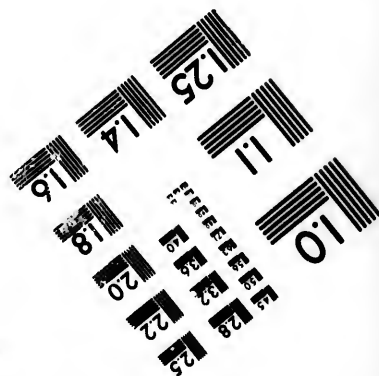
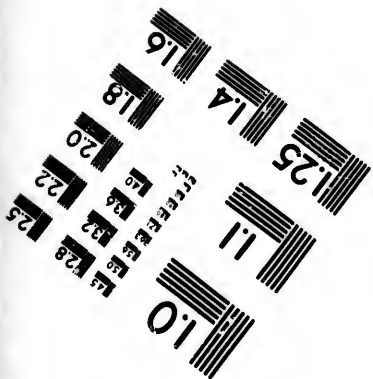
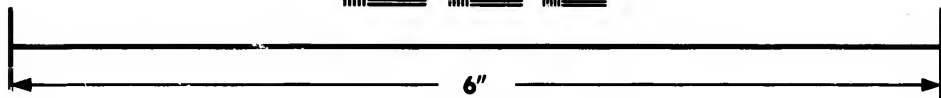
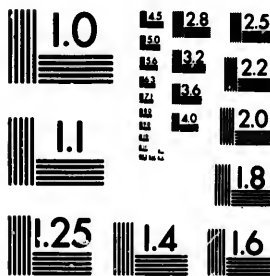


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CHAPTER XVIII.

The Master's Office.

The decree. The cause having been heard, the Registrar enters in his book a short minute of the decision delivered. The Solicitor, who desires to take out the decree, makes an appointment with the Registrar for settling the "minutes," or a short draft of the decree, and gives a notice to the solicitors of all the other parties of the time appointed. Any objection raised by either party to the form of the decree is disposed of by the Registrar, who, if he thinks fit, refers to the Court before deciding. In difficult cases the Judges frequently draw up the minutes themselves. Another appointment is made to "pass" the decree, on which occasion the Registrar has it drawn up in full, embracing short minutes of the evidence which has been read at the hearing. Each party sees that the decree is satisfactorily framed in accordance with the minutes which have already been settled, and it is then entered, and office copies delivered by the Registrar to the Solicitors who bespeak them.

The following English Order gives some idea of the form of the decree :—

21st Dec.,
1833.
Order 27.
Decrees and
Orders (except
for special In-
junctions) not
to contain re-
citals.

That for the purpose of avoiding, as much as may be, expenses and delay in the drawing of the Decrees and Orders of this Court, it is hereby directed that (except in Orders for special injunctions, in which the usual recitals

shall be inserted as heretofore,) neither the bill, nor answers, nor any part thereof be stated or recited in the original decree or order; and that no part of the Master's report be stated in any decree upon further directions, except the Master's finding or opinion upon the subject referred to him; and that in order made upon petitions no part of the petition be stated or recited except the prayer; and that the same principle of brevity be observed in all the Orders of this Court made upon motion so far as may be consistent with a statement explaining the grounds upon which the order is made. And for the better understanding of this Order certain forms of decrees and orders drawn pursuant thereto are subjoined.

And it is hereby directed that such forms shall be observed in all cases as nearly as may be.

The Form of an Original Decree.

(Date and Title).

This cause coming on the present day to be heard and debated before, &c., in the presence of Counsel learned on both sides, and the pleadings in this cause being opened, upon debate of the matter and hearing (here state in the usual form a description of the evidence which was read) and what was alleged by the Counsel on both sides, his Lordship doth order and decree, (or doth declare) &c.

Forms original
decree.

The Form of a Decree upon further Directions after a Master's Report.

(Date and Title).

This cause coming on the day of to be heard and debated before &c., his Lordship did order and decree or declare (here state the decretal part, except the words of course) that in pursuance of the said decree the said Master made his report, bearing date the day of , which stands absolutely confirmed by an order, dated the day of , and thereby found (here state the Master's finding or opinion only). And this cause coming on this present day to be heard before, &c., for further directions, and as to the matter of costs reserved in the said decree (if costs be reserved) in the presence of counsel learned on both sides, upon opening and debate of the matter, and hearing the

Decree on
further direc-
tions.

said decree &c. read and what was alleged by Counsel on both sides, his Lordship doth order, &c.

Order on
petition.

(Date and Title).

Whereas A. B. did, on the day of ,
prefer his petition unto, &c., setting forth as therein set
forth, and praying (here state the prayer), whereupon all
parties concerned were ordered to attend his Lordship on
the matter of the said petition, and Counsel for the peti-
tioner and for this day attending accord-
ingly, upon hearing the said petition, &c. read, and what was
alleged by the Counsel for the petitioner and the Counsel
for , his Lordship doth order, &c.

The same form to be observed upon the decree for
further directions, *mutatis mutandis*, where, upon the
original hearing an issue or a case for the opinion of a
Court of law is directed, or the bill is retained for twelve
months with liberty to bring an action. The issue and
verdict of the jury to be stated at length, but the judge's
certificate upon the case only and not the case itself.

Further direc-
tions.

A decree "on further directions", of which the form
is above given, is made under the following circumstances.
In cases involving matters of account, the decree made
on the first hearing, cannot, except rarely, finally dispose
of the case. The accounts must be referred to be taken
by the Master, and important questions may depend upon
the finding of the Master. In such cases, then, the first
decree "reserves the consideration of further directions",
and often reserves also the question of costs. The
Master having made his report, the case is set down to be
heard "on further directions." Sometimes it may be
necessary to bring the cause on more than once, in this
manner, after the first decree. A mode of Appeal against
the finding of the Master is pointed out by the following
Orders.

The proceedings in the Master's Office are more sum-
mary than under the old practice, under the following
Orders :

1850.
LXXIX.†
Bringing the
decree into the
Master's office.

Every decree or order, referring any matter to the
Master, is to be brought into his office within 14 days
after the decree or order shall have been pronounced, by
the party having the carriage of the same ; otherwise any

other party to the cause, or any party having an interest in the reference, may apply to the Court, as he shall be advised, for the purpose of expediting the prosecution thereof.

Upon the bringing in of every decree or order, the solicitor, bringing in the same, shall take out a warrant appointing a time, which is to be settled by the Master, for the purpose of taking into consideration the matter of the said decree or order, and shall serve the same upon the parties, or their solicitors, unless the Master shall dispense therewith; and upon the return of such warrant to consider, or upon the bringing in of the reference, when no such warrant shall have been issued, the Master shall proceed to regulate in all respects the manner of proceeding with such reference, and shall direct the time and manner in which such steps as may be required shall be taken by the respective parties, and shall further fix a time at which to proceed to the hearing and determining of such reference. And the Master, having determined the time and manner of proceeding with such reference, shall enter, in a book to be kept by him for that purpose, the name and title of the cause and the time fixed for proceeding in the matter.

Every reference appointed to be heard, as by Order LXXX provided, shall be called on and proceeded with at the day and time so fixed, unless the Master shall, in his discretion, think fit to postpone the same; and, in granting any application to postpone the hearing of any such reference, as aforesaid, the Master may make such order as to the costs consequent upon such postponement, and may impose such conditions upon the party applying for such postponement as he may think just. And, so soon as the Master shall have entered upon the hearing of any such reference, he shall proceed therewith to the conclusion, without interruption, where that is practicable; and, where any reference cannot be concluded on a single day, the Master shall proceed *de die in diem* without any fresh warrant, unless the Master shall be of opinion that an adjournment, other than *de die in diem*, would be proper and conducive to the ends of justice; and, when any such adjournment shall be ordered, the Master shall note in his book the time and reason thereof; and in no case shall any matter be discontinued or adjourned for the mere purpose of proceeding with any other matter, unless such course shall have become necessary.

So soon as the hearing of any matter pending before the Master shall have been completed, he shall so inform the

1850.
LXXX.
Considering the
decree.

LXXXI.
Proceedings de
die in diem.

LXXXII.
Completion of
reference.

parties to the reference then in attendance, and shall make a note to that effect in the book in which the proceedings shall have been entered; and after such entry no further evidence shall be received or proceeding had without the special permission of the Master; but the Master shall proceed to prepare his report, certificate or other determination in the matter, without further warrant except the warrant to settle, which shall be served on such parties as the Master shall direct. So soon as the Master's report; certificate or other determination shall have been prepared, it shall be delivered out to the party having the carriage of the reference, who shall be allowed a common attendance therefor.

1850.
LXXXIII.
Appeal from
finding of the
Master.

Objections, and exceptions to reports, are hereby abolished. Reports shall henceforth become absolute in fourteen days after the signing thereof, unless previously appealed from, as hereinafter provided. An appeal shall lie to the Court upon motion from all reports made by the Master within fourteen days from the signing thereof. Such appeal motion may be made by any party affected by such report; and, upon notice thereof being served, all the proceedings which shall have taken place before the Master in the matter, and all papers and evidence relating thereto, shall, at the instance of any party interested therein, be handed by the Master to the Registrar, to be by him produced in Court upon the hearing of such motion.

LXXXIV.
States of facts
and charges.

No state of facts, charge, discharge, account or affidavit in the Master's office, shall set out any decree, order, Master's report, or other like document, or any part thereof, further than by stating the date of the same, nor shall it state any other state of facts, charge, discharge, account or affidavit, or any or either of them, or any part thereof further than as aforesaid; save that so much of any account brought into the Master's office may be incorporated in such charge as may be absolutely necessary for the proper stating of the said account; nor shall any state of facts, charge, discharge, account or affidavit, state any matter which may already appear by the pleadings or evidence, or otherwise in the cause, further than by referring thereto (if necessary) in such manner as may be requisite to explain other matter contained in such state of facts, charge, discharge, account or affidavit. Any matter set out in contravention of this order shall be deemed impertinence and dealt with according to Order XXX, save that the Master shall stand in the place of the Court. Provided that nothing herein shall prevent any charge or discharge from stating the gross amount appearing by the

accounts, upon which the same shall be founded respectively, or the gross amount found due by any Master's report or other like document.

The practice has been little, if in any respect, altered by the above Order (84). The accounting party will be compelled to bring in his accounts upon oath, and the claimant will then base his charge upon such information as the accounts may give him. And the accounting party may be put on proof of his discharge. The charge will not recapitulate the accounts on which the charging party relies, but will merely state shortly the result.

Formerly the defendant often accounted fully in his answers. The Plaintiff could then base his charge on the schedules of the answer, but was not to set them out in full, but merely a short statement.

The following are the previous rules concerning the practice in the Master's office:—

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.

July 1837.
XLV.
Mode of bringing in and proceeding on accounts.

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 decrees or orders, 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.

July 1837.
Production and inspection of papers, &c.

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

July 1837.
Accounts to be entered in a book.

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.

July 1837.
Separate Reports.

That, when a Master shall make a separate report of

July 1837.
The Master

may certify
with respect to
the state of
assets.

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.

The following Orders 160 and 161 are only in force so far as it does not contravene the above 85th New Order. The discharge and charge will be still in use; but the schedules to answers will seldom be available, in consequence of the defendant not being compellable to make full discovery in the answer.

January 1845.
Charge and
discharge.

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 discharge; 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's account brought into the Master's office.

January 1845.
Schedule of
accounts.

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.

April 1843.
Accounts to be
taken without
specific direc-
tions.

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

Provided nevertheless that no claim for improvements shall be entertained in the Master's office, unless the party making such claim shall before the pleadings have made

such a case in respect thereof as was necessary under the previous practice of the Court.

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 *vidâ vocè*, 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.

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.

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.

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.

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

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 his debt.

(56).

July 1837.

May examine a Creditor or other person claiming, either upon interrogatories or *vidâ vocè*.

(57).

July 1837.

Scandal or impertinence in proceedings before the Master, or insufficiency of examination.

(61).

August 1837.

Master may require parties to appear by distinct Solicitors.

(92).

January 1842.

Persons interested, but not parties to the cause.

(126).

January 1842.

Documents not to be recited in Master's Report.

(125).

January 1842.

Costs of establishing debts.

- (41). 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.
- July 1837. Master's Certificate of proceedings.
- (20). 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 the taxation of such Solicitor's bill of costs, either between party and party or between Solicitor and client, whether such separate answers or other proceedings were necessary or proper; and, if he be of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.
- July 1837. Costs of separate proceedings for defendants by the same Solicitor.
- (30). 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 matter of contempt requiring personal service.
- July 1837. Service upon the Solicitor of a person who is not a party.
- (39). That, where a proceeding fails by reason of the non-attendance of any party or parties, and the Master does not think it expedient to proceed *ex parte*, then the Master shall be at liberty to certify what amount of costs, if any, he thinks it reasonable to be paid to the party or parties attending by the absent party or parties, or by his or their Solicitor or Solicitors personally, as the Master in his discretion shall think fit; and, upon motion or petition without notice, the Court will make order for payment of such costs accordingly.
- July 1837. Costs occasioned by the non-attendance of parties.
- (49). 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.
- July 1837. Affidavits used before the Master.
- (50). That, where upon an enquiry before the Master affidavits are received, then no affidavit in reply shall be read except as to new matter which may be stated in the affidavits in answer, nor shall any further affidavits be read unless specially required by the Master.
- July 1837. Further affidavits in reply to former affidavits.
- (59). 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.
- July 1837. Sales in the country.
- (37). 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
- July 1837. Master may proceed *ex parte*.

the Master shall be at liberty to proceed *ex-parte*, if he think it expedient, considering the nature of the case, so to do.

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.

(38).
Review of *ex-parte* proceedings.

That, where the party actually prosecuting a Decree or Order does not proceed before the Master with due diligence, then the Master shall be at liberty upon the application of any other party interested, either as a party to the suit, or as one who has come in and established his claim before the Master under the Decree or Order to commit to him the prosecution of the said Decree or Order, and from thenceforth neither the party making default, nor his Solicitor shall be at liberty to attend the Master as the prosecutor of the said Decree or Order.

(40).
Course to be followed where a party, prosecuting a decree, does not proceed with due diligence.

That, when the Trustee is directed to settle a conveyance or to tax costs, in case the parties differ about 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.

(60).
July 1837.
Settlement of Conveyances.
Taxation of Costs.

That a creditor, whose debt does not carry interest, who shall come in and establish the same before the Master under a Decree or Order in a suit, shall be entitled to interest upon his debt at the rate of six per cent. from the date of decree out of any assets which may remain after satisfying the costs of the suit, the debts established, and the interest of such debts as by law carry interest.

(124).
January 1842.
Interest on debt from period of its proof.

That the Master shall be at liberty, upon the appointment of a Receiver, or at any time subsequent thereto, in

(47).
July 1837.
Receivers.

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.

(48).
July 1837.
Directions on
the appoint-
ment of a
Receiver.

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.

(188).
February 1847.
Appointment of
Receiver,
Guardian or
Committee.

That upon a reference to the Master for the appointment of a Receiver, or 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 for the person or persons so proposed, and the Master upon approving any such proposal shall (without first approving such approval to the Court) proceed in the taking of the recognizances of such Receiver, Guardian, or Committee, and shall therefore proceed to the appointment 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 Master's approval of such proposal and the confirmation of such Report by the Court.

(189).
February 1847.
Master's Ad-
vertisements.

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 and 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 advisable so to do.

(190).
February 1847.
Sales before the
Master.

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.

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 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.

The following English Orders appear to be still in force here, and may be useful to observe in practice.

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

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

That, where a Master (a) is directed to settle a conveyance or to tax costs, in case the parties differ about the same, then the party claiming the costs or entitled to prepare the conveyance shall bring the bill of costs or the draught of the conveyance into the Master's office, and give notice of his having so done to the other party; and

(192).
February 1847.
As to parties
not on the
Record.

English Order.
3rd April,
1828.
Separate costs
of several
defendants.

English Order.
3rd April,
1828.
Master to enter
proceedings in
a book.

English Order.
3rd April,
1828.
Order 76.
(As amended
23rd Nov.
1831.)
Mode of pro-

ceeding where
settlement of
conveyance or
taxation of
costs directed.

at any time within eight days after such notice such other party shall have liberty to inspect the same without fee, and may take a copy thereof if he thinks fit; and at or before the expiration of the eight 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 dissent therefrom, and shall thereupon be at liberty to tender a sum of money for the costs, or to deliver a statement in writing of the alterations which he proposes in the draught of the Conveyance. But, if he make no such tender, nor deliver any such statement in writing, or if the other party refuses to accept the sum so tendered, or to adopt the proposed alterations in the draft of the Conveyance, the Master shall then proceed to tax the costs or settle the Conveyance according to the practice of the Court. And, in case the taxed costs shall not exceed the sum tendered or the Master shall adopt the proposed alterations in the draft of the Conveyance, then the costs of the proceeding with respect to the Conveyance shall be borne by the other party.

See *ante* Order 60 of the Court, which is very similar to the above.

English Order.
3rd April 1845.

Order 52.
Master may
fix time for
proceedings.

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

English Order.
24th March,
1814.
Particulars of
sale.

That the Solicitor for the party prosecuting any Decree or Order of the Court for sale shall be at liberty, in cases in which the Master shall think it fit, to print and disperse as many particulars as shall be thought beneficial under the direction of the Master in whose office such sale shall be, paying sixpence per side for so many printed copies as there shall have been actual bidders at the sale and no more, and that such payment shall be allowed the Solicitor upon taxation of his costs.

See *ante* Orders 189, 190, and 192, of 1847.

English Order.
21st December,
1833.

Order 24.
No fee for in-
spection of
entire of Mas-
ter's Orders.

Each party shall be at liberty to inspect the entry of all such (Master's) Orders in the said (Master's) Entering Book without fee.

In setting out the above Orders on the practice in the Master's office, it has not been deemed necessary, and it would extend this work to an inconvenient length to compare each of the above Orders with the English Orders

and practice. They are in nearly all particulars copied from English Orders, but to enter into detail on the various proceedings before the Master would be here inconvenient.

The Rules as they stand lay down the practice with sufficient distinctness ; and for more full information the reader is referred to that very useful work, "*Bennett's Chancery Practice in the Master's Office*," which is reprinted in the Philadelphia Law Library, and is in the hands of most practitioners ; and to the other practice books. The full statement of the practice, requiring a volume in itself to explain it fully, may be a fair reason for the writer not attempting it here. A short summary may however be useful.

There is scarcely any matter which may be made the subject of a suit in the Court, which may not become the subject of a reference to the Master. To him are referred all matters of account—questions as to priority of encumbrances—of the validity of titles in specific performance and other cases—of legacies, and their payment in administration suits—the appointment of Receivers and Guardians,—enquiries as to the estates and the maintenance and education of Minors ; and in short every subject matter which it is necessary to ascertain in order to the final settlement of the rights of parties, the Court by its Order or Decree determine that the parties have rights which entitle them to relief in the Court.

A copy of the Order or Decree having been carried into the Master's office, the warrant to consider above provided for is attended, and the Master fixes the days for bringing in the charges, claims or proposals, and proceeding with and determining the matter. The party claiming should take care to have his charge or state of facts brought in by the time appointed for that purpose ; and a party entitled to bring in a discharge may lose the benefit of it, if he delays bringing it in without sufficient reasons. The state of facts and charge, as it is commonly called, is entitled in the cause, and sets forth in short

terms the nature and particulars of the party's claim. If any documents are relied on, they are merely referred to, if they should have already appeared in the pleadings ; but, if not, such part of them as are relied upon should be set out. It is the practice to allow of amendments to the state of facts and charge without much restriction, if such amendments are required to make the charge square with the evidence. On the day appointed to hear and determine the parties should endeavour to be prepared with all their evidence, as if they were preparing for a trial at Nisi Prius, for the Master will only grant a postponement or adjournment on good cause shown, and not where there has been neglect or unnecessary delay. The witnesses are subpoenaed in the same manner as at the hearing, the hearing appointment being signed by the Master. When the reference is for the appointment of a Receiver or Guardian, or a Trustee, instead of a charge, a proposal is brought in, and the opposite party can bring in a counter proposal, and the Master hears evidence to enable him to determine between them. He may reject any proposal, and then another must be brought in. The report of the Master as to a Receiver, Guardian or Trustee is final, and constitutes appointments without further Order.

In examining any party to the suit before the Master it was usual to file interrogatories, which were settled by the Master, or he might order the examination to be *vivâ voce*. But there will be no interrogatories under the present practice unless the Court so orders. See *ante* New Order 53. The examination of witnesses is under the above mentioned 53rd Order always *vivâ voce*. Evidence is often admitted on affidavit, but only by consent.

The manner of completing the Report is clearly enough laid down by the above New Orders.

The 48th New Order as to the admission of documents is not in its terms confined to any particular stage of the cause after replication, and would therefore seem to apply to examinations in the Master's Office.

CHAPTER XIX.

Miscellaneous Orders.

The following Orders refer to proceedings which may have to be considered at various stages of the cause, and it was thought convenient to arrange them under this head.

In all cases where any person or party, having obtained from the Court or from a Master any Order upon condition, does not perform or comply with such condition, he is to be considered to have waived or abandoned such Order, so far as the same is beneficial to himself; and any other party or person interested in the matter may, on breach or non-performance of the condition, take either such proceedings as the Order may in such case warrant, or such proceedings as might have been taken if no such Order had been made, unless the Court order to the contrary.

There must, unless the Court give special leave to the contrary, be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion; and at least two clear days between the service of a petition and the day appointed for hearing the same; but in the computation of such two clear days Sundays, or days on which the offices are closed, are not to be reckoned. And all affidavits upon which any motion is founded must be filed at the time of the service of such notice of motion.

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

1850.
LXXV.
Consequence
of not complying
with condition
on which
an Order
obtained.

1850.
LXX.
Time for
notices of
motion.

1850.
VI, VII, VIII,
Computation
of time.

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

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

1850.
V.
The Vacation.

The long vacation is to commence on the 1st day of July, and to terminate on the 2nd day of August in every year.

1850.
IX.
Time of vacation not to count in certain cases.

The time of vacation is not to be reckoned in the computation of the times appointed or allowed for the following purposes:—

1. Amending, or obtaining orders for leave to amend bills.
2. Filing or referring exceptions, or obtaining the Master's report on exceptions, in cases where the time is not limited by the order of reference.
3. Setting down demurrers or objections for want of parties.
4. Filing replications, or setting down causes under the directions under article 3 of Order XLVI.

This is copied from the English Order 14 of 1845. On the principle *Expressio unius est exclusio alterius*, it would seem that the time of vacation does count for all proceedings except those above mentioned, which produces a somewhat anomalous result. For instance the time for answering must count, and so for want of answer a traversing note may be filed and followed up by a replication. Then the defendant would be put to a motion for leave to answer, and although vacation, if the Court should sit, the Plaintiff, for all that appears by the Orders, must appear and answer the motion or run the risk of its being granted. The time for passing publication also counts, and therefore the examination of witnesses may often be necessary in vacation; although it is generally supposed that the Court does not sit in vacation, except under circumstances of a special nature—such as to hear motions for injunctions which will not admit of delay. It

is a question whether it would not be preferable to abolish the vacation, or extend its effect to other proceedings than those named in the Order.

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.

1837.
Security for costs.

An Order for security for costs can always be obtained when the Plaintiff is beyond the jurisdiction of the Court.

The day on which an order that the plaintiff do give security for costs is served, and the time thenceforward until and including the day on which such security is given, is not to be reckoned in the computation of time allowed a defendant to answer or demur.

1850.
Order for security, stay of proceedings.

When any solicitor or party shall cause an appearance to be entered or an answer, demurrer, or replication to be filed, he shall on the same day give notice thereof to the solicitor of the adverse party, or to the adverse party himself, if he act in person.

1850.
XLVII.
Notice of all pleadings to be given.

The following is the interpretation clause governing the Orders of 1850.

In these Orders the following words have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction, viz.—

1850.
Interpretation.

1. Words importing the singular number include the plural number, and words importing the plural number include the singular number.
2. Words importing the masculine gender include females.
3. The word person or party includes a body politic or corporate.
4. The word bill includes information.
5. The word plaintiff includes informant.

And it may be pretty safely stated, that the same rules of interpretation may be applied to the other rules also.

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.

(7).
June 1837.
Exceptions for scandal or impertinence and reference thereof.

It will be observed that the New Orders abolish ex-

ceptions to answers for insufficiency, but exceptions for scandal or impertinence are not abolished.

(8).
June 1837.
Time for pro-
curing Report
on reference
for Scandal or
Impertinence.

That, when an 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.

June 1837.
Costs of setting
down cause
where it is
struck out of
the paper
through neglect
of Plaintiff.

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.

The terms of this Order would seem to apply to the setting down a cause by a plaintiff only, but the same rule would no doubt be observed, when under the present practice a defendant sets down the cause, and he making default the plaintiff would, it is apprehended, be allowed costs according to the above Order.

(23).
July 1837.
Before whom
answers, &c.,
shall be taken.

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.

(17).
June 1837.
Order *Nisi* for
dissolving com-
mon injunc-
tion.

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.

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.

(26).
July 1837.
Abatement or
Compromise of
a cause after it
is set down.

That, for the purpose of enabling all persons to obtain precise information, as 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 inquired after procure and furnish a certificate from the Register-office specifying therein the dates and general description of the several proceedings which have been taken in any cause in the said office, whether such Solicitor be or not concerned as Solicitor in the cause, and that the Registrar shall be entitled to receive the sum of two shillings for such certificate and no more.

(29).
Solicitor at the
request of any
person to pro-
cure certificate
of proceedings.

That, whereas the sum of twenty pounds required by the Rules of Practice in England to be deposited on petitions of re-hearing is unsuitable to the circumstances of this Province, and it is expedient to reduce the same. It is therefore ordered that henceforth it shall be sufficient to deposit with the Registrar of this Court on every petition of re-hearing the sum of ten pounds Halifax Currency.

(81).
August, 1841.
Deposition
on petition of
re-hearing.

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 office shall be deemed sufficient service on him unless the Court shall under special circumstances think fit to direct otherwise.

(85).
January 1842.
Service on
Solicitor or
Agent.

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.

(31).
July, 1847.
Correction of
clerical and ac-
cidental errors
in Orders and
Decrees.

(65).
November,
1838.
Alimony.

That, whereas it is expedient to define and declare the form of proceeding to be adopted in matters of alimony, It is ordered that the same shall be by libel and plea, such libel to be sworn before the same shall be filed by the Registrar; and that the mode of bringing the defendant before the Court and the time for appearance and pleading the mode of taking the evidence, as well as the course of proceeding in the cause generally, shall be the same as those established by the Rules and Practice of the Court upon Bills in Equity. It is further ordered that the libel and plea shall be signed by Counsel.

(73).
August, 1839.
Paying money
into Court.

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

(78).
July, 1841.
Alimony.

That, 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 each discovery shall be subject to the same objections as any other matters of discovery are by the rules and practice of the Court.

The Bill will now be for relief merely, being according to the new rules.

(71).
April, 1839.
Transmission
of papers to
Registrar.

That every answer, deposition or other proceeding in a cause which by the rules or practice of the Court are required to be transmitted to the Registrar by post by the officer of the Court taking the same, may in future be forwarded in a sealed envelope to the Registrar by a messenger or deposited in the Post-Office as may be most convenient, Provided nevertheless that in case such answer, examination, deposition or other proceeding as aforesaid shall be transmitted by a messenger, such messenger shall make oath before the Registrar that he received the same from the hands of the officer of the Court, and that it has not been out of his possession since he so received it, and that the same is in the like state and condition as when it was placed in his hands for transmission, and the Registrar shall forthwith endorse and sign a memorandum on the envelope containing the name, place of residence

and description of such messenger, and the date when such oath was so administered.

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. (88.)
January, 1852.
Service of Order to have the effect of Writ. of Execution.

That, if any party who is by an Order or Decree ordered to pay money or do any other act in a limited time shall after due service of such Order refuse or neglect to obey the same according to the exigency thereof, the party duly prosecuting such Order shall at the expiration of the time limited for the performance thereof be entitled to an Order for a Sergeant-at-Arms and such other process as he was formerly entitled to upon a Return *non est inventus* by the Commissioners named in a Commission of Rebellion issued for non-performance of a Decree or Order. (89.)
January, 1852.
Compulsory process for refusing obedience to Orders,

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, namely, "If you, the within 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 registered for the purpose of compelling you to obey the same Order." (90.)
January, 1842.
Notice of liability for non-performance of Order.

That, upon due service of a Decree or Order for delivery of possession and upon proof made of demand and refuse to obey such Order, the party prosecuting the same shall be entitled to an Order for a writ of assistance. (91.)
January, 1842.
Writ of assistance.

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 (107.)
January, 1842.
Trustees of real estate to be made parties without joining persons beneficially interested.

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.

(108). 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 bill established against trusts of will. him.

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

(121). 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 shown by the defendant.

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.

(132). 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 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.

(134). That, whereas heretofore it has been the practice for the Registrar of the Court to supply office copies of all proceedings and pleadings filed in his office, and it is convenient and desirable that such practice should be altered, It is therefore ordered that in future copies of all proceedings and pleadings to be made and delivered by the Solicitor or agent with whom the Draft or Drafts thereof shall originate, and that such copies before being delivered shall be examined and certified by the Registrar, for doing

January 1842.
When heir-at-law be party in suit to execute trusts of will.

January 1842.
Persons against whom joint and several demands exist.

January 1842.
Decree absolute against party making default at the hearing.

January 1852.
Petition of rehearing not to set out proceedings anterior to Decree, &c.

March 1843.
Solicitor's Agent's names to be entered on Solicitor's book.

March 1843.
Office copies of pleadings and proceedings to be made by Registrar.

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.

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.

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.

That in case the solicitor or agent, from whom any office copy of a pleading or proceeding may be be-spoken, shall not deliver the same upon or before the expiration of two clear days from the day of the same being so be-spoken (as on Thursday if be-spoken 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.

That, where a bill is amended on 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.

That in the case of any person being committed to prison upon attachment or other process issued from this Court for a contempt or otherwise in not paying costs or any other sum of money directed or decreed to be paid by this Court, in case the party, at whose instance such

(136).
March 1843.
Affidavits and
office copies
thereof.

(137).
March 1843.
Office copies of
affidavits of
service not
necessary.

(138).
March 1843.
Delivery of
office copies.

(140).
April 1843.
Costs of
Amendment in
case of a re-
engrossment.

(145).
February 1844.
April 1843.
Examination of
prisoner in
contempt.

person shall have been so committed, shall exhibit interrogatories in pursuance of the 7th section of an Act of Parliament of this Province passed in the seventh year of the reign of Her Majesty Queen Victoria, entitled "An Act to abolish imprisonment in execution for debt and for other purposes therein mentioned," and in case the party exhibiting such interrogatories shall desire that such person be examined personally upon such interrogatories, he shall be at liberty to have him so examined upon obtaining an Order for that purpose within the period allowed by the Statute for exhibiting such interrogatories, which Order may be issued upon petition or motion of course and shall be served without any unnecessary delay upon such prisoner, his Solicitor, or Agent, and thereupon such prisoner shall be at liberty to apply to the Vice Chancellor or to the Officer of the Court before whom such examination is to take place for an appointment for that purpose, which appointment shall be served upon the Solicitor or Agent of the opposite party, and such examination shall not be proceeded with *ex parte* unless it shall appear to the person before whom such examination shall take place that such appointment was so served a sufficient time before such examination to allow of the opposite party attending the same; and it shall be the duty of the person, in whose custody such prisoner may be, to attend with such prisoner at such examination, and the service upon him of such Order and appointment aforesaid shall be a sufficient warrant to him for that purpose, and such examination may be continued *de die in diem* as the person, before whom such examination shall take place, shall think fit. And lastly it is ordered that, in case such prisoner shall be in custody in the Home District, such examination may be had before the Vice Chancellor or before the Master in ordinary of this Court, and, in case such prisoner shall be in custody elsewhere than in the Home District, such examination may be had before a Master Extraordinary of this Court in the District in which such prisoner may be in custody.

(164).
January 1845.
Sheriffs to perform the duties of Messenger.

That the Sheriff in each District in that part of this Province formerly constituting Upper Canada shall within the limits of his district perform the duties which according to the practice of the Court heretofore have been performed by the Messenger or Sergeant-at-arms, and all writs or process of the Court, which by the law or practice of the Court have been directed to the Messenger or Sergeant-at-arms, shall be directed to the Sheriff of the district where the same is to be executed, and in no case

shall the Sheriff in executing such writ or process bring the party to the Bar of the Court, but he shall instead thereof commit the party to the gaol of the district, and the party so committed shall be dealt with according to the course and practice of the Court, as if he were brought to the Bar of the Court, and as provided for or as may be provided for by any Order of this Court.

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

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 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 practise as Solicitors of that Court either as principals or through agents.

That, where the plaintiff is directed to pay to the defendant the costs of the suit, there the costs occasioned to a defendant by any amendment of the bill shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which may have been made by special leave of the Court, or which shall appear to have

(166).
January 1845.
Enrolment of
Decree.

(179).
May 1845.
Order in relation to the
Admission of
Solicitors in
Chancery.

English Order.
3 April, 1828.
Order 29.
Amendment of
Bill in Defendant's costs.

- been rendered necessary by the default of such defendant) but there shall be deducted from such costs any sum or sums which may have been paid by the plaintiff, according to the course of the Court, at the time of any amendment.
- English Order. That, when upon taxation a plaintiff, who has obtained
3 April, 1828. a Decree with costs, is not allowed the costs of any
Order 30. amendment of the bill upon the ground of its having been
Amendment of unnecessarily made, the defendant's costs occasioned by
Bill in Plain- such amendment shall be taxed, and the amount thereof
tiff's costs. deducted from the costs to be paid by the defendant to
the plaintiff.
- English Order. That from and after the 26th day of October next, if a
5 Aug., 1818. party gives notice of motion, and does not move accord-
Costs of Aban- ingly, he shall, when no affidavit is filed, pay to the other
doned Motions. side forty shillings costs upon production of the notice of
motion; but, where an affidavit is filed by either party,
the party giving such notice of motion and not moving
shall pay to the other side costs, to be taxed by the Mas-
ter, unless the Court itself shall direct, upon production of
the notice of motion, what sum shall be paid for costs.
- English Order. That, when a cause which stands for hearing is called
3 April, 1828. on to be heard, but cannot be decided by reason of a want
Order 34. of parties or other defect on the part of the plaintiff, and
Cause struck is therefore struck out of the paper, if the same cause is
out by default again set down, the defendant or defendants shall be
of Plaintiff. allowed the taxed costs occasioned by the first setting
down, although he or they do not obtain the costs of the
suit.
- English Order. That, where a cause being in the paper for hearing is
3 April, 1828. ordered to be adjourned upon payment of the costs of the
Order 35. day, then the party to pay the same whether before the
Costs of day. Lord High Chancellor or the Master of the Vice Chan-
cellor shall pay the sum of ten pounds unless the Court
shall make other order to the contrary.
- English Order. That, whenever upon the hearing of any cause or other
3 April, 1828. matter it shall appear that the same cannot conveniently
Order 36. proceed by reason of the Solicitor for any party having
Payment by neglected to attend personally or by some proper person
Solicitor of costs of hearing neglected to attend personally or by some proper person
deferred by his on his behalf or having omitted to deliver any paper ne-
neglect. glected.

cessary for the use of the Court, and which according to its practice ought to have been delivered, such Solicitor shall personally pay to all or any of the parties such costs as the Court shall think fit to award.

CHAPTER XX.

Appeals.

It will be remembered, (see *ante*, Chap. 1), that the Act of 12 Victoria, Chap. 63, gives an appeal from the decisions of the Court to the Court of Appeals composed of all the Judges of the three Courts; and from that there is an appeal to the Judicial Committee of the Privy Council in England.

By the above mentioned Act the nine Judges were empowered to make rules regulating the conduct of Appeals, and several rules were passed, laying down the practice in appeals from all the Courts. These were confirmed by 13 and 14 Victoria, Chap. 51, and such of them as relate to appeals from Chancery are subjoined.

XXVIII.
Security for
costs--Affidavit
of justification.

That in Appeals in 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 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.

XXIX.
Petition.
Service of
copy.

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 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.

No answer.

The Schedule to the foregoing Order.

In the Court of Error and Appeal.

Between

and

Appellant,

Respondent.

To the Honourable the Judges of the said Court,

The humble Petition of the said (Appellant)

Form of
Petition.

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.)

The printed "Case," which is done away with by the
following Order, consisted of a statement of the proceed-
ings had in the Court below. The Appendix, which is
still to be used as the "Case," is a copy of the pleadings
and evidence. This will be much shorter than formerly,
in consequence of the new Rules shortening the pleadings
in Chancery.

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 pur-

XXX.
Printed Cases
abolished.

poses 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.
Appeals to the
Privy Council.

Security for
costs.

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.

[The 6th, 7th, and 8th Rules above cited, refer to the Common Law Courts.]

XXXII. That the Bond or security referred to in the last Rule Form of Bond, 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 so be made, we bind ourselves and each of us by
himself. our and each of our heirs, executors and adminis-
trators 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 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.

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.

XXXIII.
Affidavit of
justification.

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 Counsel's 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 in the argument or, in his absence, of the next Senior Judge.

XXXIV.
Fees taxable.

That the regular and appointed days or time of sitting of this Court shall be the second Thursday after the several terms of Hilary, Easter and Michaelmas, as appointed by the Statute twelfth Victoria, Chapter sixty-three, Section thirteen, 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.

XXXV.
Times of
sitting of the
Court.

The form of the Affidavit of Justification, referred to in the above Order 33rd, is as follows:—

In the (Style of Court).

A. B., Plaintiff, }
vs. } E. F. of
C. D., Defendant, } and G. H. of

Form of Affidavit of Justification.

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 House-holder in (or a Free-holder 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 House-holder in (or Free-Holder in) and that he is worth the sum of (as the case may be) over above what will pay all his Debts.

[Signed,] E. F.
G. H.

Sworn by the above named.

Deponent E. F. and G. H. at

in the County of

the day of

18 before me, X. Y.

A Commissioner, &c.

free-holder
um of (the
over and
Deponent
inhabitant
(or Free-
worth the
will pay all

. F.
. H.

er, &c.

CHAPTER XXI.

Orders of January, 1851.

Orders of January 1851, extending the practice under the 77th Order of May, 1850, and for other purposes:—

Whereas it is expedient to extend the principle of the Order comprised in the General Orders of the 7th of May, 1850, numbered LXXVII., and to further regulate the practice thereunder. The provisions of the Order comprised in the General Orders of the 7th of May, 1850, numbered LXXVII., shall be applicable in any of the following cases, that is to say, in any case where the plaintiff is—

Jan. 17, 1851.
The 77th Order
of May, 1850,
extended to
certain cases,
on the principle
of the English
Orders of
April, 1850.

1. A creditor upon the estate of any deceased person seeking payment of his debt.
2. A legatee under the will of any deceased person seeking payment or delivery of his legacy.
3. A residuary legatee, or one of the residuary legatees of any deceased person, seeking an account of the residue and payment or appropriation of his share therein.
4. The person or any of the persons entitled to the personal estate of any person who may have died intestate, and seeking an account of such personal estate, and payment of his share thereof.
5. An executor or administrator of any deceased person seeking to have the personal estate of such deceased person administered under the direction of the Court.
6. A legal or equitable mortgagee, or judgment creditor, having duly registered his judgment, or a person entitled to a lien for security for a debt, seeking foreclosure or sale, or otherwise to enforce his security.
7. A person entitled to redeem any legal or equitable mortgage, or any charge or lien, seeking to redeem the same.
8. A person entitled to an account of the dealings and transactions of a partnership, dissolved or expired, seeking such account.
9. A person entitled to an equitable estate or interest, and seeking to use the name of his trustee in prosecuting an action for his own sole benefit.

10. A person entitled to have a new trustee appointed in a case where there is no power in the instrument creating the trusts to appoint new trustees, or where the power cannot be exercised, and seeking to appoint a new trustee.

II.
Forms of Bills
in such cases,
and in other
cases.

Bills in the several cases enumerated in Order I. may be in the form and to the effect set forth in Schedule A, hereunder written, as applicable to the particular case; *and in cases not enumerated in Order I., forms of pleading similar in principle may be adopted, as in the forms set forth in Schedule B, hereunder written, whenever more detailed statement may not be necessary to the due development of the case.*

The following are the forms of Bills under the first part of the above Order 2 for cases in which a summary reference may be directed, under the above mentioned 77th Order.

I.
Creditor's Bill
against repre-
sentatives of
deceased
debtor.

By a creditor upon the estate of a deceased person, seeking payment of his debt out of the deceased's assets.

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, shews, &c., A. B., of, &c., that C. D., late of, &c., deceased, was at the time of his death, and that his estate still is, justly indebted to him, the said A. B., in the sum of £———, for goods sold and delivered by the said A. B. to the said C. D. (*or otherwise as the case may be, or if the debt is secured by any written instrument, state the date and nature thereof*), and that the said C. D. died in or about the month of ——, and that E. F., the defendant hereinafter named, is his executor (*or administrator*), and G. H., of, &c., is his heir at law, (*or devisee under his will, dated ——*). To the end therefore that the said A. B. may be paid his said debt with his costs of this suit, and in default thereof that the personal and real estate of the said C. D. may be administered in this Court on behalf of the said A. B., and all the other the unsatisfied creditors of the said C. D., and for that purpose that all proper directions may be given and accounts taken, and that your orator may have such further and other relief in the premises as shall seem meet.

(Pray subpoena, &c.)

NOTE.—This form may be varied according to the circumstances of the case, where the plaintiff is not the original creditor, but has become interested in or entitled to the debt, in which case the character in which he claims is to be stated, as, "to which debt the said A. B. is now entitled as executor or administrator, or legatee or assignee (mediate or immediate) of the said," &c.

For the prayer for subpoena see form under the 77th Order. The only difference, in substance, between the above form, and the form given in the English Orders of April, 1850, is, that the above seeks relief against both real and personal assets, the English form being confined to the latter.

Compared with English form.

By a legatee, under the will of any deceased person, seeking payment or delivery of his legacy out of the testator's personal assets.

2.
Bill for a legacy.

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that he is a legatee to the amount of £———, under the will, dated the —— day of ——, of ——, late of ——, deceased, who died on the —— day of ——, and that C. D., the defendant hereinafter named, is the executor of the said ——, and that the said legacy of £———, together with interest thereon from the —— day of ——, (*the day mentioned in the will for the payment of the legacy, or the expiration of twelve calendar months from the testator's death*), is now due and owing to him the said A. B., (*or unpaid or unsatisfied*) (*or unappropriated or unsecured*). To the end therefore that the said A. B. may be paid (*or satisfied*) the said legacy and interest, (*or may have the said legacy and interest appropriated and secured*), and in default thereof may have the personal estate of the said —— administered in this Court on behalf of himself and all others the legatees of the said ——, and for that purpose that all proper directions may be given and accounts taken.

(And for further relief (as in form 1) pray subpoena, &c.

NOTE.—This form may be varied according to the circumstances of the case, where the legacy is an annuity or specific, or where the plaintiff is not the legatee, but has become entitled to or interested in the legacy, in which case the character in which the plaintiff claims is to be stated, as before mentioned.

For the form of prayer for further relief, see form under the 77th Order.

This form (2) follows the English form of claim, No. 2, excepting only as in the other cases, the difference arising from the latter being in the form of a "claim", and the above in the form of a bill—a difference which applies to the mere formal parts.

Compared with English form.

3.
Bill by residu-
ary legatee.

By a residuary legatee or any of several residuary legatees of any deceased person, seeking an account of the residue, and payment or appropriation of his share therein.

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that he the residuary legatee (*or one of the residuary legatees*) under the will dated the _____ day of _____, of _____, late of _____, who died on the _____ day of _____, and that C. D., the defendant hereinafter named, is the executor of the said _____, and that the said C. D. has not paid to the said A. B. the (*or his share of the*) residuary personal estate of the said testator. To the end therefore that the said A. B. may have the personal estate of the said _____ administered in this Court, and may have his costs of this suit, and for that purpose that all proper directions may be given and accounts taken.

(And for further relief: pray subpoena, &c.)

NOTE.—This form may be varied according to the circumstances of the case, where the plaintiff is not the residuary legatee, but has become entitled to or interested in the residue, in which case the character in which he claims is to be stated, as before mentioned.

Similar to
English form.

This form follows the English form of claim No. 3.

4.
For an account
of the personal
estate of an
intestate; by
one entitled
under the
statute of
distributions.

By the person or any of the persons entitled to the personal estate of any person who may have died intestate, and seeking an account of such personal estate and payment of his share thereof.

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that he is the next of kin (*or one of the next of kin*) according to the statutes for the distribution of the personal estate of intestates, of _____, late of _____, who died on the _____ day of _____, intestate, and that the said A. B. is entitled to (*or to a share of*) the personal estate of the said _____, deceased, and that C. D., the defendant hereinafter named, is the administrator of the personal estate of the said _____, and that the said C. D. has not accounted for or paid to the said A. B. the (*or the said A. B.'s share of the*) personal estate of the said intestate. To the end therefore that the said A. B. may have the personal estate of the said _____ administered in this Court, and may have his costs of this suit, and for that purpose that all proper directions may be given and accounts taken.

And for further relief; pray subpoena, &c.

NOTE.—If the plaintiff is the executor or administrator, or assignee of the next of kin, or one of the next of kin, let him be so described, as “that he, the said A. B., is the executor or administrator of E. F., deceased, or assignee of E. F., who was the next of kin, or one of the next of kin,” &c. ; or “that he is the administrator de bonis non, or the executor of the executor of E. F., deceased, who was the next of kin,” &c. and that the said A. B. is entitled, as such executor or administrator, or assignee or administrator de bonis non, or executor of the said E. F., to a share of the personal estate, &c.

Alterations according to circumstances.

The above follows, in the body of it, the English form No. 4, but the foot-note is not appended in the English Order. Similar to English form.

By the executor or administrator of a deceased person claiming to have the personal estate of the testator administered under the direction of the Court.

5.
Executor's Bill.

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that he is the executor (*or administrator*) of E. F., late of ———, but now deceased, who departed this life on or about the ———, and that he has possessed the personal estate of the said E. F. to some amount, and that he is willing and desirous to account for the same, and that the whole of the personal estate should be duly administered in this Court for the benefit of all persons interested therein or entitled thereto, and that C. D., E. F., and G. H. are interested in the said personal estate as the next of kin (*or residuary legatees*) of the said E. F. To the end therefore that the said A. B. may have the personal estate of the said E. F. applied in a due course of administration under the direction of this Court, or that the said C. D., E. F., and G. H. may show good cause to the contrary, and that the costs of this suit may be provided for, and for these purposes that all proper directions may be given and accounts taken.

(And for further relief ; pray subpoena, &c.)

This is similar to the English form No. 5.

Similar to English form.

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

6.
Foreclosure Bill.

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that under and by virtue of an indenture (*or other document*), dated, &c., and made,* &c. (*and a transfer thereof, made by indenture, dated, &c., and made, &c.*) the said A. B. is a mortgagee (*or an equitable mortgagee*) of (*or, is en-*

titled to hold a lien upon) certain freehold property (or leasehold, or other property, as the case may be) therein comprised, for securing the sum of £—— and interest; and that the time for payment thereof has elapsed; and that C. D., the defendant hereinafter named, is entitled to the equity of redemption of the said mortgaged premises (or, the premises subject to such lien). To the end therefore that the said A. B. may be paid the said sum of £—— and interest, and the costs of this suit, and in default thereof that the equity of redemption of the said mortgaged premises may be foreclosed (or that the said mortgaged premises may be sold, or that the premises subject to such lien may be sold, as the case may be, and the produce thereof applied in or towards the payment of his said debt and costs,), and for that purpose that all proper directions may be given and accounts taken.

(And for further relief; pray subpoena.)

* The names only of the parties are to be set out, not the substance or effect of the document. If there is no written security to be referred to, the property is to be described generally.

Compared with English form. The above follows the English form of the same number, with the addition of the explanatory note. There is no doubt however, that under the English form, or under the above form independently of the direction contained in the note, the most proper mode of pleading would have been to have stated only the names, dates, and amount secured. The date should of course be inserted, though not named in the above note.

8. Bill to redeem. *By a person entitled to the redemption of any legal or equitable mortgage, or any lien, seeking to redeem the same.*

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that under and virtue of an indenture (or other document) dated the _____ day of _____, and made between (parties) (and the assurances hereinafter mentioned—that is to say, an indenture dated the _____ day of _____, the will of _____, dated the _____ day of _____), the said A. B. is entitled to the equity of redemption of certain freehold property (or leasehold, or other property, as the case may be) therein comprised, which was originally mortgaged (or pledged) for securing the sum of £—— and interest; and that C. D., the defendant hereinafter named, is now, by virtue of the said indenture, dated the _____ day of _____ (and of

subsequent assurances), the mortgagee of the said property (*or holder of the said lien*), and entitled to the principal money and interest remaining due upon the mortgage (*or lien*); and the said A. B. believes that the said amount of the principal money and interest now due upon the said mortgage (*or lien*) is the sum of £—, or thereabouts: and he has made, or caused to be made, an application to the said C. D. to receive the said sum of £—, and any costs justly payable to him, and to reconvey to the said A. B. the said mortgaged property (*or property subject to the said lien*), upon payment thereof, and of any costs due to him in respect of this security, but that the said C. D. has not so done. To the end therefore that the said A. B. may be let in to redeem the said mortgaged property (*or property subject to the said lien*), and that the same may be reconveyed (*or delivered up*) to him upon payment of the principal money and interest, and costs due and owing upon the said mortgagee (*or lien*); and for that purpose that all proper directions may be given and accounts taken.

(*And for further relief; pray subpoena.*)

The above follows the English form No. 7.

These forms will all necessarily have to be varied according to circumstances, and such variance will be no violation of the above Order 2, which says that bills *may* be in such forms; and see *Hanson vs. Games*, 14 Jurist, 543. As an instance of the necessity for varying the form, may be named, the case of a bill to redeem where the mortgagee has been in possession, and has overpaid himself out of the rents and profits of the estate. In such a case it would be clearly wrong to use the above form 8, where it tenders costs. That part of it must be omitted, and an allegation inserted of the special circumstance, see *Toon vs. Cotterill*, 14 Jurist, 846. It will be seen by subsequent Orders that ample care is taken that the pleadings shall not be extended to an undue length. See the Orders as to costs. At the same time it is very evident, that, where the parties to a bill are numerous, and the circumstances complicated, it must be impossible to compress the pleading into anything like the short forms here given.

Compared with English form.

Necessity for sometimes varying the forms.

9.
Bill for an account of partnership dealings.

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

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that from the _____ day of _____, down to the _____ day of _____ he and C. D., the defendant hereinafter named, carried on the business of _____ in co-partnership, under certain articles of co-partnership, dated the _____ day of _____, and made between (parties), (or under a verbal agreement made between the said A. B. and C. D., or through their respective agents E. F. and G. H), on the _____ day of _____; and he says that the said co-partnership was dissolved (or expired, as the case may be) on the _____ day of _____. To the end therefore that an account of the partnership dealings and transactions between the said A. B. and the said C. D. may be taken, and the affairs and business of the said partnership wound up and settled under the direction of this Court, and for that purpose that all proper directions may be given, and accounts taken.

(And for further relief; pray subpoena.)

The above follows the English form No. 9.

Similar to English form.

10.

To compel a Trustee to allow the plaintiff to use his name in an action at law.

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

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that under an indenture, dated the _____ day of _____, and made between (parties), he is entitled to an equitable estate or interest in certain property therein described or referred to; and that C. D., the defendant hereinafter named, is a trustee for him of such property; and that being desirous to prosecute an action at law against _____ in respect of such property, he has made, or caused to be made, an application to the said defendant to allow him to bring such action in his name, and has offered to indemnify him against the costs of such action, but that the said defendant has refused or neglected to allow his name to be used for that purpose. To the end therefore that the said A. B. may be allowed to prosecute the said action in the name of the said defendant, he hereby offering to indemnify him against the costs of such action.

(And for further relief; pray subpoena.)

The above follows the English form No. 10.

Similar to English form.

By a person entitled to have a new trustee appointed in a case where there is no power in the instrument creating the trust to appoint new trustees, or when the power cannot be exercised, and seeking to appoint a new trustee.

11.
Bill for appointment of a new Trustee.

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that under an indenture, dated the _____ day of _____, and made between (parties), (or will of _____, or other document, as the case may be), he, the said A. B., is interested in the certain trust property therein mentioned or referred to; and that C. D., the defendant hereinafter mentioned, is the present trustee of such property (or, is the real or personal representative of the last surviving trustee of such property, as the case may be); and that there is no power in the said indenture (or will, or other document) to appoint new trustees (or that the power in said indenture, or other document, to appoint new trustees cannot be exercised). To the end therefore that the said A. B. may have new trustees appointed of the said trust property, in the place of, &c. (or to act in conjunction with) the said C. D.

(And for further relief; pray subpoena.)

The above follows the English form No. 11.

Under the English Order of April, 1850, there are two forms not here adopted as applicable under the 77th Order. One is a "claim" for specific performance. This is not adopted, because, as it will be seen by the Order 1, of January, 1851, specific performance cases are not brought under the operation of the 77th Order; while in England they do form a class of cases in which the proceedings may be by "claim." The Order in England is to the effect, that a claim may be filed, instead of a bill, "in any case where the plaintiff is or claims to be." [Then follow the cases enumerated in the above Order 1—except that the words referring to real assets of deceased parties are admitted, and there is no reference to judgment creditors, as in the 6th article—with the addition of the following clause (8). "A person entitled to the specific performance of an agreement for the sale or purchase of any property, seeking such performance."]

Similar to English form.

Forms in English Orders, not adopted here.

Specific performance cases not within Order I. of January, 1851.

Within the operation of English claim orders.

In specific performance cases, proved in the ordinary way. The proceeding in specific performance cases will here be, by going on to decree in the usual way. A form of a bill for the purpose is given in these Orders, under the latter clause of the above Order 2, which is italicised.

No form of claim to revive here required. The other form, given in the English Order, is of a claim in the nature of a bill of revivor. It is not here adopted because the old proceedings to revive suits are done away with, and amendments are substituted, by the Orders of May, 1850.

Case of judgment creditor. In the English Order there is no "claim" for the lien of a judgment creditor, and the article 6 of the above Order 1 differs from the English article of the same number, in containing a reference to that class of cases. This

Files bill under Provincial statute. addition was for the purpose of providing for the cases arising under the Registration Act of this Province, which is in part set forth in the first chapter of this volume.

Form. The form of bill in such case is given in Schedule A, under the first part of the above Order 2, and is as follows :

7. Bill to establish lien of judgment creditor. *By a judgment creditor, who has registered his judgment, seeking a sale or otherwise to enforce his charge or lien.*

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that in _____ term, in the year _____ (or *G. H. late of _____, deceased, of whom the said A. B. is the executor, or administrator, or assignee, under an assignment, dated, &c., and made, &c., or of whose executor or administrator, or administrator de bonis non, the said A. B. is the assignee under,* &c.*), recovered a judgment in the Court of _____ against C. D., the defendant hereinafter named, for the sum of £____, in an action theretofore brought by the said A. B. against the said C. D., which judgment was duly registered in the Registry of the county of _____, on the _____ day of _____, at which time the said C. D. had divers lands, tenements and hereditaments in the said county, and that the said C. D. is now the owner of the same lands, tenements and hereditaments, subject to the said judgments ; to the end, therefore, that the said A. B. may be paid the amount of the said judgment, together with interest thereon, and his costs of this suit, or in de-

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

fault thereof that the said lands, tenements and hereu-
 tments, or a competent part thereof, may be sold for the
 satisfaction thereof, and the proceeds of such sale ap-
 plied accordingly; and for that purpose that all proper
 directions be given and accounts taken.

(And for further relief; pray subpoena)

We now come to the forms in Schedule B, under the
 last clause of the above Order 2. In the numerous cases
 not provided for by these forms, the pleadings should be
 drawn on the same principles, and any such departure from
 them as would lead to unnecessary prolixity may subject
 a party to the extra costs, occasioned thereby. If a
 "more detailed statement" is "necessary to the due
 development of the case," it should still be set forth ac-
 cording to the rules here observed, the leading principle
 of which appears to be, to reduce the pleading as nearly
 as possible to the concise form of a declaration at law.

Forms of bills
 in cases not
 provided for by
 Order I. of
 January, 1851.

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

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that by an
 agreement, dated the _____ day of _____, and signed
 by C. D., the defendant hereinafter named, the said C. D.
 contracted to buy of the said A. B. (or to sell him) cer-
 tain freehold property (or leasehold, or other property, as
 the case may be) therein described or referred to, for the
 sum of £_____ and that he has made or caused to be
 made to the said C. D. an application specifically to per-
 form the said agreement on his part, but that he has not
 done so; to the end therefore, that the said agreement
 may be specifically performed, and for that purpose that
 all proper directions may be given, he, the said A. B.,
 hereby offering to perform the said agreement specifically
 on his part.

1.
 Bill for specific
 performance.

(And for further relief; pray subpoena.)

The above is taken from the form already referred to,
 under the English Claim Order.

2.
 Similar to
 English Order.

The following forms are not after any English Order.

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

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that on

Specific performance of
parol agree-
ment.

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

(Pray subpoena).

For dissolution of a co-partnership.

IN CHANCERY.

To the Honourable, &c.

3
Bill to dissolve
a partnership.

Humbly complaining, &c., your orator &c., that your orator and C. D., the defendant hereinafter named, are and have been, since the _____ day of _____, co-partners in the trade or business of _____ under certain articles of co-partnership, dated, &c. (or under a verbal agreement made between them, on the _____ day of _____), which partnership was to continue for _____ years, (or for an indefinite time); that the said business was carried on under the said agreement until _____ without any difficulty (here state the facts relied on as warranting dissolution,* as); that from the

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

last mentioned day until the present time the said C. D. has greatly misconducted himself in the said business by removing the books of the co-partnership from the shop or counting-house of the said firm, and denying your orator or debarring him from access thereto ; by discharging the clerks and servants of the said firm, and engaging others in his own interest in their room ; by making false entries in the said books, or improperly keeping the same ; all which was done with the view and has had the effect of excluding your orator from his due share in the management of the said business ; by using the name of the firm for his own private purposes, and applying the moneys of the partnership to his own individual use : that there is nothing in the said articles, or in the said agreement, to justify such conduct ; and your orator has made frequent applications to the said C. D. to desist therefrom, and to act in accordance with the said agreement and with his duty as a partner, but without effect ; on which account your orator on the _____ day of _____ gave notice to the said defendant that the said partnership should be dissolved from the _____ day of _____. To the end therefore that the said partnership may be dissolved, and that the accounts of the said business may be taken from the commencement thereof, and the affairs thereof wound up and adjusted, and that your orator may have (*such further relief, &c.*), may it please, &c.

(*Pray subpoena.*)

Bill to stay waste.

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that your ⁴To stay waste. orator is and has been, from before the acts hereinafter complained of until the present time, seised in fee simple (*or in tail, or for life in possession, or remainder expectant upon the determination of an estate for the life of, &c., under and by virtue of an indenture of settlement dated, &c., or possessed for the remainder of a term of _____ years, under and by virtue of an indenture of demise, dated, &c., and made, &c.*) of lot number _____ ; and C. D., the defendant hereinafter named, is in possession of the said lot, as tenant, for a term of _____ years (*or from year to year, or at will*) of your orator, under and by virtue of an indenture of demise (*or an agreement, dated, &c., and made, &c.*) between your orator, (*or E. F. deceased, whose estate has come to your orator by descent, or devise, or purchase, or under and by virtue of his last will, dated, &c.*) and the said

C. D. (or G. H. whose estate has come to the said C. D. by operation of law, as executor, or administrator, or assignee in bankruptcy of insolvency of the said G. H., or by devise or purchase under and by virtue of the will of the said G. H., or an indenture of assignment, dated, &c., or as tenant for life, impeachable for waste, under and by virtue of the aforesaid indenture of settlement) has since the _____ day of _____ committed waste on the said lot by cutting down and removing from the said lot, and applying to his own use, a large number of the timber and other trees standing, growing and being thereon, and quarrying a large quantity of stone, being on and part of the said lot, and by pulling down, &c., houses, &c., and he continues and threatens and intends to continue to commit such waste as aforesaid, and other waste and destruction on the said lot, although frequently requested by your orator to desist therefrom. To the end therefore that the said C. D. may be restrained by the order and injunction of this honourable Court from committing such waste as aforesaid, or any other waste, spoil, or destruction on the said premises, and may account, &c., and that your orator may have such further and other relief in the premises.

(Pray subpoena.)

Bill to stay trespass in the nature of waste.

IN CHANCERY.

To the Honourable, &c.

5.
To stay tres-
pass.

Humbly complaining, &c., your orator, &c., that your orator was at the time of acts hereinafter complained of, and has been since up to the present time, the owner in fee simple (or seised in tail, or for life, or possessed for the remainder of a term of years under and by virtue of an indenture, dated, &c., and made, &c., as the case may be), and in possession of lot number _____ and that A. B., the defendant hereinafter named, has, from the _____ day of _____ until the present time continually trespassed on the said lot by cutting down and removing from the said lot, and applying to his own use, divers valuable timber and other trees which were growing, standing and being on the said lot (by quarrying and removing from the said lot and applying to his own use large quantities of stone which were on and part of the said lot), and he continues and threatens and intends to continue to trespass on the said lot, in like manner, although frequently requested by your orator to desist therefrom. To the end therefore that the said defendant may be restrained by the order and injunction of this honourable Court from committing the acts aforesaid, and

other acts of a like nature, and may account for the value of the timber and other trees cut down (*or stone quarried*), removed and applied to his own use aforesaid, and that your orator may have such further and other relief as may seem meet.

(*Pray subpœna.*)

Bill to rescind contract.

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that on the _____ day of _____ your orator entered into an agreement with C. D., the defendant hereinafter named, for the sale to him of lot number _____ in the _____ concession of the township of _____ in the county of _____ at or for the price or sum of £_____ payable by _____ equal annual instalments with interest, upon payment whereof a proper conveyance was to be executed of the said premises, by your orator, to the said defendant, and he was in the mean time to be let in to possession thereof; which agreement was reduced into writing (*in the form of a bond*) and signed by the said defendant (*or was verbal, and made between the said parties on the day and year aforesaid*), and that the said C. D. accordingly was admitted by your orator, and entered into possession of the said premises, and he has been in possession of the said premises ever since (*or, and remained in possession thereof until _____ when he abandoned the same and departed this Province, and has remained out of the same ever since*) and he has never paid any part of the said purchase money, except the sum of £_____ which he paid on the _____ day of _____ and has wholly neglected and refused to perform the said agreement, except as aforesaid, although frequently requested thereunto by your orator, who has been always ready and willing, and frequently offered to the said defendant, while he could communicate with him, to perform the same on his part. To the end therefore that the said agreement may be specifically performed within a reasonable time, to be fixed by this honourable Court for that purpose, or in default thereof that the same may be declared to be rescinded and to be at an end, and that the said agreement may be delivered to be cancelled.

(*And for further relief; pray subpœna.*)

By a vendee to rescind contract.

IN CHANCERY.

To the Honourable, &c.

Humbly complaining, &c., your orator, &c., that on the _____ day of _____ your orator entered into

6.

To rescind a contract, by the vendor.

7.

Same by the vendee.

a contract with C. D., the defendant hereinafter named, for the purchase of lot number _____, in the _____ concession of the township of _____, in the county of _____, at or for the price or sum, &c., (as in the last preceding form, according to the facts), which contract was reduced into writing and signed by your orator, (or by your orator and the said C. D.), and dated the day and year aforesaid, (or is as reduced into writing in the form of a bond, or of two bonds, with conditions thereunder written for the conveyance of the purchase, and the payment of the purchase money, upon the terms, at the times, and in manner aforesaid, respectively, signed and sealed by your orator and the said defendants and dated the day and year aforesaid, and delivered by your orator and the said defendant, each to the other respectively); that a duplicate or counterpart of the said agreement (or the said bond for the payment of the said purchase money and interest), remains still in the possession of the said defendant, and the said agreement (or bond, or bond for the conveyance of the said premises) remains in the possession of your orator, that (here state the reason why it is desired to rescind the contract, as) your orator thereupon caused the necessary steps to be taken for the investigation of the title of the said defendant to the said premises, and had the same duly investigated; whereby it appeared, as the fact is, that the said defendant cannot make a good title to the said premises by reason (here state the defect of the title,) on which account your orator applied to the said defendant to deliver up the said duplicate or counterpart of the said agreement (or the said bond,) to be cancelled, offering at the same time to deliver up the said agreement (or bond, or bond for the conveyance of the said premises,) for the same purpose; but that the said defendant refused, and still refuses to comply with such application, and has lately brought an action against your orator upon the said agreement, (or bond, or bond for the payment of the said purchase money and interest). To the end therefore that the said contract may be specifically performed if the said defendant can make a good title to the said premises, or in default thereof, that the said agreement (or bond, or bonds,) may be delivered up to be cancelled, your orator being ready and willing, and hereby offering to do all necessary acts for that purpose; and that the said action, or any other action in respect of the matters aforesaid, may be restricted by the order and injunction of this honourable Court.

(And for further relief; pray subpoena.)

NOTE.—Let the form be varied according to circumstances.

On moving the reference, under the 77th Order, it will be recollected, the plaintiff was to support his motion by an affidavit in proof of the bill. This affidavit may now be in the short form prescribed by the following Order :

Form of affidavit on motion for reference.

This affidavit of verification upon motions for a summary reference in the cases enumerated in Order I. may be in the form set forth in Schedule C, hereunder written.

III.

January, 1851.

IN CHANCERY.

Between A. B. plaintiff,
and

C. D. defendant.

A. B. of, &c., the above-named plaintiff, maketh oath and saith, that the allegations contained in the bill of complaint of this deponent hereto annexed, are, and that each of them is true in substance and in fact, to the best of this deponent's knowledge, sworn, &c., and belief.

The power of the Court, to make such Order as may be right under all the circumstances, is placed on the same footing as in England under the "Claim" Orders, by the following :—

Upon the hearing of any motion for a decree, under the provisions of the 77th of the Orders of the 7th of May, 1850, the Court may, if it shall think fit, make an Order granting or refusing the relief prayed, or may direct the examination of either parties or witnesses, or further inquiries, or other proceedings, to be had for the purpose of ascertaining the plaintiff's title to the relief claimed : and further, the Court may direct such (if any) persons, or classes of persons as it shall think necessary or fit, to be made parties to the suit, or to be summoned to attend any proceedings before the Master with reference to any accounts or inquiries directed to be taken or made, or otherwise.

IV.
Order that may be made on motion for reference.

This is copied, *mutatis mutandis*, from the English Order 13, of April, 1850.

Compared with English Order.

The frequent delays which occurred in consequence of all parties interested in the subject matter of a suit, not being before the Court, rendered necessary such Orders as the following, to obviate in some degree, the difficulty.

Parties.

If upon the proceedings before the Master under any decree made under the provisions of the 77th Order of the 7th of May, 1850, or of Order I. comprised in these

V.
Parties may be subpoenaed

when the case is in the Master's office. Orders, it shall appear to the Master that some persons not already parties ought to attend, or to be enabled to attend the proceedings before him, he is to be at liberty to order the same; and thereupon the plaintiff may sue out a writ of subpoena, requiring the persons named to appear to the writ, and such persons are thereupon to be named and treated as defendants to the suit, and bound thereby as other parties.

VI.
Form of process.

Such last mentioned writ of subpoena is to be in the form and to the effect in that behalf set forth in Schedule D, hereunder written, with such variations as circumstances may require.

The following is the form :—

IN CHANCERY.

CANADA.

Victoria, &c.

[*L.S.*] To _____ Greeting,

Whereas A. B. hath caused to be filed a bill against C. D., praying (*set forth the prayer of the bill*); and whereas by an Order made in the said cause, dated the _____ day of _____, it was ordered (*set out the ordering part of the Order*); and whereas Mr. _____, the Master to whom the said Order stands referred, hath by Order, dated the _____ day of _____, directed that you should be a party to the said cause, and to be served with a writ of subpoena therein; therefore we command you that within _____ days after service of this writ upon you, exclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Chancery of Upper Canada, and that you do attend the proceedings in the said cause as a party defendant thereto, and do and observe such things as are by our said Court ordered and directed in the said cause; and herein fail not.

Witness, &c.

The following memorandum to be placed at foot :—
Appearance to be entered at the Registrar's office, at Osgoode Hall in the City of Toronto (or at the office of Deputy Registrar [the name of the Deputy Registrar resident in the same county, with the Deputy Master to whom the cause stands referred] in the City of _____, in the County of _____); and, if you neglect to appear, the proceedings will be carried on without further notice to you.

VII.
Parties served, may attend in Master's office.

The persons served with such last mentioned subpoena having appeared are to be at liberty to attend, and to be

entitled to notice of the proceedings before the Master, subject to such directions as the Master may make in respect thereof.

The above Orders 5, 6, and 7, are after the English Orders 18, 19, and 20, of April, 1850.

English
Orders.

It may often appear, that the Order for a summary reference to the Master may on the coming in of the answer, or upon view of other circumstances, appear to be erroneous. It may happen that evidence is necessary to be taken before the hearing, in furtherance of justice. In such cases, and others, it would be injurious to hold the Order made, as final. The following Order then provides for relief, under such circumstances, by another motion :—

Relief against
proceedings
under these
Orders.

Any Order or proceeding made, or purporting to be made in pursuance of these Orders, may be discharged, varied or set aside, on motion ; and any Order for accelerating proceedings may be made by consent.

VIII.
Motion to set
aside or
vary Order.

This is after the English Order 29 of April, 1850.

English Order.

If, at any time after these Orders come into operation, any suit for any of the purposes to which the forms set forth in the Schedule A are applicable shall be prosecuted to a hearing in the usual course, and upon the hearing it shall appear to the Court that a decree to the effect of the decree then made, or a decree equally beneficial to the plaintiff, might have been obtained in the manner authorised by the 77th of the Orders of the 7th May, 1850, the Court may order that the increased costs which have been occasioned by the proceedings adopted, beyond the amount of costs which would have been sustained in the proceedings under the said Order, shall be borne and paid by the plaintiff.

IX.
Parties ne-
glecting to pro-
ceed under
these Orders,
when practica-
ble, subject to
costs.

The following Order, regulating the proceedings before the Master, taken from the 17th English Order, is little more than a confirmation of the powers which that officer already possessed, but may be taken as explanatory of the other Orders governing the Master's practice, which are given in a former chapter, and which are still in force except where they are at variance with the following. One effect however of this Order, will be to shorten the forms

Master's
Office.

of decrees, and decretal Orders, for under this the Master has power to take proceedings, which it was formerly customary to direct him specially to take, in the Decree or Order.

X.

Master may compel production of books, &c., and order advertisements, and proceed as under the "usual directions" in a decree.

Under every Order of reference to the Master, the Master is, unless the Court otherwise orders, to be at liberty to cause the parties to be examined, and to produce deeds, books, papers and writings, as he shall think fit, and to cause advertisements for creditors; and if he shall think it necessary, but not otherwise, for heirs or next of kin, or other unascertained persons, and the representatives of such as may be dead, to be published in the usual forms, or otherwise, as the circumstances of the case may require; and in such advertisements to appoint a time within which such persons are to come in and prove their claims, and within which time, unless they so come in, they are to be excluded the benefit of the decree: and in taking any account of a deceased's personal estate under any Order of reference, the Master is to inquire and state to the Court what part, if any, of the deceased's personal estate is outstanding or undisposed of; and is also to compute interest on the deceased's debts from the date of the decree, and to compute interest on legacies from the end of one year after the deceased's death, unless any other time of payment is directed by the will, but in that case according to the will: and under every Order whereby any property is ordered to be sold with the approbation of the Master, the same is to be sold to the best purchaser that can be got for the same, to be allowed by the Master, wherein all proper parties are to join as the Master shall direct.

Practice compared with that of England.

The above constitute all the Orders in which the principle of Lord Cottenham's Orders of April, 1850, is adopted. Those Orders, with the forms above referred to, are to be found in the *London Jurist* of 27th April, 1850, pages 143 to 151.

The practice here established however differs in some leading features from that of England.

Difference between the "bill" and "claim" not material.

The difference in form between the "Bill" here, and the "Claim" in England, is merely in a few words, and is of no importance. And the practice on the coming on of the motion here, is very similar to the English practice, when the defendant shows cause to the summons which

has been granted on filing the claim. See the above 4th Order, which is copied from the English 13th Order.

One particular in which the practice will be found to vary, is this. Here the original plaint is still a bill, and may be answered; and it remains to be seen how far an answer filed will operate as an objection to the motion, or whether the Court will look into it, and consider whether under the facts disclosed the cause ought to be brought to a hearing on evidence, instead of a summary reference being made. It is apprehended, that the Court must discharge the motion, if the answer sets up a substantial defence to the relief sought, and that in short the answer will be treated as an affidavit made to oppose the motion. The Court has intimated that the answer will be looked upon as an affidavit; and therefore, it is supposed, it may be rebutted by affidavits of the plaintiff. In England, it seems, there can be no *answers* properly so called, but, under Order XV. of April, 1850, the Court, if the case seems one which should be proceeded with by bill and answer, and evidence, in the old way, directs a bill to be filed. The practice here, giving, as it does, a large discretion to the Bench in dealing with each case, will probably be found more speedy than the other. But here, if on the answer, or defendant's affidavit, it seems doubtful whether the case requires evidence, the Order for the summary reference will not, it seems, be made. The disposition of the Court appears to be, to confine these references, to cases which are in the main points undisputed.

Another leading distinction is, that in England the proceeding is still by bill with interrogatories, and answer, except in cases coming under the provisions of Order 1, or where the Court gives leave to file a claim. This leave is asked for by an application of the plaintiff *ex parte*, and the Court gives the permission or refuses it, on reading the proposed claim, (English Order 6.) Here, on the contrary, the old form of bill and answer is completely abolished; and the practice by summary reference is confined to the cases coming within Order 1. It

Effect of
answer filed
before motion.

Practice in
England when
bill considered
requisite.

Leave to file
claims in
England.

Bills and answers likely to be still further abolished in England.

is believed that the practice in England, by bill and answer in the old form, will be done away with to a greater extent than is yet effected. Upon the whole, it would appear, that the reform here has been carried further than in England, but not further than will there be attempted, and most probably effected. On this subject the reader is referred to an article in the *London Jurist* of the 14th September, 1850. In both countries, however, the change is much in the nature of an experiment, and requires to be worked under for some time, before a clear opinion can be formed as to its efficiency.

Again ; in England, there is an Order (31) in the following terms :

Exception in the English practice.

“ If any of the cases enumerated in Order 1 involve or are attended by such special circumstances affecting either the estate or the personal conduct of the defendant, as to require special relief, the plaintiff is at liberty to seek his relief by bill, as if these Orders had not been made.”

No such exception here.

There is no analogous Order here, and therefore, in every case coming under Order 1, the plaintiff must, on peril of being subject to costs, attempt his motion for a reference.

Points on which doubts have arisen in England.

The doubts which have arisen in practice in England have been chiefly of these classes. First ; what evidence is required on each side, on the coming of the first motion—that is, how far may the case be resisted by affidavits, and to what extent must, or may, the plaintiff rebut the affidavit of the defendant ? Secondly ; how far can the Court go in deciding the cause, under the 13th English Order, (copied in the above Order 4,) which has been spoken of as being “ so wide in its language that it in effect amounts to saying, that the Court may at the hearing *do anything*,” (see *Jurist*, November 23rd, 1850, page 451) ? And thirdly ; what cases are proper for the Court to grant leave to file a claim ? The two first mentioned questions will arise here, and require some decisions to set them at rest. As to the affidavit in answer, see

Hubbard vs. Child, 14 Jurist, 544. The third class cannot, of course, arise here; and as it is on this question only—namely in what cases leave can be obtained to file a claim,—that nearly all the English decisions since the Orders have turned, it cannot be of any service to cite them. Some decisions, partly on other points, may be useful. At the hearing of a claim for specific performance, the contract must be produced and proved, *Marshall vs. Davies*, 14 Jurist, 997. Here on the motion for a reference, it is not necessary to produce the exhibit but only the affidavit in the form above given. An Order was made for the appointment of a Receiver, at the hearing of a claim, although not asked for, as it seems, in the claim, *Bickford vs. Chalker*, same page. See as to asking specially for a Receiver, in a bill, *Barlow vs. Gains*, 8 Beaven, 329. A special direction not to disturb settled accounts was refused, when not asked for by the claim, *Woodman vs. Farley*, 14 Jurist, 898. This decision is important in reference to the 4th Order, (answering to the English 13th Order). It has been decided in England, that, when the claim is unopposed, the plaintiff must still produce an affidavit. This renders the practice so far similar to that which obtains here, (see the form of affidavit above given.) *Hutchinson vs. Taylor*, 14 Jurist, 845. An Injunction case, under either practice, must go to a hearing on evidence, the summary proceeding not being applicable. The English case is *Holden vs. Chalcraft*, 14 Jurist, 846.

A case in England, *Davies vs. Marshall*, decided in June, 1850, is said to have given rise to a doubt as to the mode of stating documents in the claim (or bill) for specific performance, (see *Jurist*, June 22nd, 1850, page 222). But the better practice, it is apprehended, will be to adhere as closely as possible to the direction of the form.

Where there was a devise to executors in trust for one for life, and then for her children, the children filing a claim, the case was decided to be within the Order 1, (see Sec. 2 of that Order). It was said that the Orders

Which of these doubts may arise here.

English authorities.

Proof of contract.

Receiver.

Special direction.

Unopposed claim.

Injunction.

Stating documents under new forms

Construction of Section 2, of Order 1.

“ must be liberally interpreted.” *Smith vs. Smith*, 14 Jurist, 518.

As to service a-
broad of notice
of motion ;

The 22nd Order of May, 1850, giving the Court power to order the service of the subpœna out of the jurisdiction, says nothing of the notice of motion for a reference in cases under the 77th Order. The Court would probably, however, permit such service on such a case being made out as to authorise the service of a subpœna abroad, in accordance with *M^cCoy v. Cross*, 14 Jurist, 613, where the summons issued on a claim was ordered to be so served, though not strictly within the Orders as to absent defendants. The subpœna under the above Orders 5 and 6 of 1851, might, with still more reason, be ordered to be served according to the 22nd Order of 1850, for it is to all intents and purposes a writ of similar effect to the subpœna obtained on filing a bill.

and subpœna
issued under
Master's Order
for new parties.

Case as to affi-
davit in
answer.

In one case, it is said, that the affidavit in answer to the application for a reference “ must clearly be entered as an answer or as evidence, or in a manner analogous to both.” *Hubbard v. Child*, 14 Jurist, 545. It is here taken as an affidavit, see *Ante*. In *Hubbard v. Child*, the defendant, an Executor, made an affidavit on the subject of the account. The account was ordered, but costs reserved. The inference is, on this latter point, that it would be clearly regular for the Court here to reserve costs, in making an Order for a reference. And so it seemed to be conceded, provided a proper case was made on the affidavits for reserving costs. *Gooderham v. De Grassi*, not yet reported, where the costs were reserved, the defendant, a mortgagor, swearing that the assignee of the mortgagee had received rents and profits, sufficient to have paid off the mortgage.

Reserving
costs ;

Regular, under
77th Order.

These appear to be all the cases as yet decided, which can be of any service in throwing light upon the construction to be given to the New Orders here.

Country prac-
tice.

We now proceed to the Orders under which the business of the Registrar's and Master's Offices is to be done, to a great extent, by Deputies in the country. This is

considered a very satisfactory change. The Orders are not, so far as they relate to Deputy Officers, after any English practice, and are as follow :—

Deputy Masters and Deputy Registrars respectively shall perform the duties of their several offices in the same manner, and under the same regulations, as the like duties are performed by the Master and Registrar respectively ; and all orders, rules and regulations in force respecting the Master and Registrar respectively, and respecting the regulation of their respective offices, shall be in force and applicable to the Deputy Masters and Deputy Registrars respectively, in relation to such duties as they are hereby required to perform ; and the like sums and fees payable to the Master and Registrar respectively shall, in relation to similar matters, be payable to the Deputy Masters and Deputy Registrars respectively.

Bills may be filed either with the Registrar or with a Deputy Registrar, at the option of the plaintiff, unless the Court shall think fit to order otherwise. All the pleadings in each cause must be filed at the same office. Subpoenas to appear and answer, or to appear, as also subpoenas authorised by Order V., shall be issued by the Registrar in whose office the bill may have been filed, or in whose county the reference is being conducted. Appearances are to be entered at the office of the Registrar by whom the subpoenas may have been issued, unless otherwise directed ; and the memorandum at the foot of every subpoena that may have been issued by any Deputy Registrar shall be varied accordingly. All Orders of course in the progress of a cause, which under the practice heretofore existing might have been drawn up by the Registrar without the special direction of the Court, may henceforward be drawn up by any Deputy Registrar with whom the pleadings in such cause may have been filed.

In future, references may be either to the Master in Ordinary of this Court, or to one of the Deputy Masters, as the Court shall direct ; and all applications in the course of a cause, which, under the practice heretofore existing, would have been made to the Master in Ordinary, shall henceforward be made to the Deputy Master in the county where the pleadings in such cause may have been filed.

All documents, of whatever nature, required to be transmitted to this Court by any Deputy Master or Deputy Registrar, may be so transmitted either through the Post-office, under cover, directed to the Registrar, and sealed with the seal of the party required to transmit the

XI.
Duties of Deputy Masters and Registrars.

XII.
Pleadings may be filed with Deputy Registrars, and Subpoenas issued.

XIV.
Causes may be referred to any of the Masters.

XV.
Transmission of documents.

same, or they may be forwarded by special messenger, in like manner as answers and depositions are now forwarded.

XVI.
Books to be
kept by Deputy
Registrars.

Each Deputy Registrar shall keep in his office a book, to be called "The Solicitor's and Agent's book," in which solicitors residing elsewhere than in the county in which such Deputy Registrar's office may be, and being solicitors in any proceeding in this Court conducted in such county, shall respectively specify the name of an agent, being a solicitor of this Court, and having an office in the city or town where the office of such Deputy Registrar is situated, upon whom all writs, notices, orders, pleadings, warrants, rules, and other documents and written communications in relation to proceedings conducted in the office of the Deputy Master or Deputy Registrar of such county, may be served.

XVII.
Practice in the
Office of Deputy
Registrars.

All writs, notices, orders, pleadings, warrants, rules, and other documents and written communications in the next preceding order specified, which do not require personal service upon the party to be affected thereby, may be served upon his solicitor residing in the county where such proceedings are conducted, or upon the agent of such solicitor, named in "The Solicitor's and Agent's book," as hereinbefore provided, where such solicitor does not reside in the county where such proceedings are conducted. And, if any such solicitor shall neglect to cause such entry to be made in "The Solicitor's and Agent's book," then leaving a copy of any such writ, notice, order, pleading, warrant, rule, or other document or written communication for the solicitor so neglecting as aforesaid in the office of such Deputy Registrar, shall be deemed sufficient service, unless the Court, or, in the case of a Deputy Master's warrant, the Deputy Master shall think fit to direct otherwise.

It will be seen, that these Orders render the offices of the Registrars and Masters in the country open for nearly all the proceedings that can become necessary in the conduct of a cause. A Decree, or Decretal Order, may be made at Toronto, directing accounts to be taken and enquiries made before any Deputy Master, in the same manner as a reference may be made to the Master in Ordinary. In the same manner pleadings may be filed with the Deputy Registrars, as with the Registrar in Toronto. For the practice before these Deputy Officers

then, the reader is referred to the foregoing chapters, and especially to that on the subject of the "Master's Office."

The following Orders are on the subject of Costs.

The sum of twenty shillings shall be allowed for drawing every bill, but no greater sum than thirty shillings shall be taxed by the Master for drawing any bill, without the special direction of one of the Judges of the Court upon the application of the solicitor requiring the same, for which application no charge is to be made. No greater sum than thirty shillings is to be taxed for drawing any answer, petition, or affidavit without the special direction of a Judge of the Court in manner aforesaid; and no greater sum is to be allowed for drawing any answer, petition or affidavit, than would have been taxed irrespective of this order.

The sum allowed for copying and briefing shall be sixpence per folio, provided that the same shall not in any case exceed one-half of the amount which shall be allowed for drawing what shall be so copied or briefed.

No copies of pleadings (except briefs) shall in future be allowed in taxation other than the copy to file and the office copy. No copies or briefs of affidavits upon the hearing of any motion or petition, and no copies or briefs of depositions, shall be allowed in taxation without the special direction of one of the Judges of the Court, upon the application of the solicitor demanding the same, for which application no charge is to be made.

The copy of the prayer of the bill and title of the cause hitherto furnished for the use of the Court upon the hearing, and all other copies of pleadings or other documents for the use of the Court, shall henceforward be dispensed with, unless specially required, and the Master shall on taxation disallow any charge for the same.

It needs hardly be said that the above significant Orders have given rise to some discussion in the profession. The difference between their effect, and that of the Tariff appended to Lord Cottenham's Orders, is, that these Orders apply to all cases, however special and complicated, whereas the English Tariff, which, it may be observed, is not nearly as low as the above, applies only to the limited number of cases coming under the Claim Orders. In England also there is an Order (10, of June, 1850), under which a Master may allow Counsel fees in his discre-

Costs.

XVIII.
20s. or 30s.
Costs of Bill,

or Answer.

XIX.
Briefing.

XX.
No copies of
pleadings.

XXI.
Papers for
Court dispensed
with.

Remarks on
the New Orders
as to costs.

tion on arguments before him. There is no such protection here. It must be conceded on all sides, that a right object to be kept in view in every step taken towards the reform of our system of jurisprudence, is the rendering the proceedings as inexpensive as is consistent with a proper and not exorbitant remuneration to the profession. But there is some reason to fear, that under the above Orders the result will be, that large Counsel fees will be taken in order to make up for the small amount of taxable costs, and these Counsel fees cannot be recovered by the successful from the defeated party. It can hardly be expected by the Court, that a cause can be conducted throughout for some four or five pounds, which would be the effect of a strict compliance with these Orders; and especially when the disbursements in the course of the cause, for Examiner's and other fees, may often amount to £20 or £30. As regards Counsel fees, it will be seen by the tariff, that the largest amount taxable on an argument is £2 2s. On the motions for references under the New Orders, the Master has taxed 10s. as a Counsel fee. A revision of the Tariff is spoken of; but it is submitted, that such a modification of it as would reduce the disbursements to, say, one-third or one-half of their present amount, even at the expense of the "Fee Fund," would be, to the public as well as the profession, the most acceptable revision which could be effected. It would, however be out of place to pursue the subject further here.

Tariff.

Part of the duty of the Masters in the country will be, to tax costs; and they are referred for their guidance to the above Orders, and to the following schedule which, except as modified by the Orders, is still in force.

SCHEDULE OF FEES.

151

SOLICITOR.

	s.	d.	
Instructions for Bill or Answer,	7	6	Costs to be taken by Solicitor.
Letter of Notice before filing Bill,	2	6	
Instructions for Petition when no Bill is filed,	5	0	
Drafting Bills, Answers or other Pleadings, Petitions, Special Affidavits and Interrogatories, including Copy to Keep, per folio,	1	0	
<i>Note.</i> —This charge is subject to the restrictions of Order 18 of January, 1851, as to the Bills and Answers; and to the Orders of 1850 abolishing interrogatories.			
Engrossing same, and making other copies when necessary (other than Office copies to be authenticated by the Registrar) per folio,	0	6	
<i>Note.</i> —See as to this charge Order 20 of January, 1851, Office copies to be authenticated by Registrar, per folio,			
Præcipe for Subpœna or other process, entering Appearance, including attendance,	1	3	
<i>Note.</i> —One Subpœna only allowed to each County, which shall include the names of all the defendants in such District.			
Every necessary attendance to serve Process or for other purposes,	1	3	
Special attendance on the Master's Warrant, or on Examination of Witnesses, or on Hearing of Cause, or Demurrer, or Special Motion,	5	0	
Attendance on Warrant before Master, or on Examination of Witnesses, every extra hour,	5	0	
Instructions for Brief, and for Interrogatories,	5	0	
<i>Note.</i> —See Orders of 1850 as to Interrogatories.			
Brief, per folio, including fair copy, subject to be reduced by the Master, if the same contains superfluous matter or is of unnecessary length,	0	6	
Copy of Brief for second Counsel when required, per folio,	0	6	
Copy of Orders, Petitions, or other papers or documents (not Office copies), required to be served, per folio,	0	6	

	s.	d.
Fee on settling Minutes of Decree or Special Order, and attending the Registrar ; and fee on passing same,	5	0
Drawing Bill of costs and attending taxation,	5	0
Postages actually paid,	0	0

Note.—The folio consists of 100 words.

COUNSEL.

Counsel fees.	Fee to Counsel for settling and signing Pleadings, Petitions or Interrogatories,	10	0
	<i>Note.</i> —Sec Orders of 1850, under which pleadings need not be signed by Counsel.		
	Fee on Common Motions and Motions of Course,	10	0
	Special Applications, Arguments, Hearing,	25	0
	To be increased at the discretion of the Master to (being the highest fee allowed by the Statute)	42	0
	<i>Note.</i> —It is submitted that, although it has not been done as yet, the Masters have it in their discretion to apply the two last charges to the motions, which are undoubtedly "special applications" for summary reference, under the 77th new Order.		

MASTERS AND DEPUTY MASTERS.

Master's fees.	Every Summons or Warrant,	1	3
	Administering Oath, or taking Affirmation,	1	0
	Marking every Exhibit,	1	0
	Drawing Depositions, Reports, or Deeds, per folio,	0	6
	Every attendance upon a reference,	5	0
	For each additional hour,	5	0
	Preparing, Engrossing and Signing each Advertisement,	5	0
	Every Certificate,	2	6
	Filing each Paper,	0	4
	Taxing Costs, including Attendance,	5	0
	Making up and forwarding Answers and Depositions,	1	3

	s. d.
Every necessary special attendance out of Office within two miles,	5 0
Every additional mile above two,	1 0

REGISTRAR AND DEPUTY REGISTRARS.

Entering parties' names and filing Bill, Answer or Demurrer,	2 6	Registrar's fees.
Entering and filing all other Pleadings, Interroga- tories, Depositions or other Evidence,	1 0	
Filing and Registering Affidavits, Exhibits, or other Papers,	0 4	
Entering Appearance,	2 6	
Every Subpœna,	3 0	
Special Writ, Writ of Execution or Commission, Office Copy of Papers required to be given out, per folio,	5 0 0 6	
Examining and authenticating same, when Office copy prepared by Solicitor, per folio,	1 0	
Attendance on appointment of Guardian,	2 6	
Amendment of Record when re-engrossment not necessary, per folio,	1 0	
Drawing fiat to Petition,	1 0	
Attending the Chancellor for his signature to any document or paper, or on leaving abstract of proceedings,	1 3	
Making up and forwarding Interrogatories,	1 3	
Setting down cause,	2 6	
Certificate of pleadings being filed,	2 0	
Certificate of state of cause,	2 6	
Drawing Minutes of Decree or special Order, per folio,	1 0	
Drawing Decree or Order, per folio,	1 0	
Entering same, per folio,	0 6	
Receiving and paying out deposit,	5 0	

In cases when the examination of witnesses is before the Court, the fees of 1s. per folio for taking down the depositions are saved ; but there still remains the 6d. per folio to the Registrar for the Office copy given out to the Solicitor. And, when the examination is before a Deputy Master, the disbursements remain as before. These, and several other items in the Master's and Registrar's tariff, tend to raise the necessary disbursements in the manner to which we have referred in speaking of the Orders of January, 1851, as to costs. Where the evidence extends to some length, the items referred to, will, under the New Rules, constitute by far the greater amount of taxable costs in the cause.

Miscellaneous Orders. The following Miscellaneous Orders complete the set issued in January, 1851.

XIII. Affidavits filed as under former practice. The affidavits, either in support of or opposition to any special motion or petition, must be filed, as heretofore, with the Registrar ; and notice of any such motion may be served according to the now existing practice.

XXII. Form of petition for re-hearing. Petitions of re-hearing shall henceforward be in the form and to the effect in that behalf set forth in schedule E. hereunder written.

A first petition to re-hear a cause.

IN CHANCERY.

Between A. B., complainant,
and

C. D., defendant.

To the Honourable, &c.

The humble petition of the above-named A. B. or C. D. sheweth :

That a decree was lately pronounced in this cause by this Honourable Court, whereby, among other things, it was ordered that (*here state the particulars in which the petitioner was dissatisfied with the decree*) that your petitioner considers himself to be aggrieved by the said decree, in the particulars aforesaid ; and he therefore humbly prays that the said cause may be re-heard, and the said decree rectified in the matter before-mentioned.

And your petitioner will ever pray, &c.

We conceive that this cause is proper to be re-heard, touching the matter mentioned in the petition, if the Court shall think fit.

(Signature of two
Counsel.)

E. F.
G. H.

Letters of attorney to receive mortgage money or other sum ordered to be paid shall henceforward be in the form and to the effect in that behalf set forth in schedule. F. hereunder written, with such variations as circumstances may require.

XIII.
Form of power
of Attorney to
receive mort-
gage money

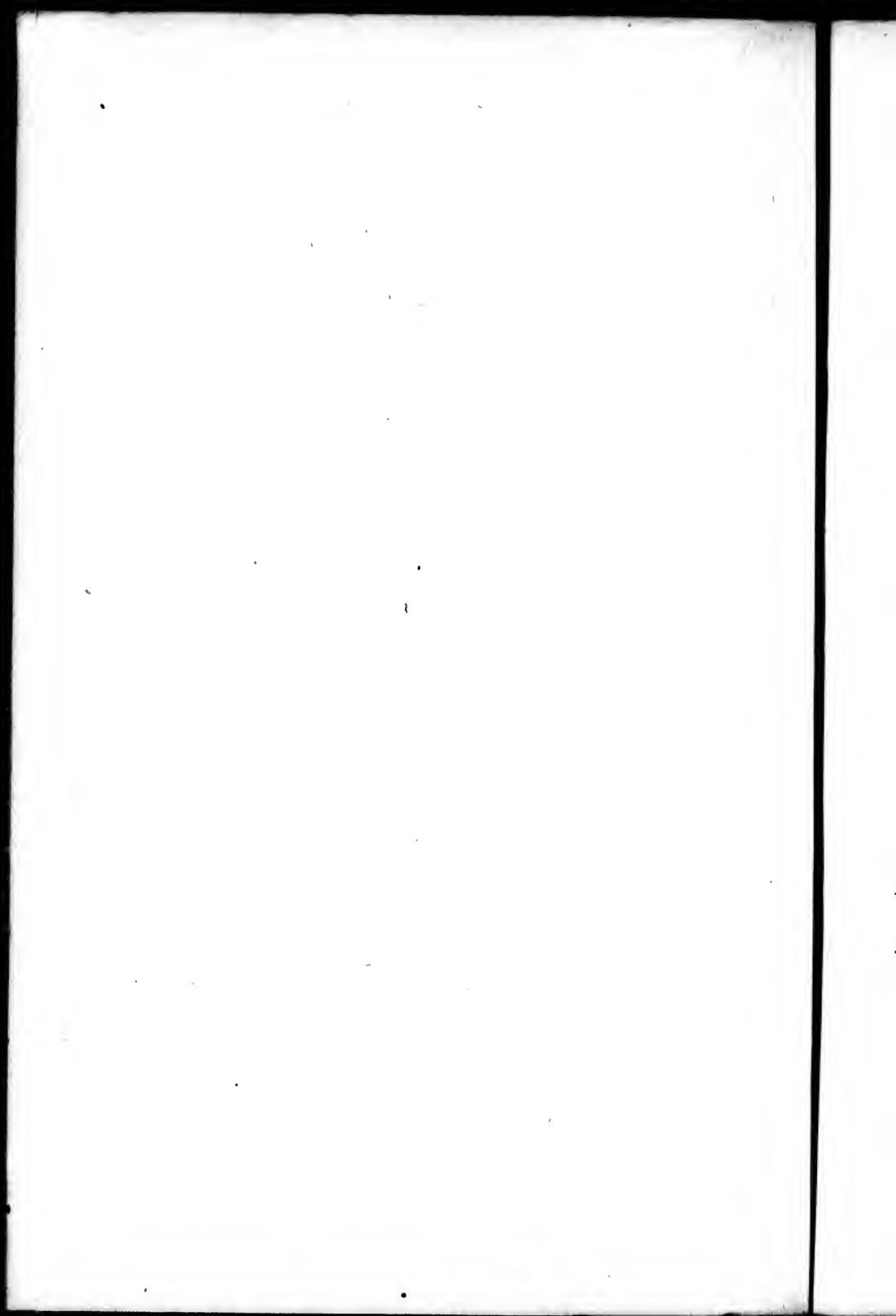
IN CHANCERY.

Between A. B., complainant ;
and
C. D., defendant.

Know all men by these presents, that I, the above-named A. B., do hereby nominate, constitute and appoint E. F., of, &c., my true and lawful attorney, for me in my name to demand and receive from the above-named defendant C. D. and all and every other person and persons whom it may concern, the sum of £——, being the sum reported due to me for principal, interest and costs, and directed to be paid to me on the —— day of ——, by the Master's report made in this cause, and dated the —— day of ——; and upon payment thereof, to make and give receipts, acquittances and other discharges for the same, and to do all acts necessary to the premises as fully and effectually as I myself could do the same if personally present, and for the purposes aforesaid to appoint any substitute or substitutes, and such substitution at pleasure to revoke.

In witness, &c.

THE END.



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ADDITIONS AND CORRECTIONS.

1. At page 5, the first line should read "is said to deal with it" &c., instead of "deals" &c.
2. At page 19, the last paragraph would seem to refer to some mode of proceeding different from the practice by "Bill". It was written before the New Orders were issued, when it was believed the "Claim" would be adopted, as in England, and hence the inaccuracy; but the last Chapters afford sufficient explanation on the point.
3. At page 24, in the last paragraph but one, read "all such applications" &c., instead of "all applications for leave" &c.
4. At page 49, the Order 157 of 1850, is stated as repealed, instead of the 157th of 1845.
5. On the subject of the production of documents (Chapter X.) the reader is referred to an Essay, in which the cases are fully considered, in several consecutive numbers of the *London Jurist* for 1851, Vol. 15, part 2, continued from Vol. 13, part 2.
6. The Order set out at page 67, is the 116th Order of 1842, the number having been inadvertently omitted in the margin.
7. At page 96, for "it does", read "they do".
8. At page 103, in the third paragraph, for "determine", read "determining".
9. At page 104, in the first paragraph, for "the hearing appointment", read "the appointment"; and for "constitutes appointments", read "constitutes the appointment".
10. As to Counsel fees (page 150), the Master has allowed a larger fee than there stated on the motion under the 77th Order. See page 152. The view there stated seems to have been that acted upon.

In addition to the above, the Editor has to apologise to his readers for several misprints, which have passed unobserved until it was too late to correct them, and as they will be at once seen to be mere typographical errors, they need not be here particularized.

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