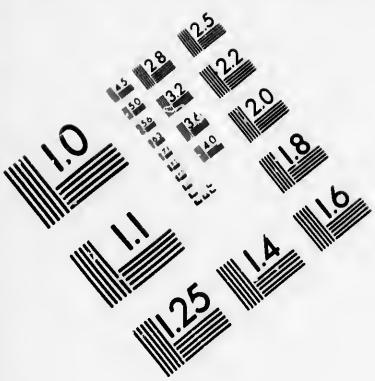

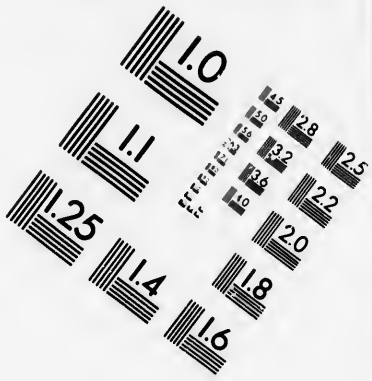

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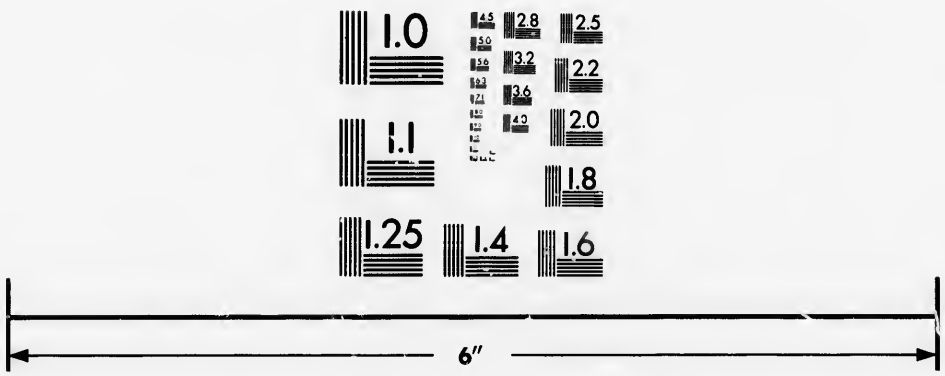

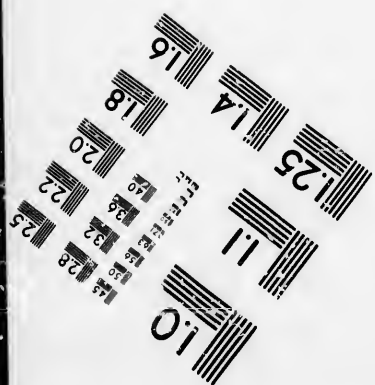

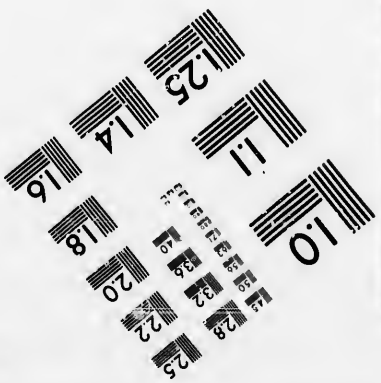

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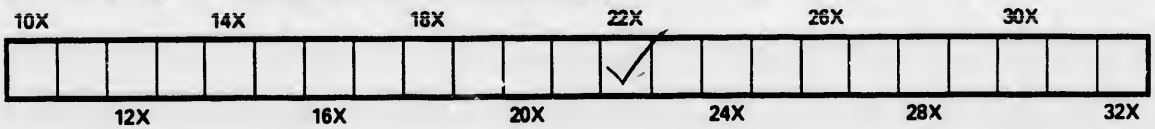

GENERAL ORDERS

OF THE

COURT OF CHANCERY,

OF

6TH FEBRUARY, 1865,

WITH NOTES AND FORMS.

BY

T. WARDLAW TAYLOR, M.A., AND G. M. RAE,

OF OSGOODE HALL, ESQUIRES, BARRISTERS-AT-LAW.

TORONTO:

ROLLO & ADAM, LAW AND GENERAL PUBLISHERS,

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TABLE SHEWING WHAT PRIOR ORDERS ARE VARIED OR PRACTICALLY ABROGATED BY THOSE PROMULGATED 6TH FEBRUARY, 1865.

CII. ..... LXIV.
Printing, &c.

CIII. ..... LXIV.
Dates and sums.

CIV.
Paper, &c.

CV ..... IX. s. 4.
Office copies. Schedule C.

CVI.
Service of bill. IX. s. 4.

CVII. ..... XII. s. 1.
Admissions in answers.

CVIII. ..... XVIII. s. 1.
Admissions in replications.

CIX. ..... XVIII. s. 1.
Form of replication. Schedule I.

CX.
Admissions to refer to paragraphs.

CXI.
Forms of admissions.

CXII.
Costs of not admitting.

CXIII. ..... XL. s. 4.
Office copies dispensed with.

CXIV.
Four written copies allowed.

CXV.
Printing.

CXVI.
Demanding two copies printed bill.

CXVII.
Notice to admit.

CXVIII.
Form of notice to admit.

CXIX.
Service of notice.

CXX ..... XIII. s. 1.
Pro con.

CXXI.
Entering orders.

CXXII. ..... XVIII.
Dismissal of bill. XXIV.

CXXIII .. .. XIV. s. 14.
Settling minutes { XLIII. s. 12, notes.

CXXIV. ..... XIV. s 4.
Costs of attendance on notice to settle minutes, &c., and postponement. { XLIII. s. 12, notes.

CXXV. ..... XXXII. s. 1.
Proceedings in redemption suits .. XCVIII. s. 1.

CXXVI.
Decree in foreclosure and redemption suits { XXXII. s. 2. LVII. s. 12. XCVIII. s. 1.

CXXVII. ..... { IX. s. 17. XIV. s. 8. XC. s. 4. XCVI.
Time for rehearing .....

CXXVIII. ..... IX. s. 17.
Petitions, &c., for rehearing ..... XLIII. s. 7. IX. s. 17.

CXXIX. ..... XLIII. s. 7.
Rehearing on præcipe.

CXXX. ..... IX. s. 17.
Varying decree .. XLIII. s. 7.

CXXXI. ..... IX. s. 18.
Fiat on petition.

CXXXII. ..... XLVI. s. 9.
Nisi abolished.

CXXXIII ..... { XXXIII. XXXVI. XXXVII. s. 8. XXXVIII.
Accountant's duties ..... { XLII. XLV. LVIII. LXXII. LXXIII.

CXXXIV.
Accountant's powers.
CXXXV.....XLV.
Fees to Accountants.
CXXXVI.....XLII.
Transfer of references.
CXXXVII. .....LXXIX.
Objections to Master's Report.
CXXXVIII.....XLV.
Taxation by Taxing Officer.
CXXXIX.....XLV.
Taxing Officer's duties.
CXL. .....XLVI. s. 7.
Local Master's powers.
CXLI .....XLV.
Fees for attendances.
CXLII .....XLV.
Fees for searches.
CXLIII.....XLV.
Fee on settling minutes.
CXLIV.....XLV.
Fees on attendances in Master's Office.
CXLV.....XLV.
Solicitor's fees on examinations.
CXLVI.....XLV.
Sums to be stated in dollars. ....V.
CXLVII. .....XLIII.
Hours of service.
CXLVIII.
Returns by Registrar.
CXLIX.
Date of Orders coming in force.

INDEX TO CASES CITED.

—o—

PAGE

Agabeg v. Hartwell 12
Ballard v. Hartwell..... 15
Bowker v. Nickson 16
Cameron, &c., *Re* 10
Cooper v. Wroxeter, &c..... 8
Hare v. Smart 10
Heron v. Wallis 10
Noel v. Ward 16
Ottey v. Pensam 16
Oxford, &c., v. Scudamore 8
Pennington v. Lord Muncaster..... 16
Perkins v. Plebs 3
Re Cameron, &c..... 10
Richardson v. Brecker 10
Rutter v. Chapman..... 7
Sharpe v. Lamb 8
Smith v. Bird 8
Spencer v. Barough..... 8
Stone v. Davies 1
Vane v. Whittington 8
Wood v. Lambirth 16

ADDENDA TO

SECOND EDITION OF TAYLOR'S ORDERS.

ORDERS OF COURT.

OF FEBRUARY, 6, 1865.

WITH NOTES.

BY

T. W. TAYLOR, M.A., AND G. M. RAE, ESQUIRES,
BARRISTERS AT LAW.

PAGE

12 15 16 10 8 10 10 16 16 8 16 3 10 10 7 8 8 8 1 8 16

CII. Pleadings and other proceedings in a cause may be written or printed, or partly written and partly printed. (*Ord.* 1.)

This order is an approach to the practice which has, since August 1852, prevailed in England, where printing is compulsory. Imp. Act 15 and 16 Vic. c. 86, s. 1, enacted that "the practice of engrossing on parchment, bills of complaint and of filing such engrossment shall be discontinued, and the clerk of Records and Writs shall receive and file a printed bill of complaint in lieu of an engrossment thereof." By recent English orders, answers and affidavits are also required to be printed.

The above order, it will be observed, applies to all proceedings as well as the pleadings in a cause, so that were it advisable printed affidavits might be used in our Court.

Where an amendment made in a printed bill exceeded 2 folios the bill was ordered to be re-printed, *Stone* v. *Davies*, 3 DeG. Mac. & G. 240; 17 Jur. 585, and see notes to *Ord.* 9, ante p. 63.

CIII. When wholly printed, dates and sums occurring therein are to be expressed by figures instead of words. (*Ord.* 2.)

This order is almost a fac simile of the last sentence of the English

order of Court relating to the printing of bills, *Eng. Con. Ord.* 9, s. 3. *Anon* 9 *Hare App.* 89 goes to show that it is the reverse of the practice pursued when pleadings were engrossed.

CIV. All such pleadings and other proceedings are to be so written or printed neatly and legibly on good paper, of the size and form heretofore in use; and if printed, the same are to be printed with pica type, and the solicitor is not to be entitled to the costs of any pleading or other proceeding which is not in conformity with this Order; and the Registrar is to refuse to file the same. (*Ord.* 3.)

The English order respecting the printing of bills is much more precise in its language. It is as follows: "Bills shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per imill ream, in pica type, leaded, with an inside margin about three quarters of an inch wide, and an outer margin about two inches and a half wide." *Eng. Con. Ord.* 9, s. 3.

As the Registrar must refuse to file any pleadings or other proceedings which do not comply with this order the provision for disallowing the costs can apply only between the solicitor and his client. When the Registrar has received and filed the pleading or other proceeding, the objection that the solicitor is not entitled to the costs can never prevail.

CV. Office Copies of bills are not to be certified by the Registrar or Deputy Registrar, but shall be authenticated by the stamp of the office, and the usual signature of the Registrar or Deputy Registrar at the foot of the bill. (*Ord.* 4.)

Heretofore all copies of bill have required a Certificate of the filing of the original bill, signed by the Registrar or Deputy Registrar with whom the bill was filed. No order of Court, however, can be found which rendered this necessary, except that the form of affidavit of service given in the orders of 1853, contains an allegation that such certificate was endorsed upon the office copy served. In future office copies of bill will be authenticated in exactly the same manner as office copies of decree served upon parties added in the masters office.

For affidavit of service of Bill see *post.*

CVI. The service of any bill within the jurisdiction of the Court is to be of no validity if not made within twelve weeks after the filing of the bill, and the service

of an amended bill upon parties added by amendment, is to be of no validity if not made within twelve weeks after such amendment: and the service of any bill without the jurisdiction of the Court is to be of no validity, if not made within a period consisting of twelve weeks, added to the time limited by the General Orders for the answer of defendants served without the jurisdiction, such time to be computed from the filing of the bill as to parties made defendants by the original bill, and from the amendment of the bill as to parties added as defendants by amendment; but service may be allowed by a Judge when made after the periods above limited, upon its being made to appear to his satisfaction that due diligence has been used in effecting such service. (*Ord.* 5.)

This order adopts the English practice which requires service to be effected within twelve weeks from the filing of the bill. The latter part of the order is ambiguous; from the wording of it it would appear as if, the service having been effected, but after the period of twelve weeks the plaintiff may apply for an order allowing such service, and on satisfying the judge that he has used due diligence it will be granted. Is this order to be granted *ex parte*, and if so must it be served? If not, a defendant served after the expiry of twelve weeks, knowing that such service is of no validity, pays no attention and puts in no answer, the plaintiff however having applied *ex parte* to a judge and obtained an order allowing the service at the end of three months, may take a decree upon præcipe, or set the cause down for hearing, *pro confesso*. In England the practice seems to be to apply before the service is effected for an order permitting, it, in the same manner as an order had formerly to be obtained permitting service out of the jurisdiction. The English order is thus expressed: "The Court may, if it shall think fit, upon the motion of the plaintiff, without notice, give the plaintiff leave to serve such defendant with such copy within such time and upon such terms as to the Court shall seem just." *Eng. Con. Ord.* 10, s. 18.

Where a defendant could not be found and an application was made to advertise under *Ord.* 9, s. 8, page 60, the Court decided that it was the settled practice, where the defendant had any relatives in the country, they should be examined before a Special Examiner or Local Master as to their knowledge of his residence, (*Ord.* 9, sec. 7 note), and if the defendant has no relations in the country, such fact must be sworn to in the affidavit under which the application for the relief provided under ss. 7 or 8 of *Ord.* 9 or *Ord.* 71 is made. *Perkins v. Plebs*, V. C. Mowat, 25th February, 1865.

CVII. A defendant is to admit in his answer such of the allegations contained in the plaintiff's bill as are to the knowledge of such defendant true, or the truth of which he can readily ascertain, or as he has reason to believe and does believe to be true; and it shall be sufficient if such admissions are expressed to be only for the purposes of the suit in which the same are made. (*Ord.* 6.)

The plaintiff, in England, can serve the defendant, and the defendant after he had put in a sufficient answer, the plaintiff, with interrogatories the answers to which are on oath, and, in the great majority of cases, elucidate all evidence necessary for either side to adduce. We had no process by which admissions could be compelled; and, as motions for decree were confined by *Ord.* 68 to a limited number of cases, the consequence has been, that the evidence required by the parties could only be taken by setting the cause down for examination of witnesses and hearing. By this, and the four following orders, the discovery formerly obtained by interrogatories, more recently by cross-examination on the answer, can be had from the defendant by less expensive means. To a great extent they, as well as *Ord.* 117 *post*, are founded on Section 7 of the English Chancery Amendment Act, 1858.

It should be borne in mind, that the admissions of the defendant are on oath, and his answer can be used as evidence against him generally, while the plaintiff's bill or replication being merely allegations, are not in the same category.

Although the orders now promulgated make no exceptions as to parties competent to make admissions, they cannot be held to apply to those, such as guardians *ad litem*, who have, hitherto, been considered incompetent.

The plaintiff alone has the power of calling upon the defendants for production of documents, and one defendant cannot compel production by a co-defendant. It is presumed these orders do not authorize one defendant to call on a co-defendant to admit.

The classes in which admissions are to be made are three: 1st. What the party knows to be true; 2nd. What he can readily ascertain to be true; and 3rd. What he has reason to, and does, believe to be true, and in each case he is allowed to give a qualified admission, but *Order* 110 provides that the qualifications allowed are to be only such as are necessary or proper.

CVIII. Plaintiffs are to admit in their replication such facts alleged by the answer as are to the knowledge of the plaintiffs or any or either of them true; or the truth of which they or he can readily ascertain, or as they or

he have or has reason to believe and do or doth believe to be true; and it shall be sufficient if such admissions are expressed to be only for the purposes of the suit in which the same are made. (*Ord.* 7.)

See note to *Order* 107.

CIX. The replication may hereafter be in the following form:—

I admit, &c., and I join issue with the answers of the defendants, C. D., &c., except in so far as I have herein made admissions in regard to allegations contained in such answers, and I will hear the cause upon bill and answer against the defendants, E. F., &c., and *pro confesso* against the defendants, G. H., as the case may be. (*Ord.* 8.)

The form given above varies slightly from that in *Ord.* 18. In the first case, the words "with the answer of," are inserted; and in the last, the words "on the order to take the bill," preceding *pro confesso*, are omitted.

CX. Such admissions are, in all cases where practicable, to be by reference to the numbers of the paragraphs in the bill or answer to which they relate, with such qualifications as may be necessary or proper for protecting the interests of the party making such admissions; and it shall not be necessary or proper, in any answer or replication, to allege ignorance of any fact stated in the bill or answer, or any other reason for not admitting any fact therein alleged. (*Ord.* 9.)

By *Ord.* 64, *ante*, page 201, all bills, answers, and affidavits are to be divided into paragraphs. This order impliedly extends the same rule to replications.

CXI. Such admissions may be in the following form:

I admit, or for the purposes of this suit I admit, the truth of the allegations contained in the plaintiff's bill, or of the answer of the defendant, C. D., or the allegations contained in the ——— paragraph of, ——— or so much of the allegations contained in the ——— as commence with the words, "—— ———," and ends with the words, "—— ———," or I admit, &c., save and except that I say, (stating qualifications or admission, if any.) (*Ord.* 10.)

CXII. When it becomes necessary to adduce evidence, or to incur expense otherwise, in order to establish or prove facts which, in the judgment of the Court upon the hearing of the cause, ought to have been admitted, it shall be competent to the Court to make such order in respect to the costs occasioned by the proof of such facts, as under all the circumstances shall appear to be just. (*Ord.* 11.)

CXIII. Office copies of answers, affidavits, and other proceedings are dispensed with; and where service is required true copies, instead of office copies, are to be served; but this Order is not to apply to bills or decrees, of which office copies are by the practice of the Court required to be served. (*Ord.* 12.)

By order of Court in England, the solicitor furnishing the copies is expressly made answerable for their being true copies of the original. It is presumed he would be held answerable, even in the absence of such an order.

CXIV. Not more than four copies of any pleading or other proceeding are to be allowed to any party, in a cause or matter, exclusive of the draft, but inclusive of copies to file, copies to serve, copies for briefs, and any other copies that may be required or made in the progress of the cause. (*Ord.* 13.)

CXV. If more than three copies, exclusive of the draft, are required of any pleading or other proceeding, and the party chooses to have the pleading or other proceeding printed for the purposes of the suit or matter, he is, in lieu of all charges for copies, to be allowed thirty (30) cents per folio of the pleading or proceeding, and his reasonable disbursements of procuring the same to be printed. (*Ord.* 14.)

It is thought that this order and the preceding will indirectly introduce the practice of using printed proceedings in all suits, as there are very few in which only four copies are required. No tariff is given in the cases where partly printed, partly written, pleadings are used.

CXVI. Every defendant, appearing by a different Solicitor, is entitled to demand from the plaintiff two copies of any printed bill, paying for each copy two cents per folio. (*Ord.* 15.)

By the English orders of 1852 ten copies are to be furnished, and the payment is at the rate of ½d. per folio.

CXVII. After replication is filed, any party may call on the other by notice to admit any document, saving all just exceptions, and in case of refusal or neglect to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the hearing the Judge certifies that the neglect or refusal to admit was reasonable; and no costs of proving any document are to be allowed, unless such notice is given, except in cases where the omission to give the notice was in the opinion of the Taxing Officer a saving of expense. (*Ord.* 16.)

The Chancery Amendment Act, 1858, introduced in England the practice of trying issues by juries before the court, instead of directing a trial in one of the Common Law Courts. Accordingly such portions of the Common Law Procedure as were thought advisable were introduced into the bill, and among them was in substance the above section. The decisions of the English Courts and our own Common Law Courts, since the Common Law Procedure Acts, have therefore an important bearing on the practice now introduced. The section 7 in the English Act is as follows: "In any case in which parties to a suit are *competent to make admissions*, *any party* may call upon any other party, by notice, to admit any document saving all just exceptions, and in case of refusal or neglect, to admit the cost of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless the court shall certify that the refusal to admit was reasonable; and no cost of proving any document shall be allowed, unless such notice be given, except in cases where the omission to give the notice is in the opinion of the taxing master a saving of expense."

The form both in Common Law and in the English Chancery Orders specifies 48 hours, within which the admission must be made, and requires an admission that the documents stated to be copies are true copies.

The order has been held to apply to all documents the party intends to adduce in evidence, and is not confined to such only as are in his custody or controul, *Rutter v. Chapman*, 8 M. & W. 388, including foreign judg-

ments, *Smith* v. *Bird*, 3 Dowl. 641, and documents the validity of which is directly in issue, *Spencer* v. *Barough*, 9 M. & W. 425.

The admission of handwriting of a bill of exchange did not preclude an objection to admissability for want of a stamp, nor admission of signature sufficient to dispense with the production of the original document. *Vane* v. *Whittington*, 2 Dowl. N. S. 757. Nor did the admission of a copy, being a mere copy, allow that copy to be used in the unexplained absence of the original. *Sharpe* v. *Lamb*, 11 A. & E. 805.

An unintentional admission contrary to the fact having occurred in an answer, a supplementary answer was allowed to be filed on payment of costs. *Cooper* v. *Wroxeter Burial Board*, 1 Hem. & Mill. 680.

CXVIII. The notice may be in the following form :—

"In Chancery.

Between A. B., ...Plaintiff,

and

C. D., ...Defendant.

Take notice, that the plaintiff (or defendant) proposes to adduce in evidence the documents hereunder specified, and that the same may be inspected by the defendant, (or plaintiff,) his solicitor or agent, at———, &c., on———, &c., between the hours of———, &c. ; and the defendant, (or plaintiff) is hereby required, within four days from the said day, inclusive, to admit that such of the said documents as are specified to be originals, were respectively written, signed or executed, as they purport respectively to have been ; that such documents as are stated to have been served, sent or delivered, were so served, sent or delivered, respectively ; saving all just exceptions to the admitting of such documents as evidence in this cause.

Dated this ——— day of ——— 186—.

To S.———, &c. Yours, &c.

&c., &. ———." (*Ord.* 17.)

With slight alterations a copy of the form given both in the English and our Common Law Procedure Acts, and the English order xli. s. 39—the chief differences being that 48 hours only are limited to make the admissions after the time for inspection has expired ; and that, after the clause referring to original documents, the words "that such as are specified as copies are true copies," are inserted. To each of the above-mentioned forms, one for the description of the documents referred to therein is appended. In the schedule to these orders a similar form will be found.

Care should be taken that the admission required does not exceed what

the order warrants. A notice to admit had been served calling on defendant to admit certain letters, the authority by which they were written, as well as the due execution of the documents, was required to be admitted. Held that the plaintiff was not entitled to the costs of proving the documents at the trial, the effect of the notice being the same as if none had been served. *Oxford, &c., Railway* v. *Scudamore*, 1 H. & N. 666.

CXIX. The notice is to be served not less than two clear days before the day appointed for inspection. (*Ord.* 18.)

This order is original, the practice in the courts referred to in the preceding notes having been to allow a reasonable time, determinable by the circumstances of each case.

CXX. No Order is to issue in cases within the first section of the 13th Order of June, 1853, for taking a bill *pro confesso* ; but in lieu thereof the plaintiff is to file the usual affidavit of service of the bill, and a præcipe requiring the Registrar or Deputy Registrar to note that the defendant is in default for want of answer, and that the bill is to be taken *pro confesso* against him. This præcipe may be filed at any time within six calendar months after service of the bill. If the defendant is in default for want of answer, the Registrar or Deputy Registrar is to enter a note in the registry of pleadings, as required by the præcipe, in the same manner as plead ings are entered therein, and the entry is to have the same effect as an Order for taking the bill *pro confesso* : the fee payable to the Registrar or Deputy Registrar thereon is to be fifty cents. (*Ord.* 19.)

By *Ord.* 13, s. 1, page 72, the plaintiff might obtain an order *pro confesso* from the Registrar within two months after service; when two months had elapsed an application to the court *ex parte* required to be made before the order could be obtained, and after the expiration of six months, by practice, notice of motion had to be served.

CXXI. No Order of course, and no order obtained *ex parte* and not being of a special nature, is to be entered by the Registrar unless the entry thereof shall be directed by the Court or a Judge ; but this provision is not to

be construed as applying to Decrees or Decretal Orders, to Final Orders for sale or foreclosure. (*Ord.* 20.)

By the kindness of the Clerk in Chambers, W. N. Radenhurst, Esq., the editors are enabled to note the following decisions under the above order up to the 25th February, 1865:

Orders to amend, without prejudice to order *pro confesso*, do not require entry, *Heron v. Wallis.*

Orders for married women to answer separately, *Richardson v. Bricker*, and *pro confesso* against married women, do not require entry, *Hare v. Smart.*

Orders for revivor require entry. The Court in fact follows the Common Law practice as much as possible; where change is made in the constitution of a suit such change must be recorded.

Petitions presented for taxation of solicitor's bill do not require entry the petition being in itself sufficient, *Re Cameron, McMichael & Fitzgerald.*

Payment of money out of Court requires entry.

The above decisions and dicta are by V. C. Mowat, the only Judge in Chambers since the orders came in force.

CXXII. Where a defendant is entitled to give a notice to dismiss, it is not to be a sufficient answer to the motion for the plaintiff, after being served with the notice, to take out and serve an order for amending the bill, or to file a replication, or to undertake to speed the cause; but it shall be necessary for the plaintiff to shew that he has prosecuted his suit with due diligence, or that under all the circumstances the bill should not be dismissed. (*Ord.* 21.)

For the old practice see notes to *Ord.* 24, ss. 2 and 3, page 101.

CXXIII. No notice to settle or pass a Decree or Order is to be given unless by direction of the Registrar. (*Ord.* 22.)

This order is in effect the same as Eng. Con. Ord. 1, s. 32, which is as follows: "The Registrar shall be at liberty, in any case in which he may think it expedient so to do, to settle and pass the decree or order without making any appointment for either purpose, and without notice to any party." This order will have the effect of checking the irregular practice which has for some time prevailed, of parties drawing up the minutes and serving notices to settle without the minutes having ever been seen by the Registrar.

For further information as to the practice, see notes to *Ord.* 43, s. 12, page 171, 172, 173.

CXXIV. Where a notice is given to settle minutes, or to pass a Decree or Decretal or other Order, and the party served attends thereon, but the party giving the notice does not attend, or is not prepared to proceed, the Registrar may proceed *ex parte* to settle the minutes, or pass the Decree or Order, or may, in his discretion, order the party giving the notice to pay to the other the costs of his attendance ; or if a party served asks for delay, the Registrar may grant the delay on such terms as he thinks reasonable as to payment of costs or otherwise. (*Ord.* 23.)

This order extends to the Registrar the power already possessed by the Master, who, on an application to postpone the proceeding on a reference, may grant the application, "and on granting any application to postpone the hearing of such reference, may make such order as to the costs consequent upon such postponement as he may think just." *Ord.* 42, s. 8.

CXXV. In a Redemption Suit, if the plaintiff does not redeem the defendants, or such of them as he is ordered to redeem, the bill need not be dismissed; but where there are other defendants, in lieu of the bill being dismissed, the plaintiff may be declared foreclosed, and directions may be given, either by the Decree or by subsequent Orders, as to the relative rights and liabilities of the defendants as amongst themselves, and such proceedings are in such case to be thereupon had, and with the same effect, as in a Foreclosure Suit. (*Ord.* 24.)

It is presumed that if the bill shews a proper case, a decree in the form above contemplated will be issued on præcipe under *Ord.* 97, s. 1, page 221.

CXXVI. In suits for foreclosure or redemption, where a reference is directed to ascertain incumbrances, it shall not be necessary to reserve further directions, but the decree directing such reference may direct that the times at which payment is to be made, or foreclosure or redemption is to take place, shall be, as to incumbrancers,

or persons entitled to redeem, at the periods allowed by the practice of the Court; and such times shall be named and appointed by the Master or Accountant in his report; and such appointment shall have the same effect, and be acted on as if the times had been fixed according to the present practice by or under a decree on further directions; and any party entitled to and desiring a sale, is to make the deposit therefor within one week after the confirmation of the report; whereupon the Registrar is upon præcipe to draw up an order to the same effect as the decree now made in such cases on further directions; and such order shall have the same effect, and be followed by the same proceedings as when a sale is ordered by a decree of the Court. (*Ord.* 25.)

See form of Decree *post.*

CXXVII. Where a Decree or Decretal or other Order is not passed and entered within one calendar month from the day judgment is pronounced, the time allowed for re-hearing the cause, or varying or discharging the Order under the first General Order of the 10th of January, 1863, shall begin to run at the expiration of such calendar month. (*Ord.* 26.)

See *Ord.* 96, *ante* p. 219.

CXXVIII. Petitions for re-hearing, Certificates of Counsel thereon, and orders to set down for re-hearing, are abolished. (*Ord.* 27.)

By this order, that part of *Ord.* 9, s. 17, which enacts, "one re-hearing may be had upon petition signed by counsel," is materially varied.

From a certificate given by the sworn clerks to the Master of the Rolls, it appears that the costs of appeals, re-hearings and exceptions are not carried by the words "costs of suit," but require to be specially mentioned in the order for taxation, *Agabeg* v. *Hartwell*, Beav. 272.

CXXIX. In lieu thereof the party entitled to a re-hearing is to file a præcipe, and serve notice as heretofore. (*Ord.* 28.)

On presenting a petition of re-hearing, and obtaining the judge's fiat,

the order drawn up ordered that, upon the petitioner depositing the sum of £10 with the registrar, and undertaking to pay such costs, if any, as the court might award, the cause should be set down to be re-heard. The present order is silent as to the deposit; but it is presumed the registrar will refuse to receive any præcipe, or set any cause down, under this order, unless accompanied by such deposit and undertaking, see *Ord.* 9, s. 17, p. 65; and *Ord.* 43, s. 7, p. 169. For forms of consent, see *ante* p. 291, and for Forms of præcipe, see Forms *post.*

CXXX. If a party seeks to vary part only of a Decree or Order, he may, in the notice of re-hearing, state the part of the Decree or Order which he seeks to vary. (*Ord.* 29.)

For form of notice, see Forms. And as to costs, note to *Ord.* 128.

CXXXI. It shall not be necessary to procure a Judge's fiat to a petition appointing a time and place for the hearing thereof; but in lieu of such fiat there is to be indorsed on the petition a notice addressed to the parties concerned, stating the time and place at which the petition is to be heard, and informing them that if they do not appear on the petition at such a time and place, the Court may make such Order, on the petitioner's own shewing, as shall appear just. (*Ord.* 30.)

For form of the notice required above, see Forms.

CXXXII. Orders *nisi* are abolished, and in lieu thereof notice is to be given of the motion for an Order absolute. (*Ord.* 31.)

By sec. 7, of *Ord.* 46, *ante* page 184, all orders *nisi* for the production of documents under *Ord.* 20, required personal service; but for disobedience to a master's warrant, service upon the solicitor of the order *nisi* was sufficient, *Ord.* 42 sec. 3, note, page 180. It is left indefinite, by the present order, whether service upon the solicitor of the notice of motion now substituted for the order *nisi*, will be sufficient in either case. The intention of the court has been to make the practice ur[illegible]; and until the point is actually decided, the safer course would be to serve the notice of motion personally in all cases.

CXXXIII. The Accountant is to take and dispose of such references of account and other matters as shall

from time to time be made to him by any Decree or Order. (*Ord.* 32.)

CXXXIV. The Accountant is, in regard to matters referred to him, to have the same powers as the Master in Ordinary to issue warrants, make appointments, and settle and sign reports and certificates, and is to have all other powers and privileges of the Master; and the reports, certificates, and other acts of the Accountant, are to have the same effect, and be subject to the same Orders and Rules as those of the Master. (*Ord.* 33.)

By the 7 Wm. IV., c. 2, s. 9, it was enacted, that it should be lawful for the Governor, Lieutenant-Governor, or person administering the government of the Province, from time to time, under the great seal of the Province, to appoint, during pleasure, one registrar, two masters, one accountant, and a sergeant-at-arms, to the said Court of Chancery, who, when appointed, shall, in addition to the duties usually performed by the like officers in England be liable to perform such other duties as shall be assigned to them by the vice-chancellor of Upper Canada.

Although, from the wording of the statute, it would appear as if the registrar had the first rank, the master the second, and the accountant the third, the order should, in fact, be reversed. The master takes rank over the registrar, and the accountant general is the senior master. In England there were, prior to 15 & 16 Vic., cap. 80, when the office of master was abolished, twelve masters. The Master of the Rolls was one, and the chief; the Accountant General was usually the senior master of the remaining eleven; and the ten others were the ordinary masters in chancery —*Bennett's Master's Office* 1.

The powers and duties of the master are defined by *Orders* 42, 58, 70, 72, 74, and 81, to which, and the notes appended, the reader is referred.

Ord. 48, s. 8, which directs that "money paid into court is to be paid into the Commercial Bank with the privity of the registrar; and that all sums of money to be paid out of the court are to be so paid upon the cheque of the registrar, countersigned by one of the judges of the court, and not otherwise," has not been abrogated. It is, however, presumed that an accountant having now been appointed, a change in the above order will be made. The original Chancery Act, 7 Wm. IV., c. 2, s. 7, is as follows: "All moneys that become subject to the control and distribution of this court, shall be paid, in the name of the accountant general of the court, into the hands of such persons or body corporate, or be vested in the name of the accountant general in the public funds of the Province, or in such other securities as the court from time to time directs."

CXXXV. The accountant is to be entitled to take and

receive for his own use, the same fees for all warrants, reports, certificates and other matters as are allowed to the Local Masters. (*Ord.* 34.)

CXXXVI. The Master in Ordinary, with the assent of the Accountant and either of the parties to the reference, may transfer to the Accountant any reference, or any part of a reference made, or which may hereafter be made, to such Master; and the certificate or report of the Accountant in such case is to have the same effect, to all intents and purposes, as a certificate, report, or separate report, (as the case may be), of the Master; and where part only of a reference is so transferred, the Accountant, after signing the certificate or report, is to deliver the same to the Master, with the evidence taken and the papers used by and before him, in the matter of such reference. (*Ord.* 35.)

CXXXVII. It shall be the duty of parties to raise before the Master, Accountant, or Local Master, in respect of any matter presented in his office for his decision, all points which may afterwards be raised upon appeal, and in case an appeal is allowed on any ground not distinctly taken before the Master, the Court may, in its discretion, order the appellant to pay the costs of the appeal. (*Ord.* 36.)

This order re-establishes the practice which existed prior to the orders of 1853.

Order 43, s. 17, provided for appeals from master's reports "without objections or exceptions being previously taken," and the same language was used in order 79, s. 1, which repealed order 43, s. 17.

Permitting appeals without objections being previously taken, was a great injustice to the Masters of the Court, as on many occasions objections were taken and argued before the Court on the appeal, which had they been brought under the notice of the Master, would have led him to re-consider his decision and induced him to come to a different conclusion from that at which he did arrive. As objections are the foundation for exceptions, and as the latter must strictly follow the objections, great attention is required in framing them, so that the points may be properly brought before the court. *Ballard v. White*, 2 Hare, 158.

In England the practice was that there should be four days between the opening of the warrant "to sign the report" and the return, to allow the opposing or other parties time to object to the draft of the report, if re-advised. Where parties were dissatisfied with the masters finding, and were advised to bring that finding more particularly before the court, they had then four days allowed them to bring in objections to the draft of such report; and unless those objections were carried in the court would not afterwards allow a party to except to the report; unless under very special circumstances, *Noel v. Ward*, 1 Madd. 339; *Pennington v. Lord Muncaster*, 1 Madd. 555; *Wood v. Lambirth*, 9 Sim. 195. Where permission given to file exceptions, where no objections to the draft report brought in before the master, the party depending upon the chance of his appeal to the court seeking delay, though the objections are allowed, yet the party, for the neglect and occasioning trouble to the court shall pay such costs as the court thinks reasonable, *Bowker v. Nickson*, 3 Madd. 439.

The leaving objections not mere form, but to enable the master to re-consider his opinion, *Ibid.*

Where from the nature of the case, the master considers it proper to allow the party further time to prepare and bring in his objections, he does so, on his being attended by the parties on a warrant taken out for that purpose, by the party requiring time. As to objections generally, see *Ottey v. Pensam*, 1 Hare, 322.

CXXXVIII. The Judges having observed in bills of costs which have come under their notice, numerous items allowed by Local Masters upon taxation, which are not warranted by the tariff, it is ordered, that every Local Master do forthwith, after taxing a bill of costs, transmit the same by mail to Toronto, addressed, "To the Taxing Officer of the Court of Chancery, Toronto," and he is to allow in the bill the postage for the transmission and return of the bill, and shall prepay the same; and is to allow in the bill the sum of One Dollar as a fee to the Taxing Officer at Toronto, and the same, with postage stamps for the postage, is to be paid at the time of taxation by the party procuring the bill to be taxed; and the Local Master is to transmit with the bill to the Taxing Officer at Toronto, the said sum of One Dollar, and the postage stamps for the postage on the return of the bill to the Local Master. (*Ord.* 37.)

CXXXIX. The Taxing Officer at Toronto, upon receiving the bill of costs, or as soon thereafter as his other engagements will permit, is to examine the same, and to mark in the margin such sums (if any) as may appear to him to have been improperly allowed, or to be questionable; and he is to revise the taxation, either *ex parte*, or upon notice to the Toronto agent (if any) of the Solicitor whose bill is in question, as in his discretion he may see fit; but notifying such agent (if any) in all cases where the taxation is not clearly erroneous, or where the amount in question is so large as in the judgment of the Taxing Officer, to make such notification proper. Such notification may be by appointment mailed to the address of the agent (if any.) If upon such revision the sums disallowed shall amount to one-twentieth of the amount allowed upon taxation, the Taxing Officer is to add to the amount taxed off, the amount of postages, and the sum of One Dollar aforesaid, and is thereupon to re-transmit the bill so revised to the Local Master. (*Ord.* 38.)

It becomes necessary on filing bills of costs in a local master's office to endorse thereon the name and address of the Toronto agent, as it is not made the taxing officer's duty to ascertain from the registrar's book who such agent is.

CXL. No sum is to be inserted in the report of a Local Master as taxed and allowed for costs, until such revision by the Taxing Officer; but in a case of urgency, a writ of execution may issue to levy costs, or debt and costs, upon the order of a Judge, subject to the future revision by the Taxing Officer: and the party may without order issue at his own expense a separate execution for the debt before the revision takes place. (*Ord.* 39.)

CXLI. The fee for a necessary common attendance including præcipe, if any, shall be fifty cents. (*Ord.* 40.)

CXLII. A fee of twenty cents is to be paid by the

parties for every search in the office of the Master in Ordinary, Accountant, or Local Master, but it is to be taxed only when the search was, in the opinion of the Taxing Officer, necessary or proper. (*Ord.* 41.)

CXLIII. The fee on settling minutes and on passing Decrees or Orders may be increased in the discretion of the Registrar, in special cases, to Two Dollars, where the solicitor attends personally on such settling or passing. (*Ord.* 42.)

CXLIV. For attendance in the Master's office and in the office of the Accountant upon a warrant or appointment to hear and determine, it shall be in the discretion of the Master, Accountant, and Local Master, to increase the fee for such attendance to any sum not exceeding Two Dollars per hour, where in the judgment of the Master, or other officer aforesaid, the matters to be heard and determined are of such special nature as to have required previous preparation, and where the Master shall find that previous preparation has been bestowed thereupon, and that in his judgment such increased fee is reasonable and proper under the circumstances. But no such allowance is to be made for more than one day, unless the hearing is proceeded with *de die in diem* to the conclusion thereof; or unless such proceeding be prevented by a party other than the one claiming the increased allowance: and the increased allowance is not to be made unless the same is noted at the time in the book of the Master, or other Officer aforesaid. (*Ord.* 43.)

CXLV. The fee on the attendance of a Solicitor upon the examination of parties or witnesses, where the Solicitor attends in person, and no counsel is employed, may in special cases be increased in the discretion of the Judge, or Officer, before whom the examination is had, to two dollars, and where the examination occupies

more than one hour, then two dollars for every additional hour which is so occupied, and during which the Solicitor is present in attendance thereupon, provided the same is noted at the time in the Registrar's Book, or in the book of the Master, or other Officer, as the case may be. (*Ord.* 44.)

The expression, "the registrar's book," must have been inserted inadvertently, as counsel only are heard before the court.

CXLVI. In all Decrees, Orders, Reports and Certificates, sums are to be stated in dollars and cents. *Ord.* 45.

CXLVII. Service upon Solicitors of Pleadings, Notices, Orders, and other proceedings, is to be made between the hours of ten o'clock A.M., and four o'clock P.M., except on Saturdays, when it shall be made between the hours of ten o'clock A.M., and two o'clock P.M. If made after four o'clock P.M., on any day except Saturday, the service is to be deemed as made on the following day, and if made after two o'clock on Saturday, the service is to be deemed as made on the following Monday. (*Ord.* 46.)

Personal service, however, can still be made at any time.

CXLVIII. Every Deputy Registrar is forthwith, after the 30th of June and 31st of December, in every year, to make a return to the Registrar at Toronto, of the number of bills, answers, and demurrers, filed with such Deputy Registrar during the preceding six months, and is to transmit with such return the amount of fees payable into "The Suitors' Fee Fund Account." The Registrar is forthwith to deposit to the credit of the said account the sums so received, and is on the 31st day of January, and 31st day of July, in each year, to lay before the court a statement of the condition of the said account, and the names of the Deputy Registrars (if any) who are in arrear thereto. (*Ord.* 47.)

See note to *Ord.* 134.

CXLIX. The foregoing Orders are to take effect on the twentieth day of February instant, as to all suits then pending, as well as to those instituted on or after this date. (*Ord.* 48.)

P. M. VANKOUGHNET, C.
J. G. SPRAGGE, V. C.
O. MOWAT, V. C.

FORMS.

131. *Affidavit of Service of Office Copy Bill as altered by the Preceding Orders.*

In Chancery.

(*Style of Cause.*)

(L. I.)

I, of in the County of make oath and say,

1. That I did, on the day of serve the above-named Defendant with a paper which purported to be an Office Copy of the Bill filed in this Cause, by delivering to and leaving with him, the said Defendant, at in the County of the said Office Copy. I further say, that the said Office Copy purported to be authenticated by the signature of the Registrar of this Court at the foot thereof, and that each page of the said Office Copy was stamped with a stamp similar to the one which I now look upon in the margin of this affidavit. I further say, that upon the said Office Copy, at the time of the service thereof, there was endorsed the following memorandum—to wit :

"NOTICE TO THE DEFENDANT WITHIN NAMED.

"Your answer is to be filed at the Office of the Registrar, &c.

"You are to answer or demur within *four* weeks from the service hereof.

"If you fail to answer or demur within the time above limited "you are subject to have such Decree or Order made against "you as the Court may think just, upon the Plaintiff's own "showing; and if this notice is served upon you personally, "you will not be entitled to any further notice of the future "proceedings in this cause.

"*Note.*—This Bill is filed by of in the County "of solicitor for the above-named plaintiff."

2. And I further say, that to effect the said service I necessarily travelled miles.

Sworn before me, &c.

132. *Schedule to Notice to Admit.*—(*Ord.* 118.)

DESCRIPTION OF DOCUMENT.	DATE.
Indenture of Bargain and Sale by way of Mortgage between A. B., of the 1st part, E. B. of the 2nd part, and C. D. of the 3rd part.....	10th August, 1860.
Memorandum of agreement beween A. B. and C. D.....	12th Sept., 1862.
Policy of Insurance on ———	15th Sept., 1862.
Letter from defendant to plaintiff.....	3rd July, 1864.

133. *Præcipe to mark pro con.*—(*Ord.* 120.)

In Chancery.

Between A. B., ...Plaintiff,

and

C. D. and E. F.,.....Defendants.

Præcipe for Registrar to enter a note in the Registry of Pleadings in pursuance of the 19th Order of the 5th February, 1865, that the defendant, E. F., in default for want of answer, and that the Bill is to be taken *pro confesso* against the said defendant

Dated this 20th day of February, 1865.

To the Registrar.

134. *Præcipe to set down for Re-hearing.*—*Ord.* 129.)

In Chancery.

A. and B.

I request that this cause be set down for re-hearing next after after the causes already appointed.

Dated 20th February, 1865.

Yours, C. D.,

Plts. (or Defts.) Sol.

To the Registrar.

135. *Notice of Re-hearing.*—(*Ord's.* 129 & 130.)

In Chancery.

Between A. B., ...Plaintiff.

and

C. D. and E. F.,.....Defendant.

Take notice that this cause has been set down (on behalf of the defendant E. F.) to be re-heard before this Honourable Court,

on ——— the ——— day of ———, at ten o'clock in the forenoon, or so soon thereafter as counsel can be heard, and unless you attend the time and place appointed the same may be re-heard and the decree already pronounced (reversed or) varied in your absence, (and take notice that such re-hearing is had in order that the decree may be varied in the following particulars: 1st. By adding, &c., 2nd. By varying the directions, &c.)

Dated 20th February, 1865.

Yours, G. H.,
Solicitor for the Defendant E. F.

To Messrs. J. & K., Plaintiff's Solicitors, and L. M., Esq., Solicitor for the Defendant C. D.

136. *Notice Endorsed on Petition.—Ord.* 131.)

Take notice that the within petition will be heard before this Honourable Court, (or the presiding Judge in Chambers) at Osgoode Hall, in the City of Toronto, on ——— the ——— day of ———, at ten o'clock in the forenoon, or so soon thereafter as the same can be heard. And unless you appear at such time and place, on the said within petition, the Court may make such order on the petitioner's own shewing as shall appear just.

And take notice that in support of such petition will be read, &c,

Dated this 20th day of February, 1865.

Yours, A. B.,
Plaintiff's Solicitor.

To X. Y., &c.

Note.—In the 2nd paragraph of the affidavit of service, *ante* page 299, the word "notice" will have to be inserted in place of the words "judge's fiat."

137. *Notice of Motion for an Order absolute.—Ord.* 132.)

In Chancery.

(*Style of Cause.*)

Take notice that a motion will be made on behalf of the (plaintiff) before the presiding Judge in Chambers, on ——— the ——— day of ———, at ten o'clock in the forenoon, or soon thereafter as the notice can be made, for an order that the Sheriff of any County or United Counties, in which you the said (defendant) may be found, do take you into his custody and commit you to the gaol of his County or United Counties, to answer your contempt in not, &c., (copy the words of the order &c.,) and for the costs of and incidental to this application, and take notice that upon such motion

will be read the said (order) affidavit (*or* admission) of the service thereof this day filed, the certificate, &c., (as the case may be.)

Dated this 20th day of February, 1865.

X. Y.,
Plaintiff's Solicitor.

To the above named defendant, E. F.

138. *Decree for Foreclosure, Account taken by Court.*

(*Formal parts.*)

Whereas the above named plaintiff , filed Bill in this Court for the payment and satisfaction of the mortgage securit in the said Bill mentioned, and thereupon served the said defendant , as by affidavit of service now produced appears, with an office copy of the said Bill, on which was endorsed the notice required by the General Orders of this Court of the tenth day of January, one thousand eight hundred and sixty-three, in that behalf, : whereby the defendant was informed, amongst other things, that the plaintiff claimed that there was then due by the defendant for principal money and interest, the sum of and that the defendant w liable to be charged with this sum, with subsequent interest and costs in and by the decree to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the decree, interest in the property might be , and no answer or demurrer or note disputing such claim of plaintiff having been filed by the said defendant within the time limited for that purpose by the said notice, as by the appears ; And this Court having caused an account of subsequent interest to be taken on the sum of principal money secured by the indenture of mortgage in the said bill mentioned, up to the day of next, being the time appointed for payment as hereinafter mentioned doth find the same amount to and having caused the costs of the plaintiff to be taxed, doth find the same amount to which said subsequent interest and costs being added to the sum of so claimed by the notice endorsed on the copy of the bill so served on the defendant , make together the sum of and upon the said Defendant paying the said sum of into the Bank at the in the between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the day of next, to the joint credit of the plaintiff and the Registrar of this Court. It is ordered that the said plaintiff do assign and convey the said premises free and clear of all incumbrances done by and deliver up all deeds

and writings in custody or power relating thereto upon oath to the said defendant or to whom he may appoint, but in default of the said defendant making such payment by the time aforesaid, it is ordered that the said defendant do stand absolutely debarred and foreclosed, of and from all equity of redemption in and to the said premises.

139. *Decree for Sale Account taken by Court, under Order* 98.

Whereas the above named plainfiff , filed Bill in this Court for the payment and satisfaction of the mortgage securit in the said Bill mentioned, and thereupon served the said defendant , as by affidavit of service now produced appears, with an office copy of the said Bill, on which was endorsed the notice required by the General Orders of this Court of the tenth day of January, one thousand eight hundred and sixty-three, in that behalf : whereby the defendant was informed, amongst other things, that the plaintiff claimed that there was then due by the defendant for principal money and interest, the sum of and that the defendant w liable to be charged with this sum, with subsequent interest and costs in and by the decree to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the decree, interest in the property might be , and no answer or demurrer or note disputing such claim of the plaintiff having been filed by the said defendant within the time limited for that purpose by the said notice, as by the appears ; and this Court having caused an account of subsequent interest to be taken on the sum of principal money secured by the indenture of mortgage in the said bill mentioned, up to the day of next, being the time appointed for payment as hereinafter mentioned doth find the same amount to and having caused the costs of the plaintiff to be taxed, doth find the same amount to which said subsequent interest and costs being added to the sum of so claimed by the notice endorsed on the copy of the bill so served on the defendant , make together the sum of and upon the said Defendant paying the said sum of into the Bank at the in the between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the day of next, to the joint credit of the plaintiff and the Registrar of this Court. It is ordered that the said plaintiff do assign and convey the said premises free and clear of all incumbrances done by and deliver up all deeds and writings in custody or power relating thereto upon oath to the said defendant or to whom he may appoint, but in default of the said

defendant making such payment by the time aforesaid, it is ordered that the said premises be sold, with the approbation of the master of this Court, who is to settle the conveyance or conveyances to the purchaser or purchasers, in case the parties differ about the same: and it is ordered, that the purchaser or purchasers do pay his, her, or their purchase money into the Commercial Bank of Canada, at its Branch or Agency Office in the City of Toronto, in the name and with the privity of the Registrar of this Court, to the credit of this cause, subject to the further Order of this Court; and that the same, when so paid in, be applied in payment of what shall be found due to the said Plaintiff together with subsequet interest and subsequent costs, to be computed and taxed; but in the event of such purchase money being insufficient to pay what shall be found due to the said Plaintiff, for such principal, interest, and costs, subsequent interest and subsequent costs; it is ordered, that the said Defendant do forthwith, after service hereof and of the Master's certificate of the deficiency, pay to the said Plaintiff the amount of such deficiency.

140. *Decree for Foreclosure where there are Incumbrancers, under Ords.* 98, 126 *and* 133.

Whereas the above named plaintiff, filed Bill in this Court for the payment and satisfaction of the mortgage securit in the said Bill mentioned, and thereupon served the said defendandant, as by affidavit of service now produced appears, with an office copy of the said Bill, on which was indorsed the notice required by the General Orders of this Court of the tenth day of January, one thousand eight hundred and sixty-three, in that behalf; whereby the defendant w informed, amongst other things, that the plaintiff claimed that there was then due by the defendant for principal money and interest, the sum of and that the defendant w liable to be charged with that sum, with subsequent interest and costs in and by the decree to be drawn up, and that in default of payment thereof, within six calendar months from the time of drawing up the decree, interest in the property might be , and no answer or demurrer or note disputing such claim of the plaintiff having been filed by the said defendant within the time limited for that purpose by the said notice, as by the appears; it is thereupon ordered and decreed that it be referred to the *Accountant* or *Master* of this Court *at* to inquire and state whether any person or persons, and who, other than the said Plaintiff has or have any lien, charge, or incumbrance upon the land and premises embraced in the mortgage security of

the Plaintiff in the said bill mentioned subsequent thereto, and in case the said *Accountant* or *Master* shall find that any person or persons other than the said Plaintiff has or have any such lien, charge, or incumbrance, then he is to cause such person or persons to be served with process under the General Orders of this Court in that behalf; and is to proceed to take an account of what is due to the said Plaintiff and to such other incumbrancer or incumbrancers (if any) for principal money and interest; and to tax to them their costs of this suit, and to settle their priorities; and also to appoint a time and place, or times and places, for payment according to the practice of this Court. And in default of payment being made according to the Report of the said . It is further Ordered, that the party or parties so making default do stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to, the said premises: and in case of payment by any party according to the said Report, It is ordered, that the party or parties to whom such payment is made, do convey the said premises, free and clear of all incumbrances, done by him, her, or them, and deliver up all deeds and writings in his, her, or their custody or power, relating thereto, upon oath to the party or parties making such payment, or to whom he, she or they, may appoint. And in default of such payment, it is further ordered, that all subsequent proceedings be from time to time taken; subsequent costs taxed, and all proceedings had for redemption by, or foreclosure of, the party or parties entitled to redeem the said mortgaged premises.

141. *Decree for Sale.—Reference to Accountant or Master, under Orders* 98, 126, *and* 133.

Whereas the above named plaintiff , filed Bill in this Court for the payment and satisfaction of the mortgage securit in the said Bill mentioned, and thereupon served the said defendant , as by affidavit of service now produced appears, with an office copy of the said Bill, on which was endorsed the notice required by the General Orders of this Court of the tenth day of January, one thousand eight hundred and sixty-three, in that behalf; whereby the defendant w informed, amongst other things, that the plaintiff claimed that there was then due by the defendant for principal money and interest, the sum of and that the defendant w liable to be charged with this sum, with subsequent interest and costs in and by the decree to be drawn up, and that in default of payment thereof within six calendar calendar months from the time of drawing up the decree, interest

in the property might be sold, and no answer or demurrer note disputing such claim of the plaintiff having been filed by the said defendants within the time limited for that purpose by the said notice, as by the appears; it is thereupon ordered and decreed that it be referred to the *Accountant or Master* of this Court *at* to enquire and state whether any person or persons, and who, other than the said Plaintiff has or have any lien charge, or incumbrance upon the land and premises embraced in the mortgage securit of the Plaintiff in the said bill mentioned other than prior mortgages, (if any,) and in case the said master shall find that any person or persons other than the said Plaintiff has or have any such lien, charge or incumbrance, then he is to cause such person or persons to be served with process under the General Orders of this Court and is to proceed to take an account of what is due to the said Plaintiff and to such other incumbrancer or incumbrancers (if any,) other than the prior mortgagees, for principal money and interst; and to tax to them their costs of this suit, and also to settle their priorities; and upon the said Defendant paying to the said Plaintiff and such other incumbrancer or incumbrancers (if any) what shall be found due to them respectively, for principal money, interest, and costs, within six calendar months after the said *Accountant or Master* shall have made his Report, at such time and place as the said *Acoountant or Master* shall appoint. It is Ordered that the said Plaintiff and such other incumbrancer or incumbrancers do assign and convey the said premises, free and clear of all incumbrances done by or and deliver up all deeds and writings in or custody or power relating thereto, upon oath to the said Defendant or to whom shall appoint: or enter up satisfaction on the Roll of their respective judgments, as the case may be. But in default of the said Defendant making such payments by the time aforesaid, it is ordered that the said premises be sold, with the approbation of the *Accountant or Master* of this Court, who is to settle the conveyance or conveyances to the purchaser or purchasers, in case the parties differ about the same: and it is ordered, that the purchaser or purchasers do pay his, her, or their purchase money into the Commercial Bank of Canada, at its Branch or Agency Office in the City of Toronto, in the name and with the privity of the Registrar of this Court, to the credit of this cause, subject to the further Order of this Court; and that the same, when so paid in, be applied in payment of what shall be found due to the said Plaintiff and such other incumbrancer or incumbrancers according to their priorities, together with subsequent interest and

subsequent costs, to be computed and taxed in manner hereinbefore directed; but in the event of such purchase money being insufficient to pay what shall be found due to the said Plaintiff , for such principal, interest, and costs, subsequent interests and subsequent costs; it is ordered that the said Defendant do forthwith, after service hereof and of the *Accountant or Master's* certificate of the deficiency, pay to the said Plaintiff the amount of such deficiency.

INDEX.

ABOLITION OF—petitions for rehearing, 12.
certificates by counsel on, 12.
orders to set down for, 12.
orders *nisi*, 13.
ABSCONDING—defendants, practice in cases of, 3.
ABSOLUTE—orders, notice of motion for, 13; service of, 13.
ACCOUNTANT—duties of, 13; powers of, 14; precedence, 14; statutes relating to, 14; fees, 14; increased by, 18, 19; search in office of, 17, 18; objections to be taken before, 15.
reference by master to, 15.
ADDED PARTIES—when to be served with bill, 3.
ADMISSION—by defendant in answer, 4; plaintiff in replication, 4.
may be solely for purposes of suit, 4, 5.
by plaintiff and defendant, how far binding, 4, 7.
to refer to paragraphs, 5.
ignorance no excuse for non, 5.
of documents, 7.
forms of, 5, 8.
costs of non, 6, 7.
English order as to, 7.
decisions as to, 7, 8, 9.
who are competent to give, 7.
service of notice for, 9.
ADVERTISING—defendant, practice as to, 3.
ALLEGATIONS—in bill, to be admitted in answer, 4.
when true to defendant's knowledge, 4.
when truth of can be ascertained, 4.
when believed to be true, 4.
ALLOWANCE—of costs, none for improperly prepared proceedings, 2.
increased fees by registrar, 18; by master, &c., 18.
on examination of witnesses, 18, 19.
of service by judge, 3.
AMEND—orders to, not entered, 10; no answer to notice to dismiss, 10.
AMENDED—bill, when to be reprinted, 1; served, 3.
ANSWER—no order *pro con.* for want of, 9; returns of, filed, 19.
office copies of dispensed with, 6.

APPEAL—costs of, not covered by costs of suit, 12.
from master, 15; exceptions must be taken before him, 15; costs of may be given against appellant, 15.
APPOINTMENT—accountant to make, 14.
by taxing officer on re-taxation, 17.
registrar to give, to settle and pass, 10, 11, 18.
costs of non-attendance on, 11; increased fees on, 18.
ATTENDANCE—on settling minutes, 11, 18; fee on, 18.
common, 17; including præcipe, 17.
in master's office, 18; fees on, 18.
on examination of witnesses, 18; fees on, 19.
AUTHENTICATION—of office copies of bills, 2.

BELIEF—parties to admit truth of, 4, 5.
BILLS—office copies not to be certified, 2; how authenticated, 2; when to be served, 3; when amended, 3; computation of time for, 3; judge may allow, 3.
defendant to admit truth of, when, 4.
printed, when to be reprinted, 1; defendant may demand two copies of, 7; price of, 7; English order as to, 7.
no order to take, *pro confesso*, 9.
dismissal of, 10.
returns of, filed, 19.
of costs in country to be revised by taxing officer, 16; or retaxed, 17; not to be reported as taxed before, 17; execution for before in certain cases, 17.

CALENDAR—month, time for rehearing to begin to run after one, 12.
CERTIFICATE—of counsel on petitions for rehearing abolished, 12; of accountant, effect of, 14; of master, 15.
to be in dollars and cents, 19.
CERTIFIED—office copies of bills not to be, 2.
COMPETENCY—of parties to admit, 4.
COMPUTATION—of time for service of bill, 3.
for rehearings, 12.
COPIES—office, of bills, how authenticated, 2; not to be certified, 2; when to be served, 3; allowance of service of, 3; of pleadings dispensed with, 6.
to be served, 6; to be true, 6; four only allowed on taxation, 6; if more than three to be printed, 6; not required to be admitted, 7, 8.
of printed bill, defendant may demand two, 7.
COSTS—of improperly prepared proceedings, 2.
of proving what ought to have been admitted, 6.
of non-admission in replication, 7; or on notice, 8; decisions on, 7, 8, 9.
of four written copies only allowed, 6; of printing, 6.

COSTS—(*continued.*)
of non-attendance before registrar, 11; delay before, 11.
of rehearing, &c., not included in costs of suit, 12.
appeal from master's report, 15.
not allowed by local masters, 16; exceptions, 17.
execution for, 17.
revision of, 17; retaxation of, 17; of search in master's office, 17, 18; of attendance there, 18; of attendance on examination of witnesses, 18, 19.
of common attendance, 17.

DATES—when pleadings printed to be in figures, 1.
of orders taking effect, 20.
DECREE—orders to have effect of, 12
time for rehearing, 12; may be varied on, 13; part of, to be stated in notice, 13; accountant to dispose of matters referred by, 13.
to be entered, 9, 10.
settling and passing, 10; registrar to give directions as to, 10, 11; fees on, 18.
in redemption suits, 11.
sums in, to be in dollars and cents, 19.
DEFENDANT—to admit by answer, 4.
practice as to advertising, 3.
may demand two copies of printed bill, 7.
DELAY—to be accounted for, in serving, 3; on motion to dismiss, 10; on settling minutes, 11; costs of, 11.
DEPOSIT—for sale, when to be made, 12; order on, 12; for rehearing, 13.
DEPUTY REGISTRARS—to make semi-annual returns, 19.
see REGISTRAR.
DILIGENCE—to be used in effecting service, 3; in answer to motion to dismiss, 10.
DIRECTIONS—further decree on dispensed with in certain cases, 12.
DISCHARGE—of decree or order, within what time to move to, 12.
DISBURSEMENTS—for printing allowed, 6
DRAFTS—of pleadings allowed, 6.
DOCUMENTS—notice to admit, 7; form of 8.
DOLLARS AND CENTS—sums to be stated in, 19.
DUTIES—of accountant, 13, 14.
of taxing officer, 16, 17.

EFFECT—orders, when to take, 20.
of orders substituted for decrees, 12.
of accountant's report, 14, 15.
ENDORSEMENT—on petitions in place of fiat, 13.
on bills of cost in local master's office, 17.
ENTRY—of orders of course, &c., dispensed with, 9, 10.

of decree or order, 12.
of increased fees in officer's book, 18, 19.
EVIDENCE—in cases of absconding defendants, 3.
taken by accountant, 15; delivered to master in certain cases, 15.
costs of adducing where not admitted, 6, 7, 8.
EXAMINATION—of witnesses, &c., increased fees on, 18, 19.
EXCEPTIONS—to master's report, 15, 16.
EXECUTION—for costs before revision, 17.
EXPRESSED—dates, &c., to be in figures in printed proceedings, 1.

FACTS—costs of proving where not admitted, 6.
FEES—of accountant, 14, 15.
for revision of costs, 17.
for common attendance, 17.
for search in master's, &c., office, 17, 18.
on settling minutes, 18.
for attendance in master's, &c., office, 18; on examination of witnesses, 18, 19.
fund, suitors, semi-annual returns of, 19.
FIAT—on petitions abolished, 13.
FIGURES—dates and sums to be in, when pleadings printed, 1.
English order as to, 1.
FILING—improperly prepared proceedings, registrar to refuse, 2.
service of bill within twelve weeks after, 2; computation of time from, 3.
of bill, not to be certified, 2.
FORECLOSURE—decrees in, 11; in redemption suits, 11, 12.
FORM—of paper to be used, 2.
FORMS—of replication, 5.
notice to admit, 8.
affidavit of service, 21.
schedule to notice to admit, 22.
præcipe to take bill *pro con.*, 22.
præcipe to set down for rehearing, 22.
notice of rehearing, 23.
of motion for order absolute, 24.
foreclosure decree, account taken by court, 24.
sale decree, account taken by court, 25.
foreclosure decree, reference to accountant, &c., 26.
sale decree, reference to accountant, 28.
FOUR—days, admission to be made, after inspection, 8.
FURTHER—directions not reserved in foreclosure or redemption suits, 12; order where sale desired, 12.

GUARDIAN—*ad litem*, admissions by, 4.
GROUNDS—of appeal, to be taken before master, 15.

HEARING—judge to certify at, as to costs of refusal to admit, 7.
petitions, 13; endorsement of notice of, 13; form of.
objections to master's report, 15, 16.
HOURS—of service of pleading, 19.

IGNORANCE—no excuse for non admission, 5.
INSPECTION—time limited for, 7, 8; for service of notice for, 9.

JUDGE—may allow service of bill after twelve weeks, 3.
to certify as to refusal to admit, 8; may direct entry of orders, 10.
fiat of, on petition, abolished, 13.
may allow execution for costs before revision, 17, 18.
grant increased fees on examinations, 19.
JUDGMENT—decree, &c., when to be drawn up after, 12.
JURISDICTION—service of bill within, 3; without, 3.

KNOWLEDGE—want of, no excuse for not admitting, 5.

LEGIBLE—proceedings to be, 2.
LIMITED—periods for service of bill, how, 3.
LOCAL MASTER—accountant's fees same as, 14.
examinations before, 3, 18.
not to allow costs, 17; before revision, 17; exception, 17.
objections to be taken before, 15; search in office of, 17, 18; may allow increased fees in certain cases, 18.
see MASTER.

MASTER—to appoint times of payment in foreclosure and redemption suits, 11, 12.
statutes regarding, 14.
may refer matters to accountants, 15.
local, not to allow costs before revision, 16, 17.
exceptions to report to be taken before, 15, 16.
fee for search in office, 17, 18.
fee increased for attendance before, 18.
MONTH—calendar, time for rehearing to run after one, 12.
six, within which to take bill *pro con.*, 9.
MOTION—notice of, instead of order *nisi*, 13; form of, 24.
to dismiss, what to be shewn on, 10.

NECESSARY ATTENDANCE—fee for, 17.
NEGLECT—costs of, in admitting, 7.
NISI—orders, abolished, 13; notice of motion in place of, 13.
NOTICE—of rehearing to be served, 12; form of, 23; part of decree may be varied on, 13.
of hearing of petition, 13; form of, 23.

NOTICE—(*continued.*)
of motion in lieu of orders *nisi*, 13; form of, 24.
to admit, 7; form of, 8; to be served two days before time; form of schedule to, 22.
to dismiss, 10; what to be shewn in answer, 10.
to settle and pass not to be given, 10; adjournment of, 11; costs on, 11, 18.
NOTIFICATION—of retaxation by taxing officer, 17.

OBJECTIONS—to masters' report to be raised in his office, 16; hearing objections, 16, 17.
OFFICE COPIES—of bill to be authenticated, 2; but not certified, 2.
service of, 3; form of affidavit, 21.
of answers, &c., dispensed with, 6.
OFFICER—see ACCOUNTANT, MASTER, TAXING OFFICER.
ORDER—instead of decree on further directions, 12.
time for rehearing, when to run, 12.
to set down for rehearing abolished, 12.
may be varied on rehearing, 13; notice for, 13.
nisi abolished, 13; notice of motion substituted, 13.
pro con. not to issue, 9.
no notice to settle or pass, without registrar's appointment, 10; costs on, 11, 18.
ORDERS OF COURSE—not to be entered; without judge's order, 10; practice on, 10.
service of, within what hours, 19.
when to take effect, 20.

PAPER—size and form of, to be used, 2.
PARAGRAPHS—admissions to refer to, 5.
PASSING—when notice of, to be given, 10; cost of not attending or postponing, 11; costs of, 11, 18.
PETITION—for rehearing abolished, 12.
PICA TYPE—to be used, 1; English order as to, 1.
PLEADINGS—written or printed allowed, 1; how to be, 1; on what paper, 1; costs of improperly prepared, 2.
office copies of, dispensed with, 6.
to be served within what hours, 19.
POWERS—of accountant, 14.
PRACTICE—as to advertising absent defendants, 3.
as to admissions, 7, 8, 9.
as to objections to master's finding, 15, 16.
PRÆCIPE—taking bill *pro con.* on, 9; foreclosure decree on, 11.
sale on, 12; rehearing on, 12.
included in common attendance, 17.
PRINTED—pleadings allowed, 1; dates and sums in, to be in figures, 1;

PRINTED—(*continued*)
English orders as to, 1, 2.
when to be, 6.
defendant may demand two copies of bill, 7.
PROCEEDINGS—see pleadings.
PRO CONFESSO—no order, to issue, 9; to be noted by registrar, 9; within six months, 9.
PROOF—costs of, where no admission, 7, 8, 9.
PURPOSES—of suit, admissions for, 4, 5.

REDEMPTION—decrees in suits for, 11; further directions not reserved in, 11.
REGISTRAR—when to refuse to file proceedings, 2.
not to certify office copies of bills, 2; to sign at foot, 2.
to enter bills as taken *pro con.*, 9; fees for, 9.
not to enter orders of course, 9; to give appointments to settle and pass, 10; settle costs of, 11; increase fees on, 18; to issue certain decrees and orders on præcipe, 11, 12.
to make returns in suitors' fee fund, to court, 19
deputy, may allow increased fees on certain attendances, 18, 19; to make semi-annual returns, 19.
REHEARING—time within which allowed, 12; to be had on præcipe, 12; decree or order varied on, 18; form of notice of, 22, 23.
RELATIVES—of absent defendants to be examined, 3.
REPLICATIONS—admissions to be made in, 4; forms of, 5.
division into paragraphs, 5.
notice to admit may be served after, 7.
filing no answer to notice to dismiss, 10.
REPORT—master's objections to, 15; sums in, to be in dollars and cents, 19.
RETAXATION—by taxing officer, 16, 17.
REVISION—of taxation, 16, 17; if one-twentieth disallowed, costs to be paid by solicitor, 18; amount not to be inserted in local master's report before, 17.
execution for, before, in certain cases, 17

SALE—in foreclosure suits, without decree on further directions, 12.
SATURDAY—time for service on, 19.
SEARCH—in master's, &c., office, fee for, 17, 18.
SERVICE—of bill, 3; within what time valid, 3; may be allowed by judge, 3.
of notice to admit, 9.
of notice to dismiss, 10.
of notice of motion for order absolute, 13.
on solicitor, 19; within what hours good, 19.
SETTLE—notice to, when to be given, 10; costs on, 10; may be increased by registrar, 18.

SIGNATURE—of registrar at foot of office copy bill, 2.
SIZE—of paper, &c., to be used, 2.
SIX MONTHS—bill may be taken *pro con.*, within, 9.
SOLICITOR—when not allowed costs of proceedings, 2.
fees to be increased on settle minutes, 18; in master's office, 18; on examinations, 18, 19.
service on, 19.
SPEED—undertaking to, no answer to notice to dismiss, 10.
STAMPED—office copies of bills to be, 2.
SUIT—admissions may be for purposes of, 5.
SUITORS—fee fund account, returns relating to, 19.
SUMS—in printed proceedings to be in figures, 1.
in decrees, &c., to be in dollars and cents, 19.

TAXING OFFICER—to settle costs in regard to admissions, 7; bills of costs to be sent to by local masters, 16; to revise costs, 17; to retax, 17.
THREE—copies of written proceedings allowed, 6.
TRUTH—of allegations to be admitted in answer, 4; in replication, 5.
TIME—for service of bill, 3.
to serve notice to admit, 7, 9; within what, admission to be made, 8.
within which to take bill *pro con.*, 9.
in foreclosure and redemption suits, to be settled by master, &c., 11.
for rehearing, 12.
for service, 10.
for returns to be made by registrar and deputy registrars, 19.
for orders to take effect, 20.
TWELVE—weeks allowed for service of bill, 3.
TWO—copies of printed bill allowed to defendant, 7.
days' service of notice to admit, 9.

VALIDITY—of service of bill, 3; may be allowed by judge, 3.
VARIATION—in form of replication, 5.
of decree or order on rehearing, 13; form of notice of, 22, 23.

WARRANT—accountant to issue, 14.
to hear objections, 16.
WEEKS—twelve allowed for service of bill, 3.
WRITTEN—proceedings, to be neat and legible, 2; on good paper, 2; costs of non-compliance with order, 2.