order.

Affidavit of justification of sureties. IX. That the parties to such bond, as sureties, shall, by affidavit respectively, make oath that they are resident householders or freeholders in Upper Canada, and severally worth the sum mentioned in such bond, over and above what will pay and satisfy all their debts; which affidavit may be in the following form:—

In the (style of court.)

A. B., plaintiff, *vs.* C. D., defendant. } E. F. of ——, and G. H. of ——, severally make oath and say: and first this deponent E. F. for himself saith, that he is a resident inhabitant of Upper Canada, and is a householder in, (or a freeholder in) ——, and that he is worth the sum of (the sum in which he stands bound by the penalty) over and above what will pay all his debts; and this deponent, G. H., for himself saith, that he is a resident inhabitant of Upper Canada, and is a householder in (or freeholder in) ——, and that he is worth the sum of (as the case may be) over and above what will pay all his debts.

(Signed,) E. F.
G. H.

Sworn by the above named deponents E. F. and G. H., at ——, in the county of ——, the —— day of ——, 18— before me, X. Y.

A Commissioner, &c.

14 days notice of application for allowance of security.

X. That fourteen days' notice shall be given of the time and place at which application will be made to the court from whose judgment it is intended to appeal, or to a judge thereof in vacation, for the allowance of such security; which notice shall contain the names and additions of the obligors.

How allowance to be opposed.

XI. That the allowance of such security may be opposed by affidavit; but that in the absence of any such opposition, the affidavit above mentioned shall be sufficient, in the discretion of the judge, to warrant the allowance thereof.

When allowed.

XII. That, if allowed, the officer of the court shall endorse on such bond the word "allowed," prefixing the date and signing his name thereto; upon which, such security shall be deemed perfected.

Security in cases under 12 Vic., ch. 63, § 40.

XIII. That cases coming within the Twelfth Victoria, chapter sixty-three, section forty, numbers two and four, shall be disposed of by special order, as the occasion may require; except that the security thereunder shall be personal and by bond as aforesaid.

When judgment appealed from is given on a point of law not appearing on the record.

XIV. *It is ordered*, That if in any case judgment shall be hereafter given in any of the said courts upon a question of law not appearing upon the record, but which judgment would be subject to be reviewed in error, if the question thereby determined were presented to the court on a special verdict, or by bill of exceptions, or demurrer to evidence, then in every such case the judgment so given may be appealed from, notwithstanding the question shall not appear upon the record.

Provided, 1st.—That before the expiration of three calendar months from the day on which the decision shall be pronounced, the party intending to appeal shall, by his attorney, file in the office of the clerk of the court in which the cause shall be or shall have

been depending, and shall serve upon the opposite party, his attorney or agent, a notice to the following effect:

The plaintiff (or defendant, as the case may be) intends to appeal from the judgment of the Court upon the *rule nisi* for nonsuit or for new trial (or as the case may be).

2ndly.—That execution shall not be stayed unless security be given as in other cases of appeal.

3rdly.—That in case of any appeal under this rule, the party appealing shall prepare a written statement of the case, and of the question determined, and of the judgment or decision thereon from which he appeals; which, being signed by both parties or their respective attorney or attornies, and approved of by one of the judges of the court appealed from, shall be transmitted with the transcript of record certified by the clerk.

4th.—That in case the parties or their attornies shall not agree in such statement, then the appellant may, on summons to the opposite party, apply to a judge of the court appealed from to approve of the statement to be submitted to him; which judge, on hearing the other party, or in case of his non-attendance, on hearing the appellant, may approve or modify the statement, as to him shall appear proper.

5th.—That the Court of Appeal may, in its discretion, remit such statement to be amended as may appear necessary for more correctly exhibiting the point or points which have been determined in the court below.

6th.—That when the Court of Appeal shall have determined the matters brought before them under this rule, they shall certify their decision, and send the same to the court below, with such order as to entering judgment for either party or otherwise, as the case shall appear to them to require.

Writ of appeal to be endorsed by clerk of the court appealed from.

XV. That the writ of appeal from either of the said common law courts, upon being presented to the chief clerk of the court appealed from, shall, by endorsement thereon, be allowed by him if the appellant has given the requisite security, such allowance to be as follows:

Allowed the —— day of ——, 185

(Signature of the Clerk.)

And that when allowed, the said clerk, on payment of legal fees, shall proceed to comply with the order of the writ, and the chief justice or some other judge of the court appealed from, shall endorse a return thereon as follows:

By virtue of the within writ, the record and proceedings therein mentioned, are sent under the seal of the Court of ———, as within it is commanded; such record and proceedings being contained in the transcript thereof hereunto annexed and signed by (officer's name), clerk of the said court.

(Signed)

Chief Justice, (or *Judge.*)

Transcript of judgment appealed from to be made.

XVI. That the clerk of the court shall, in order to such return, cause a fair and full transcript of the judgment appealed from, certified under the seal of the court and signed by him, to be affixed to the writ of appeal; which transcript, so certified and transmitted, with such further certificate as may be required in cases under the fourteenth rule, shall be deemed a sufficient compliance with the writ.

Rule to return writ of appeal.

XVII. That if any writ of appeal be not duly returned, a rule to return the same may be obtained at any time as of course, on filing a motion paper therefor, with an affidavit of the allowance of the writ and the delivery thereof to the chief clerk of the court appealed from, at least fourteen days previous to such application and of its non-return.

If not returned within four days, special application to be made.

XVIII. That if not returned within four days after service of such rule on the Chief Justice or some other judge, and on the chief clerk of the court appealed

from, special application for further proceedings must be made to the Court of Error and Appeal, upon a special affidavit of the circumstances.

Further time to return writ, how obtained.

XIX. That further time to return such writ may be had upon application to the said Court of Error and Appeal, or to any judge thereof.

No rule necessary to compel assignment of errors.

XX. No rule to allege diminution, nor rule to assign causes of appeal, nor *scire facias quare executionem non*, shall be necessary, in order to compel an assignment of errors.

Appellant to file and serve grounds of appeal within 8 days.

XXI. No rule to certify or transcribe the record shall be necessary; and if the appellant does not, in eight days after the filing of the return of the writ of appeal, file and serve a copy of his grounds of appeal, the respondent may, by notice in writing, demand the same; and if the grounds of appeal are not filed within eight days after service thereof on the appellant, his attorney or agent, the appeal, on proof thereof by affidavit, shall be dismissed with costs.

Respondent to answer in 8 days.

XXII. That within eight days after the grounds of appeal shall be filed and served, the respondent shall file and serve his answer or joinder thereto; which, unless it shall be necessary to plead specially, shall be the common plea or joinder of "*in nullo est erratum*;" or if he neglect so to do, the appellant may in writing demand the same; and unless the respondent file his answer or joinder in appeal within eight days after service of such demand, the respondent, his attorney or agent, shall be precluded from filing the same, without the leave of the court or a judge thereof first had and obtained, upon a *rule nisi* or summons; and the court will proceed *ex parte* to hear the cause on the part of the appellant, and to give judgment therein without the intervention of the respondent.

Further time.

Provided always, that either party respectively may obtain further time to file the grounds of appeal, or the answer or joinder thereto, by the order of the court or of any judge thereof, upon the return of a *rule nisi* or summons to be issued and served in that behalf.

Notice to be given if appeal is not to be resisted.

Provided also, that if the respondent does not intend to resist the appeal, he may give notice thereof to the appellant; and on proof of such notice, judgment of reversal shall be given for the appellant as of course.

When grounds of appeal served within 8 days of the 1st day of July.

Provided also, that in case the grounds of appeal are not filed and served eight days next before the first day of July in any year, then the respondent shall be allowed as many days after the twenty-first day of August next following as will be sufficient to complete such number of eight days within which to file his answer or joinder thereto.

When appeal to be set down for argument.

XXIII. That when the grounds of appeal and answer thereto are filed, the cause shall, on application of either party, be set down for argument by the clerk of this court, for a day to be fixed, of which notice shall be duly given to the opposite party, his attorney or agent, at least four days before the day appointed for the hearing of such appeal.

Copies of pleadings to be delivered to clerk 4 days before that appointed for argument.

XXIV. Four clear days before the day appointed for argument the appellant shall deliver to the clerk of the Court of Error and Appeal, for the use of the judges thereof, two copies of the judgment of the court below, and of the reasons of appeal, and of the pleadings or answers thereto; and in default thereof the appeal may be dismissed with costs.

Result of appeal to be certified by clerk.

XXV. That the result of the appeal in this court shall be certified to the court appealed from by the clerk, under the seal of this court, which certificate shall briefly state that the judgment has been affirmed, reversed or modified (as the case may be), with or

without costs; and when with costs, to be paid by either party, adding the amount thereof when the same shall have been taxed, as taxed; and that upon such certificate being filed in the court below, any entry thereof may be suggested on the roll, and further proceedings in that court be had, according to the course and practice of such court; and in case of any new question arising, according to the course and practice of the Court of Queen's Bench in England.

Provided that the respondent, if the successful party, may proceed upon the judgment by execution, and upon the bond or security required to be given under the statute and the foregoing rule in that behalf; or he may adopt either course separately, without prejudice to his other remedy by waiver, delay or otherwise.

Writs to be tested when issued.

XXVI. That all writs and all rules and orders of this Court in cases appealed shall be tested or bear date the day of their issuing, and be signed by the clerk of the court.

If appeal frivolous, judge may order execution to issue.

XXVII. That no writ of appeal shall be a supersedeas of execution until service of the notice of the allowance thereof, containing a statement of some particular ground of appeal intended to be argued. Provided, that if the error stated in such notice shall appear to be frivolous, the court or a judge, upon summons and proof of the service thereof by affidavit, may order execution to issue.

In appeals from Chancery, securities to be by bond; to stand allowed after 14 days, if not moved against.

XXVIII. That in appeals from the Court of Chancery, all securities under the fortieth section of the said Act of the Provincial Parliament, passed in the twelfth year of the reign of Her present Majesty, chapter sixty-three, shall be in the form of a bond, which, together with the affidavit of justification, shall be filed with the registrar of the said court, and notice thereof served on the respondent, his solicitor

or agent; and the same shall stand allowed, unless the respondent shall within fourteen days after service of such notice move the said court to disallow the same. A special application shall be necessary to stay proceedings under any of the exceptions in the said section of the said Act.

Petition of appeal, form of; and with whom filed.

XXIX. That the petition of appeal shall be in the form set forth in the schedule to this order. The petition of appeal shall be filed with the clerk of the court, and a copy thereof, together with a notice of the hearing of the appeal, shall be served on the respondent, his solicitor or agent, at least two months before the time named in such notice for the hearing of the appeal. Such petition shall not be answered, but at the time named in such notice the parties must attend to argue the appeal; and upon the filing of the petition, and service of a copy thereof and of such notice, the appeal shall stand in the same plight as if the petition had been answered, and such time appointed by this court for the hearing thereof.

The Schedule to the foregoing Order.

IN THE COURT OF ERROR AND APPEAL.

Between ——, appellant, and ——, respondent.

To the Honourable the Judges of the said Court.

The humble petition of the said (appellant) sheweth:

That a (decree or an order) was lately and on —— pronounced by Her Majesty's Court of Chancery for Upper Canada, in a certain cause depending in the said court, wherein your petitioner was —— and the above named —— was ——; which said (decree or order) has since been duly entered and enrolled.

That your petitioner feels himself aggrieved by the said (decree or order), and he hereby appeals therefrom, and humbly prays that the same may be reversed or varied, or that your lordships will make such other order or decree in the premises as to your lordships shall seem meet.

And your petitioner will ever pray, &c.

(Certificate of Counsel.)

Printed cases abolished; but appendix to be furnished.

XXX. That the printed cases shall be and are hereby abolished, but copies of the pleadings and evidence shall be printed, as is at present done in the appendix to the case, to which the reasons of appeal, and for supporting the decree or order, shall be appended; and the same rules shall apply to such printed copies and reasons as now apply to the

printed cases, and the same shall for all purposes be considered the printed cases of the appellant and respondent respectively. Provided always, that nothing herein contained shall prevent the parties from joining in printing such copies as they now do in printing the appendix, if they shall be so disposed. Such printed cases must be deposited with the clerk of the court for the use of the judges, at least four days before the hearing of the appeal.

XXXI. That when it shall be intended to appeal to her Majesty in the Privy Council, the securities required by the statute twelfth Victoria, chapter sixty-three, section forty-six, shall be personal and by bond to the respondent or respondents—such bond to be executed by the appellant or appellants, or one of them, and two sufficient sureties (or if the appellant or appellants be absent from or do not reside in Upper Canada, then by three sufficient sureties) in the penal sum of five hundred pounds, in cases coming within the first part of the said section forty-six; the condition of which bond shall be to the effect that the appellant (or appellants) shall and will effectually prosecute his (or their) appeal, and pay such costs and damages as shall be awarded in case the judgment (or decree) appealed from shall be affirmed or in part affirmed, and that execution shall not be stayed in the original cause until security shall further be given by bond, in conformity to the sixth, seventh and eighth rules, when from the nature of the case such further security shall be requisite: And in cases from Chancery, application to the Court of Appeal to stay proceedings, shall be by motion or notice; which motion, if granted, shall be upon such terms as to security under the statute or otherwise, as the circumstances and nature of the case require.

On appeals to the Privy Council; what security to be given.

XXXII. That the bond or security referred to in the last rule shall be in the following form:

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

Whereas (the appellant) alleges and complains, that in the giving of Judgment in a certain suit, in her Majesty's Court of Error and Appeal in Upper Canada, between (the respondent) and (the appellant) —— manifest error hath intervened: wherefore the said (appellant) desires to appeal from the said judgment to her Majesty, in her Majesty's Privy Council:

Now the condition of this obligation is such, that if the said (appellant) do and shall effectually prosecute such appeal and [*or*] pay such costs and damages as shall be awarded, in case the judgment aforesaid to be appealed from shall be affirmed, or in part affirmed, then this obligation shall be void, otherwise shall remain in full force.

XXXIII. That in every case of appeal to her Majesty in Council, the obligors, parties to any bond as sureties, shall justify their sufficiency by affidavit, in the manner and to the same effect as is required by rule number nine of this court.

XXXIV. In cases appealed from either of the courts of common law, or from the Court of Chancery, the same fees and allowances shall be taxed in appeal by the clerk of the Court of Error and Appeal for attornies and solicitors, or any officer of the said court, as are allowed for similar services in the court from which the appeal shall have been brought; and that counsels' fees shall be taxed in the discretion of the clerk, provided that no fee to counsel exceeding ten pounds shall be taxed without an order of the judge who presided on the argument, or in his absence of the next senior judge.

XXXV. That the regular and appointed days or times of sitting of this court shall be the second Thursday after the several terms of Hilary, Easter and Michaelmas, as appointed by the statute 12 Vic. ch. 63, sec. 13, at eleven o'clock in the forenoon: Provided, however, that the said court may adjourn from time to time, and meet at such other periods as shall be appointed for the hearing and disposing of any business brought before it.