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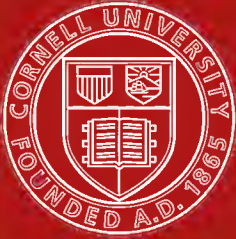
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THE
STATUTES, RULES OF COURT, AND
GENERAL ORDERS

RELATING TO THE
PRACTICE AND JURISDICTION

OF THE
*Chancery Division of the High Court of Justice
and the Court of Appeal.*

WITH COPIOUS NOTES.

BEING
THE SIXTH EDITION
OF
MORGAN'S CHANCERY ACTS AND ORDERS,
THOROUGHLY REVISED AND CONSIDERABLY ENLARGED.

BY
THE RIGHT HONOURABLE
GEORGE OSBORNE MORGAN, Q.C., M.P.,
Her Majesty's Judge Advocate General,
AND
EDWARD ALBERT WURTZBURG,
Of Lincoln's Inn, Barrister-at-Law.

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TO
THE RIGHT HONOURABLE
ROUNDELL, EARL OF SELBORNE,
LORD HIGH CHANCELLOR OF GREAT BRITAIN,
ETC., ETC.,

UNDER WHOSE AUSPICES THE GREAT WORK OF CONSOLIDATING INTO AN HARMONIOUS
WHOLE THE VARIOUS AND DISCORDANT SYSTEMS OF ENGLISH JUDICATURE
WAS SUCCESSFULLY INAUGURATED,

The Sixth Edition of this Work

IS BY PERMISSION

Respectfully Inscribed.

PREFACE TO THE SIXTH EDITION.



IN preparing the present Edition for the Press, the Editors, while omitting nothing which they considered to be of practical utility, have eliminated everything calculated unnecessarily to swell the bulk and cost of the Volume. The last Edition, which was brought out under circumstances of exceptional pressure, has been thoroughly revised, and the greater part of it has been entirely re-written; every case, within the scope of the work, has been carefully noted up down to the date of publication; and in a word, no effort has been spared to retain for the present Volume the popularity which its predecessors have now for more than a quarter of a century enjoyed.

G. O. M.

E. A. W.

February, 1885.

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ADDENDA.

- Page 18, line 30. *Add a reference to Re United Shepherd's Wheel Co., W. N. (1885), 15.*
- „ 34, line 45. } *Add a reference to Cottrell v. Cottrell, W. N. (1885), 23.*
- „ 148, line 35. }
- „ 153, line 43. *Add a reference to Re Duke of Buccleuch's Estate, W. N. (1885), 14.*
- „ 183, line 30. *Add—“As to an annuitant, see Poole v. Poole, W. N. (1885), 15.”*
- „ 193, line 10. *Add—“Pearson, J., has held, that in the case of a woman married before the Act, sect. 1 applies only as to property acquired by her after the Act (Re Harris, 28 Ch. D. 171).”*
- „ 266, line 5. *Add—“An order dismissing an action for want of prosecution without costs is not subject to appeal (Snelling v. Pulling, N. W. (1885), 13).”*
- „ „ line 50. *Add—“On an appeal for costs the decision of the judge below will rarely be interfered with (Re Gilbert, W. N. (1885), 21).”*
- „ 305, line 41. *Add—“The Attorney-General of the Duchy of Lancaster cannot exhibit an information in the High Court of Justice (Attorney-General of the Duchy of Lancaster v. Duke of Devonshire, 14 Q. B. D. 195).”*
- „ 320, line 22. *Agnew v. Usher is now reported in 14 Q. B. D. 78.*
- „ 324, line 31. *Add—“Where a writ is issued against a firm and served on one member, who appears in his own name, but there is no service on or appearance by the other members, judgment cannot be signed against the firm for default of appearance (Adam v. Townend, 14 Q. B. D. 103).”*
- „ 337, line 11. *Add—“And see Drage v. Hartopp, W. N. (1885), 17.”*
- „ 357, line 22. *Add—“In Blackie v. Osmaston, now reported in 23 Ch. D. 119, it was held that where a plaintiff claims a definite sum made up of a number of items, he must give particulars of demand, though he will not be ordered to do so if he only claims an account.”*
- „ 374, line 52. *Add—“An action may be dismissed for want of prosecution without costs, and there is no appeal in such case (Snelling v. Pulling, W. N. (1885), 13).”*
- „ 383, line 36. *Add—“Communications made by a solicitor to his client before the commission of a crime, for the purpose of being guided or helped in the commission of it, are not privileged from disclosure (The Queen v. Cox and Railton, 14 Q. B. D. 153).”*
- „ 398, line 32. *Add—“Under an order directing an account, and not referring to settled accounts, the accounting party may set up settled accounts, though the order does not direct that settled accounts shall not be disturbed, and the opposite party may impeach them though the order does not expressly give him liberty to do so (Holgate v. Shutt, 28 Ch. D. 111).”*
- „ 487, line 7. *Add—“Varied on appeal, W. N. (1885), 10.”*

- Page 509, line 15. *Add a reference to Dawson v. Fox, W. N. (1885), 11.*
- „ 512, line 23. *Ex parte Blease* is now reported in 14 Q. B. D. 123.
- „ „ line 45. *Add*—“When a respondent has given notice that he will contend that the decision below should be varied, and the appellant subsequently withdraws his appeal, such notice entitles the respondent to elect whether to continue or withdraw his cross-appeal. If he continues it the appellant may give a cross-notice that he will bring forward his original contention on the hearing of the respondent's appeal (*The Beeswing, 10 P. D. 18*).”
- „ 516, line 28. *Ex parte Arden* is now reported in 14 Q. B. D. 121.
- „ 544, line 17. *Add a reference to Furness v. Davis, W. N. (1885), 14.*
- „ 681, line 21. *Add a reference to Ex parte Hasker, 14 Q. B. D. 82.*

STATUTES, ORDERS AND RULES

RELATING TO THE

CHANCERY DIVISION

OF THE

HIGH COURT OF JUSTICE.

SOLICITORS ACT, 1843.

6 & 7 VICT., CAP. 73, SS. 37—43.

6 & 7 Vict.
c. 73, ss. 37-43

An Act for consolidating and amending several of the Laws relating to Attorneys and Solicitors practising in England and Wales.

[22nd August, 1843.]

XXXVII. And be it enacted, that from and after the passing of this Act no attorney or solicitor (*a*), nor any executor, administrator, or assignee (*b*) of any attorney or solicitor, shall commence or maintain any action or suit (*c*) for the recovery of any fees, charges, or disbursements for any business done by such attorney or solicitor (*d*), until the expiration of one month (*e*) after such attorney or solicitor, or executor, administrator, or assignee of such attorney, or solicitor, shall have delivered (*f*) unto the party to be charged therewith, or sent by the post to or left (*g*) for him at his counting-house, office of business, dwelling-house, or last known place of abode, a bill (*h*) of such fees, charges, and disbursements, and which bill shall either be subscribed (*i*) with the proper hand of such attorney or solicitor (or, in the case of a partnership, by any of the partners, either with his own name or with the name or style of such partnership), or of the executor, administrator, or assignee (*k*) of such attorney or solicitor, or be enclosed in or accompanied by a letter subscribed in like manner referring to such bill (*k*);

Solicitors to deliver bills, and not to commence action for fees till one month after delivery.

AND upon the application of the party chargeable (*l*) by such bill within such month it shall be lawful, in case the business contained in such bill or any part thereof shall have been transacted in the High Court of Chancery (*m*), or in any other Court of Equity, or in any matter of bankruptcy or lunacy, or in case no part of such business shall have been transacted in any Court of Law or Equity (*m*) for the Lord High Chancellor or the Master of the Rolls (*m*), and in case any part of such business shall have been transacted in any other Court, for the Courts of Queen's Bench, Common Pleas, Exchequer (*m*), Court of Common Pleas at Lancaster, or Court of Pleas at Durham, or any judge of either of them, and they are hereby respectively

Reference of bills, whether relating to business transacted in Court or not, for taxation.

6 & 7 Vict.
c. 73, ss. 37-43

required to refer (*n*) such bill, and the demand of such attorney or solicitor, executor, administrator, or assignee, thereupon to be taxed and settled by the proper officer of the court in which such reference shall be made without any money being brought into court; and the Court or judge making such reference shall restrain such attorney or solicitor, or executor, administrator, or assignee of such attorney or solicitor, from commencing any action or suit touching such demand pending such reference;

Taxation after
one month.

AND in case no such application as aforesaid shall be made within such month as aforesaid, then it shall be lawful for such reference to be made as aforesaid, either upon the application of the attorney or solicitor, or the executor, administrator, or assignee of the attorney or solicitor, whose bill may have been so as aforesaid delivered, sent, or left, or upon the application of the party chargeable by such bill, with such directions and subject to such conditions as the Court or judge making such reference shall think proper (*o*); and such Court or judge may restrain such attorney or solicitor, or the executor, administrator, or assignee of such attorney or solicitor, from commencing or prosecuting any action or suit touching such demand pending such reference, upon such terms as shall be thought proper (*p*):

Taxation after
verdict;

PROVIDED ALWAYS, that no such reference as aforesaid shall be directed upon an application made by the party chargeable with such bill after a verdict shall have been obtained or a writ of inquiry executed in any action (*q*) for the recovery of the demand of such attorney or solicitor, or executor, administrator, or assignee of such attorney or solicitor, or after the expiration of twelve months after such bill shall have been delivered, sent, or left as aforesaid, except under special circumstances (*r*), to be proved to the satisfaction of the Court or judge to whom the application for such reference shall be made; and upon every such reference, if either the attorney or solicitor, or executor, administrator, or assignee of the attorney or solicitor, whose bill shall have been delivered, sent, or left, or the party chargeable with such bill, having due notice shall refuse or neglect to attend such taxation, the officer to whom such reference shall be made may proceed to tax and settle such bill and demand *ex parte*;

or after twelve
months, under
special cir-
cumstances.

Payment of
costs of taxa-
tion.

AND in case any such reference as aforesaid shall be made upon the application of the party chargeable with such bill, or upon the application of such attorney or solicitor, or the executor, administrator, or assignee of such attorney or solicitor, and the party chargeable with such bill shall attend (*s*) upon such taxation, the costs of such reference shall, except as hereinafter provided for, be paid according to the event of such taxation; that is to say, if such bill when taxed be less by a sixth part than the bill delivered, sent, or left, then such attorney or solicitor, or executor, administrator, or assignee of such attorney or solicitor, shall pay such costs; and if such bill when taxed shall not be less by a sixth part than the bill delivered, sent, or left, then the party

chargeable with such bill, making such application or so attending, shall pay such costs (*t*); and every order to be made for such reference as aforesaid shall direct the officer to whom such reference shall be made to tax such costs of such reference to be so paid as aforesaid, and to certify what, upon such reference, shall be found to be due to or from such attorney or solicitor, or executor, administrator, or assignee of such attorney or solicitor, in respect of such bill and demand, and of the costs of such reference if payable: Provided also, that such officer shall in all cases be at liberty to certify specially any circumstances relating to such bill or taxation, and the Court or judge shall be at liberty to make thereupon any such order as such Court or judge may think right respecting the payment of the costs of such taxation: Provided also, that where such reference as aforesaid shall be made when the same is not authorised to be made except under special circumstances, as hereinbefore provided, then the said Court or judge shall be at liberty, if it shall be thought fit, to give any special directions relative to the costs of such reference:

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PROVIDED ALSO, that it shall be lawful for the said respective Courts and judges, in the same cases in which they are respectively authorised to refer a bill which has been so as aforesaid delivered, sent, or left, to make such order for the delivery (*u*) by any attorney or solicitor, or the executor, administrator, or assignee of any attorney or solicitor, of such bill as aforesaid, and for the delivery (*u*) up of deeds, documents, or papers in his possession, custody, or power, or otherwise touching the same, in the same manner as has heretofore been done as regards such attorney or solicitor, by such Courts or judges respectively, where any such business had been transacted in the Court in which such order was made:

Court may
order solicitor
to deliver his
bill, and to
deliver up
deeds, &c.

PROVIDED ALSO, that it shall not in any case be necessary in the first instance for such attorney or solicitor, or the executor, administrator, or assignee of such attorney or solicitor, in proving a compliance with this Act, to prove the contents of the bill he may have delivered, sent, or left, but it shall be sufficient to prove that a bill of fees, charges, or disbursements, subscribed in the manner aforesaid, or enclosed in or accompanied by such letter as aforesaid, was delivered, sent, or left in manner aforesaid; but nevertheless it shall be competent for the other party to show that the bill so delivered, sent, or left, was not such a bill as constituted a *bond fide* compliance with this Act.

Evidence of
delivery of
bill.

It shall be lawful for any judge of the superior Courts of law and equity to authorise an attorney or solicitor to commence an action or suit for the recovery of his fees, charges, or disbursements against the party chargeable therewith, and also to refer his bill of fees, charges, and disbursements, and the demand of such attorney and solicitor thereupon, to be taxed and settled by the proper officer of the Court in which such reference shall be made, although one month shall not have expired from the delivery of the bill of fees, charges, or disbursements, on proof to the satisfaction of the said judge that there is pro-

Power to
authorise
action before
expiration of
month:
Legal Prac-
titioners Act,
1875, s. 2.

6 & 7 Vict.
c. 73, ss. 37-43

able cause for believing that the party chargeable therewith is about to quit England or to become a bankrupt or a liquidating or compounding debtor, or to take any other steps or do any other act which, in the opinion of the judge, would tend to defeat or delay such attorney or solicitor in obtaining payment (v).

Short title.

The Act is now called "The Solicitors Act, 1843;" see The Solicitors Act, 1877, 40 & 41 Vict. c. 25, s. 1.

"Attorney or solicitor."

(a) Attorneys and solicitors are now styled "Solicitors of the Supreme Court" (Judicature Act, 1873, s. 87); and see Judicature Act, 1875, s. 14, and Judicature Act, 1881, s. 24, *infra*, as to power of adapting enactments to solicitors of the Supreme Court.

General jurisdiction over solicitors.

As to the general jurisdiction over solicitors, see *Cowdell v. Neale*, 1 C. B. N. S. 332; *Ex parte Lord Cawdross*, 5 M. & W. 545; *Ex parte Arrousmith*, 13 Ves. 125; *Re Forsyth*, 34 Beav. 140; on appeal, 2 De G. J. & S. 509; 13 W. R. 932; 12 L. T. 687; Judicature Act, 1873, s. 87.

The Act should be construed liberally for the client (*Engleheart v. Moore*, 15 M. & W. 548; *Maddeford v. Austwick*, 3 M. & Cr. 423; *Williams v. Griffiths*, 10 M. & W. 125).

Action for account and taxation.

The summary jurisdiction given by the Act does not exclude the right of a client to bring an action against his solicitor for an account (*Morgan v. Higgins*, 5 Jur. N. S. 236; *Lyddon v. Moss*, 4 De G. & J. 104; *O'Brien v. Lewis*, 9 Jur. N. S. 321); or to enforce an agreement for delivery by petition (*Re Bailey*, 34 Beav. 392). But a *cestui que trust*, out of whose property the bills have been paid, cannot sue the solicitors of the trustees for an account and taxation of the bills (*In re Spencer, Spencer v. Hart*, 30 W. R. 296; W. N. (1881), 170).

(b) An assignee in bankruptcy was held to be within the Act (*Re Walton*, 4 K. & J. 78); and see *Ingle v. M'Cutchan*, 12 Q. B. D. 518, and note (k), *infra*, p. 5.

Non-delivery.

(c) As to pleading non-delivery, see *Lane v. Glenny*, 7 Ad. & Ell. 83; *Morgan v. Ruddock*, 10 Dowl. Pr. Ca. 311; *Hitchins v. Tate*, 7 C. B. 875; *Flower v. Newton*, 11 Jur. 875.

Remedies of solicitor.

A solicitor may set off a bill before delivery (*Lester v. Lazarus*, 2 C. M. & R. 665; *Brown v. Tibbits*, 31 L. J. C. P. 406; 10 W. R. 465); or prove in bankruptcy (*Ex parte Prideaux*, 1 Gl. & Jam. 28; and see *Ex parte Dewdney*, 2 Rose, 59; *Ex parte Steele*, 16 Ves. 166); or sue on a promissory note or other collateral agreement (*Jeffreys v. Evans*, 14 M. & W. 210; 14 L. J. Ex. 363; *Re Moss*, 17 Beav. 346; *Thomas v. Cross*, 10 Jur. N. S. 1163; 13 W. R. 166). But he cannot recover on an account stated in respect of a bill of costs, unless the bill has been duly delivered (*Brooks v. Bockett*, 9 Q. B. 847). In *Waugh v. Waddell*, 16 Beav. 521, it was held that pending a reference for taxation a solicitor could not by suit enforce a charge for costs given him by a married woman on her separate estate; see this case commented on in *Thomas v. Cross*. After taxation, an action by the solicitor on his bill is a contempt (*Re Campbell*, 3 De G. M. & G. 585).

A solicitor has no statutory right to have the amount of his charges ascertained by taxation only (*Ex parte Ditton, Re Woods*, 13 Ch. D. 318; 28 W. R. 408; 42 L. T. 161; where a solicitor who tendered a proof in the bankruptcy of his client in respect of costs due to him, was held not entitled to have his bill referred for taxation, as the registrar had jurisdiction to determine the amount due, availing himself, if necessary, of the advice of the taxing master).

"Business."

(d) These words only include business done in the character of solicitor, see note (l), *infra*, p. 8.

"Month."

(e) A calendar month is meant (s. 48 of the Act; *Ryalls v. Reg.*, 12 Jur. 458). It is to be calculated exclusively of the days on which the bill is delivered and the action brought (*Blunt v. Heslop*, 8 Ad. & Ell. 577).

What is "delivery."

(f) As to what constitutes delivery, see *Eggington v. Cumberlege*, 11 Jur. 932; *Welsh v. Silwell*, 11 Jur. 471; *Blandy v. De Burgh*, 6 C. B. 623; *Dunn v. Hales*, 1 F. & F. 174; *Phipps v. Daubney*, 16 Q. B. 514; *Gridley v. Austen*, 16 Q. B. 504, 511; *Spier v. Bernard*, 8 L. T. 396; *Flower v. Newton*, 11 Jur. 875; and in the case of a public officer, see *Champ v. Stokes*, 6 H. & N. 683; 7 Jur. N. S. 607; and in that of the committee of a public company, *Edwards v. Lawless*, 5 Rly. Ca. 357; *Mant v. Smith*, 4 H. & N. 324; *Blandy v. De Burgh*; *Phipps v. Daubney*. Delivery to a duly authorised agent of the client is sufficient (*Rs Bush*, 8 Beav. 66), or, *semble*, to his servant (*M'Gregor v. Keily*, 3 Exch. 794); but a delivery to his solicitor, or to a friend or relation (*Gridley v. Austen*, 16 Q. B. 504, 511; *Re Abbott*, 4 L. T. 576), is not. The bill may be sent by post (*Roberts v. Lucas*, 11 Exch. 41), and in such a case it is enough if the envelope and a signed letter accompanying it be addressed to the party chargeable (*ibid.*; *Taylor v. Hodgson*, 3 D. & L. 115; and

see *Manning v. Glyn*, 1 Jones, Ir. Ex. Rep. 513). Where the action was brought against the executors of the client, a delivery to the client himself in his lifetime was held enough (*Reynolds v. Caswell*, 4 Taunt. 193, under the 2 Geo. 2, c. 23; see, too, *Tate v. Hitchens*, 7 C. B. 875). Where clients were liable on a joint contract, delivery of the bill to one of them was held sufficient (*Mant v. Smith*). As to the mode of enforcing the order, see note (u), *infra*.

(g) The bill must be left, not merely shown (*Phipps v. Daubney*, 16 Q. B. 514; *Crowder v. Shee*, 1 Camp. 437).

(h) The bill, or some accompanying document (*Taylor v. Hodgson*, 3 D. & L. 116; *Roberts v. Lucas*, 11 Exch. 41), must specify the persons to be charged (*Gridley v. Austen*, 16 Q. B. 504; *Champ v. Stokes*, 6 H. & N. 683), the Court in which the business was done (*Lewis v. Primrose*, 6 Q. B. 265; *Dimes v. Wright*, 8 C. B. 831), the name of the cause (*Keene v. Ward*, 13 Q. B. 515), and the particular items charged for (*Drew v. Clifford*, 2 C. & P. 69; *Re Smith*, 4 Beav. 309; *Philby v. Hazle*, 8 C. B. N. S. 647; *Re Pender*, 10 Beav. 390; *Re Tilleard*, 32 Beav. 476; *Pilgrim v. Hirschfeld*, 12 W. R. 51; *Wilkinson v. Smart*, 24 W. R. 42); and as to specifying the number of folios in deeds, see *Re Foster*, 2 De G. F. & J. 105.

As a general rule, it is sufficient if the bill gives such information as will enable the client to obtain advice as to the taxation (*Haigh v. Ousey*, 7 Ell. & Bl. 578; *Cook v. Gillard*, 1 Ell. & Bl. 26; *Frowd v. Stillard*, 4 C. & P. 51; *Sargent v. Gannon*, 7 C. B. 742); and it need not be drawn in the technical form of a debtor and creditor account (*Holmes v. Magrath*, 5 Ir. Law Rep. 376).

(i) An unsigned bill accompanied by a signed letter referring to the bills is sufficient (*Re Bush*, 8 Beav. 66; *Penley v. Anstruther*, 52 L. J. Ch. 367; 48 L. T. 665; W. N. (1883), 48). An unsigned bill of costs may be referred to taxation by the party chargeable if he chooses to waive the irregularity (*Re Pender*, 8 Beav. 299; on appeal, 2 Phil. 69; *Re Gedys*, 14 Beav. 56; *Re Foster*, 2 De G. F. & J. 105); but he is not bound to do so (*Billing v. Coppock*, 1 Exch. 14).

(k) The words of the Act are satisfied by an unsigned bill being sent enclosed with a letter referring to the bill, and signed by a new firm of solicitors who have taken over the business and debts of an old firm, some of the business charged for having been done by the old firm and some by the new (*Penley v. Anstruther*, 52 L. J. Ch. 367; 48 L. T. 665; W. N. (1883), 48).

(l) A married woman having separate estate, which she has by agreement made liable (*Waugh v. Waddell*, 16 Beav. 521; and see *Re Pugh*, 17 Beav. 336; *Murray v. Burles*, 3 M. & K. 209; *Penley v. Anstruther*; and the Married Women's Property Act, 1882, *infra*), the next friend of an infant (*Re Flucker*, 20 Beav. 143; *Re Flower*, 19 W. R. 578); the executors (*Jefferson v. Warrington*, 7 M. & W. 137); or trustee in bankruptcy (*Clarkson v. Parker*, 7 Dowl. 87; but see *Re Elmslie & Co.*, 9 Eq. 72), of the party originally liable, are parties chargeable within the Act; but an insolvent is not (*Re Halsall*, 11 Beav. 163; and see *Re Leadbitter*, 10 Ch. D. 388); nor an outlaw (*Re Mander*, 6 Q. B. 867); but see *Re Heritage, Ex parte Docker*, 3 Q. B. D. 726; 47 L. J. Q. B. 509; 26 W. R. 633; 38 L. T. 509; *Re Simpson*, W. N. (1878), 214; and the cases cited in note (w), *infra*, p. 10). A party in contempt is not incapacitated from applying (*Newton v. Ricketts*, 11 Beav. 67). As to enforcing payment by a married woman of a bill of costs which she has taxed, see *Re Peace and Waller*, 24 Ch. D. 405. Where several persons are jointly chargeable, they should concur in the application (*Re Lewin*, 16 Beav. 608; *Ex parte Mobbs*, 8 Beav. 499; *Re Perkins*, 8 Beav. 241); and an order obtained by one of them alone on an allegation that he alone employed the solicitor, will be discharged as irregular (*Re Perkins; Re Ilderton*, 33 Beav. 201); and see *Re Yetts*, 33 Beav. 412. But it seems that if one of the parties so liable refuses to concur, the order may be obtained by the other (*Lockhart v. Hardy*, 4 Beav. 224; *Re Hair*, 10 Beav. 187). In *Re Colquhoun*, 5 De G. M. & G. 35; 23 L. J. Ch. 515, taxation was ordered on the application of one party, the retainer having been separate. See, too, *Re Stephen*, 2 Ph. 562; 17 L. J. Ch. 219.

As to the cases in which security for costs will be required from the person applying, see *Re Pasmore*, 1 Beav. 94; *Re Dolman*, 11 Jur. 1095; *Ex parte Foley*, 11 Beav. 456; *Murrow v. Wilson*, 12 Beav. 497; *Re Waugh*, 15 Beav. 508.

Overseers of the poor are bound to have a solicitor's bill taxed before they pay it; and in case of neglect the payment may be disallowed (*Re Overseers of Napton*, 27 L. T. (O. S.) 124).

The client obtaining the order for taxation has to undertake to pay what shall be found due, and may have to pay charges which could not have been actively recovered by the solicitor; see *Re Jones*, 9 Eq. 63; *Re Elmslie & Co.*, *ibid.* 72.

(m) The Court of Chancery is now the Chancery Division of the High Court of Justice; and the Courts of Queen's Bench, Common Pleas and Exchequer, have become the Queen's Bench Division of the High Court; see Judicature Act, 1873, s. 31, as modified by Order in Council of December 16, 1880.

By the Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 2, the Master of the Rolls

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"Sent or left."

Form of bill of costs.

Unsigned bill.

Client may waive irregularity.

"Assignee."

Who, as party chargeable, may apply for taxation.

Persons jointly chargeable.

Security for costs of taxation.

Who must apply.

Undertaking to pay.

"High Court of Chancery," &c.

Master of the Rolls.

6 & 7 Vict.
c. 73, ss. 37-43

ceased to be a judge of the High Court, but continues to be a judge of the Court of Appeal.

Where orders
for taxation
may be ob-
tained.

As to the Court of Common Pleas at Lancaster and the Court of Pleas at Durham, see Judicature Act, 1873, s. 16.

An order for taxation of costs in any Court may now be made by any judge of the High Court of Justice, the jurisdiction conferred by this section being transferred by sect. 16 of the Judicature Act, 1873, to the judges of the High Court (*per* Jessel, M. R. in *Re Worth*, 18 Ch. D. 521; 50 L. J. Ch. 262; 29 W. R. 371; 44 L. T. 462, where it was held that costs as between solicitor and client in a County Court action where the claim exceeded 20*l.* might be taxed in the Chancery Division). Perhaps, too, an order for taxation of costs for business done in no Court, or in any matter of bankruptcy or lunacy, might now be obtained elsewhere than in the Chancery Division; see Judicature Act, 1873, s. 87; *Re Simpson*, W. N. (1878), 214; see, however, Judicature Act, 1873, s. 34 (2); *Daniell*, 2017. As to the scale of charges to be allowed, see R. S. C. 1883, Ord. LXV. rr. 8, 9, 10, *infra*.

Business done
in no Court.

The following descriptions of charges were held to be for business done in no Court and therefore taxable in Chancery:—

Charges for Parliamentary business (the equitable jurisdiction not being taken away by the House of Commons Costs Taxation Act, 1847, 10 & 11 Vict. c. 69, or the House of Lords Costs Taxation Act, 1849, 12 & 13 Vict. c. 78; *Re Strother*, 3 K. & J. 518; *Re Sudlow*, 11 Beav. 400; *Re Osborne*, 25 Beav. 353); for obtaining an order at chambers for leave to enter up satisfaction on a bond given to the Crown (*Re Gaitskell*, 1 Ph. 576); for obtaining a married woman's acknowledgment (*Ex parte Branson*, 4 Scott, 539); for business done in the Court of a revising barrister (*Re Andrews*, 17 Beav. 510). Where a solicitor was appointed returning officer for the election of a school board and sent in his bill of expenses in the usual form of a bill of costs, it was held the bill could be taxed (*Re Jones*, 13 Eq. 336); and see *Wombwell v. Corporation of Barnsley*, 36 L. T. 708.

Where the solicitor retained his bill and refused to produce it, it was assumed that the Court had jurisdiction (*Re Loughborough*, 23 Beav. 439).

The rule in the Court of Chancery was, that though, in general, the application need not be made to that branch of the Court which heard the suit (*Robins v. Mills*, 1 Beav. 227; *Re Elmslie*, 12 Beav. 538; *Bingham v. Hallam*, 9 L. J. Ch. 104), it was otherwise when the merits of the case entered into the question (*Webb v. Grace*, 12 Beav. 489).

Solicitor's
agent's bill.

A solicitor may have his agent's bill taxed under the statute (*Toghill v. Grant*, 2 Beav. 261; *Re Smith*, 4 Beav. 309, and see note (t), p. 8, as to the items to be included).

Order before
twelvemonths
ex parte and of
course.

(n) Orders of course, for delivery and taxation, may now be issued by any of the chief clerks in the Chancery Division (*Mem. W. N.* (1880), 7); and for forms of orders to refer bills for taxation, see Seton, 604 *seq.* In the absence of special circumstances the order may be obtained *ex parte* and *as of course* before twelve months have elapsed from delivery (*Holland v. Gwynne*, 8 Beav. 124; Seton, 607); and on an application for taxation *within the month* the Court has no discretion to refuse to make the order, it is bound to make it (*Ex parte Jarman*, 4 Ch. D. 835). The costs of a special application may be refused where an *ex parte* application would have been sufficient (*Re Bignold*, 9 Beav. 269); and see *Re Taylor*, 15 Beav. 145; *Re Atkinson*, 26 Beav. 151; *Re Adamson*, 18 Beav. 460; *Re Lett*, 31 Beav. 488; *Re Cattlin*, 8 Beav. 121; *Re Bracey*, *ibid.* 338.

Order to
continue.

If either party dies an order to continue the proceedings may be obtained on an *ex parte* application (R. S. C. 1883, Ord. XVII. r. 4; *Re Waugh*, 29 Beav. 666; *Re Nicholson*, 29 Beav. 665; *Re Whalley*, 20 Beav. 576).

An order of course, though right on the merits, will be discharged if obtained in a case where a special application was necessary (*Harris v. Stari*, 4 M. & C. 261; *Grove v. Sansom*, 1 Beav. 297; *Gregg v. Taylor*, 1 Beav. 123).

An order of course was held not irregular merely because the solicitor had commenced an action for his costs (*Re Farington*, 33 Beav. 346), though after final judgment given in an action, the Court has no jurisdiction; see note (q), *infra*. So where the solicitor had set up his bill in defence to an action, but the bill had not been gone into, this was held to be no reason for requiring a special application in Chancery for taxation (*Re David*, 30 Beav. 278).

Special appli-
cation is
necessary,

A special application is necessary under the following circumstances:—

(1) If part
only of a bill
is to be taxed.

(1) If the application is to tax only part of the bill claimed by the solicitor (*Re Law*, 21 Beav. 481; *Re Byrch*, 8 Beav. 124, followed in *Ex parte Jarman*, 4 Ch. D. 835; *Re Dalby*, 8 Beav. 469; *Re Wavell*, 22 Beav. 634; *Stokes v. Trumper*, 2 K. & J. 232; but see *Re Flucker*, 20 Beav. 143; *Re Hinton*, 15 Beav. 192; *Re Yetts*, 33 Beav. 412); or the application is made by some only of several parties jointly liable (*Re Perkins*, 8 Beav. 241; *Re Ilderton*, 33 Beav. 201; *Re Kitton*, 35 Beav. 369); *secus*, where they are severally liable (*Re Hair*, 10 Beav. 187).

(2) Where

(2) Where the professional employment or retainer is disputed (*Re Eldridge*, 12

Beav. 387; *Re Thurgood*, 19 Beav. 51; and see *Gillow v. Rider*, 15 C. B. 729; *Re Inderwick*, 25 Ch. D. 279; but a special application need not be made because the client considers some of the proceedings to have been unnecessary—the taxing master will go into these questions (*Re Atkinson*, 26 Beav. 153); and see as to retainer being joint or several, *Re Allen, Davies v. Chatwood*, 11 Ch. D. 244.

(3) Where there is a special agreement (*Re Winterbotham*, 15 Beav. 80), *e. g.*, to give the solicitor a lien (*Re Moss*, 17 Beav. 59; and see *Re Ransom*, 18 Beav. 220; *Re Fisher*, 18 Beav. 183; *Ward v. Lawson*, 8 Ch. 65). A special agreement, respecting some part of the costs, unless it goes to the whole bill, is not held now to be necessarily a bar to a common order for taxation, though it was formerly considered to be so (*Re Eyre*, 10 Beav. 569; 2 Ph. 367; and see *Re Philp*, 2 Giff. 35; *Re Forsyth*, 34 Beav. 140; *Re Thompson*, 14 L. T. 6); but there must be no suppression of the fact of such an agreement, or the order will be discharged (*Re Ingle*, 21 Beav. 275; *Re Carven*, 8 Beav. 436; *Re Holland*, 19 Beav. 314). Under the old law an agreement to charge a fixed sum in lieu of costs hereafter to be incurred was void; see *Re Newman*, 30 Beav. 196; *Pince v. Beattie*, 11 W. R. 979; *Philby v. Hasle*, 7 Jur. N. S. 125; but see as to an agreement to pay a solicitor a fixed salary, *Bush v. Martin*, 33 L. J. Ex. 17; *Galloway v. Corporation of London*, 4 Eq. 90. For the present law as to agreements between solicitors and their clients, see the Solicitors Act, 1870, 33 & 34 Vict. c. 28, ss. 4—15, *infra*, p. 20.

Any irregularity in obtaining the order may be waived by the solicitor (*Re Field*, 16 Beav. 593; *Re Wavell*, 22 Beav. 634; *Re Hair*, 11 Beav. 96; *Re Bevan*, 12 W. R. 196; *Re Bartrum*, *ibid.* 660).

For cases where a bill might have been filed, see *Re Forsyth*, 34 Beav. 140; *Ward v. Lawson*, 8 Ch. 65; *Rees v. Williams*, L. R. 10 Ex. 200.

(o) This application may be made *ex parte*. See note (n), and see also *Re Gaitskell*, 1 Ph. 576; *Re Pender*, 2 Ph. 69. For forms of order under this clause, see *Re Bromley*, 7 Beav. 488; *Re Becke*, 5 Beav. 406; *Re Field*, 16 Beav. 593.

(p) See note (c), *supra*. Under the present practice the order only restrains the commencement of proceedings (*Re Field*, W. N. (1877), 244).

(q) See *Re Bernard*, 2 De G. M. & G. 359. But where judgment at law had gone against the client *by default*, but no writ of inquiry to assess the damages had been executed, such judgment was held not to be a final judgment so as to prevent taxation in equity (*S. C.* 16 Beav. 5).

(r) Special applications are made by summons in chambers (R. S. C. 1883, Ord. LV. Pt. I. r. 2 (15)).

Twelve months after delivery, even an unsigned bill can only be taxed under special circumstances (*Re Gedye*, 14 Beav. 56), which may be matters appearing on the face of the bill (*Re Robinson*, L. R. 3 Ex. 4), so that to entitle a client to taxation after twelve months he must show either “pressure accompanied by some overcharge,” or, “gross overcharge amounting to fraud” (*Re Strother*, 3 K. & J. 528; *Re M’Kay*, 15 L. T. 101); mere overcharge, not amounting to fraud, is not enough (*Re Harle*, 17 W. R. 21; 19 L. T. 305).

But as to taxation after twelve months in cases where there is an order to tax outside the Act, see *Ex parte Blair*, 5 Ch. 482; *De Bay v. Griffin*, 10 Ch. 291.

As to what circumstances constitute such pressure or fraudulent overcharge, see note (g) to sect. 41, *infra*, on “application to tax after payment” on which applications the question more frequently arises (*Re Williams*, 15 Beav. 417).

The Court will require the delay to be accounted for. Thus, a dispute and correspondence as to alleged omissions in the bill were held to be a sufficient apology for the lateness of the application in *Re Bagshawe*, 2 De G. & Sm. 205; and see *Binns v. Hey*, 1 D. & L. 661; 13 L. J. Q. B. 28; but the circumstance that the solicitor was suing at law for his fees (*Bennett v. Hill*, 21 L. T. (O. S.) 101), or that he had possession of the papers in the suit (*Re Gedye*, 14 Beav. 56; *Sayer v. Wagstaff*, 5 Beav. 415; *Re Pugh*, 32 Beav. 173; 1 De G. J. & S. 673), was not.

Where a solicitor has been retained for a particular business, his bill of costs for carrying it through generally constitutes one bill (*Stokes v. Trumper*, 2 K. & J. 232; and see *Re Peach*, 2 D. & L. 33). But successive bills of costs in such matters as bankruptcy, administration, and winding-up, are not necessarily to be treated as one bill brought down to the date of the latest delivery (*Re Hall and Barker* (Jessel, M.R.) 9 Ch. D. 538; 47 L. J. Ch. 625; 26 W. R. 501); and see *Re Cartwright* (Selborne, L.C.) 16 Eq. 469, where, however, under the circumstances, taxation of a series of bills, most of them delivered more than twelve months, was directed (*Re Street*, 10 Eq. 165). The continuance of the relation of solicitor and client after delivery has been considered a material circumstance (*Re Nicholson*, 3 De G. F. & J. 93; *Ex parte Flower*, 18 L. T. 457; *S. C. nom. Re F—*, 16 W. R. 749); but in *Re Elmslie & Co.*, 16 Eq. 326; 42 L. J. Ch. 570; 28 L. T. 731, this alone was held not sufficient; and see *Re Cartwright*.

So where a client has not had proper opportunity to examine the bill, taxation after twelve months has been allowed (*Re Williams*, 15 Beav. 417, where the bill

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retainer is
disputed.

(3) Where
there is a
special agree-
ment.

Irregularity
in order
waived.

Application
after one
month.

Verdict a bar
to taxation.

After twelve
months.

Special cir-
cumstances.

Pressure and
overcharge.

Other grounds
accounting for
the delay.

Where there
are successive
bills, the last
only delivered
within the
year.

Continuance
of relation of
solicitor and
client.

Where client
has not had

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opportunity
to examine.

Laches and
acquiescence.

Limits of
taxation.

Winding-up
order.

Where party
chargeable
does not
attend.

Costs of
taxation.

Items to be
included.

Disburse-
ments.

Taxation of
agency bills.

No alteration
after refer-
ence to
master, ex-
cept by leave
of Court.

Nor any time
after delivery,
unless under
special cir-
cumstances.

Rule as to
one-sixth.

was delivered just as the client was going abroad); but the client must show that there has been no undue laches or acquiescence on his part, that the special circumstances are such as he could not with reason have availed himself of sooner (*Re Barnard*, 2 De G. M. & G. 359; but see *Re Strother*, 3 K. & J. 518). For cases where lapse of time and laches have been a bar to taxation, see *Re Vines*, 2 De G. M. & G. 842; *Blagrave v. Routh*, 8 De G. M. & G. 620 (where the application was by bill). And see note (h), p. 13, *post*.

In ordering taxation after twelve months the Court will, if necessary, restrict the taxation within certain limits (*Re Nicholson*, 3 De G. F. & J. 93). Compare *Allen v. Jarvis*, 4 Ch. 616.

A bill taxable in point of time at the date of a winding-up order, and a bill subsequently delivered to the official liquidator, must both be taxed before payment, although twelve months may have elapsed since delivery of the second bill, the effect of the winding-up order being to suspend the operation of the twelve months' rule (*Ex parte Evans*, 11 Eq. 151; and see *Re James*, 4 De G. & Sm. 183).

(s) Solicitors proceeding under the common order for taxation (which follows the words of the statute) must, in any event, pay the costs of the reference themselves if the party chargeable does not attend the taxation (*Re Upperton*, 30 W. R. 840).

(t) It is important with reference to the costs of taxation to consider what items included by the solicitor in his bill will be allowed him on a reference for taxation.

Only those payments are allowed on taxation which are made by the solicitor in his professional capacity; see the certificate of the taxing-masters in *Re Remnant*, 11 Beav. 603; and for the taxing-master's discretion as to the amount, see *Re Page*, 32 Beav. 487. Other disbursements should be included in a separate account; but see *Waring v. Williams*, 2 Beav. 1. Payments made to counsel for business have been held professional disbursements (*Franklin v. Featherstonhaugh*, 1 Ad. & Ell. 478); even when the client appropriated a special sum for such payment, leaving the solicitor no discretion (*Re Bedson*, 9 Beav. 5; but see *Re Metcalfe*, 30 Beav. 406; *Daniell*, 2032). Cash payments made by the solicitor in proceedings where he was not professionally concerned are not allowed to be included (*Hemming v. Wilton*, 4 C. & P. 318; *Prothero v. Thomas*, 6 Taunt. 196; *Re Lees*, 5 Beav. 410); and see *Latham v. Hyde*, 1 Crompt. & Mees. 128; *Fearne v. Wilson*, 6 B. & Cr. 86. Thus the fees of a solicitor acting as steward to a manor, are not professional disbursements (*Allen v. Aldridge*, 5 Beav. 401); but business done by a solicitor "retained to act as electioneering agent, and to advise and assist the committee," may be included (*Re Osborne*, 25 Beav. 353; 4 Jur. N. S. 296). Compare *Re Oliver*, 15 W. R. 331; 36 L. J. Ch. 261.

As to the power of the taxing-master to disallow items caused by the solicitor's negligence, see *Re Massey and Carey*, 26 Ch. D. 459.

A solicitor may apply for taxation of his agent's bill of costs (see p. 6, *ante*), and though agency business includes many transactions it may be taxed in one bill, generally on the terms of the applicant paying a sum of money into Court (*Billing v. Coppock*, 1 Exch. 14; *Smith v. Dimes*, 4 Ex. 32; *Re Smith*, 9 Beav. 342; *Jones v. Roberts*, 8 Sim. 397; *Harvey v. Mayhew*, 2 W. R. 128); and see *Re Bowen*, 41 L. J. Ch. 327; 20 W. R. 395.

After the bill has been referred for taxation under this statute (see *Davis v. Earl of Dysart*, 21 Beav. 124; 8 De G. M. & G. 33), no alteration can be made in it (*Haye v. Trotter*, 5 B. & Ad. 1106; *Re Wells*, 8 Beav. 416; *Re Catlin*, 18 Beav. 519), except by consent, or on a special application for leave to amend (*Re Andrews*, 17 Beav. 510, 514). Thus leave was given to amend by inserting omitted items, and increasing undercharges (see, however, *Re Tilleard*, 32 Beav. 476); but not to decrease overcharges (*Re Whalley*, 20 Beav. 576), nor to withdraw items improperly inserted (*Re Carven*, 8 Beav. 436; *Re Jones*, *ibid.* 479; *Re Blakesly*, 32 Beav. 379).

So a solicitor, whose bill was referred for taxation, was not allowed to have a previous bill against the same client, which he had retained, included in the taxation, for the purpose of saving costs of taxation (*Re Gregg*, 30 Beav. 259); but it has been doubted whether under an order for a general taxation, a solicitor can have items included which have been taxed and paid under a previous particular taxation (*Tarbock v. Tarbock*, 4 Beav. 149; and see *Ex parte Quilter*, 4 De G. & Sm. 183).

As soon as a solicitor has delivered his bill he is bound by it, and cannot substitute a second bill for it, even before notice of an order to tax is served on him; and unless there are very special reasons he must abide by the bill as delivered (*Re Heather*, 5 Ch. 694; 39 L. J. Ch. 781; 18 W. R. 1079; *In re Holroyde*, 29 W. R. 599; 43 L. T. 722; W. N. (1881), 6; *Re Chambers*, 34 Beav. 177; 13 W. R. 375).

The rule as to one-sixth is imperative in an ordinary reference to taxation (*Re Woollett*, 12 M. & W. 504; and see *Higgins v. Woolcott*, 5 B. & C. 760). Where the reference is special, or the master has certified specially, the statute makes an exception, and the costs of the reference are in the discretion of the judge.

Where in a suit against a solicitor for a general account, more than one-sixth was

taken off in the suit outside the taxation, but less than one-sixth on the taxation, the Court allowed the solicitor the costs of the taxation (*May v. Biggenden*, 24 Beav. 207). Where taxation was directed pending an action for the costs, and more than one-sixth was taken off, the Court ordered the costs of the reference to be paid by the solicitor, and the costs of the action by the client (*Re Hair*, 11 Beav. 96). See *contra*, before the Act, *Toghill v. Grant*, 6 Beav. 348. As to the costs of taxation of several bills, see *Beardsall v. Cheetham*, 31 L. T. (O. S.) 115; *Ex parte Barrett*, 3 D. & Ch. 731; *Ex parte Pullen*, W. N. (1883), 20.

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When more than one-sixth is taken off the bill of an insolvent or bankrupt solicitor, see as to the costs of the taxation *Re Peers*, 21 Beav. 520; *Re Peile*, 25 Beav. 561; *Re Cole*, 2 Sim. & St. 463; *Whalley v. Williamson*, 6 Man. & Gr. 269; *Re Bartrum*, 12 W. R. 699.

Where
solicitor is
bankrupt.

Where the master disallows some items and adds others, the bill is to be considered as increased by the items allowed and then reduced by the sums disallowed (*Re Hartley*, 2 Jur. N. S. 448; and see *Reg. v. Eastwood*, 6 Ell. & Bl. 285; *Re Clark*, 13 Beav. 173; 1 De G. M. & G. 43; and in bankruptcy, *Ex parte Watts*, 2 M. & A. 621; *Ex parte Christy*, 3 M. & A. 88); and as to taking into account items struck out as chargeable against another person, see *Re Clark*, and the taxing-master's certificate in that case, 13 Beav. 181-3; *Re Colquhoun*, 1 Sm. & G. app. 1; *S. C.* on appeal, 5 De G. M. & G. 35, from which it seems that such items must be reckoned in as against the solicitor.

Calculation
of one-sixth.

Where a bill was ordered to be taxed (questions as to liability being reserved) and less than a sixth was struck off, it was held that, whatever might be the result of the question reserved, the client must pay the costs of taxation (*Re Shaw*, 20 L. J. Q. B. 280).

Where client
pays costs.

As to the costs where the solicitor delivers a bill but offers to take less, see *Re Carthew*, 27 Ch. D. 485; *Re Paull*, *ibid.*; 32 W. R. 876, 901.

(u) Orders under this section for delivery of a solicitor's bill or papers may be enforced by writ of attachment or by committal; see R. S. C. (1883), Ord. XI. r. 5, Ord. XLIII. rr. 7, 24, *infra*; *Ex parte Alcock*, 1 C. P. D. 68; 24 W. R. 320; 33 L. T. 523; *Ex parte Belton*, 25 Beav. 368.

Delivery of
bill, how
enforced.

When the order was disobeyed, and the solicitor swore that he had no papers from which he could make out his bill, the Court refused to commit him for non-delivery (*Re Ker*, 12 Beav. 390). No action lay at law for disobedience to the order (*Dent v. Basham*, 9 Exch. 469). A solicitor had further time given him to make out his bill on payment of the costs of his motion (*Re Dendy*, 21 Beav. 565).

The Court will, before the completion of a taxation, order the delivery up of papers by a solicitor to his client, either upon payment into Court of the amount claimed, or on security being given for payment (*Re Jewitt*, 34 Beav. 22); or in case it appears from the solicitor's own account that a balance is due from him to his client (*Re Bevan and Whitting*, 33 Beav. 439, where the solicitor had been discharged; see 6 Eq. 328).

Delivery of
papers to
client.

It is discretionary with the Court whether or not to insert a direction for delivery up of papers in the common order for taxation; see *Ex parte Jarman*, 4 Ch. D. 835; 46 L. J. Ch. 485, where the rule is laid down by Jessel, M. R., following *Re Byrch*, 8 Beav. 124, in preference to *Re Teague*, 11 Beav. 318. See also *Re Pender*, 8 Beav. 299.

As to the solicitor's right to enforce his lien for costs by retaining papers, see *Re Mosely*, 15 W. R. 975, and *post*, p. 17. If the solicitor discharges himself, *pendente lite*, an order may be obtained for delivery up of papers to the new solicitor, without prejudice to the lien, the new solicitor undertaking to return them within a limited time after the conclusion of the action (*Robins v. Goldingham*, 13 Eq. 440; *Heslop v. Metcalfe*, 3 M. & C. 183; *Wilson v. Emmet*, 19 Beav. 233; *Re Williams*, 28 Beav. 465); and see *Cane v. Martin*, 2 Beav. 584.

(v) The Legal Practitioners' Act, 1875, 38 & 39 Vict. c. 79, repealed the proviso at the end of s. 37 of the Solicitors Act, 1843, and substituted for it the more comprehensive provision given in the text.

XXXVIII. And be it enacted, that where any person (*w*) not the party chargeable with any such bill within the meaning of the provisions hereinbefore contained, shall be liable to pay or shall have paid such bill, either to the attorney or solicitor, his executor, administrator, or assignee, or to the party chargeable with such bill as aforesaid; it shall be lawful for such person, his executor, administrator, or assignee, to make such application (*x*) for a reference for the taxation and settlement of such bill as the party chargeable therewith might

Bills may be
taxed upon
the applica-
tion of third
parties liable
to pay.

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himself make, and the same reference and order shall be made thereupon, and the same course pursued in all respects, as if such application was made by the party so chargeable with such bill as aforesaid: Provided always, that in case such application is made when, under the provisions herein contained, a reference is not authorized to be made except under special circumstances (*y*), it shall be lawful for the Court or judge to whom such application shall be made to take into consideration any additional special circumstances applicable to the person making such application, although such circumstances might not be applicable to the party so chargeable with the said bill as aforesaid if he was the party making the application (*z*).

Who entitled to apply under this section.

(*w*) Under this section, the bill of a mortgagee's solicitor for business done in regard to the mortgaged estate, may be taxed by the mortgagor (*Re Carew*, 8 Beav. 150; *Re Lees*, 5 Beav. 410; *Re Wells*, 8 Beav. 416), or by subsequent incumbrancers (*Re Taylor*, 18 Beav. 165; *Re Jessop*, 32 Beav. 406). The official manager of a wound-up company obtained an order under this section (*Re Vardy*, 20 L. J. Ch. 325); as to a trustee in bankruptcy, see *Re Elmslie*, 9 Eq. 72.

Persons who undertake to pay.

A person who has undertaken to pay the costs of another as between party and party is not entitled to an order for taxation under this section (*Re Grundy, Kershaw & Co.* (Jessel, M. R.), 17 Ch. D. 108; 50 L. J. Ch. 467; 29 W. R. 581; *Re Cowdell*, 52 L. J. Ch. 246; 31 W. R. 335; W. N. (1883), 18); *secus*, where the undertaking is to pay the costs as between solicitor and client (*Vincent v. Venner*, 1 My. & Ke. 212; *Re Hartley*, 30 Beav. 620, as explained in *Re Grundy, Kershaw & Co.*; *Wombwell v. Corporation of Barnsley*, 36 L. T. 708). As to an agreement to pay a lump sum for costs, see *Re Heritage*, 3 Q. B. D. 726; 47 L. J. Q. B. 509; 26 W. R. 633; 38 L. T. 509; *Re Morris*, 27 L. T. 554; *Re Griffith*, 32 W. R. 350. A mere volunteer, under no previous liability, who undertakes to pay a solicitor's bill, cannot have it taxed (*Re Becke*, 5 Beav. 406); nor can a person who is only remotely interested in the payment of the bill (*Re Barber*, 14 M. & W. 720).

Volunteer.

Not unless the client could have taxed.

Taxation on what principle.

Taxation can only be applied for under this and the next section in cases where the immediate client might have applied, *e. g.*, after payment, special circumstances must be shown (*Re Stephen*, 2 Phil. 562; *Re Dickson*, 8 De G. M. & G. 655). The taxation at the instance of the third party must be as between the solicitor and the immediate client, not as between the solicitor and the third party; see *Re Wells*, 8 Beav. 416; *Re Jones*, *ibid.* 479; *Re Tyson*, 9 Beav. 117; *Re Barrow*, 17 Beav. 547; *Re Taylor*, 18 Beav. 165, where the third party (a mortgagor) was held entitled to the benefit of a private arrangement between the mortgagee and his solicitor, but see *Gordon v. Dalzell*, 15 Beav. 351; *Raymond v. Lakeman*, 34 Beav. 584; *Re Newman*, 2 Ch. 707, where it was held that an agreement between the immediate client and the third party paying was not to affect the mode of taxation.

If the bill has been paid without fraud or pressure by the immediate client (*Re Neate*, 10 Beav. 181; *Re Rees*, 12 Beav. 256; *Re Dickson*, 8 De G. M. & G. 655), or has been paid twelve months (*post*, p. 14), or if there is an agreement excluding taxation, the third party cannot tax it, under this section; but if an excessive amount has been paid, he must bring an action against the client who paid the bill, to reduce his liability; see *Re Downes*, 5 Beav. 425; *Re Massey*, 34 Beav. 463; 11 Jur. N. S. 594; 13 W. R. 797 (where *Re Jessop*, 32 Beav. 406; *Re Baker*, 32 Beav. 526; and *Re Abbott*, 4 L. T. 576, were not followed); *Re Press and Inskip*, 35 Beav. 34; *Re Forsyth*, 34 Beav. 140; 2 De G. J. & S. 509; 13 W. R. 307, 932; 11 Jur. N. S. 213; *Re Gold*, 19 W. R. 343; 24 L. T. 9.

Order, when of course.

(*x*) The proceedings under this section may be by order of course (*Re Straford*, 16 Beav. 27; comp. *Re Moss*, 17 Beav. 340; *Re Bracey*, 8 Beav. 338; *Re Bignold*, 9 Beav. 269) in cases where a like proceeding might have been adopted by the immediate client, see note (*n*), p. 6; *Re Hartley*, 30 Beav. 620.

(*y*) See *ante*, note (*n*), and *post*, note (*g*), p. 12.

(*z*) See *Re Vardy*, 20 L. J. Ch. 325, as to the force of these words.

Court may direct taxation of bills chargeable on executors, &c.

XXXIX. And be it enacted, that it shall be lawful in any case in which a trustee, executor, or administrator has become chargeable with any such bill as aforesaid, for the Lord High Chancellor or the Master of the Rolls, if in his discretion he shall think fit (*a*) upon the application of a party interested (*b*) in the property out of which such

trustee (b), executor, or administrator may have paid or be entitled to pay such bill, to refer the same, and such attorney's or solicitor's, or executor's, administrator's, or assignee's demand thereupon, to be taxed and settled by the proper officer of the High Court of Chancery, with such directions and subject to such conditions as such judge shall think fit, and to make such order as such judge shall think fit for the payment of what may be found due, and of the costs of such reference to or by such attorney, or solicitor, or the executor, administrator, or assignee of such attorney or solicitor, by or to the party making such application, having regard to the provisions herein contained relative to applications for the like purpose by the party chargeable with such bill, so far as the same shall be applicable to such cases, and in exercising such discretion as aforesaid, the said judge may take into consideration the extent and nature of the interest of the party making the application: Provided always, that where any money shall be so directed to be paid by such attorney or solicitor, or the executor, administrator, or assignee of such attorney or solicitor, it shall be lawful for such judge, if he should think fit, to order the same, or any part thereof, to be paid to such trustee, executor, or administrator so chargeable with such bill, instead of being paid to the party making such application; and when the party making such application shall pay any money to such attorney or solicitor, or executor, administrator, or assignee of such attorney or solicitor, in respect of such bill, he shall have the same right to be paid by such trustee, executor, or administrator so chargeable with such bill as such attorney or solicitor, or executor, administrator, or assignee of such attorney or solicitor, had.

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(a) For form of order, see *Re Dawson*, 28 Beav. 605. The proceedings under this section must be by special application (*Re Straford*, 16 Beav. 27); i. e., by summons in chambers (R. S. C. 1883, Ord. LV. Pt. I. r. 2 (15)).

Application by *cestui que trust*.

The taxation under this section is as between the solicitor and the immediate client; but a solicitor cannot charge against a trust estate anything not necessary for the administration thereof, although expressly directed by the trustee; for payment of such charges he must look to the trustee personally (*Re Brown*, 4 Eq. 464; 15 W. R. 1030; 16 L. T. 729).

Taxation, on what principle.

Taxation of a bill may be ordered under this and the last section after payment or security given for the amount by the trustee or executor (*Re Dickson*, 8 De G. M. & G. 655), but in such case the *cestui que trust* seeking to tax must show overcharges amounting to fraud (*ibid.*). Lord Romilly, M. R., seems to have held a different opinion, see *Re Drake*, 22 Beav. 438; *Re Blackmore*, 13 Beav. 154; *Re Dawson*, 28 Beav. 605; and see note (w), p. 10, on taxation by third party.

After payment. Overcharges.

For form of order where the trustee was dead, see *Re Hallett*, 21 Beav. 250, and *Allen v. Jarvis*, 4 Ch. 616, where the trustee was also solicitor, and had retained his bill.

Where trustee dead.

(b) A bankrupt who has obtained his discharge and become entitled to the surplus of his estate cannot obtain taxation of a bill of costs paid by the trustee in the bankruptcy; he is not a "party interested," and the trustee in bankruptcy is not a "trustee" within the meaning of the Act (*Re Leadbitter*, 10 Ch. D. 388; 26 W. R. 853; 39 L. T. 12).

"Party interested."

XL. And be it enacted, that for the purpose of any such reference upon the application (c) of the person not being the party chargeable within the meaning of the provisions of this Act as aforesaid, or of a party interested as aforesaid, it shall be lawful for such Court or

Copy of bill to be delivered to person making application for reference for taxation.

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No re-
taxation.

Delivery of
bill to *cestui*
que' trust.

Taxation of
bill after
payment.

Security is
equivalent to
payment.
Retainer by
solicitor is
not.

Form of
order.

Mode of
application.

"Special cir-
cumstances."

(1) Pressure
accompanied
by some
overcharge.

Refusal to
deliver up
papers.

Threats
to enforce
securities.

judge to order any such attorney or solicitor, or the executor, administrator, or assignee of any such attorney or solicitor, to deliver to the party making such application a copy of such bill, upon payment of the costs of such copy: Provided always, that no bill which shall have been previously taxed and settled shall be again referred unless, under special circumstances, the Court or judge to whom such application is made shall think fit to direct a re-taxation thereof.

(c) For form of order under this section, see Seton, 622; and see *Re Blackmore*, 13 Beav. 154, 161.

XLI. And be it enacted, that the payment (d) of any such bill as aforesaid (e) shall in no case preclude the Court or judge to whom application shall be made from referring such bill for taxation (f) if the special circumstances of the case (g) shall in the opinion of such Court or judge appear to require the same, upon such terms and conditions and subject to such directions as to such Court or judge shall seem right, provided the application for such reference be made within twelve calendar months after payment (h).

(d) The giving of security is for the purpose of this section equivalent to payment (*Ex parte Turner*, 5 De G. M. & G. 540; *Sayer v. Wagstaff*, 5 Beav. 415; 13 L. J. Ch. 161; 14 L. J. Ch. 116; *Re Harper*, 10 Beav. 284; *Re Currie*, 9 Beav. 602; but see *Re Drake*, 22 Beav. 438; *Re Harries*, 13 M. & W. 3); but retainer by the solicitor without delivery of a bill or settlement of accounts is not (*Re Bignold*, 9 Beav. 270; *Re Steele*, 20 L. J. Ch. 562; *Re Street*, 10 Eq. 165; *Re Angove*, 46 L. T. 280; *Re Cawley and Whatley*, 18 W. R. 1125; *Re Brady*, 15 W. R. 632). See, however, *Ex parte Hemming*, 28 L. T. (O. S.) 144; *Re Gregg*, 30 Beav. 259; *Ex parte Shaekell*, 2 De G. M. & G. 842; *Allen v. Jarvis*, 4 Ch. 616.

Payment on account is not such payment as to require a special application where the application is made within twelve months from the delivery of the bill (*Re Woodard*, 18 W. R. 37).

(e) These words apply to all bills mentioned in the previous part of the Act, including an unsigned bill (*Re Sutton*, 11 Q. B. D. 377), and bills sought to be taxed by third parties (*Re Downes*, 5 Beav. 425).

(f) For form of order for taxation after payment, see Seton, 618.

The application was formerly by petition served on the solicitor, and it was held that the petition should state when payment was made (*Re Mash*, 15 Beav. 83). It is now made by summons in chambers (R. S. C. 1883, Ord. LV. Pt. I. r. 2 (15)). As to the effect of delay in making the application, see "laches and acquiescence," *infra*, note (h).

(g) A great variety of cases have been decided as to the meaning of the words "special circumstances." They have generally been held to signify either "pressure, accompanied by some overcharge," or "overcharges or errors so gross as to amount to fraud." It will be convenient to consider each ground under a separate head.

(1) Cases of "pressure accompanied by some overcharge" generally occur where a client has been practically obliged to pay a bill of costs *without having an opportunity of inspecting and examining it*, either because—

(a) The solicitor having deeds in his possession which he knew it was of importance to the client to obtain without delay, refused to deliver them up unless his bill was first paid (*Re Pugh*, 32 Beav. 173; 1 De G. J. & S. 673; 11 W. R. 762, and cases there cited; *Re Elmslie*, 12 Beav. 538; *Re Alcock*, 2 Coll. 92; *Re Lett*, 31 Beav. 488; 32 L. J. Ch. 100; 11 W. R. 15; 7 L. T. 303, where the solicitor delivered two bills, one on a higher the other on a lower scale, and the client having paid the higher bill under pressure, the delivery of the lower one was held no defence to the order for taxation; *Re Phillpotts*, 18 Beav. 84; *Re Newman*, 2 Ch. 707, where the defence was set up that the client had himself created the difficulty which made the deeds necessary to him);

(b) Or because the solicitor having securities of the client in his possession threatened to enforce them unless the bill was paid at once (*Re Rance*, 22 Beav. 177; *Re Kinneir*, 7 W. R. 175; *Re Foster*, 2 De G. F. & J. 105);

(γ) Or, generally, where the solicitor has taken undue advantage of the exigencies of the client's position (*Re Stephen*, 2 Ph. 562; *Nokes v. Warton*, 5 Beav. 448; see *Re Wyche*, 11 Beav. 209).

If the client has had an opportunity of examining and taxing the bill, these cases do not apply, and even a week was held sufficient opportunity in *Re Welchman*, 11 Beav. 319 (comp. *Re Mash*, 15 Beav. 83); a fortnight in *Re Neate*, 10 Beav. 181; three weeks in *Re Neate*, *ibid.* 57; and see *Re Drew*, *ibid.* 368; *Re Currie*, 9 Beav. 602; *Nokes v. Warton*, 5 Beav. 448; *Re Boyle*, 5 De G. M. & G. 540; *Re Browne*, 1 De G. M. & G. 322, where it was said that the pressure must have been of such a kind as to have rendered it impossible or difficult to have had the costs taxed before payment and in the ordinary course; *Re Barrow*, 17 Beav. 547, where the M. R. said that the doctrine of pressure in cases of taxation after payment is not to be extended; and *Re Heritage*, *Ex parte Docker*, 3 Q. B. D. 726; 47 L. J. Q. B. 509; 26 W. R. 633; 38 L. T. 509.

In all such cases the Court will only direct taxation if there is at least a reasonable belief that if the bill be taxed, some of the charges will be disallowed (*Re Sladden*, 10 Beav. 488); therefore some items of overcharge ought to be pointed out (*Re Brady*, 15 W. R. 632); though not necessarily such as to amount to fraud (*Re Wells*, 8 Beav. 416; *Re Hubbard*, 15 Beav. 251; *Re Abbott*, 18 Beav. 393; *Re Towle*, 30 Beav. 170; *Re Newman*, 2 Ch. 707); and the absence of any affidavit or other proof as to items of overcharge will be a reason for dismissing the application (*Ex parte Barton*, 4 De G. M. & G. 108; 16 Beav. 585).

So the fact that the bill was paid under protest is only material if connected with circumstances of pressure or overcharge (*Re Neate*, 10 Beav. 181-183); and where a bill is paid under protest, the particular items objected to should, if possible, be pointed out (*Re Davie*, 8 W. R. 15); and see *Re Dearden*, 9 Ex. 210; *Re Bayley*, 18 Beav. 415.

Payment for the purpose of staying proceedings in an action is no bar to taxation, R. S. C. 1883, Ord. III. r. 7, *infra*.

(2) Where there is no pressure the Court will only order taxation after payment on proof of "overcharges amounting to fraud" (*Re Strother*, 3 K. & J. 518; *Horlock v. Smith*, 2 M. & Cr. 495; *Re Dickson*, 8 De G. M. & G. 655).

Some of the particular charges relied on must be pointed out (*Re Browne*, 1 De G. M. & G. 322, 333; *Re Foster*, 2 De G. F. & J. 105; *Dunt v. Dunt*, 9 Beav. 146; *Re Towle*, 30 Beav. 170); but not all (*Re Davson*, 28 Beav. 605).

Trifling items will be insufficient (*Re Drake*, 8 Beav. 123; *Re Thompson*, *ibid.* 227; *Re Bayley*, 18 Beav. 415).

And generally the onus is on the applicant to show that the charges under the special circumstances were fraudulent; see *Re Walsh*, 12 Beav. 490; *Re Towle*, 30 Beav. 170, where charges for eight attendances in one day were held not sufficient to open a paid bill; *Re Boyle*, 5 De G. M. & G. 540; 24 L. J. Ch. 71, where 240 letters were written in one year; and *Re Harle*, 17 W. R. 21.

But where the solicitor had before action offered to take 40*l.* in lieu of a bill of 68*l.*, it was held a case for reference to taxation after twelve months (*Hughes v. Murray*, 9 L. T. 93); and in *Re Loughborough*, 23 Beav. 439, the solicitor kept back his bill, and fraud was presumed against him.

And when a considerable portion of the bill is for business which in the exercise of a fair and honest discretion ought never to have been done, the Court directs taxation (*Massie v. Drake*, 4 Beav. 433; *Re Lees*, 5 Beav. 410; *Re Barrow*, 17 Beav. 547; *Re Dickson*, 8 De G. M. & G. 655; *Horlock v. Smith*, 2 M. & Cr. 495; *Waters v. Taylor*, *ibid.* 526; *Re Brady*, 15 W. R. 632); and see *Cook v. Earl of Rosslyn*, 8 Jur. N. S. 875; *Re Hook*, 3 Giff. 372.

Where the overcharges evidence actual fraud, very slight circumstances will induce the Court to re-open the taxation (*Re Harding*, 10 Beav. 250; *Nokes v. Warton*, 5 Beav. 448). So where the solicitor has also acted as a trustee (*Todd v. Wilson*, 15 L. J. Ch. 450; but see *Stanes v. Parker*, 10 Jur. 603).

See further, with reference to great overcharges, in addition to the cases cited above, *Ex parte Andrews*, 13 L. J. Ch. 222; *Ex parte Hemming*, 28 L. T. (O. S.) 144; *Sayer v. Wagstaff*, 5 Beav. 415; *Re Bennett*, 8 Beav. 467; *Re Sladden*, 10 Beav. 488; *Newton v. Boodle*, 4 C. B. 359; *Re Dearden*, 9 Ex. 210.

Where on a petition being presented for taxation of a paid bill, the solicitor offered to repay items objected to, and the petitioner nevertheless brought on his petition for hearing, the Court ordered taxation, treating those items as omitted (*Re Catlin*, 23 Beav. 412; but see *Ex parte Hemming*).

See further, as to special circumstances, *Re Whicher*, 13 M. & W. 549; *Re Wilton*, 13 L. J. Q. B. 17, and note (r), *ante*, p. 7.

(h) As to the mode of calculating the time, see *Blunt v. Heslop*, 8 Ad. & Ell. 577, cited in note (e), p. 4; and in cases where security has been given, see cases cited in note (d), p. 12. When (under the former practice) the application was by petition,

6 & 7 Vict. c. 73, ss. 37-43

Generally taking an advantage. Exception where client has had opportunity to examine bill.

Some overcharge should be proved.

Payment under protest.

Payment in stay of proceedings.

(2) Fraudulent overcharge (without pressure).

Onus is on the client.

Circumstances evidencing fraud.

Fraudulent items.

Actual fraud.

Gross overcharges.

Twelve months after payment,

6 & 7 Vict.
c. 73, ss. 37-43

strictly
calculated,
an absolute
bar to taxa-
tion.

Laches and
acquiescence.

Where time
does not run
against client.

Re-opening
bills of costs
by action.

Power for
taxing officer
to request
officers of
other Courts
to tax por-
tions of the
bill.

Applications
for taxing
bill of costs,
how to be
made.

Certificate of
taxation to be
final.

the petition was considered as presented on the day of answering it (*Sayer v. Wagstaff*, 5 Beav. 415).

Where a petition was presented within twelve months, but no order was made, the Court refused to allow it to stand over for amendment, twelve months having in the meantime expired (*Barwell v. Brooks*, 7 Beav. 345).

The twelve months are an absolute bar to the application if made under the Act (*Re Harper*, 10 Beav. 284; *Re Downes*, 5 Beav. 425; *Binns v. Hey*, 1 D. & L. 661; 13 L. J. Q. B. 28; *Ex parte Hemming*, 28 L. T. (O. S.) 144; *Ex parte Pemberton*, 2 De G. M. & G. 960); unless, perhaps, actual fraud be shown (*ibid. per Lord Cranworth*); and the rule is the same in the case of an application by a third party or a *cestui que trust*, see *ante*, pp. 9, 10.

The lapse of less than the twelve months may be an objection to granting the application. (*Re Bayley*, 18 Beav. 415; *Re Pugh*, 32 Beav. 173; on appeal, 11 W. R. 762; *Re Browne*, 1 De G. M. & G. 322; *Re Whicheo*, 13 M. & W. 549.)

Where a client having fresh advice kept the bill two months in his possession and then paid it, such delay was held by Vice-Chancellor Wood to be fatal to an application for taxation on the ground of overcharge; but the Lords Justices, being of opinion that the bill was originally paid under circumstances amounting to pressure, reversed this decision, and ordered taxation of the bill (*Re Foster*, 2 De G. F. & J. 105; 8 W. R. 620; and see note (r), p. 7, *ante*).

But the Court may order *delivery* of the bill, though more than twelve months have elapsed from its payment, the solicitor having on payment undertaken to deliver the bills, but neglected to do so (*Re Foljambe*, 9 Beav. 402; *Re Bailey*, 34 Beav. 392; *Rs Fisher*, 18 Beav. 183).

As to re-opening bills of costs by action, see *Barwell v. Brooks*, 8 Beav. 121; *Blagrove v. Routh*, 2 K. & J. 509; 8 De G. M. & G. 620; *Foley v. Smith*, 12 Beav. 154. In *Turner v. Hand*, 27 Beav. 561, a solicitor delivered a general estimate of costs due to him, without specifying the particulars, and the client signed a memorandum agreeing to the statement, and requesting a third person, to whom he had given his acceptances, to pay it; and a bill filed by the client three years afterwards for delivery and taxation was dismissed with costs. See, also, *Todd v. Wilson*, 15 L. J. Ch. 450; *Stanes v. Parker*, 10 Jur. 603; *Watson v. Rodwell*, 7 Ch. D. 625; on appeal, 11 Ch. D. 150; 48 L. J. Ch. 209; 27 W. R. 265; 39 L. T. 614, where paid bills were set aside after a lapse of two years.

XLII. And be it enacted, that in all cases in which such bill shall have been referred to be taxed and settled, the officer to whom such reference is made shall be at liberty to request the proper officer of any other Court having such an officer to assist him in taxing and settling any part of such bill, and such officer so requested shall thereupon proceed to tax and settle the same, and shall have the same powers and may receive the same fees in respect thereof as upon a reference to him by the Court of which he is such officer, and shall return the same, with his opinion thereon, to the officer who shall have so requested him to tax and settle the same; and the officer to whom such reference is made shall not be paid any fee for that portion of the bill which shall have been so taxed and settled by the officer of such other Court at his request (i).

(i) See R. S. C. 1883, Ord. LXV. *infra*, and notes, as to the taxing masters.

XLIII. And be it enacted, that all applications (k) made under this Act to refer any such bill as aforesaid to be taxed and settled, and for the delivery of such bill, and for the delivering up of deeds, documents, and papers shall be made in the matter of such attorney or solicitor (l) and that upon the taxation and settlement of any such bill the certificate of the officer by whom such bill shall be taxed shall (unless set aside or altered by order, decree, or rule of Court) be final and conclusive as to the amount thereof, and payment of the amount

certified to be due and directed to be paid may be enforced (*m*) according to the course of the Court in which such reference shall be made; and in case such reference shall be made in any Court of common law, it shall be lawful for such Court or any judge thereof to order judgment to be entered up for such amount, with costs, unless the retainer shall be disputed, or to make such other order thereon as such Court or judge shall deem proper.

6 & 7 Vict.
c. 73, ss. 37-43

Judgment
may be
entered.

(*k*) By R. S. C. 1883, Ord. LV. Pt. I. r. 2 (15), all special applications for taxation and delivery of bills and delivery of papers under the Act must be made by summons, and this applies, though the client also asks that a sum of money improperly retained by the solicitor may be refunded (*Re May*, 34 Beav. 132; 34 L. J. Ch. 286; 13 W. R. 377; *Re Edmunds*, 19 W. R. 104).

Special appli-
cation for
taxation.

(*l*) As to the title of the application, see *Re Vallance*, 8 Scott, N. R. 232; *Re Hair*, *ibid.* 231; *Re Walton*, 4 K. & J. 78. It need not be headed in the matter of the Act (*ibid.*). It must state the time of payment, if presented after payment (*Re Mash*, 15 Beav. 83).

Title and form
of application.

(*m*) An action brought after taxation has been ordered is a contempt (*Re Campbell*, 3 De G. M. & G. 585). As to enforcing the order, see R. S. C. 1883, Ord. XLII. *infra*; Daniell, p. 1262.

Action after
taxation is a
contempt.

SOLICITORS ACT, 1860.

23 & 24 VICT., CAP. 127, ss. 27—29.

23 & 24 Vict.
c. 127, ss. 27-29

*An Act to amend the Laws relating to Attorneys, Solicitors, Proctors,
and Certificated Conveyancers.* [28th August, 1860.]

XXVII. Whenever a decree or order is made by the Court of Chancery in which the payment of any costs previously taxed, either in the suit or proceeding in which such decree or order is made, or in any other suit or proceeding is ordered, and whether the certificate of such previous taxation have been made before the passing of this Act, or be made thereafter, it shall be lawful for the Court or judge making such decree or order to order and direct the amount of such costs, as taxed, including the costs of taxation as ascertained by the said certificate, to be paid with interest (*a*) thereon at the rate of 4l. per cent. per annum, from the date of the certificate, the amount of such interest to be verified by affidavit, and to be payable and recoverable out of the same fund or in the same manner as the amount of such costs.

Interest on
costs.

The Act is now called "The Solicitors Act, 1860;" see the Solicitors Act, 1877, 40 & 41 Vict. c. 25, s. 1. Short title.

(*a*) It seems that this section only enables the solicitor, and not a party to the suit, to claim interest (*Jenner v. Morris*, 11 W. R. 943). Orders were made under the Act in cases where payment of costs had been unavoidably delayed; see *Carter v. Carter*, 2 N. R. 512; 8 L. T. 692; *Fox v. Charlton*, 6 N. R. 352; *Re Campbell*, 19 W. R. 427. Where there were mortgages on the estate charged with the costs the Court declined to make any order until there had been an inquiry as to incumbrances (*Twynam v. Porter*, W. N. (1872), 111). In directing payment of a mort- Interest on

Only solicitor
can apply.

Interest on

23 & 24 Vict.
c.127,ss.27-29
disburse-
ments.

g'see's principal, interest and costs out of the purchase-money of the mortgaged property, the Court directed interest to be paid on the costs from the date of the certificate (*Whitfield v. Roberts*, 9 W. R. 844). By the Attorneys and Solicitors Act, 1870, 33 & 34 Vict. c. 28, s. 17, *infra*, interest may be allowed on taxation in respect of disbursements and advances; and see the Solicitors' Remuneration Act, 1881, 44 & 45 Vict. c. 44, s. 5.

Power for
Court or
judge to
charge pro-
perty reco-
vered or pre-
served with
payment of
costs.

XXVIII. In every case in which an attorney or solicitor (*b*) shall be employed (*c*) to prosecute or defend any suit, matter, or proceeding in any Court of justice, it shall be lawful for the Court or judge (*d*) before whom any such suit, matter, or proceeding has been heard, or shall be depending, to declare such attorney or solicitor entitled to a charge (*e*) upon the property recovered or preserved (*f*) and upon such declaration being made, such attorney or solicitor shall have a charge upon and against and a right to payment out of the property, of whatsoever nature, tenure, or kind the same may be, which shall have been recovered or preserved through the instrumentality of any such attorney or solicitor, for the taxed costs, charges, and expenses of or in reference to such suit, matter, or proceeding; and it shall be lawful for such Court or judge to make such order or orders for taxation of and for raising and payment of such costs, charges, and expenses out of the said property as to such Court or judge shall appear just and proper; and all conveyances and acts done to defeat, or which shall operate to defeat, such charge or right, shall, unless made to a *bond fide* purchaser for value without notice, be absolutely void and of no effect as against such charge or right (*g*): Provided always, that no such order shall be made by any such Court or judge in any case in which the right to recover payment of such costs, charges, and expenses is barred by any Statute of Limitations (*h*).

Act to be
construed
liberally.

The Act is to be construed liberally (*Scholefield v. Lockwood*, 7 Eq. 83; *Berrie v. Howitt*, 9 Eq. 1; 39 L. J. Ch. 119; *Baile v. Baile*, 13 Eq. 497).

Town agent.

(*b*) The town agent of a country solicitor may be declared entitled to a charge for an unascertained balance due to him from the country solicitor (*Tardrew v. Howell*, 3 Giff. 381; 7 Jur. N. S. 1120; 10 W. R. 32). Attorneys and solicitors are now styled "solicitors of the Supreme Court" (Judicature Act, 1873, s. 87).

Personal
representative
of solicitor.

The charge may be declared in favour of the legal personal representative of a solicitor (*Baile v. Baile*).

Employment
by infant;

(*c*) An infant's property can be charged under the Act; but where the property recovered or preserved consists of a fund, no part of it will be actually paid to the solicitor till the infant attains twenty-one, and has an opportunity of disputing the charge (*Greer v. Young* (C. A.), 24 Ch. D. 545). See further as to charging the property of infants, *Baile v. Baile*; *Bonser v. Bradshaw*, 30 L. J. Ch. 159; 9 W. R. 229; *S. C.* on appeal, 10 W. R. 481; *S. C.* on further hearing after the infant had attained twenty-one, 4 Giff. 260; 9 Jur. N. S. 1048. An infant's costs can be made a charge in an action (*Pritchard v. Roberts*, 17 Eq. 222). A married woman's property, though subject to a restraint on anticipation, may be charged (*Re Keane, Lumley v. Desborough*, 12 Eq. 115).

by married
woman.

Order, where
to be obtained.

(*d*) The order declaring the charge must be made in that branch of the Court to which the suit is attached, and may be made though the suit has come to an end (*Heinrich v. Sutton*, 6 Ch. 865; *Jones v. Frost*, 7 Ch. 773). It must be made by the judge who tried the case (*Higgs v. Schrader*, 3 C. P. D. 252; 47 L. J. C. P. 426; 26 W. R. 831; *Porter v. West*, 50 L. J. Ch. 231; W. N. (1880), 195; 29 W. R. 236; 43 L. T. 569); and where the action, though intitled in the Chancery Division, is tried before a judge and jury, the application must be made to the judge who tried the action and not to the Chancery judge (*Owen v. Henshaw*, 7 Ch. D. 385; 47 L. J. Ch. 267; 26 W. R. 188). Where the cause was tried in the Court of Common Pleas at Lancaster, the application for a charging order was rightly made to the Common Pleas Division (*Catlow v. Catlow*, 2 C. P. D. 362,

following *Wilson v. Hood*, 3 H. & C. 148; 33 L. J. Ex. 204). The Court in which the action was brought may make the order notwithstanding a decree for administration (*Wilson v. Hood*; *Catlow v. Catlow*).

The order may be made either on petition (*Brown v. Trotman*, 12 Ch. D. 880; 48 L. J. Ch. 862; 41 L. T. 179; 28 W. R. 164) or on summons (*Clover v. Adams*, 6 Q. B. D. 622; *Hamer v. Giles*, *Giles v. Hamer* (M. R.), 11 Ch. D. 942; 48 L. J. Ch. 508; 41 L. T. 270; 27 W. R. 834); and the other parties to the action should not be served (*Brown v. Trotman*). The petition or summons must be intitled in the action, but not necessarily in the matter of the Act or of the solicitor (*Hamer v. Giles*, *Giles v. Hamer*). A solicitor who has properly discharged himself may obtain an order (*Clover v. Adams*). As to the form of the order see *Seton*, p. 643; *Pilcher v. Arden*, 7 Ch. D. 318; 27 W. R. 273; and as to the time when an application may be made for raising the amount charged by a sale, see *Re Green*, 26 Ch. D. 16; *Jackson v. Smith*, W. N. (1884), 151. Where an order had been made charging a fund that had been paid into Court, and the solicitor took out a summons calling on the party to show cause why the fund should not be paid out to him, and the party evaded service of the summons, substituted service was allowed (*Hunt v. Austin*, 9 Q. B. D. 598). In making the order it is the duty of the Court to limit it to costs properly incurred (*Emden v. Carter*, 19 Ch. D. 311; 30 W. R. 17; 45 L. T. 328).

(s) As to solicitor's lien generally, see *Fisher*, 194, *seq.*; *Daniell*, 1975; *Morgan and Wurtzburg on Costs*, 551. The lien is of two kinds; (1) A general lien on all papers and documents of the client which may happen to be in the solicitor's hands in the way of business; this lien extends to all professional costs, but cannot be actively enforced. (2) A lien on a fund recovered in an action; this lien extends only to the costs of the particular suit under which the fund arises, but to this extent the solicitor may actively enforce it.

A solicitor who conducts a cause to its conclusion in the place of one who by arrangement with his client retires from conducting it, has priority for his costs in case of a deficiency of assets (*Cormack v. Beisley*, 3 De G. & J. 157; but see *Re Audley Hall Co.*, 6 Eq. 245, as to priorities of successive solicitors).

A solicitor who begins a cause, engages to continue to act till the end of it; and if he refuses to go through with it he has no lien and cannot even bring an action for his bill (*Cresswell v. Byron*, 14 Ves. 272; *Commerell v. Poynton*, 1 Swanst. 1). But see *Re Hall and Barker*, 9 Ch. D. 538, *ante*, p. 7.

If a solicitor discharges himself *pendente lite*, he must deliver up all necessary papers to the new solicitor without prejudice to the lien, the latter undertaking to return them on the conclusion of the action (*Robins v. Goldingham*, 13 Eq. 440; *Heslop v. Metcalfe*, 3 My. & Cr. 183; 7 L. J. Ch. 49); and see *Colegrave v. Manley*, T. & R. 400; *Wilson v. Emmett*, 19 Beav. 233; *Webster v. Le Hunt*, 9 W. R. 804; *Re H.*, 15 W. R. 168; *Cane v. Martin*, 2 Beav. 584. For the practice where no suit is pending see *Rawlinson v. Moss*, 7 Jur. N. S. 1053; 9 W. R. 733.

A solicitor who refuses or neglects to proceed is considered as having discharged himself (*Robins v. Goldingham*; *Hannaford v. Hannaford*, 19 W. R. 429; 24 L. T. 86); and see *Re Williams*, 28 Beav. 465; *Steele v. Scott*, 2 Hog. 141; and a dissolution of partnership is a discharge by the solicitors; see *Cholmondeley v. Clinton*, 19 Ves. 273; *Griffiths v. Griffiths*, 2 Ha. 587; 12 L. J. Ch. 397; *Scott v. Fleming*, 9 Jur. 1085; *Rawlinson v. Moss*. As to the effect of alterations in a firm of solicitors, see *Pelly v. Wathen*, 7 Ha. 351; 18 L. J. Ch. 285; 14 Jur. 9; *Re Forshaw*, 16 Sim. 121.

When a solicitor is discharged by his client *pendente lite*, he is not bound to give the latter any facilities for prosecuting the suit, and may to some extent embarrass him by retaining papers; see *Bozon v. Bolland*, 4 My. & Cr. 354; *Lord v. Wormleighton*, Jac. 580; *Griffiths v. Griffiths*, 2 Ha. 587; *Re Smith*, 9 W. R. 396; *Re Faithfull*, 6 Eq. 325; *Pilcher v. Arden*, *Re Brook*, 7 Ch. D. 318. But he cannot stop the progress of an administration suit or otherwise obstruct the course of the Court; see *Belaney v. Ffrench*, 8 Ch. 918; 43 L. J. Ch. 312; *Re Boughton*, *Boughton v. Boughton*, 23 Ch. D. 169; 31 W. R. 517; *Clifford v. Turrill*, 2 De G. & S. 1; *Bird v. Heath*, 6 Ha. 236; *Simmonds v. Great Eastern Rail. Co.*, 3 Ch. 797; 16 W. R. 1100. If he is discharged by a person who comes in *under but adversely to* the client, e.g. a trustee in bankruptcy, it is clear that he cannot refuse to deliver up all necessary documents (*Simmonds v. Great Eastern Rail. Co.*); and see *Re South Essex Co.*, 4 Ch. 215; *Ross v. Loughton*, 1 V. & B. 349; *Re Tolman and England*, *Ex parte Bramble*, 13 Ch. D. 885.

As to the lien of the solicitor of a company which is ordered to be wound up, see *Re South Essex Co.*; *Re Capital Fire Insurance Co.*, 24 Ch. D. 408, where *Belaney v. Ffrench* and *Boughton v. Boughton* are discussed.

The town agent has a lien on the client's papers for the amount due to him from the country solicitor, but only to the extent of the amount due to the latter from the client; and if the client pays the country solicitor without notice of the town agent's claim the lien is gone (*Ward v. Hopple*, 15 Ves. 297; *Ex parte Steele*, 16 Ves. 164; *Waller v. Holmes*, 1 J. & H. 239; *Featfield v. Barlow*, 8 Eq. 61; 38 L. J. Ch.

23 & 24 Vict. c. 127, ss. 27-29

Order may be made on petition; or summons, intitled in the action.

Form of order.

As to solicitor's lien generally; lien of two kinds:

1. On papers.
 2. On fund recovered.
- Priorities of solicitors.

Solicitor refusing to proceed.

Where solicitor discharges himself.

What is a discharge by the solicitor. Dissolution of partnership.

Where solicitor is discharged by client.

Winding-up.

Lien of town agent.

23 & 24 Vict. c.127, ss. 27-29 310; 20 L. T. 217; *Cockayne v. Harrison*, 15 Eq. 298; 42 L. J. Ch. 660; *Fyse v. Foster*, 32 L. T. 219; affirmed, 23 W. R. 413).

“Property recovered or preserved.” (f) As to the meaning of “property recovered or preserved,” see the remarks of Jessel, M. R., and Mellish, L. J., in *Foxon v. Gascoigne*, 9 Ch. 654; 43 L. J. Ch. 729; the section extends to a *chose in action* (*Birchall v. Pugin*, L. R. 10 C. P. 397). Property has been held to be recovered or preserved in the following cases: Where a *cestui que trust* obtained the appointment of a receiver in a suit against a trustee, though the trust was subsequently compromised (*Twynam v. Porter*, 11 Eq. 181; 40 L. J. Ch. 617; and see *Baile v. Baile*, 13 Eq. 497); where a mortgagee obtained a foreclosure decree (*Wilson v. Round*, 4 Giff. 416; 10 Jur. N. S. 34); where land was recovered in ejectment (*Wilson v. Hood*, 33 L. J. Ex. 204; 3 H. & C. 148; 10 Jur. N. S. 592); where the client was defendant in a foreclosure suit, the result of which was that the chance of foreclosure was lessened (*Scholefield v. Lockwood*, 7 Eq. 83); where a suit was successfully conducted against an incumbrancer, whose incumbrance, though valueless, was a cloud upon the title (*Jones v. Frost*, 7 Ch. 773); where judgment was recovered in an action of detinue, and the proceeds of the goods were subsequently paid into Court in an administration suit (*Catlow v. Catlow*, 2 C. P. D. 362; 25 W. R. 866); where the defendant paid money into Court in the action (*Clover v. Adams*, 6 Q. B. D. 622; *Emden v. Carte*, 19 Ch. D. 311; 45 L. T. 328; 30 W. R. 17; and see *Jackson v. Smith*, W. N. (1884), 151); where an order was made under the Declaration of Titles Act, 1862 (*Pritchard v. Roberts*, 17 Eq. 222); and see also *Smith v. Winter*, W. N. (1870), 34; 18 W. R. 447; *Re Keane*, *Lumley v. Desborough*, 12 Eq. 115; 40 L. J. Ch. 617; *Morris v. Francis*, cited 12 Sel. J. 718; *The Phillipine*, L. R. 1 A. & E. 309; 15 W. R. 462.

Where, however, a decree was made for administration and the appointment of a new trustee, and the decree was carried into chambers and the accounts brought in, but all further proceedings were then stopped, Lord Selborne, L. C., held that no property had been recovered or preserved (*Pinkerton v. Easton*, 16 Eq. 490; 42 L. J. Ch. 878; and see *Pierson v. Knutsford Estates Co.*, 13 Q. B. D. 666; 32 W. R. 451). An easement though preserved is not “property” within the section (*Foxon v. Gascoigne*, 9 Ch. 654; 43 L. J. Ch. 729). Where new trustees had been appointed on petition, and the costs, charges and expenses of all parties had been ordered to be paid, the Court refused to charge the property under the Act with the costs of the petition (*Re Viney*, W. N. (1868), 243; 18 L. T. 851). See also *Harrison v. Cornwall Rail. Co.*, 32 W. R. 748.

Charge extends to the whole of the property recovered. The solicitor is entitled under the Act to a charge upon the whole of the property he has recovered or preserved, and his right is not necessarily limited by the extent of his client's interest; his right, in fact, is that of a salvor (*Bulley v. Bulley* (C. A.), 8 Ch. D. 479; 26 W. R. 310, 638; *Bailey v. Birchall*, 2 H. & M. 371; 11 Jur. N. S. 57; *Porter v. West*, 50 L. J. Ch. 231; 29 W. R. 236; 43 L. T. 569; W. N. (1880), 195; *Greer v. Young* (C. A.), 24 Ch. D. 545; *Emden v. Carte* (C. A.), 19 Ch. D. 311; 30 W. R. 17; 45 L. T. 328; *Charlton v. Charlton*, W. N. (1883), 141; *Berrie v. Howitt*, 9 Eq. 1, is overruled. Where no order had been made for the payment of the costs out of the estate, Fry, J., held that the solicitors were only entitled to an order for a charge on the share of their client (*Lloyd v. Jones*, 27 W. R. 655; 40 L. T. 514). The section only applies to the costs of the suit in which the property has been recovered or preserved (*Ex parte Thompson*, 3 L. T. 317).

Priority of lien under the statute. (g) The solicitor's lien under this section has priority over all charges created by the client (*Haynes v. Cooper*, 33 Beav. 431; and see *Baile v. Baile*, 13 Eq. 497, 509; *Twynam v. Porter*, 11 Eq. 181; *The Heinrich*, L. R. 3 A. & E. 505); even though the client has assigned his interest with the knowledge of the solicitor (*Pilcher v. Arden*, 7 Ch. D. 313; 47 L. J. Ch. 479; 26 W. R. 273; 38 L. T. 111); and see also *Faithfull v. Ewen*, 7 Ch. D. 495; 47 L. J. Ch. 457; 26 W. R. 270; 37 L. T. 805. As to priority as between the solicitor and an execution creditor, see *Birchall v. Pugin*, L. R. 10 C. P. 397; *Shippey v. Grey*, 49 L. J. 524; 28 W. R. 877; 42 L. T. 673; *The Leader*, L. R. 2 A. & E. 314; *Hamer v. Giles*, *Giles v. Hamer*, 11 Ch. D. 942; 48 L. J. Ch. 508; 27 W. R. 834; 41 L. T. 270; *Dallow v. Garrold*, 13 Q. B. D. 543; affirmed W. N. (1884), 231.

Statute of Limitations. (h) The Statute of Limitations will not begin to run against a solicitor in respect of his claim for a charge under the Act while the suit is pending, and he remains the solicitor on the record (*Baile v. Baile*, 13 Eq. 497, 509).

Taxation and payment of deceased lunatic's costs. XXIX. In every case in which an attorney or solicitor has been or shall be employed to prosecute or oppose any inquiry whether a person is a lunatic, idiot, or of unsound mind, and incapable of managing himself or his affairs, or in or about any proceedings consequent upon such inquiry, and the costs of such attorney or solicitor have not been

paid in the lifetime of such person, it shall be lawful for the Lord High Chancellor or the Lords Justices, or other the person or persons intrusted by Her Majesty with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind (*hh*), to make such and the like orders and to exercise the like power and authority for taxation of and for raising and payment of such costs after the death of such person as could or might have been exercised or made in his lifetime (*i*); and such orders and proceedings shall be as valid and effective to all intents and purposes as if made in the lifetime of the lunatic: Provided always, that it shall not be lawful for the Court or judge to make any such order but within six years next after the right to recover such costs, charges, and expenses shall have accrued (*k*).

23 & 24 Vict.
c. 127, ss. 27-29

(*hh*) See now Jud. Act, 1875, s. 7, *infra*.

(*i*) See 16 & 17 Vict. c. 70 (Lunacy Regulation Act, 1853), s. 145, which provides that costs incurred under the Act may be charged on the lunatic's property.

(*k*) When a lunatic died in June, 1853, and the solicitor in the lunacy—having obtained an order for taxation of his costs in the lunacy matter in February, 1854, and completed such taxation in February, 1855—in October, 1860, presented a petition for an order to charge the lunatic's estate under this section, it was held by L. J. Knight Bruce that the right to recover accrued on the death of the lunatic; and by L. J. Turner that it accrued on the order for taxation being obtained. More than six years having elapsed since either of those periods, the petitioner was held to be barred of all remedy under the concluding proviso of the section (*Ex parte Turner, Re Cumming*, 2 De G. F. & J. 376; 9 W. R. 213).

Costs in
lunacy.
Within six
years.

ATTORNEYS AND SOLICITORS ACT, 1870.

33 & 34 Vict.
c. 28.

33 & 34 VICT. CAP. 28.

An Act to amend the law relating to the remuneration of Attorneys and Solicitors. [14th July, 1870.]

WHEREAS it is expedient to amend the law relating to the remuneration of attorneys and solicitors:

Be it enacted, &c., as follows:

Preliminary.

I. This Act may be cited as "The Attorneys and Solicitors Act, 1870." Short title.

II. This Act shall not extend to Scotland.

Extent of
Act.
Interpretation
of terms.

III. In the construction of this Act, unless where the context otherwise requires, the words following have the significations hereinafter respectively assigned to them; that is to say,

The words "attorney or solicitor" (*a*) mean an attorney, solicitor, or proctor (*a*), qualified according to the provisions of the Acts for the time being in force, relating to the admission and qualification of attorneys, solicitors, or proctors:

"Person" includes a corporation:

33 & 34 Vict.
c. 28.

“Client” includes any person who, as a principal or on behalf of another person, retains or employs, or is about to retain or employ, an attorney or solicitor, and any person who is or may be liable to pay the bill of an attorney or solicitor for any services, fees, costs, charges, or disbursements (*b*).

(*a*) Attorneys and solicitors are now styled “Solicitors of the Supreme Court.” (Judicature Act, 1873, s. 87.) Section 20 of the Act empowered solicitors to perform acts appertaining to the office of proctor. This section is now repealed, and a more comprehensive provision to the same effect substituted. (Solicitors Act, 1877, ss. 17, 23.)

(*b*) Notwithstanding this definition of the word “client,” the Act does not apply to accounts between country solicitors and their town agents (*Ward v. Eyre*, 15 Ch. D. 130; 49 L. J. Ch. 657; 28 W. R. 712; 43 L. T. 525).

PART I.—*Agreements between Attorneys or Solicitors and their Clients.*

The remuneration of attorneys and solicitors may be fixed by agreement.

IV. An attorney or solicitor may make an agreement in writing (*c*) with his client respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such attorney or solicitor, whether as an attorney or solicitor or as an advocate or conveyancer, either by a gross sum, or by commission or per-centage, or by salary or otherwise, and either at the same or at a greater or at a less rate as or than the rate at which he would otherwise be entitled to be remunerated, subject to the provisions and conditions in this part of this Act contained: Provided always, that when any such agreement shall be made in respect of business done or to be done in any action at law or suit in equity, the amount payable under the agreement shall not be received by the attorney or solicitor until the agreement has been examined and allowed by a taxing officer of a Court having power to enforce the agreement, and if it shall appear to such taxing officer that the agreement is not fair and reasonable he may require the opinion of a Court or a judge to be taken thereon by motion or petition (*d*), and such Court or judge shall have power either to reduce the amount payable under the agreement or to order the agreement to be cancelled and the costs, fees, charges, and disbursements in respect of the business done to be taxed in the same manner as if no such agreement had been made.

Amount payable under agreement not to be paid until allowed by taxing officer.

Agreement must be signed by both parties.

(*c*) An agreement under the Act to take a fixed sum for costs must be in writing and signed by both solicitor and client (*Re Lewis, Ex parte Munro*, 1 Q. B. D. 724; 45 L. J. Q. B. 816; 24 W. R. 1017; *Re Raven*, 30 W. R. 134; 45 L. T. 742; and see *Re Fernandes*, W. N. (1878) 57). An agreement to charge the client nothing if the action is lost, and to take nothing for costs out of any money that may be awarded to the client in the action, need not be in writing (*Jennings v. Johnson*, L. R. 8 C. P. 425).

(*d*) The opinion of the Court cannot be required to be taken before some money is payable under the agreement (*Re Attorneys Act*, 1870, 1 Ch. D. 573; 44 L. J. Ch. 47; 24 W. R. 38).

Saving of interests of third parties.

V. Such an agreement shall not affect the amount of, or any rights or remedies for the recovery of, any costs recoverable from the client by any other person, or payable to the client by any other person, and

any such other person may require any costs payable or recoverable by him to or from the client to be taxed according to the rules for the time being in force for the taxation of such costs, unless such person has otherwise agreed: Provided always, that the client who has entered into such agreement shall not be entitled to recover from any other person under any order for the payment of any costs which are the subject of such agreement more than the amount payable by the client to his own attorney or solicitor under the same.

33 & 34 Vict.
c. 28.

VI. Such an agreement shall be deemed to exclude any further claim of the attorney or solicitor beyond the terms of the agreement in respect of any services, fees, charges, or disbursements in relation to the conduct and completion of the business in reference to which the agreement is made, except such services, fees, charges, or disbursements, if any, as are expressly excepted by the agreement.

Agreements shall exclude further claims.

VII. A provision in any such agreement that the attorney or solicitor shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such attorney or solicitor, shall be wholly void.

Reservation of responsibility for negligence.

VIII. No action or suit shall be brought or instituted upon any such agreement; but every question respecting the validity or effect of any such agreement may be examined and determined, and the agreement may be enforced or set aside, without suit or action, on motion or petition of any person, or the representative of any person, a party to such agreement, or being or alleged to be liable to pay, or being or claiming to be entitled to be paid, the costs, fees, charges, or disbursements in respect of which the agreement is made, by the Court in which the business, or any part thereof, was done, or a judge thereof, or if the business was not done in any Court, then where the amount payable under the agreement exceeds fifty pounds, by any superior Court of law or equity, or a judge thereof, and where such amount does not exceed fifty pounds, by the judge of a County Court which would have jurisdiction in an action upon the agreement (e).

Examination and enforcement of agreements.

(e) This section is intended to prevent actions to recover the remuneration agreed upon in lieu of costs when the work has been done, and does not apply to the case of an action for refusing to allow the solicitor to do the work and earn the remuneration (*Rees v. Williams*, L. R. 10 Ex. 200; 44 L. J. Ex. 116; 23 W. R. 5, 50; 32 L. T. 462).

IX. Upon any such motion or petition as aforesaid, if it shall appear to the Court or judge that such agreement is in all respects fair and reasonable between the parties, the same may be enforced by such Court or judge by rule or order in such manner and subject to such conditions, if any, as to the costs of such motion or petition as such Court or judge may think fit; but if the terms of such agreement shall not be deemed by the Court or judge to be fair and reasonable, the same may be declared void, and the Court or judge shall thereupon have power to order such agreement to be given up to be cancelled, and may direct the costs, fees, charges, and disbursements incurred or

Improper agreements may be set aside.

33 & 34 Vict.
c. 28.

Agreements
may be re-
opened after
payment in
special cases.

chargeable in respect of the matters included therein to be taxed in the same manner and according to the same rules as if such agreement had not been made; and the Court or judge may also make such order as to the costs of and relating to such motion or petition, and the proceedings thereon, as to the said Court or judge may seem fit.

X. When the amount agreed for under any such agreement has been paid by or on behalf of the client, or by any person chargeable with or entitled to pay the same, any Court or judge having jurisdiction to examine and enforce such an agreement may, upon application by the person who has paid such amount, within twelve months after the payment thereof, if it appears to such Court or judge that the special circumstances of the case require the agreement to be re-opened, re-open the same, and order the costs, fees, charges, and disbursements to be taxed, and the whole or any portion of the amount received by the attorney or solicitor to be repaid by him, on such terms and conditions as to the Court or judge may seem just.

Where any such agreement is made by the client in the capacity of guardian, or of trustee under a deed or will, or of committee of any person or persons whose estate or property will be chargeable with the amount payable under such agreement, or with any part of such amount, the agreement shall before payment be laid before the taxing officer of a Court having jurisdiction to enforce the agreement, and such officer shall examine the same, and may disallow any part thereof, or may require the direction of the Court or a judge to be taken thereon by motion or petition; and if in any such case the client pay the whole or any part of the amount payable under the agreement, without the previous allowance of such officer or Court or judge as aforesaid, he shall be liable at any time to account to the person whose estate or property is charged with the amount paid, or with any part thereof for the amount so charged; and if in any such case the attorney or solicitor accept payment without such allowance, any Court which would have had jurisdiction to enforce the agreement may, if it think fit, order him to refund the amount so received by him under the agreement.

Prohibition
of certain
stipulations.

XI. Nothing in this Act contained shall be construed to give validity to any purchase by an attorney or solicitor of the interest, or any part of the interest, of his client in any suit, action, or other contentious proceeding to be brought or maintained, or to give validity to any agreement by which an attorney or solicitor retained or employed to prosecute any suit or action, stipulates for payment only in the event of success in such suit, action, or proceeding (*f*).

(*f*) It seems that an agreement giving the solicitor in case of success what is equivalent to one-tenth of the property recovered, is void for champerty (*per* Jessel, M. R.; *Re Attorneys Act*, 1870, 1 Ch. D. 573; 44 L. J. Ch. 47; 24 W. R. 38). But an agreement to charge the client nothing if he lost the action, and to take nothing for costs out of any money recovered in the action, is good (*Jennings v. Johnson*, L. R. 8 C. P. 425).

Not to give
validity to

XII. Nothing in this Act contained shall give validity to any

disposition, contract, settlement, conveyance, delivery, dealing, or transfer, which may be void or invalid against a trustee or creditor in bankruptcy, arrangement, or composition, under the provisions of the laws relating to bankruptcy.

33 & 34 Vict.
c. 28.

contracts, &c.
which may be
void in bank-
ruptcy.

XIII. Where an attorney or solicitor has made an agreement with his client in pursuance of the provisions of this Act, and anything has been done by such attorney or solicitor under the agreement, and before the agreement has been completely performed by him, such attorney or solicitor dies or becomes incapable to act, an application may be made to any Court which would have jurisdiction to examine and enforce the agreement by any party thereto, or by the representatives of any such party, and such Court shall thereupon have the same power to enforce or set aside such agreement, so far as the same may have been acted upon, as if such death or incapacity had not happened; and such Court, if it shall deem the agreement to be in all respects fair and reasonable, may order the amount due in respect of the past performance of the agreement to be ascertained by taxation, and the taxing officer in ascertaining such amount shall have regard so far as may be to the terms of the agreement, and payment of the amount found to be due may be enforced in the same manner as if the agreement had been completely performed by the attorney or solicitor.

Provision in
case of death
or incapacity
of the
attorney.

XIV. If, after any such agreement as aforesaid shall have been made, the client shall change his attorney or solicitor before the conclusion of the business to which such agreement shall relate (which he shall be at liberty to do notwithstanding such agreement), the attorney or solicitor, party to such agreement, shall be deemed to have become incapable to act under the same within the meaning of section thirteen of this Act; and upon any order being made for taxation of the amount due to such attorney or solicitor in respect of the past performance of such agreement, the Court shall direct the taxing master to have regard to the circumstance under which such change of attorney or solicitor has taken place; and, upon such taxation, the attorney or solicitor shall not be deemed entitled to the full amount of the remuneration agreed to be paid to him unless it shall appear that there has been no default, negligence, improper delay, or other conduct on his part affording reasonable ground to the client for such change of attorney or solicitor.

As to change
of attorney
after agree-
ment.

XV. Except as in this part of this Act provided, the bill of an attorney or solicitor for the amount due under an agreement made in pursuance of the provisions of this Act shall not be subject to any taxation, nor to the provisions of the Act of the sixth and seventh Victoria, chapter seventy-three (*g*), and the Acts amending the same respecting the signing and delivery of the bill of an attorney or solicitor.

Agreements
shall be
exempt from
taxation.

(*g*) As to this Act, see *ante*, p. 1, *et seq.*

33 & 34 Vict.
c. 28.

PART II.—*General Provisions.*

Security may
be taken for
future costs.

XVI. An attorney or solicitor may take security from his client for his future fees, charges, and disbursements, to be ascertained by taxation or otherwise.

Interest may
be allowed on
taxations in
respect of dis-
bursements
and advances.

XVII. Subject to any general rules or orders hereafter to be made upon every taxation of costs, fees, charges, or disbursements, the taxing officer may allow interest at such rate and from such time as he thinks just on moneys disbursed by the attorney or solicitor for his client, and on moneys of the client in the hands of the attorney or solicitor, and improperly retained by him.

Taxing officer
to have regard
to character
of services.

XVIII. Upon any taxation of costs, the taxing officer may, in determining the remuneration, if any, to be allowed to the attorney or solicitor for his services, have regard, subject to any general rules or orders hereafter to be made, to the skill, labour, and responsibility involved.

Revival of
order for
payment of
costs.

XIX. Whenever any decree or order shall have been made for payment of costs in any suit, and such suit shall afterwards become abated, it shall be lawful for any person interested under such decree or order to revive such suit, and thereupon to prosecute and enforce such decree or order, and so on from time to time as often as any such abatement shall happen (*h*).

Section not
retrospective.
“Person
interested.”

(*h*) The section is not retrospective (*Doggett v. Eastern Counties Ry.*, 6 Ch. 474; 19 W. R. 497).

Solicitors to whom costs have been ordered to be paid are not “persons interested” within this section (*Hunter v. Wortley*, W. N. (1873), 4). The legal personal representative of a deceased person is entitled to an order; see *Hawks v. Hawks*, 1 P. D. 137; 45 L. J. P. D. & A. 41; 24 W. R. 489; 34 L. T. 659.

7 & 8 Vict.
c. 18.

LANDS CLAUSES CONSOLIDATION ACT, 1845.

7 & 8 VICT. CAP. 18.

An Act for consolidating in one Act certain Provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a Public Nature. [8th May, 1845.]

SS. I.—IV.; LXIX.—LXXXVII.

Act to apply
to all under-
takings au-
thorized by
Acts hereafter
to be passed.

WHEREAS it is expedient to comprise in one general Act sundry provisions usually introduced into Acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves; be it enacted, &c., that this Act shall apply to every undertaking authorized by any

Act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act.

7 & 8 Vict.
c. 18, ss. 1-4.

With respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows :

Interpretations in this Act:

II. The expression "the special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed which shall authorize the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the works" or "the undertaking" shall mean the works or undertaking, of whatever nature, which shall by the special Act be authorized to be executed; and the expression "the promoters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking.

"Special Act:"
"prescribed:"
"the works:"
"promoters of the undertaking."

III. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say),

Interpretations in this and the special Act:

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number :

Number :

Words importing the masculine gender only shall include females :
The word "lands" shall extend to messuages, lands, tenements, and hereditaments (a) of any tenure :

Gender:
"Lands:"

The word "lease" shall include an agreement for a lease :

"Lease:"

The word "month" shall mean calendar month :

"Month:"

The expression "superior Courts" shall mean her Majesty's superior Courts of Record at Westminster or Dublin, as the case may require :

"Superior Courts:"

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath :

"Oath:"

The word "county" shall include any riding or other like division

"County:"

7 & 8 Vict.
c. 18, ss. 1—4.

“the
sheriff :”

“the clerk of
the peace :”

“Justices :”

“Two jus-
tices :”

“Owner :

“The Bank :

“Owner.”

Short title of
the Act.

of a county, and shall also include county of a city or county of a town :

The word “sheriff” shall include under-sheriff, or other legally competent deputy ; and where any matter in relation to any lands is required to be done by any sheriff or by any clerk of the peace, the expression “the sheriff,” or the expression “the clerk of the peace,” shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate ; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place, where any part of such lands shall be situate :

The word “justices” shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter ; and where such matter shall arise in respect of lands being the property of one and the same party, situate not only in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter ; and where any matter shall be authorised or required to be done by two justices, the expression “two justices” shall be understood to mean two justices assembled and acting together :

Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorised or required to be done with the consent of any such owner, the word “owner” (b) shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking :

The expression “the Bank” shall mean the Bank of England where the same shall relate to monies to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to monies to be paid or deposited in respect of lands situate in Ireland.

(a) The power to purchase lands was held to include power to purchase a rent charge (*Re Brewer*, 1 Ch. D. 409).

(b) As to the meaning of the word “owner” in the Act, see *post*, note (x) to s. 76, p. 35.

IV. And be it enacted, that in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression “The Lands Clauses Consolidation Act, 1845.”

APPLICATION OF COMPENSATION.

7 & 8 Vict.
c. 18, s. 69-87.

And with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows :

LXIX. If the purchase-money or compensation which shall be payable in respect of any lands or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank (c), in the name and with the privity of the Accountant-General of the Court of Chancery in England, if the same relate to lands in England or Wales, or the Accountant-General of the Court of Exchequer in Ireland if the same relate to lands in Ireland, to be placed to the account there of such Accountant-General *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating monies paid into the said Courts ; and such monies shall remain so deposited until the same be applied to some one or more of the following purposes (that is to say),

Purchase-money payable to parties under disability amounting to 200*l.* to be deposited in the Bank.

In the purchase or redemption of the land tax (*d*), or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes (*e*) ; or

Application of monies deposited.

In the purchase of other lands, to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled (*f*) ; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct (*g*) ; or

In payment to any person becoming absolutely entitled to such money (*h*).

By the Settled Land Act, 1882, s. 32, it is provided that where, under any Act incorporating or applying, wholly or in part, the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, money is at the commencement of that Act in Court, or is afterwards paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorized by the Act under which the money is in Court, that money may be invested or applied as capital money arising under the Settled Land Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in the Settled Land Act) according to the same

7 & 8 Vict.
o. 18, s. 69-87.

Payment into
Court.

Supreme
Court Funds
Rules, 1884,
r. 39.

Accountant-
General.

When dis-
pensed with.

Executors.

Infant.

Purchase-
money not
converted into
personality.

Interest not
payable by
company.

Redeeming
land tax.

“Discharge
of any debt
or incum-
brance.”

“Settled
therewith.”

Investment,
in land, what
is;

procedure, as if the modes of investment or application authorized by the Settled Land Act were authorized by the Act under which the money is in Court. This section and sect. 69 of the Lands Clauses Act are to be read together (*Re Byron*, 23 Ch. D. 171; and see *Re Lytton*, W. N. (1884), 193). As to investment under this provision, see the Settled Land Act, 1882, s. 21, *infra*.

(c) It is provided by the Supreme Court Funds Rules, 1884, r. 39, *infra*, that money paid into Court pursuant to sect. 69, “in respect of lands in England or Wales, shall be placed in the books at the Pay Office to the credit of Ex parte the promoters of the undertaking, in the matter of the Special Act (citing it), and some words shall be added in each case briefly expressive of the nature of the disability to sell and convey, by reason of which the money shall be so paid in, which particulars shall be stated in the request for the direction to receive the money.”

The duties of the Accountant-General of the Court of Chancery are now performed by the Paymaster-General; see the Chancery Funds Act, 1872, 35 & 36 Vict. c. 44, *infra*.

Payment into Court under this section may be dispensed with by the Court where the money is immediately required to be paid to another account, *e. g.* to a lunatic’s account (*Re Milnes*, 1 Ch. D. 28); and see *Re Buckingham*, 2 Ch. D. 690.

Where the company, instead of paying the purchase-money into Court, paid it to the vendors, the latter were, on motion, ordered to pay it into Court for the purpose of interim protection (*London and N. W. Railway v. Corporation of Lancaster*, 15 Beav. 22; and see *Re London, Brighton, and South Coast Railway*, 4 W. R. 315).

The company is not entitled to pay the money into Court when there are executors to whom it is payable (*Newton v. Metropolitan Railway*, 8 Jur. N. S. 738).

Payment into Court under this section of the purchase-money of land belonging to an infant does not make the infant a ward of Court (*Ex parte Brewer*, 2 Dr. & S. 552).

Money paid into Court under section 69 remains impressed with the character of realty (*Kelland v. Fulford*, 6 Ch. D. 491; *Re Harrop*, 3 Drew. 726; *Re Bagot*, 10 W. R. 607; *Re Taylor*, 9 Hare, 596); *secus* where the land is taken from vendors competent to convey under section 76; see note (a) to section 78, *post*, p. 36; and *Re Stewart*, 1 Sm. & G. 32; *Re Horner*, 5 De G. & Sm. 483; *Midland Railway Company v. Oswin*, 1 Coll. 74; *Dixie v. Wright*, 32 Beav. 662, where accumulations of dividends on a fund paid in under this section were held to pass under a will as personality; *Re Skegg*, 13 W. R. 567; *Ex parte Hardy*, 30 Beav. 206. But see *Re Manchester and Southport Railway Company*, 19 Beav. 365.

As soon as the money is paid into the Bank, interest ceases to be payable by the company (*Lewis v. South Wales Railway Company*, 10 Hare, 113), unless there is a special agreement. In *Ex parte Earl of Harwicke*, 1 De G. M. & G. 297, where the company were ordered to pay interest under a special agreement, it was by consent agreed that no objection should be taken for want of jurisdiction, but that the question should be decided as if a bill had been filed. See *Re Divers*, 1 Jur. N. S. 995; *Chambers v. White*, 14 Jur. 1129; *Re Marylebone Improvement Act*, 19 W. R. 1058.

(d) A tenant for life, who has redeemed the land-tax, will be allowed to reimburse himself out of the purchase-moneys paid into Court (*Ex parte Northwick*, 1 Y. & Coll. Ex. 166); and see *Re London, Brighton & South Coast Railway*, 18 Beav. 608.

(e) The following applications of purchase-money have been held to be within this provision:—(But see now Settled Land Act, 1882, s. 32.) Paying off bonds or mortgages given by a corporation for repayment of money borrowed for sanitary purposes (*Re Derby Municipal Estates*, 3 Ch. D. 289; and see *Ex parte Corporation of Cambridge*, 6 Ha. 29; 5 Rly. Ca. 204); buying up leases (*Ex parte Corporation of Sheffield*, 21 Beav. 162; 25 L. J. Ch. 587; *Ex parte Corporation of London*, 5 Eq. 418; 37 L. J. Ch. 371; *Re Marquis Townshend’s Estates*, W. N. (1882), 7); redeeming a quit rent (*Ex parte Studdert*, 6 Ir. Ch. Rep. 53; *Ex parte Lord Leonfield*, Ir. R. 8 Eq. 559); discharging expenses incurred under statutory powers and expressly charged on the land (*Ex parte Queen’s College*, 14 Beav. 159, n.; *Ex parte Lockwood*, 14 Beav. 158; *Re Davis’s Estate*, 3 De G. & J. 144; 27 L. J. Ch. 712). But a loan from the Governors of Queen Anne’s Bounty (*Ex parte Rector of Grimoldby*, 2 Ch. D. 225), or a rent-charge charged on glebe lands in favour of a Land Improvement Company (*Ex parte Rector of Kirkmeaton*, 20 Ch. D. 203), or advances obtained by a tenant for life under a Drainage Act (*Ex parte Studdert*, 6 Ir. Ch. 53), will not be discharged out of the fund.

The word “settled” in this clause simply means “standing limited” (*Kelland v. Fulford*, 6 Ch. D. 491).

(f) Under this provision money paid in respect of freeholds (*Re Cann*, 15 Jur. 3) or leaseholds (*Re Liverpool Docks*, 1 Sm. N. S. 202) may be laid out in the purchase of copyholds; and money paid in respect of leaseholds may be laid out in the purchase of freeholds (*Re Parker*, 13 Eq. 495). But purchase-money of freeholds and copyholds will not be laid out in the purchase of leaseholds (*Re Lancashire and*

Yorkshire Ry., 2 W. R. 667; S. C. *nom. Re Macaulay*, 23 L. J. Ch. 815; see however *Re Rechoboth Chapel*, 19 Eq. 180; *Ex parte Trinity Coll. Cambridge*, 18 L. T. 849.

Enfranchisement of copyholds is a purchase of land within the Act (*Dixon v. Jackson*, 25 L. J. Ch. 588; *Re Cheshunt College*, 1 Jur. N. S. 995); and so is an investment in ground rents (*Re Mason*, W. N. (1872), 77); nor need the land purchased be within the jurisdiction of the Court (*Re Taylor*, 40 L. J. Ch. 454, where it was in the Isle of Man).

But the money cannot be invested in the purchase of an equity of redemption (*Ex parte Craven*, 17 L. J. Ch. 215; *Ex parte Fortadoun*, Ir. R. 10 Eq. 368).

The money in Court may be invested in the purchase of land, although the applicants are absolutely entitled (*Re Jones*, 39 L. J. Ch. 190; 18 W. R. 312; W. N. (1870), 7; *Re Parker*, 13 Eq. 495).

The money in Court may be expended in erecting new buildings on other parts of the settled land, whether in addition to those existing before or in substitution for such as have become ruinous, provided that (1) it is beneficial to the estate, and (2) the remaindermen do not object; but it cannot be applied in ordinary repairs and improvements (*Re Leigh*, 6 Ch. 887; *Drake v. Trefusis*, 10 Ch. 364; *Re Speer*, 3 Ch. D. 262; *Ex parte Rector of Holywell-cum-Needlingworth*, 27 W. R. 707; *Re Aldred*, 21 Ch. D. 228; *Ex parte Shaw*, 4 Y. & C. 506; *Re Dummer*, 2 De G. J. & S. 515; *Re Wight*, 6 W. R. 718); and see also *Re London and North-Western Ry. Act*, 1 Ch. 596; *Re Incumbent of Whitfield*, 1 J. & H. 610; *Ex parte Melward*, 27 Beav. 571; *Re Johnson*, 8 Eq. 348; *Re Clitheroe's Trusts*, 17 W. R. 345; *Re Rudyerd*, 2 Giff. 394.

So money representing glebe land may be expended in building or improving a rectory-house, or in erecting farm buildings (*Re Incumbent of Whitfield*; *Ex parte Rector of Claypole*, 16 Eq. 574; *Ex parte Rector of Shipton-under-Wychwood*, 19 W. R. 549). In *Re Lymington Chapel*, W. N. (1877), 226, part of the fund in Court was laid out in the purchase of land and buildings, and the remainder applied in converting the buildings into a dwelling-house for the minister or chapel keeper. As to buildings generally, see now the Settled Land Act, ss. 21, 25 and 32, *infra*.

The money may be applied in making improvements which are a permanent addition to the estate (*Re Leslie*, 2 Ch. D. 185 (drainage); *Re Croker*, W. N. (1877) 38 (water supply); and see *Re Vicar of Queen Camel*, 11 W. R. 503; *Re Buckinghamshire Ry.*, 14 Jur. 1065); but not it would seem in making roads (*Re Belfast Water Commissioners*, Ir. R. 5 Eq. 63; *Re Venour's Settled Estates*, 2 Ch. D. 522); see now, however, the Settled Land Act, ss. 21, 25, and 32, *infra*.

Where the money is to be laid out in building, it will not in general be paid out of Court till the buildings are finished (*Re Dummer*, 2 De G. J. & S. 515; 11 Jur. N. S. 615; *Ex parte Rector of Shipton-under-Wychwood*, 19 W. R. 549).

It seems doubtful whether the Court will apply the fund in recouping a limited owner money which he has expended without its previous sanction on other parts of the estate; see *Williams v. Aylesbury and Buckingham Ry.*, 9 Ch. 684; *Re Leigh*, 6 Ch. 887; *Ex parte Rector of Hartington*, W. N. (1875) 40; 23 W. R. 484; *Re Stock*, 42 L. T. 46; W. N. (1880), 11 (where, however, the money was spent before the land had been taken). But, nevertheless, this has been done in some cases; see *Ex parte Rector of Ganston*, 1 Ch. D. 477; *Ex parte Rector of Holywell-cum-Needlingworth*, 27 W. R. 707; *Re Partington*, 11 W. R. 160; 1 N. R. 177; *Re Aldred*, 21 Ch. D. 228; *Re Davis*, 3 De G. & J. 144; 4 Jur. N. S. 1029.

For the application of compensation money in the case of common lands, see *Nash v. Coombs*, 6 Eq. 51; *Fox v. Amhurst*, 20 Eq. 403; *Austin v. Amhurst*, 7 Ch. D. 689; and as to lands in which freemen have an interest, see *Ex parte Mayor of Lincoln*, 21 L. J. Ch. 621.

In a proper case the Court will sanction the investment of the money paid in, together with other trust-moneys, in the purchase of estates of greater value (*Ex parte Newton*, 4 Y. & C. Ex. 518).

On application for re-investment in land, the Court approves of the investment either immediately or after inquiry, and then directs an inquiry whether a good title can be made; see Daniell, p. 1039 *et seq.* But the Court may dispense with the investigation of the title (*Re Blomefield*, 25 W. R. 37; W. N. (1876) 242), or with the reference to the conveyancing counsel (*Re Lapworth*, W. N. (1879) 37).

(g) Providing temporary buildings until a new hospital should be built is a proper re-investment of part of the purchase-money of a hospital (*Re St. Thomas's Hospital*, 11 W. R. 1018).

Buildings may be "injured" by being severed from a farm so as to be rendered useless, although they sustain no structural damage (*Ex parte Melward*, 27 Beav. 571; 29 L. J. Ch. 245).

The Court of Chancery is now the Chancery Division of the High Court (Jud. Act, 1873, ss. 33, 34).

(h) The application for payment out or re-investment must be accompanied by an affidavit of no incumbrances, see R. S. C. 1883, Ord. LIII. r. 18, which provides that in the case of applications under Acts of Parliament directing the purchase-money

7 & 8 Vict.
c. 18, s. 69-87.

what is not.

Where applicants absolutely entitled.

Money may be expended in building.

Purchase-money of glebe land.

Improvements.

Recouping limited owner.

Common lands.

Re-investment in lands of greater value. Reference to conveyancing counsel.

Buildings taken or injured.

Court of Chancery.

Payment to person absolutely entitled.

7 & 8 Vict.
c. 18, s. 69-87.

Applicants to
make affidavit
as to incum-
brances.

of any property sold to be paid into Court, any persons claiming to be entitled to the money so paid in must make an affidavit, not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof, or if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and except the same.

See as to the necessity of the affidavit, *Ex parte Grainge*, 3 Y. & C. Ex. 62; *Ex parte Hollick*, 4 Rly. Ca. 498.

The affidavit must be made though income only is proposed to be dealt with (*Ex parte Warden of Winchester College*, 14 W. R. 788; W. N. (1866) 208; *Re Milne*, 8 L. T. 199, overruling *Ex parte Baroness of Braye*, 9 Hare, App. vii).

An affidavit by one of several petitioners is sufficient (*Re Vale of Neath Railway*, W. N. (1866) 78). The tenant for life being infirm, and the remaindermen being infants, the order for payment of dividends to the tenant for life was made on the affidavit of the executors (*Re Smith's Leaseholds*, W. N. (1866), 290; 14 W. R. 949; and see *Re Batty*, W. N. (1877) 212; and in another case on the affidavit of the petitioner's solicitor (*Re Halsey*, W. N. (1870) 68), and on a petition by trustees of a charity the affidavit of their clerk was sufficient (*Re Edward VI. Almshouses*, 16 W. R. 841).

The affidavit is necessary, although the application is by a large public body for interim investment and payment of dividends (*Re Byron*, W. N. (1883) 67); but see *Re Magdalen Coll.*, W. N. (1880) 150.

Where a fund in Court arises from a settled estate, and a tenant in tail who has barred the entail applies for payment, an affidavit of no incumbrances must be made (Seton, 1504; *Thornhill v. Millbank*, 12 W. R. 523).

Affidavit of
no settlement.

Where a married woman would be entitled there must be an affidavit of no settlement; Supreme Court Funds Rules, 1884, r. 61, *infra*, and see *ibid.* rr. 44-68, as to payment out of Court generally.

Payment out
to charity
trustees.

Payment to trustees has been allowed in the case of trustees for a charity (*Ex parte Trustees of Tid St. Giles' Charity*, 17 W. R. 758; W. N. (1869) 116; *Re Faversham Charities*, 10 W. R. 291, where the trustees had a power of sale; *Re Spurstowe's Charity*, 13 Eq. 279). But in *Ex parte the Governors, &c. of Norfolk Clergy*, W. N. (1882), 53, where there was no power of sale, Fry, J. declined to follow *Re Spurstowe's Charity*. As to dispensing with the consent of the Charity Commissioners, see *Re Lister's Hospital*, 6 De G. M. & G. 184; *Re William of Kyngeston's Charity*, 30 W. R. 70; W. N. (1881) 143; and note to s. 1 of Trustee Relief Act, *post*, p. 51.

Payment out
to trustees.

The money may be paid out to trustees with a power of sale (*Re Gooch*, 3 Ch. D. 742; *Re Hobson*, 7 Ch. D. 708; *Re Thomas*, W. N. (1882) 7; 30 W. R. 244; *Re Ward*, 28 Ch. D. 100; but see *Re Soury*, 8 Ch. 736); whether the power is presently exerciseable or not (*Re Evans*, 14 Ch. D. 511; *Re Vestry of St. Luke's*, W. N. (1880) 58). See further as to payment out to trustees, *Re Ilman*, 39 L. J. Ch. 760; 19 W. R. 962; W. N. (1870) 189; *Re Reaston*, 13 Eq. 564; *Re Horwood*, 3 Giff. 218; *Re Roberts*, 7 Jur. N. S. 818; 9 W. R. 758 (sole trustee). Under sect. 21 of the Settled Land Act the money may be paid to any person empowered to give an absolute discharge; see this Act, *infra*. The fund may also be paid out to trustees to be applied by them under a power of advancement (*Re Curwen*, W. N. (1880) 83).

Payment out of small sums to solicitors on their undertaking to distribute them is often allowed; and for order to pay out to trustees "or either of them," see note to sect. 71, *post*.

Dowress.

A dowress is entitled to have the value of her right of dower paid to her out of the fund in Court (*Re Hall*, 9 Eq. 179).

Tenant in
tail must
execute
disentailing
assurance.

Where the land taken was entailed, the purchase-money will not be paid out to the tenant in tail unless he has executed a disentailing deed; see *Re Reynolds* (C. A.), 3 Ch. D. 61; *Re Butler's Will*, 16 Eq. 479 (Selborne, L. C.); *Re Broadwood*, 1 Ch. D. 438 (Jessel, M. R.); *Re Norcop*, 31 L. T. 85 (V.-C. B.); *Ex parte Smyth*, Ir. R. 10 Eq. 66; and cases to the contrary are all overruled.

Land be-
longing to a
married
woman.

Where the land belonged to a married woman it may be paid out on her consent in Court without an acknowledged deed (*Re Robins*, 27 W. R. 705; *Re Hayes*, 9 W. R. 769; *Ex parte Ellison*, 2 Y. & C. Ex. 528; *Pollaok v. Birmingham Ry.*, 11 Jur. N. S. 7; 13 W. R. 401; *Knapping v. Tomlinson*, 18 W. R. 604; W. N. (1870) 107; and see *Standering v. Hall*, 11 Ch. D. 652; *Wallace v. Greenwood*, 16 Ch. D. 362; and the Married Women's Property Act, 1882, *infra*).

Statute of
Limitations.

Payment in favour of a person who has merely a possessory title when the land is taken (*Re Winder*, 6 Ch. D. 696; *Re Jane Evans*, 42 L. J. Ch. 357; and see *Ex parte Chamberlain*, 14 Ch. D. 323).

Transfer to
another

Transfer from the account to which the money was paid in to another account is a payment out within the Act (*Melling v. Bird*, 22 L. J. Ch. 599; 17 Jur. 155; *Tipper v. Soilleux*, W. N. (1875) 158; *Re Bristol Free Grammar School*, 47 L. J. Ch.

317; *W. N.* (1878) 26; *Ex parte Trustees of Horfield Trust*, 29 *W. R.* 462; *W. N.* (1881) 16). In cases not within the Act, and where the special Act contained no provision for payment to persons absolutely entitled, such payment has nevertheless been made (*Re Musgrave*, 6 *Jur. N. S.* 797; *Re Macclesfield Canal Act*, 9 *Jur. N. S.* 224; *Re Allen*, *W. N.* (1867) 11).

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c. 18, s. 69-87.

account is a
payment out.

LXX. Such money may be so applied as aforesaid upon an order of the Court of Chancery in England or the Court of Exchequer in Ireland, made on the petition (*i*) of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in government or real securities (*k*), and the interest, dividends, and annual proceeds thereof (*l*) paid to the party who would for the time being have been entitled to the rents and profits of the land (*m*).

Interim
investment.

(*i*) All applications for interim and permanent investment and payment of dividends under the Act, and applications for payment out where the fund does not exceed 1,000*l*, are now made by summons at chambers; see *R. S. C.* 1883, *Ord. LV. r. 2* (2, 7), *infra*; *Ex parte Maidstone Ry.*, 25 *Ch. D.* 168; *Re Calton*, *ibid.* 240; *Ex parte Mayor of London*, *ibid.* 384.

By the rules under the Settled Land Act, 1882, *r. 2*, all applications to the Court under that Act are to be made by summons in chambers; and see *infra* as to these rules generally. The Court of Chancery is now the Chancery Division of the High Court (*Jud. Act*, 1873, *ss. 33, 34, infra*).

Court of
Chancery.

The duties of the Accountant-General are now discharged by the Paymaster (*Chancery Funds Act*, 1872, *infra*).

Accountant-
General.

(*k*) The fund is cash under the control of the Court, and may be invested in any of the securities authorized for the investment of funds in Court (*Ex parte St. John's College, Oxford*, 22 *Ch. D.* 93, overruling *Ex parte Vicar of St. Mary's*, 18 *Ch. D.* 646, and (on this point) *Ex parte Rector of Kirksmeaton*, 20 *Ch. D.* 203).

What invest-
ment is
allowed.

The Court will sanction an interim investment in mortgage security (*Re Smith*, 9 *Eq.* 178), but not if the chief clerk has reported against it (*Ex parte Franklyn*, 1 *De G. & Sm.* 528).

(*l*) Where the company are in possession, payment of the dividends to the tenant for life will be ordered before the conveyance (*Re Hungerford's Trusts*, 1 *K. & J.* 413). It is not the duty of the Court to go into the title of the person claiming.

Dividends
paid before
conveyance.

As to the form of an order under this section in the case of a corporation sole, see *Ex parte the Archbishop of Canterbury*, 2 *De G. & Sm.* 365; and see *Re Davenant's Charity*, 2 *W. R.* 344; *Re Pearce*, 24 *Beav.* 491; *Ex parte Churchwardens and Overseers of Bicester*, 5 *Rly. Ca.* 702, where the dividends were ordered to be paid "to the vicar for the time being, and churchwardens and overseers, or either of them." See also *Re Collins' Charity*, 20 *L. J. Ch.* 168, cited in note to *s. 71*; *Re How*, 15 *Jur.* 266, and *Re Codrington*, 18 *Eq.* 658, where payment to the secretary of a charity was ordered, there being no treasurer.

Corporation.

Where the fund belongs to a charity the sanction of the Charity Commissioners to the application is not required (*Re William of Kyngeston's Charity*, 30 *W. R.* 70; *W. N.* (1881) 143; *Re Lister's Hospital*, 6 *De G. M. & G.* 184). As to the form of the order for payment, &c. to private trustees, see note to *s. 71, post*.

Consent of
Charity Com-
missioners.

(*m*) The Court cannot proceed under this section at the instance of an incumbent, or annuitant, but only at the instance of the person who would have been entitled to the rents and profits if the property had been unsold (*Ex parte Back*, 2 *Y. & J.* 386); and see *Re Hungerford*, 3 *K. & J.* 455; *Ex parte Cofield*, 11 *Jur. N. S.* 1; *Re Wrey*, 11 *Jur. N. S.* 206; *Ex parte Wilkinson*, 3 *De G. & S.* 633. In *Re Pedley's Estate*, 1 *Jur. N. S.* 654, an order was made on the petition of the tenant for life, and annuitants (not bound by the contract) for payment of the dividends to the former, prefaced by an undertaking not to distrain on the lands. A remainderman, though plaintiff in an administration suit, was held to have no right to petition (*Nash v. Nash*, 37 *L. J. Ch.* 927; 16 *W. R.* 1105). Where the money was deposited in respect of a closed burial ground, the income was ordered to be paid to the person who would have been entitled to the burial fees (*Re St. Paneras Burial Ground*, 3 *Eq.* 173; *Ex parte Rector of Liverpool*, 11 *Eq.* 15; *Ex parte Rector of St. Martin's Birmingham*, 11 *Eq.* 23).

Who may
apply for
interim in-
vestment as
"party en-
titled to
rents and
profits."

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c. 18, s. 69-87.

As to the parties to be served, see *Re Morris*, 20 Eq. 470; *Ex parte Staples*, 1 De G. M. & G. 294; *Re Dowling*, 24 W. R. 729; *Seton*, p. 1424.

Service.

Sums from
20*l.* to 200*l.*
to be de-
posited or
paid to
trustees.

LXXI. If the purchase-money or compensation shall not amount to the sum of two hundred pounds and shall exceed the sum of twenty pounds, the same shall either be paid into the Bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees (*n*), to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, committees or trustees; but such last-mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the Bank, but it shall not be necessary to obtain any order of the Court for that purpose.

Payment to
trustees for
time being,
one of two
trustees, &c.
Charity
trustees.

(*n*) Where the land taken had been vested in trustees under the Municipal Corporations Act, the Court, under this section, ordered payment of the dividends of the investment to any two of the trustees for the time being (*Re Collins' Charity*, 20 L. J. Ch. 168). In *Re Clinton*, 8 W. R. 492, followed in *Re Coulson*, 17 L. T. 27; *W. N.* (1867) 233, V.-C. Wood made the order for payment to the two trustees "or either of them;" and this is the proper form (*Seton*, p. 88). The proceeds of the sale of charity lands taken by a railway company were paid to the trustees of the charity, with the consent of the Charity Commissioners (*Re Faversham Charities*, 10 W. R. 291), but see note at p. 30, *ante*.

Sums not
exceeding
20*l.* to be
paid to
parties.

LXXII. If such money shall not exceed the sum of twenty pounds (*o*), the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiocy, lunacy, or other incapacity of any such parties, then such money shall be paid for their use to the respective husbands, guardians, committees, or trustees of such persons.

Purchase-
money under
20*l.*

(*o*) Where it is probable that after re-investment of part of the sum paid in, the balance left will be under 20*l.*, the Court will order that the balance, if less than 20*l.*, be paid to the tenant for life (*Re Lord Egremont*, 12 Jur. 618; *Re Bateman's Estate*, 21 L. J. Ch. 691). But see *Ex parte Vicar of Bredicot*, 5 Rly. Ca. 209, where the Court refused to order payment of 20*l.* 10*s.* (the balance of 200*l.* paid into Court for the purchase of land belonging to a rectory) to the rector in liquidation of extra costs beyond those allowed by the Act; and in *Re Bateman*, 21 L. J. Ch. 691, and *Ex parte Barrett*, 19 L. J. Ch. 415, applications to allow sums over 20*l.* to be paid to the tenant for life, he undertaking to lay them out in lasting improvements, were refused.

All sums
payable
under con-
tract with
persons not
absolutely

LXXIII. All sums of money exceeding twenty pounds which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands, under a contract or agreement with any person (*p*) who shall not be entitled to dispose

of such lands or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the Bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorising the taking of such lands, but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery in England, or the Court of Exchequer in Ireland, or the said trustees, as the case may be, to allot to any tenant for life or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the Bank or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works (g).

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c. 18, s. 69-87.

entitled to
be paid into
Bank.

(p) See as to this section generally, *Taylor v. Directors of the Chichester Railway*, 4 H. L. 628.

These words were held to apply to the case of a landowner withdrawing his opposition to the bill authorising a railway, though he never entered into any contract as to the land eventually taken under the Act, and though the section in terms only speaks of a "contracting party" (*Pole v. Pole*, 2 Dr. & Sm. 420; 11 Jur. N. S. 477); and see *Re Wilson*, 9 Jur. N. S. 1043; 32 L. J. Ch. 191.

Section
applies
though no
contract.

(q) Costs and expenses incurred by a tenant for life which the company are not bound to pay may be, under this section, ordered to be paid to the tenant for life, out of the purchase-money paid in (*Re Aubrey*, 1 W. R. 464; 17 Jur. 874); and see *Earl of Shrewsbury v. N. Staffordshire Ry. Co.*, 1 Eq. 593; *Re Oldham*, W. N. (1871), 190; *Re Strathmore Estates*, 18 Eq. 338; *Ex parte Curate of Whitworth*, 24 L. T. 126; W. N. (1871), 66; *Re Earl of Berkeley's Will*, 10 Ch. 56; *Re Nicoll's Estate*, W. N. (1878), 154.

What monies
are within
the section.

Under this section small sums will be ordered to be paid to the tenant for life, for his own use, as compensation for "injury, inconvenience, and annoyance," sustained by him; see *Ex parte Lockwood*, 14 Beav. 158; *Re Collis's Estate*, 14 L. T. 352. But in *Re Duke of Marlborough*, 13 Jur. 738, a company having agreed with a tenant for life, to pay him a sum for the benefit of himself, "or other the owner for the time being, for indemnifying him from the expenses of making a new road, &c., and as a compensation for the annoyance which he, or such owners as aforesaid, might sustain, in consequence of the construction of such railway," the Court ordered the purchase-monies, after payment of the costs for making the road, to be invested, and refused to pay them to the tenant for life.

Small sums
ordered to be
paid to
tenant for
life.

It was held that upon a reference to the master, under the old practice, to inquire as to the title to money paid in for compensation for damage done to lands, the master ought to report whether the damage done be temporary or permanent (*Color v. Croydon Canal Company*, 4 Y. & C. Ex. 405).

Damage.

LXXIV. Where any purchase-money or compensation paid into the Bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, on the petition of any party interested in such money, to order that the

Court may
direct appli-
cation of
of money in
respect of
leases or
reversions as
they may
think just.

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same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be (r).

Apportionment—

(1) As between lessor and lessee.

(r) "Lease" includes an agreement for a lease (sect. 3).

As to apportionment between lessor and lessee, where there is a doubt on the title of either, see *Brandon v. Brandon*, 2 Dr. & S. 305, and *Re Wood*, 10 Eq. 572.

A yearly tenant holding over after notice to quit can claim no compensation (*Ex parte Nadin*, 17 L. J. Ch. 421). Lessors and lessees should deal separately with the company in respect of their interests, for the Court has no jurisdiction to apportion the purchase-money between them (*Ex parte Ward*, 2 De G. & S. 4; see *Ex parte Dean of Battel*, 21 L. T. (O. S.) 55). See also *Re King*, 16 Eq. 521.

(2) As between successive owners.

(a) Where the property taken was held on lease, and therefore of perishable nature.

Property held on renewable leases.

Refusal to renew.

When property held under a lease is taken it often becomes a question between a tenant for life and remainderman how the purchase-money is to be divided. It seems to be now settled that in such a case the tenant for life is entitled to receive an annuity of such an amount that the payment of it will exhaust the fund in the number of years which the lease had to run; see *Askew v. Woodhead* (C. A.), 14 Ch. D. 27; 41 L. T. 670; 42 L. T. 567; *Re Phillips*, 6 Eq. 250; *Re Sewell*, 23 L. T. 835; *Re Money*, 2 Dr. & Sm. 94; the cases to the contrary cannot now be relied on. As to the case of an annuitant, see *Ex parte Wilkinson*, 3 De G. & S. 633.

For the principle on which the Court will estimate the value of a lease held on a contingency, see *Penny v. Penny*, 5 Eq. 227. Where settled renewable leaseholds have been taken the rule seems to be that if there is an unqualified trust for renewal the tenant for life only takes the income of the purchase-money (*Re Wood*, 10 Eq. 572; *Maddy v. Hale*, 3 Ch. D. 327; *Hollier v. Burne*, 16 Eq. 163; *Re Barber*, 18 Ch. D. 624; *Re Ranelagh*, 26 Ch. D. 590); and see *Morris v. Hodges*, 27 Beav. 625, and *Tardiff v. Robinson*, *ibid.* 629, n. Where trustees had neglected to renew a renewable lease which therefore determined in the lifetimes of the tenant for life thereof under a settlement, such tenant for life was allowed the whole of the purchase-money, *Stuart, V.-C.*, declining to consider, on petition, the question of breach of trust in not renewing (*Re Beaufoy*, 1 Sm. & Giff. 20; 16 Jur. 1084).

(β) Where property was let on leases, renewable on fines.

On the other hand, where property is let on renewable leases at a low rent the present income of the purchase-money will exceed the rent reserved, and, in such cases, the Court generally allows the persons entitled in possession so much of the dividends of the purchase-money as corresponds with the amount they would have received if the land were unconverted, and directs the surplus to be accumulated and invested, with liberty to apply at the periods when the leases would be renewable and the fines payable (*Ex parte Dean of Gloucester*, 19 L. J. Ch. 400; *Ex parte Dean of Christchurch*, 23 L. J. Ch. 149; *Ex parte Rector of Lambeth*, 4 Rly. Ca. 231; *Ex parte Bishop of Winchester*, 10 Hare, 137; *Ex parte Precentor of St. Paul's*, 1 K. & J. 538; *Ex parte Dean of St. Paul's*, 11 W. R. 482, which were all cases of ecclesiastical or college leases). The same principle applies where the company take land of private persons, which is subject to a beneficial lease; see *Re Wootton*, 1 Eq. 589; *Re Mette*, 7 Eq. 72; *Re Wilkes*, 16 Ch. D. 597, where the form of order is given. But the whole dividends have, under special circumstances, been allowed to the persons entitled in possession (*Re Dean and Chapter of Westminster*, 26 Beav. 214, where the present value of the property taken was largely increased since the leases were granted; *Ex parte Trustees of St. Thomas's Church, Bristol*, W. N. (1870), 192; *Re Steward*, 1 Drew. 636).

When whole dividends allowed.

See note to section 80, p. 42, *post*, as to the costs of remaindermen appearing upon petitions under this section.

Upon deposit being made the owners of the lands to convey, or in default the lands to vest in the promoters of the undertaking, upon deed poll being executed.

LXXV. Upon deposit in the Bank in manner hereinbefore provided of the purchase-money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, the owner (s) of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof (t), or if he fail to adduce a

good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made; and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase-money or compensation shall have been determined by a jury or by arbitrators or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands (u).

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(s) As to the meaning of "owner," see next section and note.

(t) See, before the passing of the Act, *Bruce v. Willis*, 11 Ad. & Ell. 463; *S. C. nom. Bath River Company v. Willis*, 2 Rly. Ca. 7; *The Earl of Harborough v. Shardlow*, 2 Rly. Ca. 253; 7 M. & W. 87.

(u) The lands vest without a conveyance (*Bruce v. Willis*).

Vesting.

LXXVI. If the owner (x) of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase-money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot, after diligent inquiry, be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase-money or compensation payable in respect of such lands, or any interest therein, in the Bank, in the name, and with the privity of the Accountant-General* of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them, so far as the promoters of the undertaking can do), subject to the control and disposition of the said Court.

Where parties refuse to convey, or do not show title, or cannot be found, the purchase-money to be deposited.

* See 35 & 36
Vict. c. 44,
s. 4, *infra*,
p. 203.

(x) A person in possession, but showing a bad title, is not an "owner" within this section; and therefore, where a vendor under a contract for a sixty years' title, fails to show more than a title for thirty-six years, he cannot compel the

Who is
"owner"
(see s. 79).

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company to deposit the purchase-money in the Bank under this section (*Douglas v. London and North-Western Railway Co.*, 3 K. & J. 173; and see *Ex parte Freeman and Stallingers of Sunderland*, 1 Drew. 184; *Doe d. Hutchinson v. Manchester, Bury, and Rosendale Railway Co.*, 14 M & W. 687; *sub nom. Hutchinson v. East Lancashire Railway Co.*, 3 Rly. Ca. 748). But a surviving partner selling the property by virtue of his duty to wind up the partnership, is an owner within the section (*Douglas v. London and North-Western Railway Co.*). Comp. as to the meaning of the word owner, *Russell v. Shenton*, 3 Q. B. 449, and *Chauntler v. Robinson*, 4 Exch. 163; and see also as to this section generally, *Ex parte Winder*, 6 Ch. D. 696; *Wells v. Chelmsford Local Board*, 15 Ch. D. 108.

Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.

LXXVII. Upon any such deposit of money as last aforesaid being made, the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, under their common seal, if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase-money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Application of monies so deposited.

LXXVIII. Upon the application by petition (*y*) of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in England or the Court of Exchequer in Ireland may, in a summary way, as to such Court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof (*z*), and may make such other order in the premises as to such Court shall seem fit (*a*).

(*y*) The application for investment is now by summons, see R. S. C. 1883, Ord. LV. r. 2 (7), *infra*.

Suit by owners.

Where the company alleged that the owners failed to make a title, and paid the purchase-money into Court under sect. 76, and the owners obtained a decree for completion of the purchase in a suit, the order for payment out under this section was made on a petition entitled in the suit and in the matter of the Act (*Galliers v. Metropolitan Railway*, 11 Eq. 410).

Payment to incumbancers.

(*z*) Under this section incumbancers may petition for the money to be paid to them out of court (*Re Marriage*, 9 W. R. 843); but they cannot recover more than six years' arrears of interest (*Re Stead*, 2 Ch. D. 713).

Conversion into personalty.

(*a*) Purchase-money in Court, under this section, is converted into personalty, the vendors from whom the land is taken being competent to convey (*Ex parte*

Flamank, 1 Sim. N. S. 260; *Ex parte Harrop*, 3 Drew. 726, 733; *Ex parte Hawkins*, 13 Sim. 569; and see note to sect. 69, *ante*, p. 28). See, however, *Re Walker's Estate*, 22 L. J. Ch. 888; and if the company have taken the land from a person incompetent to deal with them the money in Court belongs to the heir (*Re Tugwell*, 27 Ch. D. 309), where Pearson, J. declined to follow *Ex parte Flamank*.

A person claiming in respect of an interest created after the notice to treat cannot apply for compensation (*Ex parte Edwards*, 12 Eq. 389).

LXXIX. If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands until the contrary be shown to the satisfaction of the Court (b), and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly (c).

(b) See *Ex parte Webster*, W. N. (1866), 246.

(c) "The legislature has anxiously provided that the Court shall not upon the occasion of applications for payment of purchase-money, deal with the property in any way which can affect the title, unless it can be shown so clearly as to be beyond all question, that there must be litigation upon the question of title," *per V.-C. Wood* in *Re St. Pancras Burial Ground*, 3 Eq. 173, 183; and see *Ex parte Chamberlain*, 14 Ch. D. 323; *Re Winder*, 6 Ch. D. 696; *Re Evans*, W. N. (1873), 46; *Re Perry*, 1 Jur. N. S. 917; *Re Sterry*, 3 W. R. 561; *Re Alston*, 5 W. R. 189.

But where the title is proved to be doubtful, the Judge is bound to try the question, as formerly the Court would have directed an issue at law (*Ex parte Issauchaud*, 3 Y. & Coll. Exch. 721; *Ex parte The Freeman, &c. of Sunderland*, 1 Drew. 184). Where successive interests were claimed, and there was a dispute whether one of the claimants was really entitled, the Court would apply its ordinary machinery to ascertain the respective values of the particular interests, and after paying the amount of the value of the interests as to which there was no doubt to the parties entitled, would return the remainder of the money to the company (*Brandon v. Brandon*, 2 Dr. & Sm. 305; 34 L. J. Ch. 333; 13 W. R. 251; *Re N. London Railway Co.*, 2 Dr. & S. 312; 34 L. J. Ch. 373; 13 W. R. 364); and see *Re Perks*, 1 Sm. & Giff. 545; *Re Hayne*, 13 W. R. 492; *Bogg v. Midland Railway*, 4 Eq. 310.

LXXX. In all cases of monies deposited in the Bank under the provisions of this or the special Act or an Act incorporated therewith (d), except where such monies shall have been so deposited by reason of the wilful refusal (e) of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking (f) (that is to say), the costs of the purchase or taking of the lands or which shall have been incurred in consequence thereof (g) other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in government or real securi-

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Party in possession to be deemed the owner.

Party in possession. When the Court will refuse to investigate title of party in possession.

What rights will be determined.

Where title to part is disputed.

Costs in cases of money deposited.

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ties (*h*), and of the reinvestment (*i*) thereof in the purchase of other lands, and also the costs of obtaining the proper orders (*k*) for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out (*l*) of Court of the principal of such monies or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants (*m*): Provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland, that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands in different sums and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking (*n*).

Costs payable
by company.

As the section applies to cases where the company uses its compulsory powers either under the preceding sections, or under sect. 85 (see *Ex parte Flower*, 1 Ch. 599), the Court inclines in doubtful cases to make the company pay the costs (*Ex parte Marshall*, 1 Phill. 560; *Re Long*, 10 Jur. N. S. 417; *Re Jones*, 4 Jur. N. S. 581, 887; 6 W. R. 614, 762).

The costs payable by the company (or companies, see note (*f*)) may be divided into—

- (1) Costs of the purchase and consequential thereon, see note (*g*).
- (2) Costs of interim investment in government or real securities, see note (*h*).
- (3) Costs of reinvestment and payment out, including successive partial investments or abortive attempts to invest, see note (*i*).
- (4) Costs of orders, see note (*k*).
- (5) Costs of "proceedings relating thereto," including costs arising from the land taken being subject to suits, or to incumbrances, or belonging to persons under disability, see notes (*k*) and (*m*).

The section does not authorise the Court to order the company to pay the costs out of any particular fund (*Re Neath & Brecon Railway*, 9 Ch. 263).

The costs of all proceedings in Court are now in the discretion of the Court or Judge (*Garnett v. Bradley*, 3 App. Cas. 944; *Ex parte Mercers' Co.*, 10 Ch. D. 481; R. S. C. (1883), Ord. LXV. r. 1, and notes to that rule, *infra*); but in proceedings under the Lands Clauses Act the Court follows the rules as to costs laid down by that Act as explained and illustrated by the decided cases.

As to the costs under special Acts, see note (*d*), *infra*.

No vendor's
lien for costs.

The Court refused to declare that the landowner had a vendor's lien in respect of the costs (*Earl Ferrers v. Stafford and Uttoxeter Railway*, 20 W. R. 478).

Discretion
of Court.

If the landowner has put the company to unreasonable expense the Court may disallow him his costs, even of an application for payment out (*Re Marylebone Improvement Act*, 19 W. R. 1058).

Arranged
costs.

Where, by arrangement, a landowner was to be paid principal, interest, and costs, the taxing master was directed to allow all reasonable costs incurred by the vendor before the Parliamentary Committee (*Cooper v. L. C. & D. Railway Co.*, 17 L. T. 283).

When a company was insolvent, and the vendor was entitled for life only as rector, his costs were ordered to be paid out of the purchase-money (*Re Glebe Lands of Great Yeldham*, 9 Eq. 68).

Where no
jurisdiction.

When purchase-money paid into Court has been carried to the credit of a cause, but the account is not entitled in the matter of the Act, the company cannot be made to pay costs (*Brown v. Fenwick*, 14 W. R. 257; W. N. (1866), 6; *Prescott v. Wood*, 37 L. J. Ch. 691; W. N. (1868), 123; *Fisher v. Fisher*, 17 Eq. 340; *Nock v. Nock*, W. N. (1879), 125). On an application for payment out they ought not to be served, and if the applicant has served them he may be ordered to pay their costs, see *Prescott v. Wood*, and the other cases cited.

"Special
Act."

(*d*) For the meaning of "the special Act," see sect. 2, *supra*. The Lands Clauses Act is held to be "incorporated" with all subsequent Acts, authorising the taking of lands (*Ex parte Vicar of St. Sepulchre's*, 4 De G. J. & S. 232; 12 W. R. 499), unless such subsequent Act contains provisions inconsistent with such incorporation

"Incorporated
there-
with."

(*Re Cherry's Estates*, 4 De G. F. & J. 332; 10 W. R. 305; *Re St. Katharine's Dock Co.*, 14 W. R. 978). Where a special Act was repealed and re-enacted by a new Act, with which was incorporated the Lands Clauses Act, the special Act was held to be incorporated with the Lands Clauses Act (*Re Ellison*, 8 De G. M. & G. 62), see *Re Holden*, 1 Jur. N. S. 995; *Re Shuttleworth*, 4 Giff. 87; *Re Derriman*, W. N. (1866), 269.

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In cases where a special Act was dated before, and had not been incorporated with the Lands Clauses Act, it was the practice of the Court of Exchequer to make the company pay costs, whether they were given by the special Act or not; but the Court of Chancery was more strict, and held that the company need only pay such costs as were provided for by their special Act. (See the cases collected in Morgan and Wurtzburg on Costs, p. 303.) The matter is of no great importance now as the costs are in the discretion of the Court in all cases, and the Court generally adopts the rules laid down by the L. C. C. Act (*Ex parte Mercers' Co.*, 10 Ch. D. 481; *Re Hanbury*, W. N. (1883), 116; *Ex parte Hospital of St. Katharine*, 17 Ch. D. 378; *Re Lee and Hemingway*, 24 Ch. D. 669).

Practice under special Acts.

(e) For cases of doubt, whether the refusal is wilful, see *Re Jones*, 4 Jur. N. S. 581; *Ex parte Marshall*, 1 Phil. 560. A wilful refusal means a capricious refusal; and a reasonable objection, though ultimately overruled, is not a wilful refusal within the section; see *Ex parte Bradshaw*, 16 Sim. 174; *Re Windsor Railway*, 12 Beav. 522; *Ex parte Railston*, 15 Jur. 1028; and *Ex parte Dashwood*, 3 Jur. N. S. 103; and see also *Ex parte Lawson*, 17 W. R. 186; and *Re Divers*, 1 Jur. N. S. 995.

What is not a wilful refusal.

But where a vendor insisted upon payment, not only of the purchase-money, but of his costs also, before he gave up possession, and the company consequently paid the purchase-money into the bank under the 76th section of the Act, V.-C. Wood, on a petition to obtain payment out of the money, held that the vendor had been guilty of "wilful refusal," and had thus disentitled himself to receive costs (*Re Turner's Estate*, 10 W. R. 128; and see also *Ex parte Hyde*, cited in Seton, p. 1443). As to wilful neglect, see *Re Woodburn*, 13 L. T. 237; *Re Marylebone Improvement Act*, 19 W. R. 1058.

What is a wilful refusal.

(f) Where lands are taken by several companies, the costs of an application for payment out of the purchase-moneys must be borne by the companies, or, if any of them have been amalgamated, by such of them as are subsisting at the time of the application, in equal shares (*Ex parte Gaskell*, 2 Ch. D. 360; 45 L. J. Ch. 368; 24 W. R. 752; *Ex parte Ecclesiastical Commissioners*, W. N. (1873), 173). And the same rule applies in general to the costs of an application for re-investment in land, except that the costs of the *ad valorem* stamp on the conveyance must be borne by the companies rateably, according to the amount contributed by each to the purchase-moneys (*Ex parte Bishop of London*, 2 De G. F. & J. 14; *Ex parte Corporation of London*, 5 Eq. 418; *Re Maryport and Carlisle Ry. Co.*, 1 N. R. 506; 11 W. R. 410 (S. C. 32 Beav. 397; 1 N. R. 545; 11 W. R. 507, *contra*, is overruled); *Ex parte Corpus Christi College, Oxford*, 13 Eq. 334; *Re Leigh*, 6 Ch. 387; *Ex parte Governors of Christ's Hospital*, 27 W. R. 458; *Re Byron*, 1 De G. J. & S. 358; 2 N. R. 294; 8 L. T. 562; *Re Merton College*, 1 De G. J. & S. 361; 3 N. R. 598; 10 Jur. N. S. 223; 12 W. R. 503; 10 L. T. 8; *Ex parte Governors of Christ's Hospital*, 2 H. & M. 166; *London and Brighton Ry. Co. v. The Shropshire Ry. Co.*, 23 Beav. 605; and a surveyor's fee will be apportioned in the same way as the costs of the *ad valorem* stamp (*Ex parte Corporation of London*, 5 Eq. 418; *Re Power*, W. N. (1876), 205).

Wilful neglect.

Where several companies paid in purchase-money.

Where, however, there is great inequality in the amounts, such as would produce extreme hardship and injustice, the costs may be apportioned (*Ex parte Governors of Bartholomew's Hospital*, 20 Eq. 369; *Ex parte Christ Church*, 9 W. R. 474; *Ex parte Governors of St. Thomas's Hospital*, 7 W. R. 425; *Re Byron's Settled Estates*, 1 De G. J. & S. 358; 2 N. R. 294; *Ex parte Dean of Christ Church*, W. N. (1872), 201); but see *Ex parte Governors of Christ's Hospital*, 2 H. & M. 166).

The landowner ought to make one application only for payment out, or reinvestment of the money paid in by the several companies (*Ex parte Lord Broke*, 11 W. R. 505).

Where two funds paid into Court had been dealt with by different branches of the Court, and it was desired to deal with both funds at the same time, leave was given to present one petition in both matters in one branch of the Court without transferring either of the matters (*Re Lord Arden*, 10 Ch. 445). See, too, *Re Butterfield*, 9 W. R. 805; *Re Gore Langton*, 10 Ch. 328.

When funds are in different branches of the Court.

(g) The costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, include the costs of ascertaining the value of the land conveyed, e.g., by apportionment of ground-rents (*Ex parte Flower*, 1 Ch. 599); *secus* in cases where the purchase is not compulsory, see note (p), p. 45).

Costs of purchase or taking.

They also include costs of a power of attorney from parties abroad (*Re Godley*, 10 Ir. Eq. Rep. 222; *Ex parte Incumbent of Guilden Sutton*, 8 De G. M. & G. 380; 2

Costs of conveyance.

7 & 8 Vict.
c. 18, s. 69-87.

Costs of
interim in-
vestment.

Jur. N. S. 793), and costs of conveyance generally. As to costs of taking lands which are the subject of a suit, see note (k), *infra*.

(h) The costs of interim investment include the broker's commission (*Ex parte Corporation of Trinity House*, 3 Hare, 95; *Re Braithwaite*, 1 Sm. & Giff. App. xv.; *Ex parte Earl of Harborough*, 22 L. T. (O. S.) 115).

The company must pay the costs of an interim investment either in stock (*Re Liverpool Railway Co.*, 17 Beav. 392), or on real security (*Re Flemon*, 10 Eq. 612; *Re Stewart*, 18 Eq. 278; *Re Smith*, 9 Eq. 178; *Re Blyth* (Lord Chancellor Selborne), 16 Eq. 468; 21 W. R. 819; *Reading v. Hamilton*, 5 L. T. 628); and without any condition as to the costs of any future permanent investment (*Re Blyth*; *Re Stewart*; the cases of *Re Lomax*, 34 Beav. 294; *Re Wilkinson*, 16 W. R. 537; and *Re Flemon* (on this point) must be considered overruled). See also *Ex parte Eton College*, 15 Jur. 45; 3 Rly. Ca. 271.

On an application for interim investment partly in securities authorised by the special Act, and partly in debenture stock under the provisions of the Settled Land Act, 1882, the public body must pay the costs of investment (*Re Hanbury*, W. N. (1883), 116; 31 W. R. 784).

Costs of and
incident to
payment of
dividends.

The costs of, and incident to, the payment of the dividends must be paid by the company (*Ex parte Incumbent of Guilden Sutton*, 8 De G. M. & G. 380; 2 Jur. N. S. 793; *Ex parte Eccles. Commissioners*, 39 L. J. Ch. 623).

So where the purchase-money of leaseholds was invested in consols, and the dividends thereon did not amount to the rents previously payable, so that yearly sales were necessary in order to satisfy the tenant for life, the costs of such sales were held to be payable by the company (*Re Long*, 1 W. R. 226; and see *Re Edmunds*, 35 L. J. Ch. 538; W. N. (1866), 111; 14 W. R. 507).

As to the costs of an application for payment of dividends to persons successively entitled, see *Re Jolliffe*, 9 Eq. 668, and other cases in note (k), *infra*.

Costs of rein-
vestment in
land;

(i) The section provides that the company shall pay the costs of the reinvestment, in cases where the reinvestment is in lands or hereditaments (*Re Lathropp's Charity*, 1 Eq. 467); for if a company, acting under its compulsory powers, deprives a man of his land, it is bound, at its own cost, to place him in possession of land of equal value (*Ex parte Rector of Holywell*, 2 Dr. & Sm. 465). But the section does not provide that when the purchase-money is applied in any of the other modes authorised by the 69th section, the company shall pay any costs other than those of the application, and, accordingly, the costs of applying the purchase-money in discharge of incumbrances have been held *not* to be payable by the company (*Ex parte Corporation of Sheffield*, 21 Beav. 162; *Ex parte Town Trustees of Sheffield*, 8 W. R. 602; *Ex parte Earl of Hardwicke*, 1 De G. M. & G. 297; 17 L. J. Ch. 422; *Re Yeates*, 12 Jur. 279; *Re Mark's Trust*, W. N. (1877), 63; but the contrary was held in *Ex parte Trafford*, 2 Y. & C. Ex. 522; *Ex parte Bishop of London*, 2 De G. F. & J. 14; and see *Re London & South Western Railway Act*, 2 J. & H. 390; and the costs of proceedings to redeem the land tax can certainly be ordered to be paid by the company (*Re London & Brighton Railway Co.*, 18 Beav. 608; *Ex parte Beddoes*, 2 Sm. & Giff. 466; *Re Bethlem Hospital*, 19 Eq. 457; 44 L. J. Ch. 406; 23 W. R. 644, where the cases are discussed by Jessel, M. R.; *Re Vicar of Queen Camel*, 11 W. R. 503; *Ex parte Hospital of St. Katharine*, 17 Ch. D. 378).

in redeeming
incumbrances
or land tax.

What are
costs of rein-
vesting in
land.

The company have had to pay the following costs under the head of costs of reinvesting the purchase-money in other lands:

Costs of enrolling a purchase deed (*Re Governors of Christ's Hospital*, 12 W. R. 669).

Of referring the title to the conveyancing counsel of the Court (*Re Morgan Jones*, 6 W. R. 762).

Of a second petition rendered necessary by the lands selected for reinvestment being the subject of a chancery suit (*Carpmael v. Proffit*, 17 Jur. 875; 23 L. J. Ch. 165); and see *infra*, note (k).

Petitions
under Trustee
Act, &c.

Of a petition under the Trustee Act rendered necessary by the death of the vendor leaving an infant heir (*Re Lowry*, 15 Eq. 78). See cases cited, p. 45, *post*.

But not the costs of the vendor's appearance on the petition (*Re Dylar*, 1 Jur. N. S. 975); nor the fine payable on a reinvestment in purchase of copyholds, the fine being part of the purchase-money (*Ex parte Vicar of Sawston*, 6 W. R. 492; 4 Jur. N. S. 473).

Costs where
reinvestment
in land is
asked for by
person abso-
lutely
entitled.

The company is liable to pay the costs of reinvestment in land, even where a person who has become absolutely entitled to the money asks for such reinvestment (*Re Jones*, 39 L. J. Ch. 190; 18 W. R. 312; *Re Dodd*, W. N. (1871), 83; and see *Re Parker*, 13 Eq. 495; 26 L. T. 12; 20 W. R. 289; *Re Bagot*, 14 W. R. 471; *Re Pick*, 10 W. R. 365; *Re Lye*, W. N. (1866), 20); and where a person absolutely entitled to the money died, having resettled it, the company had to pay the costs of reinvestment in land, to be settled to the uses of the will (*Re De Beauvoir*, 2 De G. F. & J. 5; 8 W. R. 425; and see *Re Lye*, W. N. (1866), 20).

Special costs
of purchase.

When the money is sought to be reinvested in land upon a contract which throws

upon the purchaser costs of the purchase, which in an open contract would be borne by the vendor, the costs directed to be paid by the company will be limited to those which in an open contract would be purchaser's costs (*Ex parte Governors of Christ's Hospital*, 20 Eq. 605; *Re Temple Church Lands, Bristol*, 26 W. R. 259; W. N. (1877), 262; and see *Re Mason*, W. N. (1872), 77).

7 & 8 Vict.
c. 18, s. 69-87.

The costs of reinvestment in the purchase of other lands may include the costs of successive reinvestments, and of *bonâ fide* but abortive attempts to reinvest.

Costs of successive reinvestments

The costs of three successive reinvestments in land were ordered to be paid by the company in *Re St. Katharine's Dock Co.*, 3 Rly. Ca. 514; and see *Jones v. Lewis*, 2 M. & G. 163; *Re Merchant Tailors' Co.*, 10 Beav. 485; *Ex parte Trustees of St. Bartholomew's Hospital*, 4 Drew. 425; *Ex parte Eton College*, 3 Rly. Ca. 271; *Ex parte Bouverie*, 4 Rly. Ca. 229; *Re Hereford, &c. Ry. Co.*, 13 W. R. 134; *Ex parte Rector of Loughton*, 5 Rly. Ca. 591 (where the company had to pay the costs, though 6l. only was invested in the second purchase); *Re Brandon*, 2 Dr. & Sm. 162; *Ex parte Fishmongers' Co.*, 11 W. R. 81; *Re Paddon*, W. N. (1878), 65. Where the purchase-money amounted to 125,000l. the Court did not consider six applications for reinvestment leaving 38,440l. still uninvested to be unreasonable (*Ex parte Hospital of St. Katharine*, 17 Ch. D. 378). In *Re Kinsey*, 1 N. R. 303, the balance remaining uninvested was paid out to trustees under the 71st section.

Land having been purchased out of money in Court, an application was made for reinvestment of a further sum in redemption of the land-tax, and the company paid the costs (*Re London and Brighton Ry.*, 18 Beav. 608).

In redemption of land tax.

Where attempts not authorised by the Court to reinvest in land fail by reason of the Court's disapproval or otherwise, the company does not pay the costs, but where the Court has approved, and the purchase goes off for other reasons, the company pays the costs of the *bonâ fide* attempt (*Ex parte Rector of Holywell*, 2 Dr. & Sm. 463; 13 W. R. 960; *Re Carney*, 20 W. R. 407; W. N. (1872), 53; 26 L. T. 308; *Ex parte Copley*, 4 Jur. N. S. 297; *Ex parte Eton College*, 7 W. R. 710; *Re Macdonald*, 6 Jur. N. S. 865; 2 L. T. 168; *Ex parte Stevens*, 15 Jur. 243; *Re Hardy*, 18 Jur. 370; *Re Wolley*, 1 W. R. 407, 465; *Re Yawdrey*, 3 Giff. 224; *Ex parte Pumphrey*, 4 Rly. Ca. 490; *Ex parte The Manchester Burial Board*, W. N. (1866), 117).

Of attempts to reinvest.

(k) The costs of the application may be directed to be paid by the company in the following cases:—

Costs of obtaining the orders.

If the application is for reinvestment, and that not merely strict reinvestment in land, but also in any of the modes allowed by the Court under section 69; see *Re Lathropp's Charity*, 35 Beav. 297; 1 Eq. 467, where *Re Bucks Railway*, 14 Jur. 1065, and *Re Oxford, &c. Railway*, 27 Beav. 571, were reviewed.

For reinvestment.

If the application is for payment of the dividends of an interim investment, it is decided that though there has been an application for interim investment and payment of dividends to one tenant for life, the company must bear the costs of a further application on the death of such tenant for life for payment of future dividends to the person subsequently entitled (*Re Jolliffe*, 9 Eq. 668, where *Ex parte Incumbent of Guilden Sutton*, 8 De G. M. & G. 380, was referred to); and see *Re Lye*, W. N. (1866), 20; *Re Byrom*, 5 Jur. N. S. 261; but the company had not to pay the costs of a petition for payment of dividends to new trustees of a settlement, where the original petition was defective (*Re Pryor*, W. N. (1876), 141; 35 L. T. 202; see, however, as to the costs of defective and unnecessary petitions, *infra*, p. 45).

For payment of dividends to persons entitled.

If the application is for payment out to the person absolutely entitled, then if the land belongs to several persons, though their interest is derived under the same will, they may each apply; but if two or more appear by one solicitor, they will only have one set of costs (*Re Nicholl*, W. N. (1866), 93).

For payment out.

The company must pay the costs not only of obtaining the orders, but of proceedings relating thereto except those caused by litigation between adverse claimants (as to which see note (m)).

Costs of orders and proceedings relating thereto.

Thus where the lands taken are the subject of an administration suit pending in the Chancery Division, the company will have to pay the costs of proceedings therein necessitated by the purchase; see *Dinning v. Henderson*, 2 De G. & Sm. 485; *Paterson v. Paterson*, 10 L. T. 183; *Bradshaw v. Fane*, 1 N. R. 159; 9 Jur. N. S. 166; *Re Brandon*, 2 Dr. & Sm. 162; *S. C. nom. Brandon v. Brandon*, 9 Jur. N. S. 11; *Eden v. Thompson*, 2 H. & M. 6; *Brandon v. Brandon*, 11 Jur. N. S. 30; *Henniker v. Chafy*, 35 Beav. 124; *Picard v. Mitchell*, 12 Beav. 486; *Haynes v. Barton*, 1 Dr. & Sm. 483; and see *S. C.* 1 Eq. 422; *Henniker v. Chafy*, 28 Beav. 621, 625; *Re Walker*, 7 Rly. Cases, 129; *Re Taylor*, 1 Mac. & G. 210; *Re Hore's Estate*, 5 Rly. Cases, 592; *Re Merchant Tailors' Co.*, 10 Beav. 485; but see *Hore v. Smith*, 14 Jur. 55; *Re Pilton*, 3 W. R. 327; *Wilson v. Foster*, 26 Beav. 398; 5 Jur. N. S. 113; *Sidney v. Wilmer*, 31 Beav. 338.

Where lands belonging to a lunatic were taken, and the next of kin attended inquiries into the propriety of investment, &c., their costs were held payable by the company (*Re Briscoe*, 2 De G. J. & S. 249; and see *Re Taylor*; *Re Walker*; *Re Mines*, 1 Ch. D. 28).

References in lunacy.

7 & 8 Vict.
c. 18, s. 69-87.

Costs of parties im-
properly
served.

Vexatious
appearances.

Costs of ser-
vice upon and
appearance
of incum-
brancers.

But the company is not liable to pay costs of the appearance of parties to the suit who have been improperly served (*Eden v. Thompson*, 2 H. & M. 6; and see *Melling v. Bird*, 22 L. J. Ch. 599; *Haire v. Lovitt*, 12 L. T. (O. S.) 306); and if parties who might and ought to appear together, vexatiously appear separately, and thereby increase the costs, the company will not have to pay these increased costs (*Ex parte Baroness Brayne*, 11 W. R. 333; and see *Re Nicholl*, 14 W. R. 475; *Re Prebend of St. Margaret*, 10 L. T. 221).

The following rule seems to be now established as to service upon mortgagees and incumbrancers, and the costs consequent thereon: Where there are incumbrancers who, as a matter of form, are necessary parties, but who have no interest in opposing the petition, the proper course is to serve them with a copy of the petition, and tender them thirty shillings for costs, with an intimation that if they appear they will be liable to pay their own costs; the rule applies equally to petitions for reinvestment in land and to petitions for payment out, either to or with the consent of incumbrancers; but the petitioners will be entitled to add to their costs of the petition (in addition to the thirty shillings), a sum sufficient to cover the costs of an affidavit of service; see *Re Gore Langton's Estates*, 10 Ch. 328; 44 L. J. Ch. 405; 23 W. R. 842; 32 L. T. 785; *Re Halsestead United Charities*, 20 Eq. 48; *Ex parte Jones*, 14 Ch. D. 624; *Re Pattison*, 4 Ch. D. 207; R. S. C. (1883), Ord. LXV. r. 27 (19). The earlier cases were conflicting.

The company are not bound to pay the costs of incumbrancers on the interest of a tenant for life (*Ex parte Smith*, 6 Rly. Ca. 150), unless they are served at the instance of the company (*Re Hungerford*, 1 K. & J. 413), or their interests are affected (*Re Nash*, 1 Jur. N. S. 1082; and see *Re Thomas*, 12 W. R. 546). Nor is it necessary on a petition for interim investment and payment of dividends to serve persons having charges on the inheritance prior to the life estate, and the costs of such parties, if served, will not be allowed against the company (*Re Morris*, 20 Eq. 470; 23 W. R. 351; and see *Re Dowling*, 45 L. J. Ch. 568; 24 W. R. 729). So, when a mortgage affects part only of the land, but not the part taken by the company, the company will not be ordered to pay the costs of the mortgagee if served (*Re Yeates*, 12 Jur. 279); and where a small portion of the estate only was in mortgage, and it became necessary to apply to the Court in a pending suit to obtain a release from the mortgages, it was held that the company were not liable to pay the costs of the application (*Ex parte Phillips*, 11 W. R. 54, reversing *S. C. 2 J. & H.* 390).

Mortgage
created since
payment in.

The costs of a mortgagee, whose incumbrance has been created after the lands were taken and the money paid into Court are not payable by the company (*Re Middle Level Drainage and Navigation Commissioners*, June 23, 1864, V.-C. K.; *Re Jones*, 39 L. J. Ch. 190; 18 W. R. 312).

Where the mortgagee of a tenant for life of lands taken by a railway company dies, and the mortgagor and the executors of the mortgagee petition for payment of the dividends to a transferee of the mortgage, the company are not liable to pay the costs of the petition (*Re Byrom*, 5 Jur. N. S. 261; 7 W. R. 367).

Costs of ser-
vice upon and
appearance
of trustees.

The general rule above laid down as to mortgagees applies also in the case of trustees, but of course the company must pay the costs of trustees who have been properly served and appear (*Re Finch*, 14 W. R. 472; *Re Dukes of Cleveland's Harte Estates*, 1 Dr. & Sm. 46; *Henniker v. Chafy*, 35 Beav. 124; overruling on this point *Wilson v. Foster*, 26 Beav. 398); and see *Re Burnell*, 12 W. R. 568; *Re Bowes*, 12 W. R. 929; *Re East*, 2 W. R. 111; *Ex parte Metropolitan Ry.*, W. N. (1868), 204; 16 W. R. 997; *Ex parte L. & S. W. Ry. Co.*, 38 L. J. Ch. 527; *Re Pattison*, 4 Ch. D. 207.

Costs of
appearance
of remainder-
men.

Generally speaking, if a tenant for life petitions for interim investment or for payment out, or for reinvestment in land, and there is no suit pending or other special circumstances, the petition should not be served on remaindermen or trustees (*Ex parte Staples*, 1 De G. M. & G. 294; *Re Whitting*, 9 W. R. 830; *Re Marner*, 3 Eq. 432; *Re Dowling*, 45 L. J. Ch. 568; 24 W. R. 729).

Service on
persons
entitled to
other shares.

And where a petitioner is only entitled as one of a class to an aliquot part of the fund service on the other parties interested may be dispensed with (*Re Midland Ry.*, 11 Jur. 1095).

When re-
maindermen
should be
served.

But where the petition is under section 74 for the application of purchase-money paid in respect of leases or reversions which are in settlement, and the apportionment thereof between tenant for life and remaindermen, the remaindermen are "parties interested" within the section, and are entitled to appear (*Re Brailey*, W. N. (1866), 109; *Re Crane*, 7 Eq. 322; and see *Re Romney*, 3 N. R. 287).

And when the petition is for reinvestment not in land or hereditaments but in improvements, the remaindermen should be served (*Re Leigh*, 9 Ch. 684).

Ordinary.

Ecclesiastical
Commis-
sioners.

As to the costs of serving the ordinary, and of his appearance on the petition where his consent is required, see *Ex parte Vicar of Creech St. Michael*, 21 L. J. Ch. 677, where such costs were allowed; but compare *Ex parte Bishop of London*, 2 De G. F. & J. 14, where the costs of the Ecclesiastical Commissioners, whose

consent was necessary to the investment, and *Re Incumbent of Whitfield*, 1 J. & H. 610; 9 W. R. 764, where the costs of the governors of Queen Anne's Bounty, were disallowed against the company. In *Ex parte Dean and Canons of Manchester*, 28 L. T. 184, the costs of the Church Estates Commissioners were ordered to be paid out of the funds in Court.

Tenants in common interested in money paid into Court by a company are entitled to their costs of appearance separately on an application by one of them for payment of the money to an incumbrancer of the whole (*Re Braye*, 9 Jur. N. S. 454).

The costs of the Attorney-General on a petition entitled under Sir S. Romilly's Act, 52 Geo. III. c. 101, are payable by the company (*Re London, Brighton and South Coast Railway Co.*, 18 Beav. 608).

The company are not liable to pay the costs of the official solicitor whom it has become necessary to serve through the fund not having been dealt with for upwards of fifteen years (*Re Clarke*, 21 Ch. D. 776).

The company were held liable to pay the costs of freemen of a city where the land belonged to a corporation (*Ex parte Mayor of Lincoln*, 6 Rly. Ca. 738).

The Court will take care that the company are not put to unnecessary costs; e.g., of unnecessary matter in a petition (*Ex parte Osbaldiston*, 8 Hare, 31; *Haire v. Lovitt*, 12 L. T. (O. S.) 306); but the introduction into the petition of clauses in special Acts is not necessarily impertinent (*Re Lilley*, 17 Sim. 110); and see as to costs of unnecessary matter generally, R. S. C. (1883), Ord. LXV. r. 27 (20), *infra*.

So, if a second petition is necessary by reason of a defect in the first, the company will not have to pay the costs; see *Re London and Brighton Railway Co.*, 18 Beav. 608, 612; *Ex parte Jolliffe*, 3 Jur. N. S. 633; *Re Byrom*, 5 Jur. N. S. 261; *Re Leigh*, 6 Ch. 887; *Ex parte Winder*, 6 Ch. D. 696; *secus* where the defect was in the order (*Re Goe*, 3 W. R. 119, where the costs of two necessary petitions were allowed against the company; and see *Re Metropolitan Railway Co. and Maire*, W. N. (1876), 245; but see *Re Oakham School*, 23 L. T. (O. S.) 251; and *Re Pryor*, W. N. (1876), 141; 35 L. T. 202. See also *Re Pattison*, 4 Ch. D. 207; *Re Nicholls*, W. N. (1866), 93.

Where two portions of a settled estate had been taken by different corporations, and the purchase-money had been paid into two different branches of the Court, and two petitions were presented for reinvestment of the two funds together in one purchase, the Court only allowed the costs of one as costs under the Act (*Re Gore Langton's Estates*, 10 Ch. 328); and see *Re Butterfield*, 9 W. R. 805; *Re Lord Arden*, 10 Ch. 445.

When the purchase-money has been once paid out, or transferred to a new account (*Melling v. Bird*, 22 L. J. Ch. 599; 17 Jur. 155), the company ought not to pay the costs of any further applications rendered necessary by subsequent dealings with, or settlements of the property by, the landowner, or by the appointment of new trustees of the property (*Re Andenshaw School*, 1 N. R. 255); and see *Ex parte Hordern*, 2 De G. & Sm. 263; *Re Byrom*, 5 Jur. N. S. 261; 7 W. R. 367.

Where an order directed payment of dividends to a tenant for life, the company were held not liable to pay the costs of a subsequent order for payment of them to an assignee of the tenant for life (*Ex parte Vicar of Kidderminster*, 7 W. R. 482; *Re Pick*, 10 W. R. 365). As to the costs where the land belonged to a charity which it has subsequently become necessary to reconstitute, see *Re Shakespeare Walk School*, 12 Ch. D. 178; *Re St. Paul's Schools*, 52 L. J. Ch. 454; 31 W. R. 424.

Where other money is invested besides the sum paid in by the company, the Court will take care that the costs are not thereby increased (*Re Branmer*, 14 Jur. 236; *Re Loveband*, 9 W. R. 12; *Ex parte Hodge*, 16 Sim. 159; *Ex parte Tetley*, 4 Rly. Ca. 55 (but see *Ex parte Lord Palmerston*, *ibid.* 57); *Ex parte King's College*, 5 De G. & Sm. 621; *Ex parte Newton*, 4 Y. & Coll. 518; *Attorney-Gen. v. Mayor of Rochester*, 15 W. R. 765; W. N. (1867), 142; *Ex parte Ecclesiastical Commissioners*, 13 W. R. 575).

(j) The costs of payment-out include those of a disentailing deed (*Re Brooking*, 2 Giff. 31; *Ex parte Vaudrey*, 3 Giff. 224); and of half-yearly sales where necessary for apportionment as between tenant for life and remaindermen of leaseholds; see *Re Long* and *Re Edmunds*, cited notq (h), *ante*.

As to costs of reinvestment when asked for by a person absolutely entitled, see note at foot of p. 40, *ante*.

(m) The words "except such as are occasioned," &c., refer to "costs" and not to "proceedings" (*Re Cant*, 1 De G. F. & J. 153; *Ex parte Rector of St. James*, 9 Jur. N. S. 1222). "Adverse litigation arises where different parties set up adverse titles to the estate" (*Askeu v. Woodhead*, 14 Ch. D. 27, *per* Jessel, M. R.). The usual form of order (on which see Seton, p. 1441, and *Ex parte Hooper*, 1 Dr. 269), directs the company "to pay the costs of obtaining this order, &c., and of all the

7 & 8 Vict. c. 18, s. 69-87.

Governors of Queen Anne's Bounty.

Church Estates' Commissioners.

Tenants in common.

Attorney-general.

Official solicitor.

Freemen.

Unnecessary costs.

Lengthy petitions.

Unnecessary and defective petitions.

Subsequent dealings with the money after transfer.

Where other money is invested besides that paid in.

Costs of payment out.

Exception of costs of adverse litigation.

7 & 8 Vict.
c. 18, a. 69-87.

proceedings relating thereto." "Notwithstanding what is stated in *Es Cant*, 1 De G. F. & J. 159, and *Re Courts of Justice Commissioners*, W. N. (1868), 124, it is not and has not been, the practice to insert the exception as to the costs of litigation between adverse claimants, unless it appears or is suggested that some litigation has taken place" (Seton, p. 1441). In a simple case the order should specify what costs fall within the exception (*Re Tookey*, 16 Jur. 708; *Re Longworth*, 1 K. & J. 1; *Ex parte Collins*, 15 L. T. (O. S.) 362; *Ex parte Palmer*, 13 Jur. 781). And see further as to the form of the order, *Re Hayward*, 9 L. T. 320; *Ex parte Great Southern and Western Ry.*, Ir. R. 11 Eq. 497.

Adverse
claimants.

This exception only applies where there is an actual *litis contestatio* (*Re Longworth*, 1 K. & J. 1; *Re Spooner*, *ibid.* 220; *Re Hungerford*, *ibid.* 413; *Ex parte Hooper*, 1 Drew. 264). Costs incident to the ordinary administration of a fund by the Court, e. g. the costs of an inquiry, how much of a fund belongs to a mortgagor and how much to a mortgagee must be borne by the Co. (*Re Bareham*, 17 Ch. D. 329; *Eden v. Thompson*, 2 H. & M. 6). Where the land belonged to a devisee for life with remainder to the testator's heirs, it was held that the company must pay the costs of two petitions by two co-heirs, and also the costs of investigating the title of other parties who claimed to be heirs, in answer to advertisements ordered to be issued by the Court, except such costs as were occasioned by affidavits of the petitioners in answer to such claims (*Re Spooner*, 1 K. & J. 220; and see *Haire v. Lovitt*, 12 L. T. (O. S.) 306).

A contest between tenant for life and remainderman as to how much of a fund belonged to one of them, and how much to the other, was held by V.-C. Bacon to be within the exception; but this decision was disapproved of by Jessel, M. R. (*Ashe v. Woodhead*, 14 Ch. D. 27; 41 L. T. 670; 42 L. T. 567).

It was said by V.-C. Kindersley, in *Re Tookey*, 16 Jur. 708, that the exception was not intended to apply to a question of construction decided by the Court upon petition, but to a case where an action at law was necessary to decide the rights of the parties. See, too, *Ex parte Palmer*, 13 Jur. 781; *Re Singleton*, 11 W. R. 871; *Re Wilson*, W. N. (1867), 110. But where the petitioner, although there was no actual hostile litigation, was obliged to bring parties before the Court to contest questions with him he paid their costs, though the general costs were borne by the company (*Ex parte Cooper*, 2 Dr. & Sm. 312; 34 L. J. Ch. 373; 11 Jur. N. S. 103; 13 W. R. 364; 11 L. T. 661).

Where a question arising on the construction of a will relating to the property taken was argued by the petitioner and the respondents, the company was only ordered to pay one set of costs (*Ex parte Styan*, Johns. 387; *Ex parte Yates*, 17 W. R. 872; 20 L. T. 940; W. N. (1869), 150). In another case, an additional application having been rendered necessary by litigation, no order as to costs was made thereon, (*Ex parte Jolliffe*, 3 Jur. N. S. 633). But in *Carpmael v. Prewitt*, 23 L. J. Ch. 165; 17 Jur. 875, it was held that the fact of a second petition being rendered necessary by the investment of the purchase-moneys in other lands sold in a pending suit did not bring the case within the exception in the Act.

When a company has, by virtue of two different Acts, taken two pieces of land held under the same title, with knowledge that such title is disputed, and taken a conveyance from both claimants, it must pay the costs of two applications for investment, including the costs in each case of the appearance of the adverse respondents (*Re Butterfield*, 9 W. R. 805). But where two parties claimed the money and the company paid it into Court, and one of them abandoned his claim, the company were held not liable for the costs of payment in or of the petition by the other for payment out, the Court doubting indeed whether the company were not in strictness entitled to have their costs paid by the claimant (*Re English*, 13 W. R. 932; 12 L. T. 561; see, however, *Re Duke of Norfolk's Estates*, W. N. (1874), 158; 22 W. R. 817). In *Re Bagot*, 10 W. R. 607, V.-C. Kindersley, upon a special Act containing clauses as to costs substantially the same as those in the Lands Clauses Consolidation Act, decided that the company must pay all the costs of a petition to obtain payment of money out of Court, involving a question of disputed conversion, except the costs of the petitioner and of a respondent, both of whom had failed in their contentions.

(n) See note (i), *ante*.

Successive
reinvest-
ments.

Conveyances

And with respect to the conveyances of lands, be it enacted as follows:

Form of con-
veyances.

LXXXI. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the schedules (A) and (B) respectively to this Act annexed, or as near thereto as the circumstances of the case will

admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration or by construction of law on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged they shall in equity afford the same protection as if they had been kept on foot and assigned to a trustee for the promoters of the undertaking, to attend the reversion and inheritance.

7 & 8 Vict.
c. 18, s. 69-87.

LXXXII. The costs of all such conveyances (*o*) shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred (*p*) on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

Costs of
conveyances.

(*o*) The costs of a conveyance prepared but not used by reason of incumbancers refusing to join, were held to be payable by the company in *Re Divers*, 1 Jur. N. S. 995. The costs of conveyance under this section do not include costs of a collateral agreement with the vendor, which, though part of the consideration for the purchase, forms no part of the conveyance (*Re Lietch and Kewney*, 15 W. R. 1055).

Costs of
conveyance.

(*p*) There is a distinction between the costs payable by the company under this section and under section 80, *supra*, the reason being that the former section refers to cases where the company uses its *compulsory* powers and therefore has to pay all the costs arising out of the transaction; but this section relates to purchases by agreement where the vendor can make his own terms, or, if he goes before a jury, can urge any incidental expenses before the jury as a ground for increase of compensation; therefore this section deals only with the legal expenses of making a title and conveying the property, taking those expenses in their largest sense (*e. g.*, including the taking out administration for purposes of conveyance, *Re Liverpool Improvement Act*, 5 Eq. 282; overruling *Re S. Wales Ry.*, 14 Beav. 418), but not with any costs of ascertaining what that is which is to be put into the document (*Ex parte Buck*, 1 H. & M. 519; 33 L. J. Ch. 79, where the costs of apportioning ground-rents between houses taken and houses not taken were disallowed against the company on taxation); and see *Ex parte Incumbent of Alsager*, 2 W. R. 324; *Ex parte Feoffees of Addies' Charity*, 3 Hare, 22; *Re Woodburn*, 13 L. T. 237.

Costs under
this section
different from
costs under
sect. 80.

As to the costs occasioned by a vendor dying and leaving an infant heir or devisee, so that a suit or petition under the Trustee Act is necessary, see *Lake v. Eastern Counties Ry.*, 19 L. T. (O. S.) 323; *Re Lowry*, 15 Eq. 78; *Re Manchester & Southport Ry.*, 19 Beav. 365; *Eastern Counties Ry. v. Tufnell*, 3 Rly. Ca. 133; *Midland Counties Ry. v. Westcomb*, 11 Sim. 57; *Midland Counties Ry. v. Caldecott*, 2 Rly. Ca. 394; *Armitage v. Askham*, 1 Jur. N. S. 227; *Ex parte Cave*, 26 L. T. (O. S.) 176.

Costs of
apportion-
ment;

Where the agreement was to sell in fee simple, the company had not to bear the expense of discharging a mortgage (*Ex parte Phillips*, 3 De G. J. & S. 341; 11 W. R. 54; overruling *S. C. 2 J. & H. 390*).

of petition
under Trustee
Act.

LXXXIII. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof (*q*),

Taxation of
costs of con-
veyances.

7 & 8 Vict.
c. 18, s. 69-87.

such costs shall be taxed by one of the taxing-masters of the Court of Chancery, or by a Master in Chancery in Ireland, upon an order of the same Court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or, in default thereof, the same may be recovered in the same way as any other costs payable under an order of the said Court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation (*r*).

(*q*) See *Re Rhodes*, 8 Beav. 224; *Lake v. Eastern Counties Ry. Co.*, 19 L. T. (O. S.) 323.

(*r*) See *Ex parte The Great Western Ry. Co.*, 3 Rly. Ca. 516; and *Re Spooner*, 1 K. & J. 220. An order for taxation cannot be obtained after the costs have been paid (*Ex parte Somerville*, 23 Ch. D. 167; 31 W. R. 518).

[By sect. 84, the company may enter on the lands before purchase, in order to survey, but not for any other purpose except after deposit of the price under the following sections.]

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security, and giving bond.

LXXXV. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to, or an award made, or verdict given for the purchase-money, or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit (*s*) in the Bank by way of security, as herein-after mentioned, either the amount of purchase-money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices* in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond (*t*), under the common seal of the promoters, if they be a corporation, or, if they be not a corporation, under the hands and seals of the promoters, or any two of them with two sufficient sureties, to be approved of by two justices* in case the parties differ, in a penal sum equal to the sum so to be deposited conditioned for payment to such party, or for deposit in the Bank (*u*) for the benefit of the parties interested in such lands, as the case may require under the provisions herein contained of all such purchase-money or compensation, as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds per centum per annum, from the time of entering on such lands, until such pur-

* By 30 & 31 Vict. c. 127, s. 36, the Board of Trade appoints a surveyor.

chase-money or compensation shall be paid to any such party or deposited in the Bank for the benefit of the parties interested in such lands, under the provisions herein contained (v); and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands without having first paid or deposited the purchase-money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

7 & 8 Vict.
c. 18, s. 69-87.

(s) See Kerr on Injunctions, p. 134, as to this section. The section does not apply to interference with an easement (*Clark v. School Board for London*, 9 Ch. 120). The company are not to proceed under this section unless there is an urgent need for immediate entry (*Field v. Carnarvon Ry. Co.*, 5 Eq. 190); but they may proceed under it after notice of their intention to summon a jury (*Langham v. G. N. Ry.*, 1 De G. & Sm. 486). The payment of the deposit by the railway company does not deprive the landowner of his right to have the value of the land ascertained afterwards, and to have the ordinary lien of a vendor both for such actual value and for the compensation for severance and inconveniences (*Walker v. Ware, &c. Ry. Co.*, 35 Beav. 52; 1 Eq. 195); and see *Wing v. Tottenham Ry.*, 3 Ch. 740; *Betty v. L. C. & D. Ry.*, W. N. (1867), 169. The valuation made of the premises must be a proper one (*Cotter v. Metropolitan Ry.*, 12 W. R. 1021; 10 Jur. N. S. 1014).

Landowner's rights, independently of deposit.

As to what the deposit covers, see note (y) to s. 87, *infra*.

(t) The production of the bond by the company is sufficient evidence that the condition thereof has been performed (*Re L. & N. W. Ry.*, 26 L. T. 687). If the bond is not performed the landowner may apply to have the money in Court paid out to him (*Re Muirow*, 10 Ch. D. 131).

(u) See as to payment into Court of additional purchase-money, found to be payable (*Ex parte London, Tilbury, and Southend Ry. Co.*, 1 W. R. 533; *Ashford v. L. C. & D. Ry. Co.*, W. N. (1866), 288; 14 L. T. 787).

(v) As to the interest payable where the entry was originally wrongful, but the requirements of the statute have been afterwards satisfied, see *Willey v. South Eastern Ry. Co.*, 1 M. & G. 59. See also as to interest *Re Wolff*, W. N. (1868), 66; *Re Navan Ry.*, I. R., 10 Eq. 113; *Rhys v. Dare Valley Ry.*, 19 Eq. 93.

Interest.

LXXXVI. The money so to be deposited as last aforesaid shall be paid into the Bank in the name and with the privity of the Accountant-General* of the Court of Chancery in England, or the Court of Exchequer in Ireland, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon and who shall not have consented to such entry, subject to the control and disposition of the said Court; and upon such deposit being made, the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

Upon deposit being made cashier to give receipt.

* See now 35 & 36 Vict c. 44, s. 4.

LXXXVII. The money so deposited as last aforesaid shall remain in the Bank by way of security to the parties whose lands shall so have been entered upon, for the performance of the condition of the bond to be given by the promoters of the undertaking as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested (w) in Bank Annuities or Government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the

Deposit to remain as a security, and to be applied under the direction of the Court.

7 & 8 Vict.
c. 18, s. 69-87.

* See Judicature Act,
1873, s. 34
(2).

Court of Chancery in England,* or the Court of Exchequer in Ireland, upon a like application, to order (x) the money so deposited or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid (y) or transferred to the promoters of the undertaking (z), or if such condition shall not be fully performed, it shall be lawful for the said Court to order the same to be applied in such manner as it shall think fit for the benefit of the parties, for whose security the same shall so have been deposited (zz).

Investment of deposit.

(w) On application by the promoters for investment the landowner need not be served (*Ex parte Carmarthen Ry.*, 2 N. R. 516). The application is now made by summons; see R. S. C. 1883, Ord. LV. r. 2, *infra*.

Repayment of deposit.

(x) For form of order for repayment of deposit, see Seton, 1438, 1439.

As to when the application for repayment of the deposit may be made by summons, see R. S. C. 1883, Ord. LV. r. 2, *infra*; and as to the costs of a landowner who is served and appears, see R. S. C. 1883, Ord. LXV. r. 27 (19), *infra*; *Re Tottenham Ry.*, 14 W. R. 669; but see *Ex parte Stevens*, 2 Ph. 772.

Deposit repaid though vendor's costs are not paid;

(y) The deposit is not subject to any lien for the costs of the vendor, but upon due performance of the condition the company are entitled to have the money paid out, notwithstanding that a question may be pending with respect to such costs (*Ex parte Stevens*, 2 Ph. 772; *Ex parte Great Northern Ry.*, 16 Sim. 169; 5 Rly. Ca. 269; *Ex parte London, Chatham and Dover Ry.*, W. N. (1868), 75; and see *Re Neath and Brecon Ry.* 9 Ch. 263); or notwithstanding that the landowner is proceeding at law to set aside the award (*Re Fooks*, 2 M. & G. 357). So in *Re Birmingham, Wolverhampton, and Dudley Ry.*, 3 N. R. 290, where that company had paid money into Court in respect of lands on which they desired to enter, but an opposition company had filed a bill to restrain such entry, and the Birmingham Company in consequence gave up their intention to purchase the lands, the opposition company asked that the deposit should not be paid out to the Birmingham Company until they had paid the costs of the suit for an injunction, and contended that as the conditions of the bond given by the company had not been fulfilled, the Court had a discretion as to allowing the money to be paid out; but V.-C. Wood held that the words of the section relating to the non-fulfilment of the bond, did not apply to cases where the only reason why the condition of the bond was not fulfilled was that neither party desired it, and he allowed the money deposited to be paid out. The deposit is only applicable as security for the landowner actually treated with, and not as security for his mortgagees, though the company ought to have treated with them (*Martin v. London, Chatham and Dover Ry. Co.*, 1 Ch. 501); nor is it subject to any lien for any sum beyond what is included in the bond, *v. g.*, compensation for minerals (*Ex parte Neath and Brecon Ry.*, 2 Ch. D. 201).

though award is disputed;

(z) It was held on petition by a railway company for repayment of money deposited under these sections to the secretary of the company, that payment might be ordered on the petition being stamped with the company's seal, without the necessity of verifying the seal (*Ex parte London, Chatham and Dover Ry. Co.*, 8 W. R. 636).

though the company has to pay costs of a suit;

though purchase goes off.

Not repaid where a contract is afterwards entered into.

Where a company, after paying a deposit into Court and entering on lands under these sections, afterwards concluded the purchase by contract, the Court refused to pay the deposit out unless the vendor joined in the petition, or was served with a copy of it (*Ex parte South Wales Ry. Co.*, 6 Rly. Ca. 151); see *Ex parte Eastern Counties Ry. Co.*, 5 Rly. Ca. 210.

Repayment to secretary.

Repayment to landowner.

(zz) If the company do not perform the condition of their bond the landowner may apply to have the money paid out to him (*Re Mutlow*, 10 Ch. D. 131; 27 W. R. 245).

PARLIAMENTARY DEPOSITS ACT.

9 & 10 Vict.
c. 20.

9 & 10 VICT. CAP. 20.

An Act to amend an Act of the Second Year of Her present Majesty for providing for the Custody of certain Monies paid, in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the authority of Parliament. [18th June, 1846.]

[Sections 1-4 provide for payment of sums of money, required by any Standing Order of Parliament to be deposited by the subscribers to any undertaking, which is to be executed under the authority of an Act of Parliament, into Court, by persons named in the warrant of one of the clerks of the House to the account *ex parte* the work or undertaking mentioned in such warrant or order; and for interim investment in Bank Annuities, or any Government security or securities at the option of the aforesaid person or persons, or the survivor or survivors of them. The fund may be invested in any of the securities sanctioned by the Court; see *Re Southwold Bill*, 1 Ch. D. 697; *Ex parte St. John's College*, 22 Ch. D. 93; but see *Ex parte G. N. Ry.*, 9 Eq. 274. The petitioners must employ the broker of the Paymaster-General (*Re Undertaking of West Riding, &c.*, W. N. (1876), 80; *Ex parte Bolton Ry.*, 24 W. R. 451).]

Ss. 1-4.

V. And be it enacted, that on the termination of the Session of Parliament in which the petition or bill for the purpose of making or sanctioning any such work or undertaking shall have been introduced into Parliament, or if such petition or bill shall be rejected or finally withdrawn (*a*) by some proceeding in either House of Parliament, or shall not be allowed to proceed, or if the person or persons by whom the said money was paid or security deposited shall have failed to present a petition, or if an Act be passed authorising the making of such work or undertaking, and if in any of the foregoing cases the person or persons named in such warrant or order, or the survivors or survivor of them, or the majority of such persons, apply by petition (*b*) to the Court, the Court shall by order direct the sum of money paid in pursuance of such warrant or order, or the stocks, funds, or securities in or upon which the same may have been invested, and the interest or dividends thereof, or the exchequer bills, stocks, or funds so deposited or transferred as aforesaid, and the interest and dividends thereof, to be paid or transferred to the party or parties so applying, or to any other person or persons (*c*) whom they may appoint in that behalf; but no such order shall be made in the case of any such petition or bill being rejected or not being allowed to proceed, or being withdrawn or not being presented, or of an Act being passed authorising the making of such work or undertaking, unless upon the production of the certificate of the Chairman of Committees of the House of Lords with reference to any proceeding in the House of Lords, or of the Speaker of the House of Commons (*d*) with reference to any proceeding in the House of Commons, that the said petition or bill was rejected or not allowed to proceed, or was withdrawn during its passage through one of the

Repayment
of deposit.

9 & 10 Vict.
c. 20, s. 5.

Granting
certificate,
&c., not to
make the
Chairman or
Speaker sign-
ing the same
liable.

Houses of Parliament, or was not presented, or that such Act was passed, which certificate the said Chairman or Speaker shall grant on the application in writing of the person or persons, or the majority of the persons named in such warrant, or the survivor or survivors of them: Provided always, that the granting of any such certificate, or any mistake or error therein or in relation thereto, shall not make the Chairman or Speaker signing the same liable in respect of any monies, stocks, funds, and securities which may be paid, deposited, invested, or transferred in pursuance of the provisions of this Act, or the interest or dividends thereof (e).

(a) Payment out of part of a deposit on withdrawal of part of the undertaking was refused (*Re Aberystwith Ry.*, 3 De G. F. & J. 301; 7 Jur. N. S. 564).

(b) By R. S. C. 1883, Ord. LV. r. 2 (6), all applications under this Act for investment, payment of dividends, and payment out of Court, are to be made by summons. As to what is sufficient authority to enable the Court to order payment or transfer out, see *Re Dartmouth Ry.*, 9 W. R. 609; *Ex parte L. C. & D. Ry.*, 8 W. R. 636; *Ex parte Brompton Waterworks*, 8 W. R. 636, n.; *Re Warwick Ry.*, 13 Sim. 31; *Re Staines Ry.*, 9 Jur. 479; Daniell, p. 2133; Seton, p. 1457.

(c) Payment may be made to the bankers or solicitors of the company (*Re Warwick Ry.*; *Re Dartmouth Ry.*). An application for payment out may be made in the Long Vacation (*Re Wigan Railways Act*, 10 Ch. 541).

(d) The Deputy-Speaker's certificate was held sufficient (*Ex parte Stockbridge Railway Bill*, 2 Eq. 364; 12 Jur. N. S. 465). The passing of the Act may also be proved by the production of a Queen's Printer's copy of the Act (*Re Yarmouth Ry.*, W. N. (1871), 236).

Railway
Abandonment
Act, 1867.

(e) The deposit will also be paid out on the abandonment of a railway under 32 & 33 Vict. c. 114, s. 34. As to conflict of claims to the parliamentary deposit of an insolvent company, see *Re Barry Ry. Co.*, 4 Ch. D. 315; *Re Brampton Ry. Co.*, 10 Eq. 613; *Re Kensington Station Act*, 20 Eq. 197; *Re Manchester and Milford Ry.*, W. N. (1881), 125. The costs of petition for payment out have been ordered to be paid out of the general assets of the company (*Re Laugharne Ry.*, 12 Eq. 464).

Standing
Orders, 1882.

For the Standing Orders relative to Private Bills, 1882, providing for the insertion of clauses as to penalties, retention of the deposit (notwithstanding 9 & 10 Vict. u. 20), application of the deposit if the line is not duly completed, and other matters, see Daniell, vol. ii. p. 2133 *et seq.*, and cases there cited.

10 & 11 Vict.
c. 96.

TRUSTEE RELIEF ACT, 1847.

10 & 11 VICT. CAP. 96.

An Act for better securing Trust Funds, and for the Relief of Trustees.
[22nd July, 1847.]

Trustees may
pay trust
monies or
transfer stock
and securities
into Court.

WHEREAS it is expedient to provide means for better securing trust funds, and for relieving trustees from the responsibility of administering trust funds in cases where they are desirous of being so relieved: Be it enacted, &c., that all trustees, executors, administrators, or other persons (a), having in their hands any monies belonging to any trust whatsoever, or the major part of them, shall be at liberty, on filing an affidavit (b), shortly describing the instrument creating the trust, according to the best of their knowledge and belief to pay (c) the same,

with the privity of the Accountant-General* of the High Court of Chancery,† into the Bank of England, to the account of such Accountant-General* in the matter of the particular trust (*d*), (describing the same by the names of the parties, as accurately as may be, for the purpose of distinguishing it), in trust to attend the orders of the said Court, and that all trustees or other persons having any annuities or stocks (*e*) standing in their name in the books of the Governor and Company of the Bank of England, or of the East India Company, or South Sea Company, or any Government or Parliamentary securities standing in their names (*f*), or in the names of any deceased persons of whom they shall be personal representatives, upon any trusts whatsoever, or the major part of them (*f*), shall be at liberty (*g*) to transfer or deposit such stock or securities into or in the name of the said Accountant-General, with his privity, in the matter of the particular trust (describing the same as aforesaid), in trust to attend the orders of the said Court (*h*); and in every such case the receipt of one of the cashiers of the said Bank for the money so paid, or in the case of stocks or securities, the certificate of the proper officer, of the transfer or deposit of such stocks or securities, shall be a sufficient discharge (*i*) to such trustees or other persons for the money so paid, or the stocks or securities so transferred or deposited.

10 & 11 Vict.
c. 96, s. 1.

* Now the
Paymaster-
General,
35 & 36 Vict.
c. 44, s. 4.

† See Judica-
ture Act,
1873, s. 34 (2),
infra.

Receipt of
Bank cashier
or certificate
of proper
officer, to be
sufficient dis-
charge.

As to costs under the Act, see note (*h*), *infra*, p. 54.

As to what questions will be decided on petition under the Act, see note (*l*), p. 57, *infra*.

An order under this Act has the same force as a decree (*Re Smyth*, 11 W. R. 850).

The time allowed for appealing from an order made under the Act is that allowed for appealing from an interlocutory order, viz., twenty-one days (*Re Baillie*, 4 Ch. D. 785; R. S. C. 1883, Ord. LVIII. rr. 9, 15, *infra*).

Payment of money into Court, under an Act, is a "suit or matter actually pending," so as to give the Court jurisdiction to make orders as to charity monies paid in, without the sanction of the Charity Commissioners, which by 16 & 17 Vict. c. 137, s. 17, is necessary for all legal proceedings not being applications in a suit or matter actually pending (*Re St. Giles' Volunteer Corps*, 25 Beav. 313; and see *Re Cheshunt College*, 1 Jur. N. S. 995; *Att.-Gen. v. Cooper*, 10 W. R. 31); but where an order has been made, which is in effect final, the matter is no longer "pending," and the sanction of the Commissioners must be obtained for further proceedings (*Re Jarvis' Charity*, 1 Dr. & Sm. 97); and see *Braund v. Earl of Devon*, 3 Ch. p. 806.

Sanction of
Charity Com-
missioners to
orders rela-
ting to
charity
money.

Money belonging to a charity in the hands of trustees or other persons may now be paid by them to the Official Trustee of Charitable Trusts (18 & 19 Vict. c. 124, ss. 22, 23); and trustees of a charity fund should not as a rule bring the fund into Court under the Trustee Relief Act, but should apply to the Charity Commissioners for their advice and direction (*Re Poplar School*, 8 Ch. D. 543).

By the Judicature Act, 1873, s. 25 (6), any debtor trustee or other person liable in respect of any debt or other legal chose in action which has been absolutely assigned in writing, may if he has notice that the assignment is disputed by the assignor or any one claiming under him, or of any other, opposing or conflicting claims to such debt or chose in action pay the same into Court in conformity with the provisions of the Trustee Relief Acts; see this section and notes thereto, *infra*.

Judicature
Act, 1873,
s. 25 (6).

Where the money which it is desired to pay into Court belongs to infants, use may be still made of the 36th Geo. 3, cap. 52, which applies whether there is any difficulty in the execution of the trust or not. The 32nd section enacts, that where by reason of the infancy or absence beyond the seas of any person entitled to any legacy, or to the residue of any personal estate or any part thereof chargeable with duty by virtue of this Act, the person or persons having or taking the burden of any will or testamentary instrument, or the administration of such personal estate, cannot pay such legacy or some part thereof, although he, she, or they may have effects for that purpose, or cannot pay such residue or some part thereof, although

Legacy Duty
Act.

10 & 11 Vict.
c. 96, a. 1.

he, she, or they may have the same or some part thereof in his, her, or their hands, it shall be lawful for such person or persons to pay such legacy or residue, or any parts or part thereof respectively, or any sum or sums of money on account thereof, after deducting the duty chargeable thereon, into the Bank of England, with the privity of the Paymaster-General, and such payment into the Bank shall be a sufficient discharge for the money so paid in, provided the duty be also paid thereon as aforesaid, and such money, with the dividends thereon, shall be transferred and paid to the person or persons entitled thereto, or otherwise applied for his or their benefit, on application to the Chancery Division by petition or motion in a summary way: Provided always that, if it shall afterwards appear that such money or any part thereof has been improperly paid into the Bank as aforesaid, it shall be lawful for the Court, upon petition in a summary way, to dispose thereof, in such manner as justice shall require.

Payment in.

Where the legacy or share of residue consists of cash no order is necessary for payment in; but where it consists of stock an order must be obtained, which may be made *ex parte* on motion (*Ex parte Bennett*, 15 Jur. 213), petition (*Re Watlington*, 1 W. R. 194), or summons (*Re Thomas*, M. R. at Chambers, 8 July, 1869, Reg. Lib. B. 2305). It is now usually made on summons; see Daniell, p. 2200.

Transfer and
payment out.

The fund and the dividends thereon may be transferred and paid to the person entitled, or otherwise applied for his benefit, on application to the Court by *ex parte* petition or motion in a summary way (e. 32, and see Daniell, p. 2200). See also R. S. C. 1883, Ord. LV. r. 2 (1), *infra*; *Re Barker*, W. N. (1884), 237.

Where the
fund is under
1,000l.

By R. S. C. 1883, Ord. LV. r. 2 (4), applications under the Legacy Duty Act, where the money or securities in Court do not exceed 1,000l. or 1,000l. nominal value, must be made by summons at chambers.

Applications for advancement to an infant out of a fund in Court which exceeds 1,000l. must be made by petition (*Re Coore*, W. N. (1883), 169).

For the mode of investment under the Act, see r. 73 of the Supreme Court Funds Rules, 1884, *infra*, p. 234.

The Court has refused to pay out to the testamentary guardian of an infant sum paid in under the Legacy Duty Act (*Re Cresswell*, 30 W. R. 244).

Payment into Court of an infant's legacy under the Act does not make the infant a ward of Court (*Re Hillary*, 2 Dr. & Sm. 461).

For other cases under the Act, see *Whopham v. Wingfield*, 4 Ves. 630; *Reinell v. Simpson*, 18 L. J. Ch. 55.

County Court
jurisdiction.

As to the power of a County Court judge to order payment into Court under the Legacy Duty Act, see 28 & 29 Vict. c. 99, s. 6; Pitt-Lewis on County Courts, p. 520.

Trustee Relief
Act.

Where it is doubtful to whom a legacy is payable it is often the better course to take the opinion of a judge on summons rather than pay the money into Court under the Trustee Relief Act; see *Re Birkett*, 9 Ch. D. 576; 47 L. J. Ch. 846; 27 W. R. 164; 39 L. T. 418; and see also R. S. C. 1883, Ord. LV. r. 3, *infra*.

County Court
jurisdiction.

The County Courts have jurisdiction under the Trustee Relief Acts, where the trust fund does not exceed 500l.; see 28 & 29 Vict. c. 99, s. 1 (6); Pitt-Lewis on County Courts, p. 1041.

Who may
pay money
into Court
under the
Act.

(a) A mortgagee who has sold under his power of sale, and is in doubt as to who is entitled to the balance of the money, may pay it into Court under this Act (*Roberts v. Ball*, 24 L. J. Ch. 471; 1 Jur. N. S. 585; 3 W. R. 466; *Re Hardley*, 10 Ch. D. 664; 48 L. J. Ch. 335; *Re Walkhampton Estate*, 26 Ch. D. 391). But a purchaser of an estate subject to a charge is not within the Act (*Re Buokley*, 17 Beav. 110; 17 Jur. 478); nor is a banking company which has received notice of conflicting claims to money placed with it on deposit (*Re Sutton*, 12 Ch. D. 175; 48 L. J. Ch. 350; 27 W. R. 429); nor an insurance company, unless the policy is subject to some trust (*Matthew v. Northern Assurance Co.*, 9 Ch. D. 80; 47 L. J. Ch. 562; 27 W. R. 51; 38 L. T. 468; *Re Haycock*, 1 Ch. D. 611; and see *Re United Kingdom Assurance Co.*, 34 Beav. 493; 11 Jur. N. S. 424; 6 N. R. 59; *Re Webb*, 2 Eq. 456; 12 Jur. N. S. 595; *Re Moseley*, 18 W. R. 126; *Hankey v. Morley*, 4 Jur. N. S. 234; *Re Hall*, 10 W. R. 37; 5 L. T. 395). See, however, Jud. Act, 1873, s. 25 (6), cited above.

As to a stakeholder, see *Re United Kingdom Assurance Co.*; *Re Hall*; *Matthew v. Northern Assurance Co.*; *Re Kempner*, 8 Eq. 286. Where there was a power of sale without a power of giving receipts, the Court intimated that the purchase-money might be paid into Court under the Act (*Cox v. Cox*, 1 K. & J. 251). Executors may pay in money which they claim beneficially (*Re Henshaw*, 10 Jur. N. S. 837). As to payment into Court by liquidators of a company, see *Re Australian Co.*, W. N. (1877), 37.

Affidavit of
one trustee.

(b) In general the affidavit should be made by all the trustees, but the affidavit of one of two trustees has been held sufficient (*Anon.* 1 Jur. N. S. 974).

Supplemental
affidavit.

The amount to be brought into Court should be expressed in the affidavit in words and not in figures (*Re Watts*, 24 W. R. 701).

If between the filing of the affidavit and the actual bringing of the money into Court, the trustee becomes aware of further claims, he should file a supplemental

affidavit; and if he omits to do this he may have to pay any costs occasioned by his omission (*Re Allen*, 27 W. R. 629; 40 L. T. 466). But see next paragraph.

As to the present form of affidavit on payment into Court under the Act, see r. 41 of the Supreme Court Funds Rules, 1884, *infra*, p. 225. It differs considerably from that prescribed by r. 34 of the Chancery Funds Consolidated Rules, 1874 (9 Ch. xliii), now repealed. Notice of the payment into Court (in accordance with r. 5 of the Chancery Funds Amended Orders, 1874) should, however, still be given to the "persons interested in or entitled to" the fund, in the same way as if r. 34 were still in existence (*Re Stening*, W. N. (1884), 142); and it is a convenient practice, therefore, for the trustee to name these persons in his affidavit.

The Chancery Funds Amended Orders, 1874 (which are only repealed so far as they are inconsistent with the Supreme Court Funds Rules, 1884), provide as follows:—

5. "A person having made a payment or transfer of money or securities into, or a deposit of securities in Court under the above-mentioned Act of 10 & 11 Vict. c. 96, shall forthwith give notice thereof to the several persons named in his affidavit to be made in pursuance of Rule 34 of the Chancery Funds Consolidated Rules, 1874, and the said Act, as interested in or entitled to such money or securities."

6. "The persons interested in or entitled to any money or securities so paid or transferred into, or deposited in Court, in pursuance of the said Act of 10 & 11 Vict. c. 96, and named in the affidavit, or any of such persons, or the person so paying or transferring into or depositing in Court, may apply by petition, or in cases where the fund does not exceed 300*l.* cash or 300*l.* in securities, by summons, as occasion may require, respecting the investment, payment out, or distribution of the money or securities, or of the dividends or interest of such securities. [See now Ord. LV. r. 2, *infra*.]"

7. "A person who has paid or transferred money or securities into, or deposited securities in Court pursuant to the said Act of the 10 & 11 Vict. c. 96, shall be served with notice of any application made to the Court, or judge in chambers, respecting such money or securities, or the dividends thereof, by any person interested therein or entitled thereto."

8. "The persons interested in or entitled to such money or securities shall be served with notice of any application made by the trustee to the Court, or judge, respecting such money or securities, or the dividends thereof."

9. "No petition relating to such money or securities as mentioned in the last four preceding Orders shall be set down to be heard, and no summons relating thereto shall be sealed until the petitioner or applicant has first named in his petition or summons a place where he may be served with any petition or summons, or notice of any proceeding or order relating to such money or securities, or the dividends thereof."

10. "Petitions presented and summonses issued under the said Act of 10 & 11 Vict. c. 96, shall be entitled in the matter of the said Act, and in the matter of the particular trust."

11. "Every petition for dealing with money or securities in Court, chargeable with duty payable to the revenue under the Acts relating to legacy or succession duty, or the dividends on such securities, shall contain a statement whether such duty or any part thereof has or has not been paid."

The notice to the persons interested required by r. 5 may be dispensed with in the case of persons who cannot be found (*Re Hansford*, 7 W. R. 199; *Re Walkers*, 22 L. T. 120; *Re Whitaker*, 31 W. R. 114; W. N. (1882), 158). Where they are resident abroad, notice may be given by registered letter (*Re Merryweather*, 22 L. T. 603) or if their address is not known, by advertisement in the newspapers (*Re Goodsman*, W. N. (1870), 152; *Re Palmer*, W. N. (1873), 101; *Re Hardley*, 10 Ch. D. 664; 48 L. J. Ch. 335). But the Court has no jurisdiction to give directions as to the mode of giving notice which will free the trustee from responsibility (*Re Hardley*).

(e) No order for making the payment, transfer or deposit into or in Court, of money or of Government securities is required (*Daniell*, 2071; *Re Biggs*, 11 Beav. 27). As to transfer of private securities, see *post*, note (e).

(d) The fund should be lodged to the credit of a particular trust (*Re Joseph's Will*, 11 Beav. 625; *Re Everett*, 12 Beav. 485; and see *Re Godfrey*, 2 Ir. Ch. Rep. 105; *Re Monohan*, I. R. 8 Eq. 353); and the title of the trust should be as limited in designation as possible (*Re Coulson*, 4 Jur. N. S. 6). Comp. *Re Tillstone's Trusts*, 9 Hare, App. lix, where it was held that a fund bequeathed in aliquot parts on distinct trusts ought to be carried to separate accounts; *Re Wright*, 3 K. & J. 419; and see *Re Perry*, W. N. (1874), 61; 22 W. R. 432, where the stock was of a kind not admitting of division below 1*l.* Where a fund had been paid in to the general account of a testator's will, the Court at first declined to pay it out to the residuary legatees; but upon consideration of the will it was ordered that the fund should

10 & 11 Vict. c. 96, s. 1.

Form of affidavit.

Chancery Funds

Amended Orders, 1874. Chancery Funds Amended Orders, rr. 5—10.

Notice of payment. Application for payment out.

On notice to trustees, &c.

And to persons interested.

Place of service.

Title of petition.

Payment of duty.

Notice dispensed with.

To what account fund should be paid in.

10 & 11 Vict.
c. 96, s. 1.

Where fund
is paid in
"upon the
trusts of a
will."

Transfer to
separate
account.

Where some
claimants are
not named.

What securi-
ties may be
paid in.

Payment in
by surviving
trustees;

or by a
majority of
the trustees.

Trustee not
compelled to
pay in.

Costs under
the Act.

Costs of
trustees.

Payment into
Court is justi-
fied where
there are
lunatic or
infant *cestuis
que trust*.

Where there
is a doubt
who are
interested.

be carried over to an account entitled "the account residue," subject to the particular legacies (*Re Robinson's Trust*, 1 Jur. N. S. 750). Where a fund is paid into Court "upon the trusts of a will," it has been held that the general administration of the testator's estate becomes necessary, and the Court will not order it to be transferred to a particular account, except on admission of assets by the personal representative, or on the responsibility of the trustee (*Re Wright's Trusts*, 15 Beav. 367; cf. *Re Edwards*, 4 W. R. 801).

But in a later case (*Re Coulson*, 4 Jur. N. S. 6), V.-C. Wood ordered a fund paid in to the general account of a testator's will to be carried over to the separate account of the person (an infant) named in the trustee's affidavit, as the only person entitled, without previously directing the name of the account to be changed.

Where trustees paid a fund into Court to the account of one of the claimants, without giving, at the same time, notice to the Court of the adverse claims, payment of the fund to the person in whose name it stood was ordered by the Court, but without prejudice to any future question as between the trustees and the adverse claimants (*Re Jenkins*, 3 N. R. 408); and see *Crause v. Cooper*, 1 J. & H. 207, 214, and the cases cited *post*, p. 58. In *Ex parte Tournay*, 3 De G. & Sm. 677, money paid in by an executor in ignorance of debts was paid out to him by consent.

(e) Foreign bonds seem not to be within the Act (*Re Lloyd*, 2 W. R. 371). All Railway Stock and India Stock, may, on the application of the trustees, be directed to be brought into Court (*Re Gladstones*, W. N. (1878), 26; *Re Ross*, 28 W. R. 418; *Re Perry*, 22 W. R. 432; W. N. (1874), 61); but this can only be done under the provisions of the Amendment Act, 12 & 13 Vict. c. 74, *post*.

(f) The payment in may be made by the survivors of several trustees (*Re Parry*, 6 Ha. 306; 12 Jur. 721); and as to the payment in by a majority of the trustees, see 12 & 13 Vict. c. 74, and notes thereto, *infra*, p. 60.

(g) A trustee who prefers to act personally in the trust cannot be compelled to pay the trust fund into Court (*Mountain v. Young*, 18 Jur. 770; *Handley v. Davies*, 28 L. J. Ch. 873; 5 Jur. N. S. 190). But where a trustee being requested to pay money into Court, refused, and thereby made a suit necessary, he had to pay the costs of it (*Handley v. Davies*; and see *Gunnell v. Whitear*, 10 Eq. 664; 18 W. R. 883; 22 L. T. 645; *Wells v. Malbon*, 31 Beav. 48; *Weller v. Fitzhugh*, W. N. (1870), 144). An order may be made for payment in where the majority of the trustees are willing, though the rest do not concur (12 & 13 Vict. c. 74, *post*, p. 60).

(h) Though the Act makes no mention of costs, it was held that, as the fund paid in by the trustee is to be paid in *in trust to attend the orders of the Court*, it therefore became subject to the general jurisdiction of the Court, which included a power to order the payment of costs (*Re Woodburn*, 1 De G. & J. 351; *Re Armstrong*, 4 De G. J. & S. 454; 10 Jur. N. S. 715).

And now the costs of and incident to all proceedings in the High Court are in the discretion of the Court, with a saving of the right of an executor, trustee, or mortgagee to costs out of the estate unless he has misconducted himself (R. S. C. 1883, Ord. LXX. r. 1, *infra*).

A trustee paying money into Court is *prima facie* entitled to his costs of such payment in, and of his appearance, when he is served upon the petition or summons for payment out, but the Court will exercise a discretion as to such costs if he pays the money in vexatiously.

An executor or administrator, or trustee, may pay money into Court where he cannot get a valid discharge otherwise, for example, in cases of infant *cestuis que trust*; see *Re Cawthorne*, 12 Beav. 56; *Re Beauclerk*, 11 W. R. 203; *Re Coulson*, 4 Jur. N. S. 6; *Re Richards*, 8 Eq. 119; or lunatic legatees (*Re Uppfull*, 3 M. & G. 281; *Re Ivy*, 17 Beav. 334; or where the *cestui que trust* is deaf, dumb, and blind (*Re Biddulph* 5 De G. & Sm. 469); but in other cases he must have a *bond fide* doubt, &c. as to the parties entitled (*Re Jones*, 3 Drew. 679; *Re Headington*, 6 W. R. 7, where a claim to a trust fund being made by the assignees, under a creditor's deed and also by the assignor, it was held that the trustee was not bound to assume the deed valid, and might pay into Court; compare *Re Moseley*, 18 W. R. 126). Jessel, M. R., held that the trustees of a trust fund to which their *cestui que trust* has become entitled in default of appointment by a tenant for life, are justified in paying it over to him on being informed in writing by the solicitor to the parties that he has reason to believe that no appointment has been made; and would be free from liability in doing so, and that trustees who, under such circumstances, pay the trust fund into Court under the Act will not, as a rule, be entitled to their costs (*Re Cull*, 20 Eq. 561; 23 W. R. 850; 32 L. T. 853). But payment into Court has been held to be justified where a person claimed by representation, for there is a possibility of a disposition by the deceased person (*Re Lane*, 24 L. T. (O. S.) 181; *King v. King*, 1 De G. & J. 663); or where under the old law a married woman might claim her equity to a settlement (*Re Swan*, 2 H. & M. 34; but see *Re Roberts*, 17 W. R. 639; W. N. (1869), 88; *Re Brookesby*, 29 Beav. 652); and

see *Re Bendyshe*, 3 Jur. N. S. 727; 5 W. R. 816; *Re Wyllly*, 28 Beav. 458; *Re Williams*, 4 K. & J. 87. 10 & 11 Vict. c. 96, s. 1.

For cases where payment in has been justified on account of a *bonâ fide* doubt as to some question of law arising on the claim, see and consider *King v. King*, 1 De G. & J. 663; *Re Metcalfe*, 2 De G. J. & S. 122, where the *cestui que trust* was a professed nun; *Gummell v. Whitear*, 10 Eq. 664; 22 L. T. 645; 18 W. R. 883, and observations of Sir George Jessel, M. R., in *Re Maclean's Trusts*, 19 Eq. 282, where it was held that a trustee who paid money into Court under the Act, in consequence of a claim supported by learned counsel, and brought forward *bonâ fide* by a responsible solicitor, and a threat that costs would be asked against him personally if he did not do so, was justified in the course which he took; see also *Re Phillips*, W. N. (1882), 134.

Where there is a doubt on a question of law.

Trustees have been disallowed their costs of appearing on a petition for payment out where they acted with unreasonable caution and espicion (*Re Leake*, 32 Beav. 135; *Re Heming*, 3 K. & J. 40; 2 De G. J. & S. 122; *Re Covington*, 25 L. J. Ch. 238; 1 Jur. N. S. 57; *Re Thakeham Monies*, 12 Eq. 494; *Desborough v. Harris*, 5 De G. M. & G. 439; *Firmin v. Pullen*, 2 De G. & Sm. 99; *Re Warwick Pearson*, 20 L. T. 8; 17 W. R. 365); or have paid the money in in order to anticipate a bill about to be filed against them (*Re Waring*, 21 L. J. Ch. 784; *Re Fagg*, 19 L. J. Ch. 175; *Att.-Gen. v. Alford*, 4 De G. M. & G. 843); or have caused unnecessary expense (*Re Metcalfe*, 3 N. R. 657: *e. g.*, by requiring copies of affidavits, *Re Lazarus*, 3 K. & J. 555).

When payment into Court is not justified.

In cases of gross misconduct the trustee may even have to pay the costs of the application for payment out; see *Re Woodburn*, 1 De G. & J. 333, where the trustee paid the money into Court without waiting for evidence of title, or stating what evidence he should require; *Re Cater* (No. 1), 25 Beav. 361, where the ground of paying the money in was an alleged refusal on the part of the persons to whom the fund was payable to give a release by deed; *Re Fortune*, I. R. 4 Eq. 351; *Re Roberts*, 17 W. R. 639; *Re Elgar*, 11 L. T. 415; *Re Elliot*, 15 Eq. 194; 42 L. J. Ch. 289; 21 W. R. 455, where there seems to have been no reason for paying the money in except a wish to get rid of it; *Re Glendenning*, W. N. (1867), 191; *Re Foligno*, 32 Beav. 131; *Re Wise*, I. R. 3 Eq. 599, where the executors of a surviving trustee refused to pay the fund to new trustees properly appointed; *Re Abbot*, 38 L. T. 442; *Re Knight*, 27 Beav. 45; 5 Jur. N. S. 326, where the trustee neglected to make any inquiries as to whether the persons entitled were alive or dead.

In cases of gross misconduct the trustee may have to pay costs.

In *Re Hoskin*, 5 Ch. D. 229; 6 Ch. D. 281, a married woman under a general power appointed a fund by will, and appointed executors. The trustees paid the money into Court, and upon a petition for payment out by the appointees, the Court held that the trustees ought to have paid the fund to the executors, and they were therefore ordered to pay the costs; but as the executors were the proper persons to present the petition, the trustees were relieved from the costs occasioned by the appointees proving their title.

The fact that trustees have under a misapprehension paid a fund to an account wrongly entitled, is no ground for depriving them of their costs (*Re Jenkins*, 3 N. R. 408).

If the trustee deducts his costs from the fund and pays the balance only into Court (which is the usual course), the Court has no jurisdiction on the hearing of the petition to make any order as to these costs (*Re Bloye*, 1 M. & G. 488, 504; *Re Leake*, 32 Beav. 135; 9 Jur. N. S. 453; 1 N. R. 417; *Re Barber*, 2 N. R. 571; 9 Jur. N. S. 1098; 11 W. R. 1056; *Re Fortune*, I. R. 4 Eq. 351). But on ordering payment out and taxation of costs, the trustee's costs of paying in may be included, and the sum then deducted by him set off (*Re Hue*, 27 Beav. 337; 5 Jur. N. S. 1235; 7 W. R. 562; *Seton*, p. 498; *Re Sweeper*, 19 W. R. 793; 24 L. T. 413); and the trustee must be careful not to deduct more than a reasonable amount for his costs (*Beaty v. Curson*, 7 Eq. 194; 38 L. J. Ch. 161; 17 W. R. 132; 20 L. T. 61).

Where the costs are deducted before payment in.

The costs of paying the money into Court, as a general rule, ought to be paid out of the general trust estate, if there be one (*Re Cauthorne*, 12 Beav. 56; *Re Jones*, 3 Drew. 679). But if there is no general residue, or if the difficulty relates to the fund only, or if the fund paid in has been completely severed and appropriated, they may come out of the fund itself (*Re Lorimer*, 12 Beav. 521).

Out of what fund costs are paid—

In *Mutlow v. Mutlow*, 4 De G. & J. 539, a fund paid into Court under the Trustee Relief Act, was ordered to bear a proportionate share of the costs of a suit which had been instituted to administer the estate of which it formed part.

(1) Of paying in and administration;

The costs of payment out generally come out of the fund itself (*Re Dickson*, 1 Sim. N. S. 37; *Re Ross*, *ibid.* 196; *Re Jones*, 3 Drew. 679; *Re Robertson*, 6 W. R. 405; *Re Wilson*, 14 W. R. 161). But as leave may be given to bring an action, which would have the effect of throwing such costs upon the general estate (*Re Sharpe*, 15 Sim. 470; *Re Feltham*, 1 K. & J. 528), so the Court has jurisdiction on a

(2) of paying out the corpus:

10 & 11 Vict. c. 96, s. 1. petition to order the costs of payment out to be paid out of the residue (*Re Trick*, 5 Ch. 170; 39 L. J. Ch. 201; 18 W. R. 123; 21 L. T. 739, overruling *Re Bartholomew*, 13 Jur. 380; *Re Hodgson*, 18 Jur. 786; 2 Eq. R. 1083). In *Re Feltham*, the costs of the executors who had paid the fund into Court were ordered to come out of the general residue; and see *Re Birkett*, 9 Ch. D. 576.

Where a sum of stock representing sixteen shares in a legacy, five of which were held to have lapsed, was transferred into Court, Lord Cranworth, V.-C., held that the lapsed shares ought to bear the costs of the petitioners and respondents (*Re Ham's Trust*, 2 Sim. N. S. 106).

Trustees who are made respondents and have accepted 30s. for their costs, will not be allowed their costs of appearing on the petition, unless they come for some useful purpose (*Re Sutton*, 21 Ch. D. 855; 30 W. R. 657; R. S. C. 1883, Ord. LXV. r. 27 (19), *infra*).

(3) of paying out income.

Upon an application by a tenant for life for payment to him of the dividends on a fund paid into Court under the Act, all the costs of the application, both those of the tenant for life and of the trustees, are payable out of the income (*Re Marner*, 3 Eq. 432; 36 L. J. Ch. 58; 15 W. R. 99; 15 L. T. 237; *Re Evans*, 7 Ch. 609; 41 L. J. Ch. 512; 20 W. R. 695; 26 L. T. 815; *Re Whitton*, 8 Eq. 352; *Re Smith*, 9 Eq. 374; *Re Battell*, 21 W. R. 138; *Re Cameron*, I. R. 1 Eq. 258; *Re Munton*, 22 L. T. 293; W. N. (1870), 106; *Re Mason*, 12 Eq. 111); but the costs incurred by the trustee in and about and preliminary to the payment into Court are payable out of the corpus where not previously deducted (*Re Whitton*). The cases of *Re Wood*, 11 Eq. 155; *Re Gordon*, 6 Eq. 335; *Re Knight*, 37 L. J. Ch. 409; *Re Tanner*, 14 L. T. 589; and *Re Turnley*, 1 Ch. 152, are overruled. Where the money was paid into Court in a suit and not under the Act, Malins, V.-C., declined to follow *Re Marner* (*Scrivenor v. Smith*, 8 Eq. 310; and see *Longuet v. Hockley*, 22 L. T. 198); and where an annuity was given free of duty, the costs of a petition for payment thereof were given out of the surplus of the fund (*Re Aphorpe*, W. N. (1869), 64). The earlier cases were conflicting.

Two petitions.

As to the amount of costs allowed on a petition for payment out, see *Gover v. Stilwell*, 21 Beav. 182. The costs of two petitions *bona fide* separately prepared by different parties entitled to petition will generally be allowed; *scous*, where the second petition is prepared with knowledge of the first (*Re Chaplin*, 33 L. J. Ch. 183; 3 N. R. 289).

Costs of persons served.

Persons served with the petition or summons appear at the risk of costs, and if unsuccessful, will not generally be allowed them (*Re Parry*, 12 Jur. 615; *Re Tyler*, 2 Jur. N. S. 927; *Re Birch*, 2 K. & J. 369; *Re Insole*, 14 W. R. 160; *Re Wilson*, *ibid.* 161).

An unsuccessful claimant may, under special circumstances, be allowed his costs (*Re Birch*; *Re Dickson*, 1 Sim. N. S. 34).

A respondent whose unsuccessful claim was the cause of the payment into Court, will be ordered to pay the costs of the application for payment out (*Re Armstrong*, 4 De G. J. & Sm. 464; 10 Jur. N. S. 715).

As to costs of unnecessary services, see *post*, p. 59.

Trustee discharged not from liability (except as to monies paid in),

(i) These words of course do not mean that a trustee can by paying trust monies into Court discharge himself from liability for past breaches of trust in respect of those monies (*Att.-Gen. v. Alford*, 2 Sm. & Giff. 488; 4 De G. M. & G. 843; 1 Jur. N. S. 361; *Re Fagg*, 19 L. J. Ch. 175; *Re Waring*, 21 L. J. Ch. 783); nor from liability to pay in more if more is due (*Goode v. West*, 9 Ha. 378; *Mitchell v. Cobb*, 17 L. T. (O. S.) 25; *Re Jephson*, 1 L. T. 5); but the payment into Court is so far a discharge as to the monies paid in, that the remedy of the cestuis que trust in respect of any breach of trust as to such monies, or if they wish to deduct the costs retained by the trustee on payment in, is by action only; see *Re Wright*, 3 K. & J. 419, 422; *Re Jenkins*, 10 Jur. N. S. 332.

but from control and active duties, &c.

The trustee, by payment into Court, discharges himself from the future administration of, and control over, the trust fund paid in (*Re Coe*, 4 K. & J. 199; *Re Wright*, 3 K. & J. 421; *Re Tegg*, 15 W. R. 52; W. N. (1866), 317); and the Court undertakes such administration in his place, so that when a trustee had paid money into Court a new trustee was allowed to be appointed in his stead, he being considered as desirous of being discharged (*Re Williams*, 4 K. & J. 87; *Re Bailey*, 3 W. R. 31).

He is still liable to receive notices, &c.

But he is still trustee of the fund, at any rate until the Court deals with the fund, for the purpose of receiving notices as to incumbrances, &c. (*Thompson v. Tomkins*, 2 Dr. & Sm. 8; 8 Jur. N. S. 185); and he cannot get a full discharge except by proceeding to have his accounts taken (*Barker v. Peile*, 2 Dr. & Sm. 340; 11 Jur. N. S. 436); nor by bringing the fund into Court does he necessarily abandon a discretionary power as to its application (*Re Landon*, 40 L. J. Ch. 370).

Payment into Court of a fund belonging to an infant, constitutes the infant a ward of Court (*Re Hodges*, 3 K. & J. 213; 3 Jur. N. S. 860; *Re Tweedale*, Johns. 109; *Re Benand*, 16 W. R. 538).

II. And be it enacted, that such orders as shall seem fit shall be from time to time made by the High Court of Chancery in respect of the trust monies, stocks, or securities so paid in, transferred, and deposited as aforesaid, and for the investment (*k*) and payment of any such monies, or of any dividends or interest on any such stocks or securities, and for the transfer and delivery out of any such stocks and securities, and for the administration of any such trusts (*l*) generally, upon a petition (*m*) to be presented in a summary way to the Lord Chancellor or the Master of the Rolls, without bill, by such party or parties (*n*) as to the Court shall appear to be competent and necessary in that behalf, and service of such petition shall be made upon such person or persons as the Court shall see fit and direct (*o*); and every order made upon any such petition shall have the same authority and effect, and shall be enforced and subject to rehearing and appeal (*p*) in the same manner as if the same had been made in a suit regularly instituted in the Court; and if it shall appear that any such trust funds cannot be safely distributed without the institution of one or more suit or suits, the Lord Chancellor or Master of the Rolls may direct any such suit or suits to be instituted (*q*).

10 & 11 Vict.
c. 96, s. 2.

Court to make orders on petition, without suit, for application of trust monies and administration of trusts.

(*k*) As to investment of funds lodged in Court under the Act, see Supreme Court Funds Rules, 1884, r. 74, *infra*, p. 234.

Investment.

(*l*) The Court undertakes the control over, and administration of the fund paid in, in place of the trustee, see note (*i*), *supra*.

Administration of fund.

Where monies belonging to a person of unsound mind, not so found by inquisition, are in Court under the Act, the High Court may in the exercise of its ordinary jurisdiction entertain applications for payment out of such monies for his support (*Re Macfarlane*, 2 J. & H. 673; 8 Jur. N. S. 208; *Re Dodsworth*, 10 Ha. 16; *Re Law*, 30 L. J. Ch. 512; 7 Jur. N. S. 410; *Re Berry*, 13 Beav. 455; *Re Upfull*, 3 M. & G. 281; *Re Parker*, 2 W. R. 139; *Re Ward*, *ibid.* 406; *Re Drewery*, *ibid.* 436; *Re Buckley*, Johns. 700; *Re Sturge*, 5 Jur. N. S. 423; *Re Phelps*, 28 L. T. 350; *Re Garnier*, 13 Eq. 532; *Re Perry*, 23 W. R. 335; W. N. (1875), 17; *Re Whitley*, W. N. (1877), 208; see however, *Re Burke*, 2 De G. F. & J. 124; 6 Jur. N. S. 717.

Jurisdiction over funds of lunatics and persons of unsound mind.

Where the fund belongs to a person who has been found lunatic the application should be made in Chancery under the Act and in Lunacy, and the Lords Justices can then make an immediate order for the transfer of the fund to the account of the lunatic (*Re Tate*, 20 Ch. D. 135).

The Court has the same jurisdiction upon a petition as in an action; and where cross petitions are presented by the adverse claimants (which however in practice is seldom done), or where, by consent, the case is treated as if such cross petitions had been presented, the Court has full power to declare the validity or invalidity of any deed on which the claim is rested (*Re Bloye*, 1 M. & G. 488; *S. C. nom. Lewis v. Hillman*, 3 H. L. C. 607).

Jurisdiction to decide questions as in a suit;

Thus, it has been held that, when money is paid in under the Act, the Court has jurisdiction to decide all questions arising concerning it, just as well as in a suit, and may, if it thinks fit, direct an issue to try the sanity of a testator, or for any other similar purpose (*Re Allen*, Kay, App. 51); and make a binding declaration of right (*Re Walker*, 16 Jur. 1154; *Re Morgan*, 2 W. R. 439; but see *Sharsshaw v. Gibbs*, Kay, 333); and may, of course, decide as to the construction of a settlement (*Re Dalton*, 1 De G. M. & G. 265; 16 Jur. 253); or give effect to a married woman's equity to a settlement, by ordering such settlement out of the fund in Court, either on her petition (*Re Disney*, 2 Jur. N. S. 206), or on that of another person (*Re Culler*, 14 Beav. 220; *Re Kincaid*, 1 Drew. 326; *Re Grove*, 3 Giff. 575); and may even order payment to a person not petitioning (*Re Woollard*, 18 Jur. 1012); and the mere fact that pedigrees, deaths, &c., have to be proved, which in an action might be admitted, will be no ground for directing an action to be instituted (*Re Harris*, 2 W. R. 442, following *Goode v. West*, 9 Hare, 378); and see *Ex parte Barnard*, 6 Ir. Ch. Rep. 133 (decided on the Irish Act, 11 & 12 Vict. c. 68), where it was doubted whether the Court had jurisdiction on a petition under the Act to decide a question of election, as to which point see *Stroud v.*

e. g. questions

of married woman's equity to settlement,

of pedigrees, &c.,

of election,

10 & 11 Vict. c. 96, s. 2.

of general administration. But not to reform a deed, nor remedy a breach of trust, nor decide a question of adverse title.

Norman, Kay, 313, 326. Where there are creditors or unascertained claims, an action may be necessary (*Re Allen, Kay*, App. 51); but compare *Hankey v. Morley*, 4 Jur. N. S. 234; *Re Trower*, 1 L. T. 54, where money paid in was ordered to be distributed as in an administration suit, proper inquiries being directed; and *Re Gombault*, W. N. (1868), 243. As to a general administration being made necessary by generality in the title of the affidavit, see note (d), *supra*. It was held that a deed could not be reformed or its validity impeached on petition under the Act (*Re Malet*, 30 Beav. 407; 8 Jur. N. S. 226; 10 W. R. 332, overruling *Re Morse*, 21 Beav. 174; *Re Way* (C. A.), 2 De G. J. & S. 365; 10 Jur. N. S. 1166); but in *Re Hoare*, 4 Giff. 254, the Court was held to have such jurisdiction; and in *Re De La Touche*, 10 Eq. 603, an order for payment out was made, prefaced by a declaration amounting to rectification of a patent error in a settlement; and see *Lewis v. Hillman*, 3 H. L. C. 607; *Re Bird*, 3 Ch. D. 214. It was held that a breach of trust could not be remedied (*Re Lloyd*, 2 W. R. 271); and that if a question of adverse title had to be decided, a suit should be directed (*Re Fozard*, 24 L. J. Ch. 441); and leave was given to the *cestuis que trust* to file a bill to have their rights declared (*Thorp v. Thorp*, 1 K. & J. 438; and see *Re Sharpe*, 15 Sim. 470).

At the hearing of the petition it may be adjourned into Chambers, and an order upon it made there (*Re Moate*, 22 Ch. D. 635).

The fund in Court may be ordered to be paid out to new trustees to be appointed by the order for payment out (*Re Tubb*, W. N. (1872), 73).

Stop order.

Where a fund is paid in under the Act, an assignee should obtain a stop order (*Re Millar*, 6 W. R. 238; *Re Blunt*, 10 W. R. 379).

Prospective order for payment of future instalments and income.

Though the jurisdiction of the Court is properly confined to the trust money already paid in (*Re Hodgson*, 18 Jur. 786), yet a trustee who had paid a part of the trust fund into Court, was ordered, on the petition of the *cestui que trust*, whose title was clear, to pay to him the future instalments of the fund as they were received (*Re Wright*, 1 Sm. & G. App. v.). And, in a later case, Lord Romilly, M. R., made a prospective order for payment by the Accountant-General to a tenant for life of the income of any future fund paid to the same account (*Re Chamberlain*, 22 Beav. 286, and note to the case; *Re Thornton*, 9 W. R. 475). So an order may be made for payment of dividends to successive tenants for life (*Re How*, 15 Jur. 266); and in *Re Brent*, 8 W. R. 270, an order was made for payment of the dividends of a fund in Court to one tenant for life, and on proof of his death to a second tenant for life, without further order.

Application by petition or summons.

(m) The application must be by petition (*Pelling v. Goddard*, 9 Ch. D. 185; *Re Masselin*, 15 Jur. 1073; *Ex parte Stock*, 5 Ir. Ch. Rep. 341); except where the trust fund does not exceed 1,000*l.* or 1,000*l.* nominal value, in which case it must be by summons in chambers (R. S. C. 1883, Ord. LV. r. 2 (5), *infra*). When, however, an order has been made on petition, further proceedings upon it may be taken by summons in chambers (*Re Hodges*, 4 De G. M. & G. 491; 1 Jur. N. S. 73; *Re Tracey*, I. R. 6 Eq. 271; and see Ord. LV. r. 2 (1, 2, 3)). And when before the institution of an administration suit the trustees had paid in part of the money under the Act, a petition for payment out was dispensed with, the order for payment out being entitled in the matter of the Act (*Dixon v. Morley*, W. N. (1869), 49).

Where claim disputed.

Where the claim is disputed, cross petitions may be presented (*Lewis v. Hillman*, 3 H. L. C. 607); but in practice this is seldom done, as the Court has jurisdiction to order payment to a respondent (*Re Woollard*, 18 Jur. 1012).

Form of petition.

The prayer of the petition and notice thereof specify the exact order sought for, and the precise portions of the fund which are to be transferred to the several parties entitled to it (*Ex parte Barnard*, 6 Ir. Ch. Rep. 133, under the Irish Act, 11 & 12 Vict. c. 68, the provisions of which are similar to those of this Act). Where one of several persons interested applies, the petition should ask that the shares of the other persons may be carried to separate accounts (*Re Hawkes*, 18 Jur. 33; see *Handley v. Metcalfe*, 9 Beav. 495; *Re Tillstone*, 9 Hare, App. lix.). The petition should set out the effect of the affidavit upon which the money is paid in (*Re Levett*, 5 De G. & Sm. 619; *Re Flack*, 10 Hare, App. xxx.), but it need not, except in special cases, set out the whole affidavit (*Re Courtois*, 10 Hare, App. lxxv.; 17 Jur. 852).

Who may petition.

As to who may apply, see rule 6 of Chancery Funds Amended Orders, p. 53, *ante*. The trustees are not the proper persons to present the petition, though the Court (see *Re Trower*, 1 L. T. 54) will make the order on their petition (*Re Hutchinson*, 1 Dr. & Sm. 27, where V.-C. Kindersley, following the decision in *Re Casneau*, 2 K. & J. 249, allowed the trustees only respondents' costs, and gave the carriage of the order to the *cestuis que trust*); and see also *Re Poplar School*, 8 Ch. D. 543; and the request of one of the *cestuis que trust* that they should present the petition is not sufficient to justify them in doing so.

Persons not named in the affidavit.

A person not mentioned in the trustee's affidavit may apply (*Re Puttrell*, 7 Ch. D. 647, not following *Re Jephson*, 1 L. T. 5).

On the application of an infant domiciled in Scotland (who was above the age of puberty), and her curator properly appointed, a fund which had been brought into Court under this Act was ordered to be transferred into the joint names of the infant and her curator (*Re Crichton*, 24 L. T. (O. S.) 267).

In *Re Garnier*, 13 Eq. 532, the Court declined to pay out the fund to a *curator bonis* appointed by a foreign Court, but directed the income only to be paid to him.

The petition must be supported by proper evidence of the title of the applicant, and, if necessary, inquiries will be directed (*Re Wood*, 15 Sim. 469; *Re Sharpe*, *ibid.* 470; *Re Barber*, 1 Sm. & G. 118; *Re Morgan*, 2 W. R. 439). And a person making an affidavit may be cross-examined (*Re Bendyshe*, 5 W. R. 816). As to trustees taking copies of the affidavits, see *Re Lazarus*, 3 K. & J. 555.

(n) A petitioner may apply in *formâ pauperis* (*Re Money*, 13 Beav. 109; and see *Re Lancaster*, 18 Jur. 229).

(o) The following rule as to service is laid down by rules 7 and 8 of the Chancery Funds Amended Orders, p. 53, *ante*:—(1), the trustees are to be served with notice of applications by persons interested in the fund; (2), the persons interested are to be served with notice of applications by the trustees.

(1) Trustees, &c., paying money into Court, have their costs of appearing as respondents to a petition for a stop order (*Re Blunt*, 10 W. R. 379) or (except in cases of vexatious conduct or needless appearance) to a petition for payment out; see note (h), *ante*; but where the title of a tenant for life petitioning for income is clear, the trustees ought not to appear (*Re Evans*, 7 Ch. 609; *Re Battell*, 21 W. R. 138; and see R. S. C. 1883, Ord. LXV. r. 27 (19), *infra*).

A petition for payment to a lunatic's executors of money paid in by the committee was ordered to be served on the committee though he had passed his accounts (*Re Wyld*, 5 De G. M. & G. 25).

Where a trustee avoided service, the order was made upon service at the place mentioned in his affidavit (*Ex parte Baugham*, 16 Jur. 325; but see *Re Lawrence*, 14 W. R. 93). Service on a trustee may be dispensed with in a clear case (*Re Young*, 5 W. R. 400; *Re Beavalerk*, 11 W. R. 203; *Re Thomas*, *ibid.* 276); and where the house named by trustees for service was pulled down, and the trustees had not been heard of for ten years, service of the petition on them was dispensed with, and an inquiry was directed to ascertain who were entitled to the fund (*Re Bolton*, 18 W. R. 56; W. N. (1869), 226).

(2) As to dispensing with service on the ground that the party to be served is abroad and cannot be heard of, see *Re Hansford*, 7 W. R. 199, cited p. 53, *ante*; *Re Naylor*, 28 L. T. 18. Where inquiries had been directed at the original hearing, and it appeared that persons not parties to the proceedings were interested, the Court ordered that the petition, the order made thereon, the chief clerk's certificate and the order for service, should be served on the persons named in the certificate, and that the petition should stand over till such service had been effected (*Re Battersby*, 10 Ch. D. 228). Parties served, who claim no interest, should not appear, and if they do, will get no costs (*Re Smith*, 3 Jur. N. S. 659; *Re Birch*, 2 K. & J. 369; *Re Justices of Coventry*, 19 Beav. 158; but see *Ex parte Queen's College*, 6 W. R. 9; *Rudge v. Weedon*, 11 W. R. 819). *A fortiori*, incumbancers appearing on a petition by a prior incumbancer, whose debt exhausted the fund in Court, in spite of a notice by the petitioner's solicitor that if they appeared the payment of their costs would be resisted, were held disentitled to costs (*Roberts v. Ball*, 24 L. J. Ch. 471).

Where a tenant for life petitions for payment of income, remaindermen need not be served (*Re Whitting*, 9 W. R. 830; *S. C. nom. Re Whiting*, 7 Jur. N. S. 754; *Re Marnor*, 3 Eq. 432); and the trustees need not appear (*Re Evans*, 7 Ch. 609; *Re Battell*, 21 W. R. 138; and see R. S. C. 1883, Ord. LXV. r. 27 (19), *infra*). So on a petition that the dividends might be paid to several tenants for life, and the several shares of the corpus carried over to the accounts of numerous remaindermen (*Re Hodges*, 6 W. R. 487; and see *Ex parte Fletcher*, 12 Jur. 619; *Strong v. Strong*, 6 W. R. 455); and in such cases leave may be given to serve some of the parties interested on behalf of the class (*Re Colson*, 2 W. R. 111).

Where a fund has been carried over to a separate account, the parties interested in the other shares need not be served (*Re Hodgson*, 2 Eq. R. 1083; *Re Hawkes*, 18 Jur. 33); so a mortgaged share of funds paid into Court under the Act, may be paid to parties clearly entitled, in the absence of the parties interested in the other shares (*Re Bafford*, 21 L. T. (O. S.) 164).

A married woman, having a power of appointment over a reversionary trust fund, appointed it by way of mortgage, with a power of sale, under which it was afterwards sold. Her husband became bankrupt, and, after the determination of the life estate, the trustees paid the fund into Court under this Act. The purchasers thereupon presented a petition for a transfer of the fund to them, which was served upon the trustees only. The Court made the order, subject to a direction that it should not be drawn up for a fortnight, and that the husband's assignees should be

10 & 11 Vict.
c. 96, s. 2.

Infant and
curator.

Evidence and
inquiries.

Service and
costs of ap-
pearance—

of trustees;

of cestuis que
trust;

on petition
by tenant
for life;

of persons
interested in
other shares;

of persons
who may
claim ad-
versely.

10 & 11 Vict.
c. 96, s. 2.

Parties
residing
abroad.
Substituted
service.

served with notice that the fund would be paid out if no objections were taken (*Ex parte Stutely*, 1 De G. & Sm. 703).

On a reasonable application, in writing, by parties residing abroad, and served with notice of a petition under the Act, the Court may postpone the order for payment out of Court (*Re Hodgson's Will*, 22 L. J. Ch. 1055).

Substituted service of the petition (*Re Bonelli*, 18 Eq. 655), or service out of the jurisdiction (*Re Haney*, 10 Ch. 275; *Re Bonelli*; *Re Fisher*, W. N. (1881), 137; 30 W. R. 57; *Re Morant*, W. N. (1879), 144), may be ordered.

(p) As to the time for appealing from an order made under the Act, see *Re Baillie*, 4 Ch. D. 785, *ante*, p. 51.

(q) See *Re Fozarà*, and other cases, p. 58, *supra*, as to directing an action. The direction is now given by a judge of the Chancery Division.

[Sect. III., regulating salary of Accountant-General, is repealed by the Chancery Funds Act, 35 & 36 Vict. c. 44, *post*.]

Lord Chn-
cellor, with
Master of the
Rolls, &c.,
may make
General
Orders.

IV. And be it enacted, that the Lord Chancellor, with the assistance of the Master of the Rolls, or of one of the Vice-Chancellors, shall have power, and is hereby authorised, to make such orders as from time to time shall seem necessary for better carrying the provisions of this Act into effect.

Construction
of expression
"Lord Chan-
cellor."

V. And be it enacted, that in the construction of this Act, the expression "the Lord Chancellor" shall mean and include the Lord Chancellor, Lord Keeper, and Lords Commissioners for the custody of the Great Seal of Great Britain for the time being.

12 & 13 Vict.
c. 74.

TRUSTEE RELIEF ACT, 1849.

12 & 13 VICT. CAP. 74.

An Act for the further Relief of Trustees.

[28th July, 1849.]

WHEREAS difficulties have arisen in the transfer of securities vested in trustees in certain cases under the provisions of an Act passed in the session of Parliament holden in the 10th and 11th years of the reign of her present Majesty, intituled "An Act for better securing trust funds, and for the relief of trustees," and it is expedient to make a further provision for carrying into effect the objects of the said recited Act: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that if upon any petition presented to the Lord Chancellor or Master of the Rolls (a) in the matter of the said Act it shall appear to the judge of the Court of Chancery before whom such petition shall be heard that any monies, annuities, stocks, or securities (b), are vested in any persons as trustees, executors, or administrators, or otherwise upon trusts within the meaning of the said recited Act, and that the major part of such persons (c) are

desirous of transferring, paying, or delivering the same to the Accountant-General of the High Court of Chancery under the provisions of the said recited Act, but that for any reason the concurrence of the other or others of them cannot be had (*d*), it shall be lawful for such judge as aforesaid to order and direct such transfer, payment or delivery to be made by the major part of such persons without the concurrence of the other or others of them; and where any such monies or Government or Parliamentary securities shall be deposited with any banker, broker, or other depositary, it shall be lawful for such judge as aforesaid to make such order for the payment or delivery of such monies, Government or Parliamentary securities, to the major part of such trustees, executors, administrators, or other persons as aforesaid, for the purpose of being paid or delivered to the said Accountant-General as to the said judge shall seem meet; and every transfer of any annuities, stocks, or securities, and every payment of money, or delivery of securities, in pursuance of any such order, shall be as valid and effectual as if the same had been made on the authority or by the act of all the persons entitled to the annuities, stocks, or securities so transferred, or the monies or securities so paid or delivered respectively, and shall fully protect and indemnify the Governor and Company of the Bank of England, the East India Company, and the South Sea Company, and all other persons acting under or in pursuance of such order.

12 & 13 Vict.
c. 74.

Court may, upon application by majority of trustees, &c., order payment or transfer of trust monies, stocks, or securities into Court.

(*a*) The application is now made to a judge of the Chancery Division.

(*b*) Ordinary, debenture and preference stock of a railway company, and India 4 per Cent. Stock, may be directed to be transferred into Court under the Act; see *Re Perry*, W. N. (1874), 61; 22 W. R. 432; *Re Gledstones*, W. N. (1878), 26; *Re Ross*, 28 W. R. 418.

(*c*) Where one of three trustees was ill the order was made on the petition of the other two (*Re Broadwood*, 8 L. T. 632; and see *Re Perry*; *Re Gledstones*).

(*d*) A trustee who does not concur should be served with the petition (*Re Bryant*, W. N. (1868), 123).

TRUSTEE ACT, 1850.

13 & 14 Vict.
c. 60.

13 & 14 VICT. CAP. 60.

An Act to consolidate and amend the Laws relating to the Conveyance and Transfer of Real and Personal Property vested in Mortgagees and Trustees (a). [5th August, 1850.]

(*a*) For the scope of the Act, see *Bristow v. Booth*, L. R. 5 C. P. 80, 91.

It provides for getting in the legal estate of *land* where trustees or mortgagees are lunatic (1850, ss. 3, 4, pp. 64, 66), or infant (ss. 7, 8, pp. 67, 68), or trustees or heirs of mortgagees are out of jurisdiction, or survivor uncertain, or they or their heirs are not known (ss. 9—15, 19, pp. 68—70), or refuse to convey (1852, ss. 2, 3, *infra*);

Provisions as to *land*.

Where there is a contingent right in an unborn trustee (1850, s. 16, p. 70);

- 13 & 14 Vict
c. 60. Where the lands are copyhold (1850, s. 28, p. 76), or in the Duchy of Lancaster or Durham (1850, s. 21, p. 72);
And for vesting orders of *stock* where trustees or mortgagees, or personal representatives are lunatic (1850, ss. 5, 6, pp. 56, 57; 1852, s. 6, p. 92), infant (1852, s. 3, p. 91), out of jurisdiction, or uncertain, or not known (1850, ss. 22, 25, pp. 73, 75), or refuse to assign (1850, ss. 23, 24, pp. 73, 74; 1852, ss. 4, 5, p. 91);
- Copyhold or
Duchy lands. The bankers or companies are to be bound, see 1850, s. 26, p. 75.
- Stock*. And for vesting orders of *choses in action* where trustees, or mortgagees, or personal representatives are lunatic (1850, s. 5, p. 66), or out of jurisdiction (1850, s. 22, p. 73), or refuse to sue (1850, ss. 23, 24, pp. 73, 74; 1852, s. 4, p. 91);
- Bank of Eng-
land. For the effect of such orders, see 1850, s. 27, p. 75.
- Choses in
action*. Orders as to trustees of charities are provided for, 1850, s. 45, p. 86;
- Charity. It provides for appointment of new trustees on petition, and the consequent conveyances and transfers, 1850, ss. 32—42, pp. 79—84;
- Appointment
of new
trustees. For appointment of a person to convey or transfer if desirable, 1850, s. 20, p. 71;
- Of persons to
convey. And for declaration that persons against whom a decree is made are trustees, 1850, ss. 29, 30, pp. 76, 77; 1852, s. 1, p. 90.
- Money pay-
able to infants
or lunatics. Money payable to infants or lunatics may be paid into Court under the Act of 1850, s. 48, p. 86.
- Conveyancing
Act, 1881. By s. 30 of the Conveyancing Act, 1881, trust and mortgage estates on a death after Dec. 31, 1881, vest in the legal personal representative of the deceased trustee or mortgagee; see the section and note thereto, *infra*.
- [Sect. 1, repealing 11 Geo. 4 & 1 Will. 4, c. 60; 4 & 5 Will. 4, c. 23; 1 & 2 Vict. c. 69, was repealed by Stat. Law Revision Act, 1875.]

- Interpreta-
tion of terms. II. And whereas it is expedient to define the meaning in which certain words are hereafter used: it is declared that the several words hereinafter named are herein used and applied in the manner following respectively (that is to say)—
- “Lands.” The word “lands” shall extend to and include manors, messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein (b):
- “Stock.” The word “stock” (c) shall mean any fund, annuity, or security transferable in books kept by any company or society established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share or interest therein:
- “Seised.” The word “seised” (d) shall be applicable to any vested estate for life or of a greater description, and shall extend to estates at law and in equity, in possession or in futurity, in any lands:
- “Possessed.” The word “possessed” shall be applicable to any vested estate less than a life estate, at law or in equity in possession or in expectancy, in any lands:
- “Contingent
right.” The words “contingent right,” as applied to lands, shall mean a contingent and executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained; also a right of entry, whether immediate or future, and whether vested or contingent:
- “Convey.”
“Convey-
ance.” The words “convey” and “conveyance” applied to any person shall mean the execution (dd) by such person of every necessary or suitable assurance for conveying or disposing to another lands whereof such person is seised or entitled to a contingent right, either for the whole estate of the person conveying or disposing,

or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants in tail in accordance with the provisions of an Act passed in the fourth year of the reign of his late Majesty King William the Fourth, intituled "An Act for the abolition of fines and recoveries, and the substitution of more simple modes of assurance," and including also surrenders and other acts which a tenant of customary or copyhold lands can himself perform preparatory to or in aid of a complete assurance of such customary or copyhold land :

13 & 14 Vict.
c. 60, s. 2.

3 & 4 Will. 4,
c. 74.

The words "assign" and "assignment" shall mean the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring lands of which such person is possessed, either for the whole estate of the person so possessed or for any less estate :

"Assign."
"Assignment."

The word "transfer" shall mean the execution and performance of every deed and act by which a person entitled to stock can transfer such stock from himself to another :

"Transfer."

The words "Lord Chancellor" shall mean as well the Lord Chancellor of Great Britain as any Lord Keeper or Lords Commissioners of the Great Seal for the time being :

"Lord
Chancellor."

The words "Lord Chancellor of Ireland" shall mean as well the Lord Chancellor of Ireland as any Keeper or Lords Commissioners of the Great Seal of Ireland for the time being :

"Lord
Chancellor
of Ireland."

The word "trust" shall not mean the duties incident to an estate conveyed by way of mortgage (*e*); but, with this exception, the words "trust" and "trustee" (*f*) shall extend to and include implied and constructive trusts (*g*), and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust (*h*), and shall extend to and include the duties incident to the office of personal representative of a deceased person (*i*) :

"Trust."
"Trustee."

The word "lunatic" shall mean any person who shall have been found to be a lunatic upon a commission of inquiry in the nature of a writ De lunatico inquirendo (*j*) :

"Lunatic."

The expression "person of unsound mind" shall mean any person, not an infant, who, not having been found to be a lunatic, shall be incapable from infirmity of mind to manage his own affairs :

"Person of
unsound
mind."

The word "devisee" shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the lands of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent :

"Devisee."

The word "mortgage" shall be applicable to every estate, interest, "Mortgage."

- 13 & 14 Vict.
c. 60, s. 2.
- "Person." or property in lands or personal estate, which would in a Court of Equity be deemed merely a security for money (*k*):
The word "person," used and referred to in the masculine gender, shall include a female as well as a male, and shall include a body corporate (*l*):
- Number and gender. And generally, unless the contrary shall appear from the context, every word importing the singular number only shall extend to several persons or things (*k*), and every word importing the plural number shall apply to one person or thing, and every word importing the masculine gender only shall extend to a female.
- "Lands." (*b*) As to "lands" including "rent-charge," see *Re Harrison*, cited Seton, 516. "Lands" do not include leaseholds in sect. 15, where the word "seised" is used (*Re Harvey*, Seton, 520; *Re Mundel*, 8 W. R. 683); but in *Re Mundel*, a vesting order was made under sect. 34, in which section the word "lands" includes leaseholds (*Re Matthews*, 2 W. R. 85; *Re Robinson*, 11 W. R. 1035).
- "Stock." (*c*) The word "stock" includes shares in a joint stock banking company (*Rs Angelo*, 5 De G. & S. 278; and see *Morrice v. Aylmer*, 10 Ch. 148), and shares in ships registered under the Merchant Shipping Act, 1854 (18 & 19 Vict. c. 91, s. 10).
(*d*) See *Re Mundel*.
(*dd*) The Act applies where a person has been directed to execute a lease, and has refused to do so (*Hall v. Hale*, W. N. (1884), 185; but see *Grace v. Baynton*, W. N. (1877), 79; 25 W. R. 506).
(*e*) Therefore a mortgagor cannot obtain an order for reconveyance or sale under the Act, without suit, under sections which relate only to trustees, *e. g.*, sect. 9, and see note (*g*) to sect. 30; *Re Osborn*, 12 Eq. 392. *Secus*, where land was conveyed, not strictly by way of mortgage, but by way of trust for sale in default of payment of money borrowed; see *Re Underwood*, 3 K. & J. 745; or where the mortgagee has become a trustee (*Re Crowe*, 13 Eq. 26; *Re Walker*, 3 Ch. D. 209).
(*f*) The following persons have been held to be trustees within the Act:—
The husband of a *feme covert* trustee (under sect. 5), *Re Wood*, 3 De G. F. & J. 125; and of an executrix (under sect. 22), *Ex parte Bradshaw*, 2 De G. M. & G. 900. See now Vendor and Purchaser Act, s. 6, *post*, p. 107; Married Women's Property Act, 1882, s. 18, *post*, p. 199.
The executrix of a surviving trustee (under sect. 4 of the Extension Act), *Rs Ellis*, 24 Beav. 426.
A surviving executor (not a trustee) who died intestate, *Rs Davis*, 12 Eq. 214.
An heir on whom trust estates descended by reason of the disclaimer of devisees in trust (under sect. 9), *Wilks v. Groom*, 6 De G. M. & G. 205; *Hooper v. Strutton*, 12 W. R. 367.
The heir-at-law of a deceased mortgagee (under sects. 9 and 15), in cases not within the 19th section (*Re Skitter*, 4 W. R. 791; *Re Underwood*, 3 K. & J. 745; *Re Keeler*, 11 W. R. 62. See now Conveyancing Act, 1881, s. 30, *post*, p. 116).
An assignee of a bankrupt (under sect. 9), *Re Joyce*, 2 Eq. 576.
As to the Act applying to a trustee with a mere power of sale, see note (*p*), p. 65, on vesting orders.
As to a mere dower trustee being a trustee within the Act, see *Collard v. Roe*, 4 De G. & J. 525, whence it seems that his interest might have been bound by a decree without any order under this Act.
(*g*) On the question whether a suit for specific performance, foreclosure, &c., is necessary before a mortgagor, or contracting party can be declared a constructive trustee, see note (*g*) to sect. 30, *post*, p. 77.
(*h*) This includes an infant beneficially entitled to a fund subject to trusts for maintenance (*Gardner v. Cowles*, 24 W. R. 920; 3 Ch. D. 304).
(*i*) See *Re Moore, McAlpine v. Moore*, 21 Ch. D. 778.
(*j*) See now "The Lunacy Regulation Act, 1862," 25 & 26 Vict. c. 86.
(*k*) See *Re Underwood*, 3 K. & J. 745; *Laurance v. Galsworthy*, 3 Jur. N. S. 1049; *Re King*, 5 De G. & Sm. 644; 16 Jur. 1153.
(*l*) Extended by the Crown Private Estates Act, 1862 (25 & 26 Vict. c. 37), s. 10, to the trustees of the private estates of the Sovereign.
- Crown Estates Act, 1862.
Lunatic trustees and
- III. And be it enacted, that when any lunatic or person of unsound mind (*m*) shall be seised (*n*) or possessed of any lands upon any trust

or by way of mortgage, it shall be lawful for the Lord Chancellor (o) 13 & 14 Vict.
 intrusted by virtue of the Queen's Sign Manual with the care of the c. 60, s. 3.
 persons and estates of lunatics to make an order that such lands be
 vested (p) in such person or persons in such manner and for such
 estate as he shall direct; and the order shall have the same effect as if
 the trustee or mortgagee had been sane, and had duly executed a
 conveyance or assignment of the lands in the same manner for the
 same estate (q).
 mortgagees
 of lands.

(m) When the lunacy is disputed the Act does not apply (*Re Phillips*, Cr. & Ph. Lunacy
 147); but a commission may be issued if the Court thinks fit; see sect. 52, disputed.
post, p. 88.

Where an infant trustee is also of unsound mind, the case falls within the Where
 ordinary jurisdiction of the Court (*Re Arrowsmith*, 6 W. R. 642; 4 Jur. N. S. 1122). lunatic is
 infant.

(n) The word "seised" includes an estate in tail (*Re Sherard*, 1 De G. J. & S. 421). Seised.
 (o) The words "the Lord Chancellor," with reference to the jurisdiction in lunacy, Lord
 included the L.J.J. (*Re Waugh*, 2 De G. M. & G. 279; 15 & 16 Vict. c. 55, s. 11; Chancellor.
 c. 87, s. 15). The jurisdiction in lunacy is now exercised by such judge or judges
 of the High Court or the Court of Appeal as may be intrusted by the Sign Manual
 with the care of lunatics (Jud. Act, 1875, s. 7; and see Seton, 518). The Lords
 Justices have been appointed judges of the Chancery Division for the purpose of
 applications connected with lunacy (*Re Lamotte*, 4 Ch. D. 325; Jud. Act, 1873,
 s. 51).

Whenever the trustee or mortgagee is of unsound mind, but not found a lunatic, Application
 the application under these Acts may be made in Chancery if the fund is already when to be
 standing to the credit of a cause; see note to sect. 43; *Herring v. Clark*, 4 Ch. 167; made in
Harrison v. Smith, 17 W. R. 646; and see *Re Ferrior*, 3 Ch. 178; but if no cause is lunacy.
 pending, the jurisdiction belongs not to the Chancery Division, but to the judges in
 lunacy, unless the trustee is also an infant (*Re Arrowsmith*), or is out of the juris-
 diction (*Re Gardner*, 10 Ch. D. 29); see *Re Good Intent Benefit Society*, 2 W. R. 671;
Re Davidson, 20 L. J. Ch. 644; *Re Chauncey*, 14 W. R. 849; and comp. *Re Irby*, 17
 Beav. 334, and the cases cited by Lord Justice Turner in *Re Ormerod*, 3 De G. &
 J. 249, where it was held that the V.-C. of the Duchy of Lancaster had no power
 under the 17 & 18 Vict. c. 82, to appoint a new trustee in the place of a trustee of
 unsound mind, not found so by inquisition; see also *Re Owen*, 4 Ch. 782; *Re Mason*,
 10 Ch. 273; and sect. 10 of the Extension Act, *post*; and as to appointing a new
 trustee in place of a lunatic, see note (l), p. 79, *post*.

In *Re Vickers*, 3 Ch. D. 112, it was held that a petition for the appointment of
 new trustees in the place of two deceased trustees and a trustee of unsound mind
 not so found, no vesting order being required, might be made in Chancery. Where
 one of several trustees is a lunatic, and it is desired to appoint a new trustee in his
 place, the petition must be entitled in Chancery as well as in lunacy; otherwise the
 vesting order would sever the joint tenancy (*Re Pearson*, 5 Ch. D. 982; *Re Duce*, 30
 W. R. 759). As to the mode of applying where a fund standing in the name of a
 lunatic trustee is desired to be transferred to the credit of a cause, see *Re Dawson*,
 6 N. R. 346, where *Jeffries v. Drysdale*, 9 W. R. 428, is remarked upon.

The order ought to be made in Chancery as well as in lunacy in all cases where it is
 desired to appoint a new trustee, as the power in lunacy is restricted to making a
 vesting order (*Re Boyce*, 4 De G. J. & S. 205; 12 W. R. 359), and in *Re Stewart*,
 8 W. R. 297, the Lords Justices, under one petition presented in Chancery and
 lunacy, appointed new trustees in the place of one trustee of unsound mind, not
 found so by inquisition, one resident abroad, and one who was dead. See further
 as to the exercise of the jurisdiction where the trustee is a lunatic and the lands are
 in Ireland (*Re Lamotte*, 4 Ch. D. 325).

As to service on the committee, see note to sect. 40.

Service on
 committee.

(p) Vesting orders may be made in pursuance of decrees, see s. 30, *infra*.

Vesting orders should contain some description of the property comprised in them
 (*Re Ord*, 3 W. R. 386).

VESTING
 ORDERS OF
 LAND.

The Court will make orders vesting lands to "such uses as a person shall appoint,
 and in default to such person in fee" (*Re Powell*, 4 K. & J. 338, where the object
 was to save the expense of an acknowledgment by a *feme covert*, a mortgagee's
 executrix, or to uses in bar of dower (*Re Lush*, 5 De G. & Sm. 436; *Davey v.*
Miller, 1 Sm. & G. App. xix.; overruling *Re Howard*, 5 De G. & Sm. 435); but
 will not, it seems, insert in an order a declaration barring dower (*Re Lush*); see
 Seton, 519.

To what uses.
 To uses in
 bar of dower.

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c. 60, s. 3.

Subject to
legacy.

Or other
reservations.

Where no
one has an
existing
estate.

Equitable
interest.

Copyhold.

An order was made to vest a legal estate outstanding in an infant mortgagee in the devisees of the mortgagor, subject to a legacy charged on the land by his will (*Re Ellerthorpe*, 18 Jur. 666; see *Re Winteringham's Trusts*, 3 W. R. 578).

A vesting order was discharged and a conveyance directed, under s. 21, for the purpose of expressing reservations as to mines in *Turner v. Speakman*, Seton, 534; see *Langhorn v. Langhorn*, 21 L. J. Ch. 860.

It was held that vesting orders of land under the Act could only be made where the person from whom the land was to be divested had a legal estate, and not where he had a mere power (*Re Porter*, 3 W. R. 583); but the order was subsequently made in that case, see *Seton*, 519; and see *Re Boyce*, 4 De G. J. & S. 205; 12 W. R. 359; and compare *Re Rathbone*, 2 Ch. D. 483, cited *infra*, as to vesting orders of personalty where there is no legal personal representative.

As to the propriety of a vesting order where the interest to be assigned is only equitable, see note (g), s. 30.

As to vesting orders of copyholds, see note (d), s. 28.

See s. 20, by which the Court may appoint a person to convey in certain cases instead of making a vesting order.

A vesting order may be made under the Act, even though there is no incapacity in the person seized of the legal estate to execute a conveyance; see *Re Manning, Kay*, App. xxviii. (under sect. 34); *Hancock v. Spittle*, 3 Sm. & G. 478.

As to costs of applications for vesting orders, see note (k), s. 51.

A vesting order of stock or other personalty can be made though the last trustee died intestate and had no personal representative, so that there is no existing interest to be vested (*Re Rathbone*, 2 Ch. D. 483; *Re Mundel*, 8 W. R. 683; *Re Driver*, 19 Eq. 352; *Re Daigleish*, 4 Ch. D. 143); and see *Re Dixon*, 21 W. R. 220; *Re Crowe*, 14 Ch. D. 610.

The vesting order binds the Bank (ss. 20 and 26, and sect. 6 of the Extension Act, *post*); but the Bank appealed successfully against an order vesting the right to transfer a fractional part of a dividend of stock, and the new trustees in that case were consequently enabled to receive the arrears of the dividends, and directed to retain only such part as was subject to the trust (*Re Stewart*, 8 W. R. 425). Nor will the Court generally vest the right to receive or transfer future dividends of stock in a person in whose name the stock is not standing; see *Re Hartwall*, 5 De G. & Sm. 111; and even where an order was made (under sect. 22) vesting the right to receive "dividends now due or hereafter to accrue due," in three out of four trustees, one being out of the jurisdiction, this order was, on the appeal of the Bank, varied by limiting the right of the three trustees to receive the dividends to their joint lives (*Re Peyton*, 25 Beav. 317; 2 De G. & J. 290).

In the case of an order to be acted upon by the Bank the circumstances bringing the case within the Act should be shown upon the order (*Re Ellis*, 24 Beav. 426; *Re Mainwaring*, 26 Beav. 172); see *Seton*, 514.

The Court may give directions as to how the right to transfer is to be exercised, *e. g.*, may direct it to be paid into Court under the Trustee Relief Act; see *post*, sect. 31, and note.

The Court has vested the right to transfer stock, &c., in the *cestuis que trust* themselves under this section and sect. 24 combined; see *Re White*, 5 Ch. 698.

(g) An order under this section vesting lands vested in a lunatic trustee as tenant in tail will bar the estate tail, though the Fines and Recoveries Act be not referred to (*Re Mason*, 7 Ch. D. 707).

Contingent
rights of
lunatic
trustees and
mortgagees
of lands.

IV. And be it enacted, that when any lunatic or person of unsound mind shall be entitled to any contingent right (r) in any lands upon any trust or by way of mortgage, it shall be lawful for the Lord Chancellor (s), intrusted as aforesaid, to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said Lord Chancellor shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right.

(r) As to the definition of "contingent right" see sect. 2, *ante*.

(s) See note (o) to sect. 3, *ante*, p. 65.

Stock and
choses in action
of lunatic

V. And be it enacted, that when any lunatic or person of unsound mind shall be solely entitled to any stock or to any chose in action

upon any trust or by way of mortgage, it shall be lawful for the Lord Chancellor intrusted as aforesaid (*t*) to make an order vesting in any person or persons the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof; and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or chose in action upon any trust or by way of mortgage, it shall be lawful for the said Lord Chancellor to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said Lord Chancellor may appoint (*u*).

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c. 60, s. 5.
trustees and
mortgagees.

(*t*) See note (*o*) to sect. 3, *ante*, p. 65.

(*u*) See *Re Stewart*, 8 W. R. 297; *Re Chauncey*, W. N. (1866), 217; 14 W. R. 849. The order should not vest the stock in the persons beneficially entitled, except as trustees (*Re Currie*, 10 Ch. D. 93; and see *Re Holland*, 16 Ch. D. 672).

The Court has jurisdiction under this section to make an order vesting the right to transfer the stock solely in the co-trustees, and the order may be made in lunacy only (*Re Watson*, 19 Ch. D. 334, overruling *Re Nash*, 16 Ch. D. 503).

The husband of a married woman trustee was held to be a trustee within the meaning of the Act, and an order made accordingly (*Re Wood*, 3 De G. F. & J. 125); see now Married Women's Property Act, 1882, s. 18, *infra*.

Where one of the executors of a person in whose name stock was standing became a lunatic, an order was made in lunacy vesting the right to call for a transfer, and to transfer the stock, in the other executors (*Re Wachter*, 22 Ch. D. 535; *Re White*, 5 Ch. 698).

As to Irish railway stock standing in the name of a trustee who becomes of unsound mind, see *Re Hodgson*, 11 Ch. D. 888, cited in note to sect. 56, *infra*.

VI. And be it enacted, that when any stock shall be standing in the name of any deceased person whose personal representative is a lunatic or person of unsound mind, or when any chose in action shall be vested in any lunatic or person of unsound mind as the personal representative of a deceased person, it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in any person or persons he may appoint (*y*).

Stock of deceased persons in name of lunatic personal representative.

(*y*) See the notes to last section.

VII. And be it enacted, that where any infant shall be seised (*z*) or possessed of any lands upon any trust or by way of mortgage (*a*), it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the infant trustee or mortgagee had been twenty-one years of age, and had duly executed a conveyance or assignment of the lands in the same manner for the same estate (*b*).

Estates of infant trustees and mortgagees of land.

(*z*) "Seised" includes an estate tail (*Re Sherard*, 1 De G. J. & S. 421).

13 & 14 Vict.
c. 60, s. 7.

Reconveyance
of mortgaged
and trust
estates.

Order barring
entail.

Contingent
rights of infant
trustees and
mortgagees
in land.

Trustees of
land out of
the jurisdiction
of the Court.

Mortgagor
out of juris-
diction de-
clared trustee.

Where per-
sons are seized
of lands
jointly with
persons out of
jurisdiction of
Court, &c.

(a) As to what words in a will are sufficient to carry estates held on trust or mortgage, and to prevent their descending on infant, &c., heirs, see *Lewin*, 207; *Re Arrowsmith*, 6 W. R. 642; *Re Finney*, 3 Giff. 465; *Lysaght v. Edwards*, 2 Ch. D. 499; and for the present law see Conveyancing Act, 1881, s. 30, and note thereto, *infra*.

(b) An order vesting the legal estate of an infant remainderman in tail, made with the consent of the tenant for life, as protector, will bar the entail (*Powell v. Matthews*, 1 Jur. N. S. 973). For form of order see *Seton*, 503. See also *Hargreaves v. Wright*, 1 W. R. 408; *Singleton v. Hopkins*, 4 W. R. 107; *Re Bloomer*, 2 De G. & J. 88; *Re Lush*, 5 De G. & Sm. 436; *Re Ellertorpe*, 18 Jur. 669.

VIII. And be it enacted, that where any infant shall be entitled to any contingent right in any lands upon any trust or by way of mortgage (c) it shall be lawful for the Court of Chancery to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the infant had been twenty-one years of age, and had duly executed a deed so releasing or disposing of the contingent right (d).

(c) See note (a) to s. 7, *supra*.

(d) See last note, and as to contingent rights of unborn persons, see sect. 16.

IX. And be it enacted, that when any person solely seised or possessed of any lands upon any trust (e) shall be out of the jurisdiction of the Court of Chancery, or cannot be found, it shall be lawful for the said Court to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands in the same manner and for the same estate (f).

(e) As to the meaning of the word "trust," see s. 2, *ante*, p. 63.

A mortgagee is not a trustee within the section (s. 2, *ante*).

(f) An absconding mortgagor was declared a trustee for the mortgagee after a decree for foreclosure upon motion under this section (*Lechmere v. Clump*, 31 Beav. 578; see 30 Beav. 218); but such a declaration could only be obtained on a separate application (*Smith v. Boucher*, 1 Sm. & G. 72); see the 30th section, and note (g) thereto, and *Re Underwood*, 3 K. & J. 745.

Where a testator devised copyholds to one of two daughters and after his death both the daughters being his co-heiresses were admitted as tenants in common, it was held that an order vesting the legal estate of the daughter not beneficially entitled, who was out of the jurisdiction, in trustees for the other daughter, was rightly made under this section (*McMurray v. Spicer*, 5 Eq. 527). Where the defendant in a specific performance suit (who had been served by substitution) did not appear at the hearing the Court made a decree vesting the estate in the plaintiff (*Murphy v. Vincent*, 40 L. J. Ch. 378). See also *Wilks v. Groom*, 6 De G. M. & G. 205; 2 Jur. N. S. 1077; *Re Skitter*, 4 W. R. 791. Where the heir of the last surviving trustee was a lunatic and out of the jurisdiction the order was made in the Chancery Division only (*Re Gardner*, 10 Ch. D. 29).

X. And be it enacted, that when any person or persons shall be seised or possessed of any lands jointly (ff) with a person out of the jurisdiction of the Court of Chancery, or who cannot be found, it shall be lawful for the said Court to make an order vesting the lands in the person or persons so jointly seised or possessed, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the said Court shall direct: and

the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance or assignment of the lands in the same manner for the same estate (g).

13 & 14 Vict.
c. 60, s. 10.

(f) The words "seised jointly" are not limited to a strictly joint tenancy (*Re Greenwood*, 27 Ch. D. 359).

(g) The section only applies where the persons are so seised upon a trust. An order, therefore, will not be made vesting in a purchaser the estate of an absent mortgagee, unless such mortgagee be also a trustee (*Re Osborn*, 12 Eq. 392; *Re Walker*, 3 Ch. D. 209; *Re Watkin*, W. N. (1876), 232).

Where a new trustee is appointed, in the place of one out of the jurisdiction, or who cannot be found, the estate may be vested in such new trustee and the continuing trustees, notwithstanding the words of the latter part of this section (*Smith v. Smith*, 3 Drew. 72; 18 Jur. 1047; *Re Marquis of Bute*, Johns. 15; 5 Jur. N. S. 487, overruling *Re Watts*, 9 Ha. 106; *Re Plyer*, *ibid.* 220).

Where a legal estate had descended on two co-heirs of a deceased mortgagee in fee, one of whom was out of the jurisdiction, an order was made under this section vesting it in the other alone (*Re Templer*, 4 N. R. 494; *Re Greenwood*, 27 Ch. D. 359; but see *Re Osborn*; *Re Walker*).

XI. And be it enacted, that when any person solely entitled to a contingent right in any lands upon any trust shall be out of the jurisdiction of the Court of Chancery, or cannot be found, it shall be lawful for the said Court to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.

Contingent rights of trustees out of jurisdiction in lands.

XII. And be it enacted, that when any person jointly entitled with any other person or persons to a contingent right in any lands upon any trust shall be out of the jurisdiction of the Court of Chancery, or cannot be found, it shall be lawful for the said Court to make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.

Where persons are jointly entitled with others out of the jurisdiction of the Court to a contingent right in lands.

XIII. And be it enacted, that where there shall have been two or more persons jointly seised or possessed of any lands upon any trust and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

When it is uncertain which of several trustees was the survivor, lands may be vested.

XIV. And be it enacted, that where any one or more person or persons shall have been seised or possessed of any lands upon any trust and it shall not be known, as to the trustee last known to have been seised or possessed, whether he be living or dead, it shall be lawful for the Court of Chancery to make an order vesting such lands

When it is uncertain whether the last trustee of land be living or dead.

13 & 14 Vict.
c. 60, s. 14.

in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

When trustee
of land dies
without an
heir.

XV. And be it enacted, that when any person seised of any lands upon any trust shall have died intestate as to such lands without an heir (*h*), or shall have died and it shall not be known who is his heir or devisee, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the lands in the same manner for the same estate (*hh*).

(*h*) See *Re Wilkinson*, 10 Jur. N. S. 716; 12 W. R. 522.

(*hh*) This section does not apply to leaseholds (*Re Mundel*, 8 W. R. 683). But the difficulty may be got over by appointing new trustees of the leaseholds and making a vesting order under sect. 34 (*Re Rathbone*, 2 Ch. D. 483; *Re Dalgleish*, 4 Ch. D. 143; and see *Re Crowe*, 14 Ch. D. 610).

Where a testatrix devised real estate in trust for sale, but the trustee died in her lifetime and it was not known who was her heir, the Court had no jurisdiction in the absence of the heir to appoint a trustee or make a vesting order (*Gunson v. Simpson*, 5 Eq. 332).

Where a mortgage was made by way of trust for sale the mortgagee was held to be a trustee within this section (*Re Underwood*, 3 K. & J. 745; *Re Keeler*, 9 Jur. N. S. 95; 11 W. R. 62). Where a trustee of copyholds held in trust for a beneficiary absolutely died without an heir, the Court vested the estate in the beneficiary (*Re Godfrey*, 23 Ch. D. 205; 31 W. R. 426; and see sect. 28, *post*).

As to the devolution of trust and mortgage estates on a death occurring after 31st December, 1881, see Conveyancing Act, 1881, s. 30, *infra*.

Contingent
right of unborn
trustee [in
lands].

XVI. And be it enacted, that when any lands are subject to a contingent right in an unborn person (*i*) or class of unborn persons who upon coming into existence would in respect thereof become seised or possessed of such lands upon any trust, it shall be lawful for the Court of Chancery to make an order which shall wholly release and discharge such lands from such contingent right in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons the estate or estates which such unborn person or class of unborn persons would upon coming into existence be seised or possessed of in such lands (*j*).

Discharge of
contingent
rights in suits.

(*i*) See a similar provision in s. 30, *infra*, for discharge of contingent rights in a suit. There "unborn persons" are held to include persons who cannot be ascertained, *e. g.*, heirs of a living person, note (*h*), p. 78, *post*.

(*j*) For cases on this section, see *Hargreaves v. Wright*, 1 W. R. 408; *Wake v. Wake*, 17 Jur. 545; 1 W. R. 283.

Sects. 17 & 18.

[The 17th and 18th sections of this Act are repealed by the "Trustee Extension Act, 1852," s. 2, *post*, p. 90.]

Heir or
devisee of
mortgagee
of land.

XIX. And be it enacted, that when any person to whom any lands have been conveyed by way of mortgage shall have died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the reconveyance of such land, then in any

of the following cases it shall be lawful for the Court of Chancery (*k*) to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; (that is to say),

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c. 60, s. 19.

When an heir or devisee of such mortgagee shall be out of the jurisdiction of the Court of Chancery, or cannot be found :

[*Out of jurisdiction.*]

When an heir or devisee of such mortgagee shall upon a demand by a person entitled to require a conveyance of such lands, or a duly authorised agent of such last-mentioned person, have stated in writing that he will not convey the same; or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such lands shall have been tendered to him by a person entitled as aforesaid, or a duly authorised agent of such last-mentioned person :

[*Refusing to convey.*]

When it shall be uncertain which of several devisees of such mortgagee was the survivor :

[*Uncertain.*]

When it shall be uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee whether he be living or dead :

When such mortgagee shall have died intestate as to such lands, and without an heir (*l*), or shall have died and it shall not be known who is his heir or devisee (*m*).

[*Intestate and without heir.*]

And the order of the said Court of Chancery made in any one of the foregoing cases shall have the same effect as if the heir or devisee or surviving devisee (as the case may be) had duly executed a conveyance or assignment of the lands in the same manner and for the same estate (*n*).

(*k*) Now the Chancery Division of the High Court (Jud. Act, 1873, s. 34).

(*l*) See *Re Minchin*, 2 W. R. 179.

(*m*) See *Re White*, W. N. (1881), 115; 29 W. R. 820.

(*n*) It was at first held that this section applied only to cases of reconveyance after payment of the mortgage debt; and not to cases where, the mortgage money not having been paid, it was desired to vest in the personal representatives of the mortgagee the legal estate outstanding in his heir (*Re Meyrick*, 9 Ha. 116); but such orders have since been made (*Re Boden*, 1 De G. M. & G. 57; 16 Jur. 279; 9 Ha. 820; *Re Lea*, 6 W. R. 482). It seems doubtful, however, whether the order ought to be made unless a sale or transfer is contemplated (*Re Hewitt*, 27 L. J. Ch. 302; but see *Re Lea*).

For the recent enactments as to the devolution of trust and mortgage estates on death, see Conveyancing Act, 1881, s. 30, and note thereto, *infra*.

XX. And be it enacted, that in every case where the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, shall, under the provisions of this Act, be enabled to make an order having the effect of a conveyance or assignment of any lands, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery (as the case may be), should it be deemed more convenient, to make an order appointing a person to convey or assign such lands, or release or dispose of such contingent right (*o*); and the conveyance or assignment, or release or disposition, of the person so appointed, shall, when in

Power to appoint a person to convey in certain cases.

13 & 14 Vict.
c. 60, s. 20.

conformity with the terms of the order by which he is appointed, have the same effect, in conveying or assigning the lands, or releasing or disposing of the contingent right, as an order of the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, would in the particular case have had under the provisions of this Act; and in every case where the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, shall, under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books of the Governor and Company of the Bank of England, or of any other company or society established, or to be established, it shall also be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, if it be deemed more convenient, to make an order directing the secretary, deputy secretary, or accountant-general for the time being of the Governor and Company of the Bank of England, or any officer of such other company or society, at once to transfer or join in transferring the stock to the person or persons to be named in the order; and this Act shall be a full and complete indemnity and discharge to the Governor and Company of the Bank of England, and all other companies or societies and their officers and servants, for all acts done or permitted to be done pursuant thereto (*p*).

(*o*) For form of order, see Seton, 507, No. 15.

(*p*) See *Re Dickson*, W. N. (1872), 223; 27 L. T. 671; *S. C. nom. Re Dixon*, 21 W. R. 220; *Re Price*, W. N. (1883), 202, cited in note to sect. 25, *post*.

In determining whether to make a vesting order or to appoint a person to convey, the Court is guided by the relative expense of the two modes (*Hancox v. Spittle*, 3 Sm. & G. 478; and see *Sheperd v. Churchill*, 25 Beav. 21; *Wilks v. Groom*, 6 De G. M. & G. 205; 2 Jur. N. S. 1077).

As to lands in
Lancaster and
Durham.

XXI. And be it enacted, that as to any lands situated within the Duchy of Lancaster or the Counties Palatine of Lancaster or Durham, it shall be lawful for the Court of the Duchy Chamber of Lancaster, the Court of Chancery in the County Palatine of Lancaster (*g*), or the Court of Chancery in the County Palatine of Durham, to make a like order in the same cases as to any lands within the jurisdiction of the same Courts respectively, as the Court of Chancery has under the provisions hereinbefore contained been enabled to make concerning any lands; and every such order of the Court of the Duchy Chamber of Lancaster, the Court of Chancery in the County Palatine of Lancaster, or the Court of Chancery in the County Palatine of Durham, shall, as to such lands, have the same effect as an order of the Court of Chancery: Provided always, that no person who is anywhere within the limits of the jurisdiction of the High Court of Chancery shall be deemed by such local Courts to be an absent trustee or mortgagee within the meaning of this Act.

17 & 18 Vict.
c. 82, s. 11.

(*g*) See now 17 & 18 Vict. c. 82, s. 11, which extends all the powers of this and the Extension Act to property in the County Palatine of Lancaster. But the Act does not give the Vice-Chancellor of the Duchy Court jurisdiction in lunacy (*Re Ormerod*, 3 De G. & J. 249).

XXII. And be it enacted, that when any person or persons shall be jointly entitled with any person out of the jurisdiction of the Court of Chancery (*r*), or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or chose in action upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof (*s*), or to sue for or recover such chose in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any person or persons the said Court may appoint; and when any sole trustee of any stock or chose in action shall be out of the jurisdiction of the said Court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof (*s*), or to sue for and recover such chose in action, or any interest in respect thereof, in any person or persons the said Court may appoint (*t*).

13 & 14 Vict.
c. 60, s. 22.

When trustees of stock or chose in action out of the jurisdiction, or otherwise uncertain.

(*r*) Now the Chancery Division of the High Court (Jud. Act, 1873, s. 34).

(*s*) These words include future dividends; see cases decided upon next sections.

(*t*) For forms of orders see Seton, 508-510; *Coles v. Benbow*, W. N. (1873), 60. An order was made where the death of a trustee could not be formally proved (*Re Bourke*, 2 De G. J. & S. 426).

Where the husband of an executrix was out of the jurisdiction a vesting order was made under this section (*Ex parte Bradshaw*, 2 De G. M. & G. 900; see now Married Women's Property Act, 1882, s. 18, *infra*).

Husband of executrix.

Where one of two trustees was dead, and it was uncertain whether the other was alive or not, the Court refused to treat him as a sole trustee (*Re Randall*, 1 Drew. 401). Under special circumstances the right to the stock or chose in action has been vested in the persons beneficially entitled (*Re Ryan*, 9 W. R. 137; *Ex parte Bradshaw*; *contra*, *Re Brass*, 4 W. R. 764); and see *Re Bourke*; *Re Dickson*, W. N. (1872), 223, *S. C. nom. Re Dixon*, 21 W. R. 220. But orders which would be in effect administering trusts will not be made; and it seems that instead of vesting a trust fund in the beneficiaries the Court will appoint new trustees, and leave the persons beneficially entitled to take the necessary steps for putting an end to the trusts (*Re Currie*, 10 Ch. D. 93; *Re Holland*, 16 Ch. D. 672; *Re Dickson*, W. N. (1872), 223, *S. C. nom. Re Dixon*, 21 W. R. 220; but see *Re Godfrey*, 23 Ch. D. 205; 31 W. R. 426). Where one of four trustees of stock was out of the jurisdiction the Court vested in the other three the right to receive the dividends to accrue during their joint lives (*Re Peyton*, 2 De G. & J. 290; 25 Beav. 317; 4 Jur. N. S. 370, 469).

Surviving trustee.

Vesting right in beneficiaries;

and in three of four trustees.

As to the order where a person of unsound mind was trustee of part of a sum of stock, and beneficially entitled to the rest, see *Re Stewart*, 2 De G. F. & J. 1.

The Court has power under this section to vest the right to receive the future dividends, as well as those already accrued (*Re Peyton*; see, however, *Re Hartnall*, 5 De G. & S. 111; 16 Jur. 33).

XXIII. And be it enacted, that where any sole trustee of any stock or chose in action* shall neglect or refuse to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose in action, or any interest in respect thereof, according to the direction of the person absolutely entitled thereto for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful for the Court of Chancery to make an order vesting the sole right to transfer such stock, or to receive the dividends or

When trustee of stock or chose in action refuses to transfer.

* For similar provisions in case of lands, see Act of 1852, s. 2.

13 & 14 Vict.
c. 60, s. 23.

income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in such person or persons as the said Court may appoint (*u*).

“Sole trustee.”

(*u*) This section applies to the case of all the trustees refusing, where there are more than one, as well as to the case of a sole trustee refusing to transfer the stock or receive the dividends (*Re Hartnall*, 5 De G. & S. 111; *Re Hyatt*, 21 Ch. D. 846; see, however, *Re Spawforth*, 12 W. R. 978). The Court has no power under this section to vest the right to receive future dividends (*Re Hartnall*; but see *Re Peyton*, 2 De G. & J. 290; 25 Beav. 317; 4 Jur. N. S. 370, 469).

The 4th section of the Extension Act extends the provisions of this section to the case of a trustee neglecting to obey an order of the Court; see *Mackenzie v. Mackenzie*, 5 De G. & Sm. 338.

The words “person absolutely entitled” include new trustees of the stock sought to be transferred (*Re Russell*, 1 Sim. N. S. 404). But not one of two trustees; nor a tenant for life (*Mackenzie v. Mackenzie*), unless the application is for payment of dividends (*Re Hartnall*).

Service on recusant trustee.

The refusing trustee need not be served (*Re Baxter*, 2 Sm. & G. App. v.; *Ex parte Armstrong*, 16 Sim. 296; *Re Crowe*, 13 Eq. 26).

When one of several trustees of stock refuses to transfer or receive and pay over dividends.

XXIV. And be it enacted, that where any one of the trustees of any stock or chose in action shall neglect or refuse to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose in action, according to the directions of the person absolutely entitled thereto (*w*), for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him or her by such person, it shall be lawful for the Court of Chancery (*x*) to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, in the other trustee or trustees (*y*) of the said stock or chose in action, or in any person or persons whom the said Court may appoint jointly with such other trustee or trustees.

“Person absolutely entitled.”

(*w*) As to these words see note (*u*) to s. 23.

(*x*) Now the Chancery Division of the High Court (Judicature Act, 1873, s. 34).

(*y*) Where one of the executors of a surviving trustee was a lunatic and the other executors refused to transfer shares, part of the trust property, to the person absolutely entitled, it was held that a vesting order could not be made on a petition presented in Chancery only (*Re Nicholl*, 18 W. R. 443); but a vesting order was made on a petition presented in Lunacy and Chancery (*Re White*, 5 Ch. 698; and see *Re Wacher*, 22 Ch. D. 535).

When stock is standing in the name of a deceased person, and the personal representative is out of jurisdiction, &c.

XXV. And be it enacted, that when any stock shall be standing in the sole name of a deceased person (*z*), and his or her personal representative (*a*) shall be out of the jurisdiction of the Court of Chancery, or cannot be found, or it shall be uncertain whether such personal representative be living or dead, or such personal representative shall neglect or refuse to transfer such stock, or receive the dividends or income thereof, according to the direction of the person absolutely entitled thereunto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the Court of Chancery to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, in any person or persons whom the said Court may appoint (*b*).

“Sole name of a deceased person.”

(*z*) This includes stock in the name of two deceased persons as being in the name of the survivor (*Re Bradshaw*, Seton, 523).

(a) An executor of a surviving trustee who has not proved is a personal representative within this section (*Re Ellis*, 24 Beav. 426); and so is the next of kin, who is entitled to take out administration (*Re Stroud*, W. N. (1874), 180). 13 & 14 Vict. o. 60, s. 25.

(b) An order was made under this section where the survivor of the two original trustees had died without a legal personal representative, and new trustees had been appointed under the will (*Re Crowe*, 14 Ch. D. 304). "Personal representative."

Where the survivor of two trustees of stock died leaving no personal representative, Wickens, V.-C., appointed the person beneficially entitled a trustee under this section (*Re Dickson*, W. N. (1872), 223; 27 L. T. 671; *S. C. nom. Re Dickson*, 21 W. R. 220; and see *Re Price*, W. N. (1883), 202).

XXVI. And be it enacted, that where any order shall have been made under any of the provisions of this Act, vesting the right (*bb*) to any stock in any person or persons appointed by the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorised and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock into his or their own name or names or otherwise (*c*), or relating to the receipt of the dividends thereof, to the extent and in conformity with the terms of such order: and the Bank of England, and all companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order as the said Bank of England, or such companies, associations, or persons, would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made; and after notice in writing of any such order of the Lord Chancellor, intrusted as aforesaid, or of the Court of Chancery, concerning any stock, shall have been given, it shall not be lawful for the Bank of England, or any company or association whatever, or any person having received such notice, to act upon the requisition of the person in whose place an appointment shall have been made in any matter whatever relating to the transfer of such stock, or the payment of the dividends or produce thereof.

(*bb*) See s. 6 of the Extension Act, *infra*.

(*c*) Where it is sought to avoid an immediate transfer to the trustees the order may direct that the trustees are to have the right to call for a transfer of the funds to themselves or to any purchaser or purchasers, the trustees undertaking to hold the proceeds on the trusts of the settlement (*Re Peacock*, 14 Ch. D. 212; 43 L. T. 99; 28 W. R. 801).

XXVII. And be it enacted, that where any order shall have been made under the provisions of this Act, either by the Lord Chancellor, intrusted as aforesaid, or by the Court of Chancery, vesting the legal right to sue for or recover any chose in action, or any interest in respect thereof, in any person or persons, such legal right shall vest accordingly, and thereupon it shall be lawful for the person or persons

Effect of an order vesting the legal right to transfer stock.

Effect of an order vesting legal right in a chose in action.

13 & 14 Vict.
o. 60, s. 27.

so appointed to carry on, commence, and prosecute, in his or their own name or names, any action, suit, or other proceeding at law or in equity for the recovery of such chose in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such chose in action.

Effect of an order vesting copyhold lands, or appointing any person to convey copyhold lands.

XXVIII. And be it enacted, that whensoever, under any of the provisions of this Act, an order shall be made either by the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, vesting any copyhold or customary lands in any person or persons, and such order shall be made with the consent of the lord or lady of the manor whereof such lands are holden, then the lands shall, without any surrender or admittance in respect thereof, vest accordingly; and whenever, under any of the provisions of this Act, an order shall be made either by the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, appointing any person or persons to convey or assign any copyhold or customary lands, it shall be lawful for such person or persons to do all acts and execute all instruments for the purpose of completing the assurance of such lands; and all such acts and instruments so done and executed shall have the same effect, and every lord and lady of a manor, and every other person, shall, subject to the customs of the manor, and the usual payments, be equally bound and compellable to make admittance to such lands, and to do all other acts for the purpose of completing the assurance thereof, as if the persons in whose place an appointment shall have been made, being free from any disability, had duly done and executed such acts and instruments (*d*).

Copyholds vested with or without consent of lord.

(*d*) This section dispenses with the necessity of surrender and admittance, where a vesting order is made with the lord's consent, but it does not require such consent, and where such consent is not given, the lord of the manor ought not to be served with the petition, for the order is without prejudice as to his rights (*Re Fitcheroff*, 1 Jur. N. S. 418; *Re Howard*, 3 W. R. 605; *Paterson v. Paterson*, 2 Eq. 31; *Re Hurst*, Seton, 507, 1665; *Ayles v. Cox*, 17 Beav. 584).

Fine payable.

As to the fine payable to the lord on substitution of a trustee under this Act, see *Bristow v. Booth*, L. R. 5 C. P. 80.

It is settled that the lord need not appear in Court to consent (*Ayles v. Cox*; *Cooper v. Jones*, 25 L. J. Ch. 240, where a verified certificate of his consent was treated as sufficient).

Form of order.

For a form of an order appointing a person to convey under this section, see *Re Hey*, 9 Hare, 221; and as to the application of the Act to copyholds, *Re Collingwood*, 6 W. R. 536.

The Queen's Bench issued a mandamus to enforce an order made under the section (*Re Lane*, 12 W. R. 710).

Where a sole trustee of copyholds died intestate, and without an heir, the Court vested the premises in the sole beneficiary (*Re Godfrey*, 23 Ch. D. 205; 31 W. R. 426).

When a decree is made for sale of real estate for payment of debts.

XXIX. And be it enacted, that when a decree shall have been made by any Court of Equity, directing the sale of any lands for the payment of the debts of a deceased person (*e*), every person seised or possessed of such lands, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed to be so seised or possessed or entitled, as the case may be, upon a trust within the meaning of this Act; and the Court of Chancery is hereby

empowered to make an order wholly discharging the contingent right, under the will of such deceased debtor, of any unborn person (f). 13 & 14 Vict. c. 60, s. 29.

(e) For form of order under this section, see *Seton*, 527. The provisions of this section are also extended to decrees for sales for payment of costs, &c. (as to which see *Weston v. Filer*, 5 De G. & Sm. 608), by sect. 1 of the Extension Act, where the words are "for any purpose whatever;" see 15 & 16 Vict. c. 55, s. 1, *infra*. Trustee under decree for sale.

(f) See *Wood v. Beeston*, 1 K. & J. 213; *Gough v. Bage*, W. N. (1871), 237. Application in chambers.

The application under this section must be made in chambers (Ord. LV. r. 2 (8), *infra*; *Clark v. Ward*, 14 W. R. 241).

XXX. And be it enacted, that where any decree (g) shall be made by any Court of Equity for the specific performance of a contract concerning any lands, or for the partition or exchange of any lands, or generally when any decree shall be made for the conveyance or assignment of any lands, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said Court to declare that any of the parties to the said suit wherein such decree is made are trustees of such lands or any part thereof, within the meaning of this Act, or to declare concerning the interests of unborn persons (h) who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased, who was during his lifetime a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who upon coming into existence would be trustees within the meaning of this Act; and thereupon it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, as the case may be, to make such order or orders as to the estates, rights and interests of such persons, born or unborn, as the said Court or the said Lord Chancellor might under the provisions of this Act make concerning the estates, rights, and interests of trustees born or unborn. Court to declare what parties are trustees of lands comprised in any suit, and as to the interests of persons unborn.

(g) Orders under this section may be made in an action without any separate proceeding under the Act (*Harrison v. Smith*, 17 W. R. 646; *Hall v. Hale*, W. N. (1884), 185). Order in the suit.

It has been held that no vesting order is necessary to bind equitable interests which are affected by a decree (*Re Williams*, 5 De G. & S. 515), unless the constructive trustee is out of the jurisdiction; see *Lechmere v. Clamp*, 31 Beav. 578. Decree binding equitable interests.

The Court has a discretion to declare a constructive trust by order on petition under the Act without decree in a suit (*Re Angelo*, 5 De G. & Sm. 278, where a mortgagor of shares resident out of the jurisdiction was declared a constructive trustee for the person to whom the shares were sold by the mortgagee upon the petition of such purchaser without suit). If it is desired to have a vendor or mortgagor declared a trustee for a purchaser within the section, such declarations cannot be obtained without action, unless the contract is executed by payment of purchase-money, &c. (*Re Cuming*, 5 Ch. 72). When a constructive trust can be declared without decree.

Thus the infant heir of an alleged vendor could not be declared a constructive trustee for the purchaser, where the contract concerned realty, until the rights had been ascertained by a suit (*Re Carpenter*, Kay, 418); see *Re Wedding*, 4 Jur. N. S. 707; *Cust v. Middleton*, 9 W. R. 242; *Re Draper*, 9 W. R. 805; *Re Burt*, 9 Hare, 289, where the Court refused, on application under the Act without suit, to declare the infant heir of a deceased partner, whose surviving partner had exercised a right of purchasing the partnership property given to him by the articles of partnership, a constructive trustee for the surviving partner. In *Re Collinson*, 3 De G. M. & G. 409, the Court would not make an order on petition, declaring a son trustee for the father of property purchased in the son's name, though shortly after it made a decree to that effect in the suit; but compare *Re De Visme*, 2 De G. J. & S. 17.

13 & 14 Vict.
c. 60, a. 30.

Vendor a
constructive
trustee.

But where a contract for purchase is executed, as, for example, where the purchase-money has been paid, the vendor or his heir will be declared a trustee under the Act without suit (*Re Cuming*, 5 Ch. 72, following *Re Collingwood*, 6 W. R. 536, there cited; *Re Crowe*, 13 Eq. 26; *Re Taylor*, W. N. (1866), 5). So, where the equitable estate was clearly in the petitioner (*Re Wilkinson*, 12 W. R. 522; 10 Jur. N. S. 716). So, where a testator directed his executors to sell lands and apply the money, and before his death contracted to sell the lands, the Court made an order vesting the estate outstanding in his heir in the executors (*Re Badoock*, 2 W. R. 386). So, where a vendor died before completion of a compulsory sale to a railway company, his heir was held a constructive trustee without bill filed (*Re Russell*, 12 Jur. N. S. 224; *Re Lowry*, 15 Eq. 78); and again, where lands purchased with the money of a railway company had been conveyed to two persons as tenants in common without any express declaration of trust, it being clearly proved that the lands were only held in trust, the Court treated the infant heir of one of the tenants in common who died, as a trustee for the company within the Act (*Re Brancker*, V.-C. W., Jan. 14, 1859).

Where a decree was made for specific performance of an agreement to grant a lease, and the defendant refused to obey the order, he was declared a trustee of the premises and a person was appointed to execute the lease in his place (*Hall v. Hale*, W. N. (1884), 185; but see *Grace v. Baynton*, W. N. (1877), 79; 25 W. R. 506).

As to what applications under the Acts must be made in Chambers, see Ord. LV. r. 2 (8), *infra*.

Compare *Lysaght v. Edwards*, 2 Ch. D. 499; where the question how far a vendor, who dies before completion, is a trustee for the purchaser, is fully considered.

Infant
defendant.

Decree of
foreclosure
against
infanta.

Partition
suits.

One object of the section is said to have been to obviate the necessity of inserting, in decrees of foreclosure made against infants, a day for the infant to show cause against the decree; see as to this, *Newbury v. Marten*, 15 Jur. 166; *Foster v. Parker*, 8 Ch. D. 147; *Mellor v. Porter*, 25 Ch. D. 158. In *Botva v. Wright*, 4 De G. & Sm. 265, which was a partition suit, the Court declared the infant a trustee of such of the shares as were allotted to other parties. See now a. 7 of the Partition Act, 1868, *post*; *Re Bloomer*, 2 De G. & J. 88; *Re Molynaux*, 4 De G. F. & J. 365; 10 W. R. 512, where, on a decree for partition being made against a lunatic tenant in tail, declaring her a trustee of certain hereditaments, the committee declining to take any steps to complete the partition, a vesting order was made under this section and the Lunacy Regulation Act, 16 & 17 Vict. c. 70; *Shepherd v. Churchill*, 25 Beav. 21, where the shares of the parties to a partition suit were very minute and complicated, and the Court declared each of the parties trustees as to the shares allotted to the other of them, and vested the whole in a single trustee, with directions to convey to each of the parties their allotted shares; *Orger v. Sparke*, 9 W. R. 180; *Hubbard v. Hubbard*, 2 H. & M. 38.

Unborn
persons.

(h) As to the power of the Court to bind unborn persons, see *Hargreaves v. Wright*, 1 W. R. 408, where on a bill filed by purchasers from a father and son having a joint power of appointment under a settlement, against the infant heir in tail of the son, who had died before the completion of the purchase, the Court made an order discharging the estate from the contingent rights of the unborn claimants under the settlement, and appointing a person to convey in the place of the infant; cf. *Wake v. Wake*, 1 W. R. 283; 17 Jur. 745. The word "unborn" is used in a large sense, and includes the right heirs of living persons who cannot be ascertained, and therefore cannot be made parties to a suit (*Basnett v. Moron*, 20 Eq. 182; *Lees v. Coulton*, 20 Eq. 20).

Power to
give direc-
tions how
the right to
transfer stock
is to be
exercised.

XXXI. And be it enacted, that it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, to make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act shall be exercised; and thereupon the person or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced (i).

Stock ordered
to be trans-
ferred into
Court.

(i) The Court may order the person to whom a fund is paid, to pay it into Court under the Trustee Relief Act (*Re Thornton*, 9 W. R. 475; *Re Draper*, 9 W. R. 805); but an order for payment direct into Court will not be made (*Re Parby*, 29 L. T. (O. S.) 72); see, however, *Re Pitt*, 1 Jur. N. S. 1155, and *Re Dawson*, 3 N. R. 397, cited in note (m), *post*, p. 81.

XXXII. And be it enacted, that whenever it shall be expedient to appoint a new trustee or new trustees (*k*) and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the Court of Chancery (*l*), it shall be lawful for the said Court of Chancery to make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees (*m*).

(*k*) New trustees of a composition deed for the benefit of creditors were appointed in *Re Price's Trust*, 6 Eq. 460; *Re Bache*, W. N. (1868), 223; *Re Raphael*, 9 Eq. 233; *Re Thomson*, 10 Ch. 55; and see *Re Waddell*, 2 Ch. D. 172; and new trustees in place of those appointed under the Settled Estates Act (*Scott v. Hersch*, 24 W. R. 108).

Appointments of new trustees of *charities* may be obtained under the Act; but such appointments are generally made on summons in chambers under the Charitable Trusts Acts, 1853, *infra*, p. 94; see *Re Conyer's School*, 10 Hare, App. v.; or in simple cases, and where the income is under 50*l.*, by application to the Charity Commissioners under the Act of 1860, and the property may be vested under sect. 45 of this Act, p. 86, *post*. For the County Court jurisdiction where the property is under 500*l.*, see 28 & 29 Vict. c. 99, s. 1.

Applications for the appointment of new trustees of a charity should be intitled under Sir S. Romilly's Act, 52 Geo. III. c. 101, as well as the Trustee Acts, and such other Act as may be applicable (*Lewin*, 723; *Re Rolle's Charities*, 3 De G. M. & G. 153; *Re Berton*, 10 Ha. App. xxxviii.; *Re Gloucester Charities*, 10 Ha. App. iii.). The fiat of the Attorney-General and the sanction of the Charity Commissioners should be obtained (*Re Rolle's Charities*; *Re Warwick Charities*, 1 Phil. 569; *Re Lancaster Charities*, 9 W. R. 192); unless the application is in a pending matter or action (*Att.-Gen. v. Cooper*, 8 Jur. N. S. 50; 10 W. R. 31; *Re Jarvis*, 1 Dr. & Sm. 97).

New trustees of an alien's will were appointed, the Crown not opposing (*Re Martinez*, W. N. (1870), 70); see *Re Giraud*, 32 Beav. 385; and see now 33 & 34 Vict. c. 14, s. 2, enabling aliens to hold property.

(*l*) This section only provides machinery in cases where, on the face of the instrument, it appears difficult, impracticable, or inexpedient to act without the Court's aid; and does not give the Court jurisdiction on petition to consider the validity of the instrument or the conduct of trustees.

(1) The Court will not consider the question of validity (*Re Matthews*, 26 Beav. 463; 5 Jur. N. S. 184; *Re Harrison*, 22 L. J. Ch. 69); and see *Att.-Gen. v. Ward*, 6 Hare, 477, where the deed declaring the trusts had not been enrolled (as it should have been), but the Court appointed new trustees, the old trustees admitting the trusts.

(2) The Court will not, on petition, appoint a new trustee on any ground not appearing on the face of the instrument; *e. g.*, on the ground of the trustee's misconduct (*Re Bridgman*, 1 Dr. & Sm. 164; *Legg v. Mackrell*, 1 Giff. 165); or because of disagreements between the trustee and *cestui que trust* (*Forster v. Davies*, 4 De G. F. & J. 133); or because the donee of the power is about to exercise it corruptly (*Re Hodson*, 9 Hare, 118; *Re Hadley*, 5 De G. & Sm. 67).

Nor will the Court, on petition under the section, remove a trustee without or against his consent (*Re Blanchard*, 3 De G. F. & J. 131; 9 W. R. 647; *Re Garty*, 16 L. T. 331; *Re Dennis*, 12 W. R. 575). In such cases an action must be brought (*Lewin*, 882); but see *Re Byrne*, 18 L. T. 631, where a trustee showed by his conduct that he declined to act; *Re Bignold*, 7 Ch. 223, where he had gone to reside abroad. The Court has considered it expedient to exercise its statutory powers of appointing new trustees in the following cases:—

Where a vesting order could not otherwise have been obtained; thus, at the instance of the Bank of England, a fund which belonged to the Lords of the Regency of Hanover, who ceased to exist as a corporation on the annexation by Prussia, was transferred by the intervention of trustees appointed by the Court (*King of Hanover v. Bank of England*, 8 Eq. 350); but see note (*p*), p. 66, for vesting orders made when there was no one who had an existing estate or interest, and *Re Driver* and *Re Rathbone* there cited.

Where there was great difficulty in obtaining administration to a deceased trustee (*Re Matthews*, 26 Beav. 463; *Davis v. Chanter*, 6 W. R. 416).

Where one of two trustees for sale was an infant (*Re Porter*, 2 Jur. N. S. 349). And the Court will generally appoint a new trustee in the place of an infant, even though appointed by the testator himself (*Re Gartside*, 1 W. R. 196); but the order should be without prejudice to any application by the infant to be restored to the

13 & 14 Vict.
c. 60, s. 32.

Power to
Court to make
order appoint-
ing new
trustees.

New trustees
of composi-
tion deed.

Charities.

New
Trustees.

The Court will
not on peti-
tion enter
into—

(1) Validity
of instru-
ments;

(2) Miscon-
duct of
trustees.

Cases: (A)
where *expe-
dient* to ap-
point new
trustees.

For transfer
by Bank of
England.

Difficulty in
administering
to deceased
trustee;
infancy;

13 & 14 Vict. c. 60, s. 32. trusteeship on coming of age (*Re Shelmerdine*, 33 L. J. Ch. 474; *Re Brunt*, W. N. (1883), 220).

For the practice where a trustee becomes lunatic, see note (o), p. 65; and see *Re East*, 8 Ch. 735.

residence
abroad;

It has been held, that the mere fact of a trustee residing out of the jurisdiction of the Court is not always a ground for holding it expedient to appoint another in his place (*Re Mais*, 16 Jur. 608; *Re Moravian Society*, 26 Beav. 101; *Re Watts*, 9 Hare, 106; *Withington v. Withington*, 16 Sim. 104, where a trustee who had gone to reside in China was held not to be incapable of acting); and see *Re Blanchard*, and other cases, *supra*. But see *Mennard v. Welford*, 1 Sm. & G. 426; *Re Guibert*, 16 Jur. 852; *Re Stewart*, 8 W. R. 297; *Re Joyce*, 2 Eq. 576; *Re Bignold*, 7 Ch. 223, which decide the contrary.

age and
infirmity;
bankruptcy.

So, where a trustee is incapable of acting by reason of age and infirmity, the Court considers it expedient to appoint (*Re Lemann*, 22 Ch. D. 633).

The mere fact of a trustee becoming bankrupt was not a sufficient ground for the Court under the Trustee Act to appoint a new trustee in his stead (*Re Renshaw*, 4 Ch. 783); but by the Bankruptcy Act, 1883, s. 147 (re-enacting with only verbal alterations s. 117 of the Bankruptcy Act, 1869), "where a bankrupt is a trustee within the Trustee Act, 1850, s. 32 of that Act shall have effect so as to authorise the appointment of a new trustee in substitution for the bankrupt (whether voluntarily resigning or not) if it appears expedient to do so, and all provisions of that Act, and of any other Act relative thereto shall have effect accordingly;" and the Court will now remove a bankrupt trustee or a trustee who has liquidated by arrangement whenever he has trust money to receive, or deal with, which he can misappropriate (*Re Barker*, 1 Ch. D. 43; *Re Adams*, 12 Ch. D. 634; and see *Coombes v. Brookes*, 12 Eq. 61).

Where of three trustees one was dead, another had become bankrupt and absconded, and the third had become lunatic, new trustees were appointed, and a right to call for a transfer of the trust estate vested in them (*Re Duce*, 30 W. R. 759).

Felony.

As to appointing a new trustee in place of a person convicted of felony, see "Trustee Extension Act, 1852," *post*, s. 8.

(B) Where
impracticable
to appoint
without
Court's aid:

Cases where it is impracticable to appoint new trustees without the aid of the Court arise where there is a power given by an instrument for appointment of new trustees, but either (1) the donee of the power is incapacitated by lunacy or other causes, or (2) the words of the power do not apply to the case which has arisen.

(1) Where
donee of power
lunatic.

(1) Where the incapacity of the donee arises from lunacy, the application may be made under the Lunacy Regulation Act, 16 & 17 Vict. c. 70, for the committee to appoint, and therefore the Court will not appoint in the absence of the committee (*Re Parker*, 32 Beav. 580; *Re Bowmer*, 3 De G. & J. 658); but a new trustee in place of a lunatic trustee, whether so found or not, may be appointed under the Chancery jurisdiction (*Re Sparrow*, 5 Ch. 662); see *Re Boyce*, 3 N. R. 396; 12 W. R. 359; *Re Vickers*, 3 Ch. D. 112; *Re Heaphy*, 18 W. R. 1070.

16 & 17 Vict.
c. 70.

So, where the donee of a power to appoint new trustees was in India, new trustees were appointed under the Act (*Re Humphry*, 1 Jur. N. S. 921).

(2) Where
power in
instrument
insufficient.

(2) For cases where the power given by the instrument did not meet the case which happened, see *Lewin*, 559 *et seq.*; *Re Woodgate*, 5 W. R. 448; *Re Harrison*, 22 L. J. Ch. 69 (where the power provided for the case of a trustee being incapable, unwilling, or unable, and the event was that a trustee went abroad); *Cooper v. Macdonald*, 14 W. R. 755; *Travis v. Ilkingsworth*, 2 Dr. & Sm. 345; *Re Dawson*, 3 N. R. 397, where a trustee was unable to sign from ill health. See also *Re Glenny and Hartley*, 25 Ch. D. 611, and *Re Norris*, 27 Ch. D. 333, where *Travis v. Ilkingsworth* is discussed.

Where
trustees
disclaim.

Where the application is in consequence of a trustee refusing to act, the disclaimer may be made at the bar of the Court (*Foster v. Dawber*, 1 Dr. & Sm. 172; *Re Barnes*, Seton, 542).

Conveyancing
Act, 1881.

Many cases where formerly it would have been impracticable to act without the aid of the Court are now provided for by the Conveyancing Act, 1881, s. 31, which contains extensive powers for the appointment of new trustees; see *post*, p. 117; and where the appointment can be thus effected it is improper to apply under the Trustee Acts (*Re Gibbon*, W. N. (1882), 12; 30 W. R. 287). The section was not intended, however, to vary the practice of the Court under the Trustee Act (*Re Aston*, 23 Ch. D. 217).

Discretion of
the Court.

Number
of trustees
appointed.

(m) The Court exercises a discretion in appointing new trustees; and as to its general rules and principles in the selection, see *Re Tempest*, 1 Ch. 485. The Court generally appoints such number of trustees as is necessary to make up the original number: it will increase the number if it thinks fit (*Re Tunstall*, 4 De G. & S. 421; 15 Jur. 645; *Re Boycott*, 5 W. R. 15; *Re Brackenbury*, 10 Eq. 45; and see *Viscountess D'Adhemar v. Bertrand*, 35 Beav. 19), but will not diminish it except under special circumstances (*Bulkeley v. Earl of Eglinton*, 1 Jur. N. S. 994; *Re*

Colyer, 43 L. T. 454; *W. N.* (1880), 131). Where, however, all that remained to be done was to distribute the trust fund, and there was a difficulty in finding persons willing to act as trustees, the Court appointed two trustees in the place of three (*Re Marriott*, *W. N.* (1868), 215; and see *Re Watson*, 19 Ch. D. 384). The Court has appointed the continuing trustees to be sole trustees in the place of the continuing and retiring trustees (*Re Stokes*, 13 Eq. 333; *Re Harford*, 13 Ch. D. 135; *Re Tatham*, *W. N.* (1877), 259; *Re Crowe*, 14 Ch. D. 610; *Re Gibbin*, *W. N.* (1880), 99; *Re Shipperdon*, *W. N.* (1880), 155; *Re Northrop*, *W. N.* (1880), 184; 29 *W. R.* 134); but this practice has been disapproved of, and in a recent case was not followed (*Re Aston*, 23 Ch. D. 217; and see *Re Lamb*, 28 Ch. D. 77; *Re Nash*, 16 Ch. D. 503; *Re Colyer*, *W. N.* (1880), 131; 43 L. T. 454). Where, however, the fund is immediately divisible, there is no objection to this course being taken (*Re Martyn*, 26 Ch. D. 745, where the right to deal with the trust funds was vested in two out of three trustees, the third having become a lunatic). The Court will not generally appoint a single trustee (*Re Dickinson*, 1 *Jur. N. S.* 724; *Re Ellison*, 2 *Jur. N. S.* 62; *Re Porter*, 2 *Jur. N. S.* 349; *Re Roberts*, 9 *W. R.* 758; *Grant v. Grant*, 34 L. J. Ch. 641; 6 *N. R.* 347), even where there was only one originally (*Re Tunstall*, 4 De G. & S. 421; 15 *Jur.* 645). It was done so, however, on an allegation that the trust was almost wound up (*Re Reynault*, 16 *Jur.* 233; *Re Dickson*, *W. N.* (1872), 223; *S. C. nom. Re Dixon*, 21 *W. R.* 220). And where, by the will, only one trustee was appointed, the Court appointed an additional trustee at the cost of the reversioners who presented the petition (*Re Brackenbury*, 10 Eq. 45).

13 & 14 Vict.
c. 60, s. 32.

The Court has appointed new trustees of one or more specific trusts created by an instrument, and not of the entire instrument (*Re Cotterill*, *W. N.* (1869), 183; *Re Dennis*, 3 *N. R.* 636; 12 *W. R.* 575; *Re Cunard*, 27 *W. R.* 52; *Re Grange*, *W. N.* (1881), 50).

Trustees appointed of part of the trust property.

The Court will not appoint one of the *cestuis que trust* to be a trustee, except under very special circumstances; as where no disinterested person can be found to accept the office (*Ex parte Clutton*, 17 *Jur.* 988; *Re Conybeare*, 1 *W. R.* 458; *Re Roskell*, Seton, 547; *Re Clissold*, 10 L. T. 642); or where the *cestuis que trust* are entitled to receive the fund (*Re Currie*, 10 Ch. D. 93; *Re Dickson*, *W. N.* (1872), 223; *S. C. nom. Re Dixon*, 21 *W. R.* 220). The Court is also unwilling to appoint a near relation of the *cestuis que trust* (*Wilding v. Bolder*, 21 *Beav.* 222; *Re Hattatt*, *W. N.* (1870), 14; 18 *W. R.* 416; *Re Burgess*, *W. N.* (1877), 87).

Who appointed.

The Court refused to appoint a foreigner resident abroad (*Re Guibert*, 16 *Jur.* 852; *Re Long*, 17 *W. R.* 218); but where the beneficiaries are residing abroad, or there are other special circumstances, the Court will appoint persons resident out of the jurisdiction (*Re Smith*, *W. N.* (1872), 134; 20 *W. R.* 695; *Re Hill*, *W. N.* (1874), 228; *Re Drewe*, *W. N.* (1876), 168; *Re Cunard*, 27 *W. R.* 52; *Re Liddiard*, 14 Ch. D. 310). A *feme sole* may be appointed (*Re Campbell*, 31 *Beav.* 176; *Re Berkley*, 9 Ch. 720). Where no one else could be found, the husband of one of the beneficiaries was appointed, on his undertaking to appoint a new trustee to act with him if ever he became sole trustee (*Re Parrott*, *W. N.* (1881), 158; *Re Lightbody*, *W. N.* (1885), 3); and the petitioner's solicitor has been appointed where there was a difficulty in getting anybody else (*Re Brentnall*, *W. N.* (1872), 77); though as a rule such an appointment will not be made (*Re Orde*, 24 Ch. D. p. 272).

The Court requires a written consent by the new trustees to act, unless counsel consent on their behalf (*Re Parke*, 21 L. T. (O. S.) 218); but they need not appear to consent (*Re Draper*, 2 *W. R.* 440). An affidavit of their fitness must be produced (*Re Battersby*, 16 *Jur.* 900; *Re Tunstall*, 4 De G. & S. 421; 15 *Jur.* 645, 981). As a general rule, an affidavit of fitness by the solicitor is not enough (*Grundy v. Buckridge*, 22 L. J. Ch. 1007; 17 *Jur.* 731; *Re Hartley*, *W. N.* (1879), 197).

Consent of new trustees. Affidavit of fitness.

Where parties interested objected to the trustees proposed to be appointed, and desired the property to be paid in under the Trustee Relief Act, the Court made an order vesting the property in the proposed trustees, on an undertaking by them to transfer it into Court within a month (*Re Dawson*, 3 *N. R.* 397, and see note (i), p. 78, *supra*).

New trustee to pay into Court.

Since the passing of the Trustee Extension Act, sect. 9, *post*, p. 93, the Court can act under this section, when there are no existing trustees, even though the trustees all died in the testator's lifetime (*Re Smirthwaite*, 11 Eq. 251), but in such a case the heir must be served (*Gunson v. Simpson*, 5 Eq. 332). Trustees were appointed where the testator had appointed executors, but no trustees (*Re Davis*, 12 Eq. 214; *Dodkin v. Brunt*, 6 Eq. 580; and see *Re Gillatt*, 25 *W. R.* 23; *Re Moore, McAlpine v. Moore*, 21 Ch. D. 778). See also *Paterson v. Paterson*, 2 Eq. 31; 35 *Beav.* 506, where the trustees had disclaimed.

Where there are no existing trustees.

XXXIII. And be it enacted, that the person or persons who, upon

The new trustees to

13 & 14 Vict.
c. 60, s. 33.

have the
powers of
trustees ap-
pointed by
decree in suit.

the making of such order as last aforesaid, shall be trustee or trustees, shall have all the same rights and powers as he or they would have had if appointed by a decree in a suit duly instituted (n).

(n) As to the powers of trustees appointed by the Court, see Conveyancing Act, 1881, s. 33, *infra*.

Power of
Court to vest
lands in new
trustees.

XXXIV. And be it enacted, that it shall be lawful for the said Court of Chancery (o), upon making any order for appointing a new trustee or new trustees (p), either by the same or by any subsequent order to direct that any lands (q) subject to the trust shall vest in the person or persons who upon the appointment shall be the trustee or trustees, for such estate as the Court shall direct (r); and such order shall have the same effect as if the person or persons who before such order were the trustee or trustees (if any) had duly executed all proper conveyances and assignments of such lands for such estates.

Vesting lands
under decree.

(o) Now the Chancery Division of the High Court (Judicature Act, 1873, s. 34).

(p) A vesting order was made under this section, where trustees previously appointed by the parties were reappointed by the Court (*Re Clay*, W. N. (1873), 129).

Where a mortgagee's executors had, by decree, been ordered to transfer the mortgage debt to the trustees of a settlement, it was held that this was an appointment of new trustees by the Court, and that a vesting order of the mortgaged property might be made under this section (*Re Hughes*, 2 H. & M. 695).

(q) Under this section "lands" include leaseholds; see note (b) to s. 2, *ante*, p. 64. Where there was no legal personal representative of the surviving trustee, the Court made a vesting order as to leaseholds (*Re Rathbone*, 2 Ch. D. 483; *Re Dalglish*, 4 Ch. D. 143).

Whether a
declining
trustee must
execute deed
of disclaimer.

(r) Before the Court will under this section make an order divesting the estate out of a trustee declining to act, it seems to have been thought by V.-C. Wood that the trustee so declining must execute a deed of disclaimer; as an executor, even though he may not have proved the will, must finally renounce before an order will be made to vest an estate in his co-executor (*Re Badcock*, 2 W. R. 386); a parol disclaimer, on the hearing of the petition, not being sufficient (*Re Ellison*, 2 Jur. N. S. 62). But this *dictum* has been doubted by other judges (*Foster v. Dauber*, 1 Dr. & Sm. 172).

Form of
order.

For a form of vesting order under this section, see Seton, 539; *Hancox v. Spittle*, 3 Sm. & G. 478; *Re Ellis*, 24 Beav. 426, where the Court directed the circumstances bringing the case within the Act to be inserted in the order. See, too, *Re Mainwaring*, 26 Beav. 172, from which it seems that where the Bank is required to transfer stock, this should always be done.

Vesting in
new and old
trustees as
joint tenants

The Court may make an order vesting the estate which is outstanding in the old and continuing trustees in the new and continuing trustees as joint tenants (see note (g) to sect. 10), and for the cases on the form, &c., of vesting orders under the Act, see note (p), p. 65, *ante*.

XXXV. And be it enacted, that it shall be lawful for the said Court of Chancery upon making any order for appointing a new trustee or new trustees, either by the same or any subsequent order to vest the right to call for a transfer (s) of any stock subject to the trust, or to receive the dividends or income thereof, or to sue for or recover any chose in action, subject to the trust, or any interest in respect thereof, in the person or persons who upon the appointment shall be the trustee or trustees.

(s) This section only empowers the Court to vest the right "to call for a transfer" of stock (*Re Smyth*, 4 De G. & S. 499; 15 Jur. 644); under s. 6 of the Extension Act the right to the stock itself is vested.

XXXVI. And be it enacted, that any such appointment by the Court of new trustees, and any such conveyance, assignment, or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have done.

13 & 14 Vict.
c. 60, s. 36.

Old trustees
not to be dis-
charged from
liability.

XXXVII. And be it enacted, that an order under any of the hereinbefore contained provisions, for the appointment of a new trustee or trustees, or concerning any lands, stock, or chose in action subject to a trust, may be made upon the application of any person beneficially interested (*t*) in such lands, stock, or chose in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof; and that an order under any of the provisions hereinbefore contained concerning any lands, stock, or chose in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the monies secured by such mortgage (*u*).

Who may
apply.

(*t*) A person having a contingent interest in real estate (*Re Sheppard*, 4 De G. F. & J. 423; 9 Jur. N. S. 59, overruling *S. C.* 8 Jur. N. S. 711; 10 W. R. 704), a creditor who has obtained a decree for administration and sale of real estate (*Re Wragg*, 1 De G. J. & S. 356), and a purchaser who has paid his purchase-money into Court (*Ayles v. Cox*, 17 Beav. 584), are "persons beneficially interested" within the meaning of the section; but the committee of a lunatic *cestui que trust* is not such a person (*Re Bourke*, 2 De G. J. & S. 426).

Who are
persons
beneficially
interested

(*u*) As a general rule, all persons beneficially interested in the property, or parties to the suit, where the application is made in a suit, must join in the application or be served (*Re Richards*, 5 De G. & S. 636; *Re Fellows*, 2 Jur. N. S. 62; *Re Sloper*, 18 Beav. 596). Where, however, the *cestuis que trust* are very numerous, or some other sufficient reason why they should not all be served is shown by affidavit, service on some of them may be dispensed with (*Re Smyth*, 2 De G. & S. 781; *Re Sharpley*, 1 W. R. 271; *Re Blanchard*, 3 De G. F. & J. 131; *Re Lightbody*, W. N. (1886), 3. If the application is for the appointment of new trustees and there are old trustees who are desirous of retiring they must be served or join as co-petitioners (*Re Sloper*, 18 Beav. 596), unless they are of unsound mind (*Re East*, 8 Ch. 735; *Re Green*, 10 Ch. 272), or permanently residing abroad (*Re Bignold*, 7 Ch. 223); or have absconded (*Hyde v. Benbow*, W. N. (1884), 117). Where all the trustees of a will have died in the testator's lifetime, a petition for the appointment of new trustees of the real estate and a vesting order should be served on the heir (*Re Smirthwaite*, 11 Eq. 251).

Who must
concur.

The husband of a married woman petitioner need not now be a co-petitioner or respondent (*Re Outwin*, 31 W. R. 374; and see Married Women's Property Act, 1882, *infra*).

[Sections. 38 and 39 were repealed by the Statute Law Revision Act, 1875.]

XL. And be it enacted, that any person or persons entitled in manner aforesaid to apply for an order from the said Court of Chancery (*v*), or from the Lord Chancellor, intrusted as aforesaid, may, should he so think fit, present a petition (*w*) in the first instance to the Court of Chancery, or the Lord Chancellor, intrusted as aforesaid, for such order as he may deem himself entitled to, and may give evidence (*x*) by affidavit or otherwise in support of such petition before the said Court, or the Lord Chancellor, intrusted as aforesaid, and may serve (*y*) such person or persons with notice of such petition as he may deem entitled to service thereof.

Power to pre-
sent petition
in the first
instance.

(*v*) Now the Chancery Division (Judicature Act, 1873, s. 34 (2)).

13 & 14 Vict.
c. 60, s. 40.

(w) Where there has been a judgment or order for the sale, conveyance or transfer of stock, or of any hereditaments, the application is made in chambers (Ord. LV. r. 2 (8), *infra*). If the application is unnecessarily made by petition the extra costs will be ordered to be paid by the petitioner (*Clark v. Ward*, 14 W. R. 241).

Evidence.

(x) In *Re Pickanee*, 10 Hare, App. xxxv., the Court allowed affidavits filed in a cause to be used as evidence on a petition in the matter of the Acts; and as to evidence in support of a petition under this Act, see *Re Hoskins*, 4 De G. & J. 436, where on a petition for appointing new trustees of a will containing gifts to classes, an affidavit of the solicitor was received as sufficient evidence of the persons constituting the classes without the production of baptismal and other certificates.

Service on
cestuis que
trust and
trustees.

(y) The general rule is, that all the *cestuis que trust* should be served, including infants (*Re Fellows*, 2 Jur. N. S. 62). In cases of retiring trustees, the old trustees also (*Re Sloper*, 18 Beav. 596) should be served; and see *Ex parte Hardman*, 3 M. D. & De G. 559, where the *cestuis que trust* were abroad; *Re Richards*, 5 De G. & Sm. 636; *Re Lightbody*, W. N. (1885), 3.

But service on all the *cestuis que trust*, where they are very numerous, may be dispensed with (*Re Sharpley*, 1 W. R. 271; *Re Smyth*, 2 De G. & Sm. 781), and trustees with a power of sale sufficiently represent their *cestuis que trust* (*Re Blanchard*, 3 De G. F. & J. 131).

Service upon infant respondents was dispensed with in *Re Tweedy*, 9 W. R. 398; *Re Willan*, *ibid.* 689; *Re Wise*, 5 De G. & Sm. 415; *Re Little*, 7 Eq. 323.

A trustee refusing to transfer need not be served with a petition under the 23rd and 24th sections; see note (u), p. 74, *ante*.

Service of
petition by
tenant for
life;

The Court will not make a vesting order on petition of a lessee or tenant for life without service on the remaindermen (*Re Farrant*, 20 L. J. Ch. 532; *Re Maynard*, 16 Jur. 1084); but see *Re Pryse*, 10 Eq. 531. Where the lease contained no clause prohibiting assignment, an order vesting leaseholds was made in the absence of the lessor (*Re Matthews*, 2 W. R. 85). A petition as to lands vested in a lunatic trustee must be served upon the committee (*Re Saumarez*, 8 De G. M. & G. 390; *Re Wylde*, 5 De G. M. & G. 25); and see *Re Wood*, 3 De G. F. & J. 125; *Re Parker*, 32 Beav. 580; *Re East*, 8 Ch. 735; as to service of a petition to appoint new trustees in the place of a bankrupt upon the trustee, see *Ex parte Carden*, 12 Jur. 391, and on the bankrupt himself, see *Ex parte Whitley*, 1 Dea. 478; *Ex parte Harris*, 11 L. J. Bkcy. 16. An order to vest lands subject to an annuity may be made in the absence of the annuitant (*Re Winteringham*, 3 W. R. 578); see *Ex parte Marshall*, 3 De G. & Sm. 679.

See further as to services, the note on costs, note (k) to sect. 51, *infra*, p. 87.

by lunatic,
by bankrupt,
in incum-
brancers.

What may be
done upon
petition.

XXI. And be it enacted, that upon the hearing of any such *motion or petition* it shall be lawful for the said Court or for the said Lord Chancellor, should it be deemed necessary to direct a reference to one of the Masters in Ordinary of the Court of Chancery to inquire into any facts which require such an investigation, or it shall be lawful for the said Court or for the said Lord Chancellor to direct such *motion or petition* to stand over to enable the petitioner or petitioners to adduce evidence or further evidence before the said Court or before the said Lord Chancellor, or to enable notice or any further notice of such *motion or petition* to be served upon any person or persons (z).

(z) The words in italics were repealed by Statute Law Revision Act, 1875.

Court may
dismiss peti-
tion with or
without costs.

XXII. And be it enacted, that upon the hearing of any such *motion or petition*, whether any *certificate or report* from a Master shall have been obtained or not, it shall be lawful for the Court, or the Lord Chancellor, intrusted as aforesaid, to dismiss such *motion or petition*, with or without costs, or to make an order thereupon in conformity with the provisions of this Act (a).

(a) The words in italics were repealed by the Statute Law Revision Act, 1875.

XLIII. And be it enacted, that whensoever, in any cause or matter, either by the evidence adduced therein, or by the admission of the parties, or by a report of one of the Masters of the Court of Chancery, the facts necessary for an order under this Act shall appear to such Court to be sufficiently proved, it shall be lawful for the said Court, either upon the hearing of the said cause or of any petition or motion in the said cause or matter, to make such order under this Act (b).

13 & 14 Vict.
c. 60, s. 43.

Power to
make an
order in a
cause.

(b) See as to this section, *Frodsham v. Frodsham*, 15 Ch. D. 317. Generally, an order may be made in a cause without a petition (*Wood v. Beetlestone*, 1 K. & J. 213; *Viscountess D'Adhemar v. Bertrand*, 35 Beav. 19); but where the trustee is a lunatic, a petition in lunacy is requisite; see notes (m) and (o) to sect. 3, p. 65; *Jeffryes v. Drysdale*, 9 W. R. 428; *Re Dawson*, 6 N. R. 346.

Orders under
Act made in
cause.

Vesting orders in a suit were made on motion in *Mackenzie v. Mackenzie*, Seton, 526, where a previous order appointing new trustees had been made in a cause; and see *Re Holbrook's Will*, 3 W. R. 3, where such order had been made on petition in a matter, and a subsequent vesting order was made on motion; see, too, *Skynner v. Pelichet*, 9 W. R. 191; and *Fisher v. Hughes*, 25 W. R. 528, where an order was made on motion for judgment in default of pleading.

The petition, though presented in a suit, should be intitled in the Act (*Gough v. Bage*, W. N. (1871), 237; 25 L. T. 738; *Re Law*, 4 Beav. 509; *Huntley v. Clutierbuck*, W. N. (1872), 81); but see Seton, p. 544.

Petition, how
intituled.

As to amending an order, see *Re Clinton, Jackson v. Slaney*, W. N. (1882), 176; and *Re Savage*, 15 Ch. D. 557, where the names of some of the co-petitioners had been used without their authority.

Amendment
of order.

XLIV. And be it enacted, that whenever any order shall be made under this Act, either by the Lord Chancellor, intrusted as aforesaid, or by the Court of Chancery, for the purpose of conveying or assigning any lands, or for the purpose of releasing or disposing of any contingent right, and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the Court of Chancery, or cannot be found, or that it is uncertain which of several trustees, or which of several devisees of a mortgagee, was the survivor, or whether the last trustee, or the heir or last surviving devisee of a mortgagee, be living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or devisee, then in any of such cases the fact that the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, has made an order upon such an allegation, shall be conclusive evidence (c) of the matter so alleged in any court of law or equity upon any question as to the legal validity of the order: Provided always, that nothing herein contained shall prevent the Court of Chancery directing a re-conveyance or re-assignment of any lands conveyed or assigned by any order under this Act, or a re-disposition of any contingent right conveyed or disposed of by such order; and it shall be lawful for the said Court to direct any of the parties to any suit concerning such lands or contingent right to pay any costs occasioned by the order under this Act, when the same shall appear to have been improperly obtained.

Orders made
by the Court
of Chancery,
founded on
certain alle-
gations, to be
conclusive
evidence of
the matter
contained in
such alle-
gations.

Order to be
conclusive
evidence of
facts on
which it was
founded.

(c) See *Collinson v. Collinson*, 3 De G. M. & G. 409, 414.

13 & 14 Vict.
c. 60, s. 45.

Trustees of
charities.

XLV. And be it enacted, that it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, to exercise the powers herein conferred, for the purpose of vesting any lands, stock, or chose in action in the trustee or trustees of any charity (*d*) or society, over which charity or society the said Court of Chancery would have jurisdiction upon suit duly instituted, whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court of Chancery, or by order made upon a petition to the said Court under any statute authorising the said Court to make an order to that effect in a summary way upon petition.

Vesting order
on appoint-
ment of new
charity
trustees.

(*d*) New trustees of a charity having been appointed under the 16 & 17 Vict. c. 137, s. 28, a vesting order under this section was made in chambers (*Re Davenport's Charity*, 4 De G. M. & G. 839); and see *Re Lincoln Chapel*, 1 Jur. N. S. 1011; 3 W. R. 608.

No escheat of
property held
upon trust or
mortgage.

XLVI. And be it enacted, that no lands, stock, or chose in action vested in any person upon any trust or by way of mortgage, or any profits thereof, shall escheat or be forfeited to her Majesty, her heirs or successors, or to any corporation, lord or lady of a manor, or other person, by reason of the attainder or conviction for any offence of such trustee or mortgagee, but shall remain in such trustee or mortgagee, or survive to his or her co-trustee, or descend or vest in his or her representative, as if no such attainder or conviction had taken place (*e*).

Rights of
Crown to
escheat.

(*e*) This section is taken from 4 & 5 Will. 4, c. 23, s. 3. See now 33 & 34 Vict. c. 23; and as to the present law of escheat, see the Intestates Estates Act, 1884.

Where an illegitimate mortgagee in fee devised her real and personal estate to a trustee upon certain trusts and died without issue, the Court, the Crown offering no opposition, vested the legal estate in a purchaser, the mortgage-money having been paid off (*Re Minchin*, 2 W. R. 179). From a case of *Bartlett v. Bartlett*, however (cited in Ince's Trustee Acts, 2nd ed. p. 91), it would seem that where an illegitimate testator devises estates to which he is beneficially entitled to a trustee who predeceases him and dies without issue, a vesting order cannot be made so as to defeat the rights of the Crown.

Trustee
felons.

By sect. 8 of the Extension Act, p. 92, *post*, the Court has power to appoint new trustees in lieu of persons convicted of felony.

Act not to
prevent
escheat or
forfeiture of
beneficial
interest.

XLVII. And be it enacted, that nothing contained in this Act shall prevent the escheat or forfeiture of any lands or personal estate vested in any such trustee or mortgagee, so far as relates to any beneficial interest therein of any such trustee or mortgagee, but such lands or personal estate, so far as relates to any such beneficial interest, shall be recoverable in the same manner as if this Act had not passed (*f*).

(*f*) This section is taken from 4 & 5 Will. 4, c. 23, s. 5. See now 33 & 34 Vict. c. 23; and as to escheat, the Intestates Estates Act, 1884.

Money of
infants and
persons of
unsound mind
to be paid
into Court.

XLVIII. And be it enacted, that where any infant or person of unsound mind shall be entitled to any money payable in discharge of any lands, stock, or chose in action conveyed, assigned, or transferred under this Act, it shall be lawful for the person by whom such money is payable to pay the same into the Bank of England, in the name and with the privity of the Accountant-General (*g*), in trust in any

cause then depending concerning such money, or, if there shall be no such cause, to the credit of such infant or person of unsound mind, subject to the order or disposition of the said Court; and it shall be lawful for the said Court, upon petition in a summary way, to order any money so paid to be invested in the public funds, and to order payment or distribution thereof, or payment of the dividends thereof, as to the said Court shall seem reasonable; and every cashier of the Bank of England who shall receive any such money is hereby required to give to the person paying the same a receipt for such money, and such receipt shall be an effectual discharge for the money therein respectively expressed to have been received (*h*).

13 & 14 Vict.
c. 60, s. 48.

(*g*) The payment is now made to the account of the Paymaster-General.

(*h*) See *Re Sparks*, 6 Ch. D. 361.

XLIX. And be it enacted, that where in any suit commenced or to be commenced in the Court of Chancery, it shall be made to appear to the Court by affidavit that diligent search and inquiry has been made after any person made a defendant, who is only a trustee, to serve him with the process of the Court, and that he cannot be found, it shall be lawful for the said Court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to them to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the Court, and had appeared and filed his answer thereto, and had also appeared by his counsel and solicitor at the hearing of such cause (*i*): Provided always, that no such decree shall bind, affect, or in any wise prejudice any person against whom the same shall be made, without service of process upon him as aforesaid, his heirs, executors, or administrators, for or in respect of any estate, right, or interest which such person shall have at the time of making such decree for his own use or benefit, or otherwise than as a trustee as aforesaid.

Court may
make a decree
in the absence
of a trustee.

(*i*) The Court under this section ordered a cause to be certified as fit for hearing though a defendant trustee could not be found, and had not appeared (*Westhead v. Sale*, 6 W. R. 52; *Burrell v. Maxwell*, 25 L. T. 655).

[Sect. 50 was repealed by Statute Law Revision Act, 1875.]

LI. And be it enacted, that the Lord Chancellor, intrusted as aforesaid, and the Court of Chancery, may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, assignments, and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the lands or personal estate, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Lord Chancellor or Court shall think proper (*k*).

Costs may be
paid out of
the estate.

(*k*) When a bill was filed for the appointment of a new trustee in a case where a petition might have been presented, the plaintiff was held to be liable for the additional costs (*Thomas v. Walker*, 18 Beav. 521).

Costs of cause
instituted
unnecessarily.

The costs of applications in the matter of a trust, whether occasioned by the

Costs of
applications.

13 & 14 Vict.
c. 60, s. 51.

Charged on
trust property
if for benefit
of trust
property.

Costs of
appearance of
bankrupt
trustee.

Costs of
vesting order—

(1) As be-
tween ven-
dor's estate
and pur-
chaser ;
(2) as between
mortgagee's
estate and
mortgagor
redeeming.

Where
mortgagee
lunatic.

Costs of
respondent
trustees in
case of
misconduct.

Commission
concerning
person of
unsound
mind.

lunacy (*Re Fulham*, 15 Jur. 69), infancy (*Ex parte Cant*, 10 Ves. 554), or bankruptcy (*Ex parte Painter*, 2 Deac. & Ch. 584), of a trustee, must be borne by the *cestui que trust* or the trust estate, according as the application is for the benefit of the applicant solely, or generally for the benefit of the estate; see *Carter v. Sebright*, 26 Beav. 374; *Re Brackenburg*, 10 Eq. 45; *Re Fellows*, 2 Jur. N. S. 62. In *Ex parte Davies*, 16 Jur. 882, V.-C. Parker, upon appointing a new trustee and making a vesting order under the Act, by consent ordered the new trustee to pay the costs of the proceedings, and directed that such costs, with interest thereon at 4l. per cent. should form a charge on the inheritance; and see *Re Crabtree*, 14 W. R. 497, where costs were directed to be raised by mortgage to be settled by the Court. Where new trustees of two funds were appointed, the costs were borne rateably (*Re Grant*, 2 J. & H. 764). As to costs where two petitions are presented, see *Re Pring*, 42 L. J. Ch. 473; 28 L. T. 467.

When a trustee is served and appears on an application for appointment of a new trustee, he will, except in case of misconduct (see *Ex parte Harris*, 11 L. J. Bkcy. 16), be allowed his costs; see *Turner v. Mullineux*, 9 W. R. 252; 3 L. T. 687, where costs as between solicitor and client were given to a bankrupt trustee. For cases where it was held that infant respondents need not be served, see p. 84.

The costs of an application for a vesting order as between vendor and purchaser, occasioned by the vendor leaving an infant heir or devisee, must be borne by the vendor's estate (*Heard v. Cuthbert*, 1 Ir. Ch. Rep. 369; *Bradley v. Munton*, 16 Beav. 294; *Ayles v. Cox*, 17 Beav. 584 (where the sale was under a decree); *Re South Wales Ry. Co.*, 14 Beav. 418); see, however, *Re Nash*, 4 W. R. 111; *Re Liverpool Improvement Act*, 5 Eq. 282.

The costs of an application for a vesting order as between a mortgagor paying off the mortgage debt and the mortgagee, occasioned by the mortgagee leaving an heir who cannot be found, or is lunatic, or a bare trustee who is lunatic (*Re Lewes*, 1 M. & G. 435), are payable by the mortgagor (*Re Marrow*, Cr. & Ph. 142; *Ex parte Ommancy*, 10 Sim. 298; *King v. Smith*, 6 Hare, 473; *Re Jones*, 2 De G. F. & J. 554; *Re Stuart*, 4 De G. & J. 317); but if the application was occasioned by the mortgagee himself becoming lunatic, it should be made by the committee of the lunatic's estate, and the committee will pay the costs out of the lunatic's estate (*Re Rowley*, 1 N. R. 251; 1 De G. J. & S. 417; *Re Viall*, 8 De G. M. & G. 439; *Re Wheeler*, 1 De G. M. & G. 435; *Ex parte Richards*, 1 J. & W. 264; *Re Townsend*, 2 Ph. 348; *Re Thomas*, 22 L. J. Ch. 858; *Re Jones*, 2 Ch. D. 70). The mortgagor, if he appears, will not get his costs (*Re Phillips*, 4 Ch. 629). If, however, the lunatic mortgagee appears on the face of the mortgage-deed to be only a trustee, the trust estate pays the costs (*Re Jones*; and see *Re Lewes*, 1 M. & G. 23; *Re Townsend*, *ibid.* 686). And if the mortgagor makes the application in a case where the committee of the lunatic has not declined to act, he must bear the costs (*Re Wheeler*, 1 De G. M. & G. 435).

In *Re Sparks*, 6 Ch. D. 361; 25 W. R. 869, it was held that the Court has no jurisdiction to order the costs of a vesting order occasioned by the lunacy of the mortgagee to be paid out of the mortgage debt, and that each party must bear his own costs; this case overrules *Re Biddle*, 23 L. J. Ch. 23.

It was held in *Re Primrose*, 23 Beav. 590, that the Court has no jurisdiction under the Act to order a respondent to pay the costs of an application occasioned by his own misconduct; and it seems very doubtful whether the Court has any such jurisdiction even now, notwithstanding the Jud. Acts and Ord. LXV. r. 1, R. S. C. 1883 (*Re Sarah Knight*, 26 Ch. D. 82); but see the remarks on *Re Primrose* in *Re Woodburn*, 1 De G. & J. 346; and see also *Re Adams*, 12 Ch. D. 634; *Re Wiseman*, 18 W. R. 574; *Re Wills*, 12 W. R. 97; 9 Jur. N. S. 1225. The costs of appointing new trustees were ordered in a suit to be paid by trustees who improperly refused to retire; see *Legg v. Mackrell*, 2 De G. F. & J. 551; *Attorney-General v. Murdoch*, 2 K. & J. 571; *Grierson v. Astle*, 3 L. T. 288; *King v. King*, 1 De G. & J. 663; *Palairat v. Carew*, 32 Beav. 564; *Re Wiseman*, 18 W. R. 574. But the Court can dismiss a petition with costs (sect. 42), and will do so where the petition is needlessly presented (*Re Gibbon*, 30 W. R. 287; W. N. (1882), 12; *Re Oakden*, 26 Sol. J. 563). In *Richardson v. Grubb*, 16 W. R. 176 (Ireland), it was decided that failing health, where the trusts were of a formal character only, was not a sufficient reason for a petition asking that they might be discharged, and the petitioner was disallowed his costs. Where a trustee on a petition to appoint new trustees disclaims at the bar he will only be allowed costs as between party and party (*Bulkeley v. Earl of Eglington*, 1 Jur. N. S. 994; and see *Norway v. Norway*, 2 M. & K. 278, overruling *Sherratt v. Bentley*, 1 R. & M. 655; and *Legg v. Mackrell*, *ante*).

LII. And be it enacted, that upon any petition being presented under this Act to the Lord Chancellor, intrusted as aforesaid, concerning a person of unsound mind, it shall be lawful for the said Lord

Chancellor, should he so think fit, to direct that a commission in the nature of a writ de lunatico inquirendo shall issue concerning such person, and to postpone making any order upon such petition until a return shall have been made to such commission.

13 & 14 Vict.
c. 60, s. 52.

LIII. And be it enacted, that upon any petition under this Act being presented to the Lord Chancellor, intrusted as aforesaid, or to the Court of Chancery, it shall be lawful for the said Lord Chancellor or the said Court of Chancery to postpone making any order upon such petition until the right of the petitioner or petitioners shall have been declared in a suit duly instituted for that purpose (*l*).

Suit may be directed.

(*l*) This section was acted on in *Collinson v. Collinson*, 3 De G. M. & G. 409; *Re Burt*, 9 Hare, 289; *Re Carpenter, Kay*, 418; *Carpenter v. Lord Churchill*, 2 W. R. 364; *Re Weeding*, 4 Jur. N. S. 707.

Cases where suit directed.

LIV. And be it enacted, that the powers and authorities given by this Act to the Court of Chancery in England shall extend to all lands and personal estate within the dominions, plantations, and colonies belonging to her Majesty (except Scotland) (*m*).

Powers of Court of Chancery to extend to property in the colonies.

(*m*) Under this section a vesting order was made as to lands in Canada (*Re Schofield*, 24 L. T. (O. S.) 322; *Re Groom*, 11 L. T. 336). As to lands in Ireland, see *Re Davies*, 3 Mac. & G. 278, where the Lord Chancellor held that an order could not be made to vest such estates in a trustee appointed in the place of a lunatic trustee (see *post*, ss. 55, 56, 57). But when the *cestui que trust* was in England, and the surviving trustee in Ireland, V.-C. Kindersley made an order vesting lands situate in Ireland in a new trustee appointed by the Court (*Re Hewitt*, 6 W. R. 537); and in *Re Lamotte*, 4 Ch. D. 325, an order was made vesting land in Ireland. See also *Re Taitt*, W. N. (1870), 257.

Lands in Canada.
Ireland.

LV. And be it enacted, that the powers and authorities given by this Act to the Court of Chancery in England shall and may be exercised in like manner and are hereby given and extended to the Court of Chancery in Ireland with respect to all lands and personal estate in Ireland.

Powers given to Court of Chancery may be exercised by that Court in Ireland.

LVI. And be it enacted, that the powers and authorities given by this Act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall extend to all lands and personal estate within any of the dominions, plantations, and colonies belonging to her Majesty (except Scotland and Ireland) (*n*).

Powers of Lord Chancellor in Lunacy to extend to property in the colonies.

(*n*) Where one of two trustees of Irish railway stock became of unsound mind, an order was made appointing a person new trustee of the stock in his place, and directing such person to concur with the other trustee in transferring the stock (*Re Hodgson*, 11 Ch. D. 885).

LVII. And be it enacted, that the powers and authorities given by this Act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall and may be exercised in like manner by and are hereby given to the Lord Chancellor of Ireland, intrusted as aforesaid, with respect to all lands and personal estate in Ireland.

Powers of Lord Chancellor in Lunacy may be exercised by Lord Chancellor of Ireland.
Short title.

LVIII. And be it enacted, that in citing this Act in other Acts of Parliament, and in legal instruments and in legal proceedings, it shall be sufficient to use the expression "The Trustee Act, 1850."

Sections 59 and 60 are repealed by the Statute Law Revision Act, 1875.

15 & 16 Vict.
c. 55.

TRUSTEE EXTENSION ACT, 1852.

15 & 16 VICT. CAP. 55.

An Act to extend the provisions of the "Trustee Act, 1850."

[30th June, 1852.]

WHEREAS it is expedient to extend the provisions of the Trustee Act, 1850: Be it therefore enacted, &c.:

Court of
Chancery may
make an order
for vesting the
estate, in lieu
of conveyance
by a party to
the suit after
a decree or
order for sale.

I. That when any decree or order (*a*) shall have been made by any Court of Equity directing the sale of any lands for any purpose whatever (*b*), every person seised or possessed of such land, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby or being otherwise bound by such decree or order, shall be deemed to be so seised or possessed or entitled (as the case may be) upon a trust within the meaning of the Trustee Act, 1850; and in every such case it shall be lawful for the Court of Chancery (*c*), if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such lands or any part thereof, for such estate as the Court shall think fit, either in any purchaser or in such other person as the Court shall direct; and every such order shall have the same effect as if such person so seised or possessed or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such lands for such estate (*d*).

Section retro-
spective.

(*a*) This section applies retrospectively to a decree made before the passing of the Act (*Wake v. Wake*, 17 Jur. 545).

(*b*) This removes the difficulty which arose in *Weston v. Filer*, 5 De G. & S. 608; the 29th section of the Trustee Act, 1850, only applied to a sale for payment of debts.

(*c*) Now the Chancery Division of the High Court (Jud. Act, 1873, s. 34).

(*d*) The order was made in the suit without a petition where one of the vendors was a lunatic (*Harrison v. Smith*, 17 W. R. 646). The section applies to sales under the Partition Acts, 1868 and 1876, and is not limited to cases of persons under disability (*Beckett v. Sutton*, 19 Ch. D. 646). The application under this section is by summons (Ord. LV. r. 2 (8), *infra*).

Power to
make an order
for vesting
the estate, on
refusal or
neglect of a
trustee to
convey or
release.

II. That sections numbered 17 and 18 in the Queen's Printer's copy of the Trustee Act, 1850, be repealed; and in every case where any person is or shall be jointly or solely seised or possessed of any lands or entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance or assignment of such lands, or a duly authorised agent of such last-mentioned person, requiring such trustee to convey or assign the same, or to release such contingent right, it shall be lawful for the Court of Chancery, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey or assign the said lands for the space of twenty-eight days after such demand, to make an order vesting such lands in such person in such manner and for such estate as the Court shall direct; or releasing such

contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands, or a release of such right, in the same manner and for the same estate (e).

15 & 16 Vict.
c. 55, s. 2.

(e) See sect. 23 of the Act of 1850, p. 73, *ante*, and notes. The refusing trustee need not be served (*Re Crowe*, 13 Eq. 26).

Trustee need not be served.

A vesting order was made under this section to defeat an attempt at extortion on the part of the trustee (*Re O'Donnell*, 19 W. R. 522); and see *Knight v. Knight*, 14 L. T. 161; W. N. (1866), 114; *Re Grayson*, W. N. (1879), 52; 27 W. R. 534.

Vesting orders.

The section was acted on where a mortgagor of copyholds who had covenanted to surrender neglected to do so (*Re Crowe*, 13 Eq. 26).

Mortgagor of copyholds refusing to surrender.

III. That when any infant shall be solely entitled to any stock upon any trust, it shall be lawful for the Court of Chancery to make an order vesting in any person or persons the right to transfer such stock, or to receive the dividends or income thereof; and when any infant shall be entitled jointly with any other person or persons to any stock upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, either in the person or persons jointly entitled with the infant, or in him or them together with any other person or persons the said Court may appoint (f).

Power to make an order for the transfer or receipt of dividends of stock in name of an infant trustee.

(f) This section was passed to meet the case of *Cramer v. Cramer*, 5 De G. & S. 312; 16 Jur. 831. For cases under the section, see *Sanders v. Homer*, 25 Beav. 467; 6 W. R. 476; *Devoy v. Devoy*, 3 Sm. & G. 403; 3 Jur. N. S. 79; *Stone v. Stone*, 3 Jur. N. S. 708; *Rives v. Rives*, W. N. (1866), 144; *Re Westwood*, 6 N. R. 61, 316; and see *Gardner v. Cowles*, 3 Ch. D. 304; 24 W. R. 920, where the infant was the sole beneficial owner of the stock. In *Re Morgan*, Seton, 516, the right was vested in the infant's guardian. Where stock to which an infant was beneficially entitled had been invested in the joint names of himself and another person, the Court made an order under this section vesting the right to transfer the stock in the other person (*Re Harwood*, 20 Ch. D. 536).

IV. That where any person shall neglect or refuse to transfer any stock (g), or to receive the dividends or income thereof, or to sue for or recover any chose in action, or any interest in respect thereof, for the space of twenty-eight days next after an order of the Court of Chancery for that purpose shall have been served upon him (h) it shall be lawful for the Court of Chancery to make an order vesting all the right of such person to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in such person or persons as the said Court may appoint (i).

On neglect to transfer stock for 28 days, order may be made vesting right to transfer in such person as the Court shall appoint.

(g) See sect. 23 of the former Act, p. 73, *ante*.

The order under this section may, it seems, be made on motion (*Re Holbrook*, 8 W. R. 3; 5 Jur. N. S. 1333; *Skynner v. Pelichet*, 9 W. R. 191).

Vesting order of stock.

(h) The service should be personal, unless the order can be made under section 23 of the principal Act (*Coles v. Benbow*, W. N. (1873), 60).

Order may be made on motion.

(i) An order may be made although the petition for the order which has not been complied with has not been served on the recalcitrant person (*Re Mount*, 24 L. T. 290).

V. When any stock shall be standing in the sole name of a deceased person, and his personal representative shall refuse or neglect to

On like neglect by executor,

15 & 16 Vict.
c. 55, s. 5.
similar order
may be made.

transfer such stock or receive the dividends or income thereof for the space of twenty-eight days next after an order of the Court of Chancery for that purpose shall have been served upon him, it shall be lawful for the Court of Chancery to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, in any person or persons whom the said Court may appoint.

Bank of Eng-
land and com-
panies to
comply with
orders.
(See ss. 20 and
26 of Trustee
Act, 1850.)

VI. When any order being or purporting to be under this Act or under the Trustee Act, 1850, shall be made by the Lord Chancellor, intrusted as aforesaid, or by the Court of Chancery, vesting the right to any stock, or vesting the right to transfer any stock, or vesting the right to call for the transfer of any stock, in any person or persons, in every such case the legal right to transfer such stock shall vest accordingly (*k*); and the person or persons so appointed shall be authorised and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock into his or their own name or names, or otherwise, to the extent and in conformity with the terms of the order; and the Bank of England and all companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as the said Bank of England, or such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made.

(*k*) This enactment was rendered necessary by *Re Smyth*, 4 De G. & Sm. 499, which decided that the former Act only gave the right to call for a transfer of the stock.

Indemnity to
Bank and
companies so
obeying.

VII. That every order made or to be made, being or purporting to be made under this or the Trustee Act, 1850, by the Lord Chancellor, intrusted as aforesaid, or by the Court of Chancery, and duly passed and entered, shall be a complete indemnity to the Bank of England, and all companies and associations whatsoever, and all persons, for any act done pursuant thereto; and it shall not be necessary for the Bank of England, or such company or association, or person to inquire concerning the propriety of such order, or whether the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery had jurisdiction to make the same (*kk*).

(*kk*) Notwithstanding this section the Bank is justified, where it considers an erroneous or defective order has been made, in requiring the point to be brought before the Court for reconsideration (*Re Westwood*, 6 N. R. 316; *Frodsham v. Frodsham*, 15 Ch. D. 317). Where, before the fund could be transferred into the names of new trustees appointed by the Court, one of them died, the order was amended by inserting the words "or the survivor of them" (*Re Glanville*, W. N. (1877), 248).

Power to
appoint new
trustees in
lieu of persons
convicted of
felony.

VIII. That when any person is or shall be jointly or solely seised or possessed of any lands or entitled to any stock upon any trust, and such person has been or shall be convicted of felony, it shall be lawful for the Court of Chancery, upon proof of such conviction, to appoint

any person to be a trustee in the place of such convict, and to make an order for vesting such lands, or the right to transfer such stock, and to receive the dividends or income thereof, in such person to be so appointed trustee; and such order shall have the same effect as to lands as if the convict trustee had been free from any disability, and had duly executed a conveyance or assignment of his estate and interest in the same (*l*).

15 & 16 Vict.
c. 55, s. 8.

(*l*) See note (*e*), *ante*, p. 86, as to escheat of trust property.

IX. That in all cases where it shall be expedient to appoint a new trustee, and it shall be found inexpedient, difficult or impracticable so to do without the assistance of the Court of Chancery, it shall be lawful for the said Court to make an order appointing a new trustee or new trustees, whether there be any existing trustee or not at the time of making such order (*m*).

Power to the Court to appoint new trustees where there is no existing trustee.

(*m*) See notes to s. 32 of the Act of 1850, *ante*, p. 79.

The Court sitting in lunacy has power under this section to appoint new trustees of the will of a deceased lunatic, where the trustees appointed by him have died in his lifetime, for the purpose of getting rid of the funds standing to the credit of the lunacy (*Re Orde*, 24 Ch. D. 271).

X. In every case in which the Lord Chancellor, intrusted as aforesaid, has jurisdiction under this Act, or the Trustee Act, 1850, to order a conveyance or transfer of land or stock, or to make a vesting order, it shall be lawful for him also to make an order appointing a new trustee or new trustees in like manner as the Court of Chancery may do in like cases, without its being necessary that the order should be made in Chancery as well as in lunacy, or be passed and entered by the Registrar of the Court of Chancery (*n*).

Chancellor may make order for appointment of trustees, without it being necessary that it should be made in Chancery, &c.

(*n*) See *Re Waugh*, 2 De G. M. & G. 279; and note (*o*) to the 3rd section of the former Act, *ante*, p. 65.

Jurisdiction in lunacy.

XI. That all the jurisdiction conferred by this Act, on the Lord Chancellor, intrusted by virtue of the Queen's sign manual with the care of the persons and estates of lunatics, shall and may be had, exercised, and performed by the person or persons for the time being intrusted as aforesaid (*o*).

As to powers of persons intrusted with the care of lunatics.

(*o*) See the Judicature Act, 1875, sect. 7, *post*.

XII. That this Act shall be read and construed according to the definitions and interpretations contained in the second section of the Trustee Act, 1850, and the provisions of the said last-mentioned Act (except so far as the same are altered by or inconsistent with this Act) shall extend and apply to the cases provided for by this Act, in the same way as if this Act had been incorporated with and had formed part of the said Trustee Act, 1850.

Act to be construed as part of Trustee Act, 1850.

15 & 16 Vict.
c. 55, s. 13.

All orders made under Trustee Act, 1850, or this Act to be chargeable with the same stamp duty as deeds of conveyance.

XIII. That every order to be made under the Trustee Act, 1850, or this Act, which shall have the effect of a conveyance or assignment of any lands, or a transfer of any such stock as can only be transferred by stamped deed, shall be chargeable with the like amount of stamp duty as it would have been chargeable with if it had been a deed executed by the person or persons seised or possessed of such lands or entitled to such stock; and every such order shall be duly stamped for denoting the payment of the said duty (*p*).

(*p*) As to the stamp duties, see the Stamp Act, 1870; *Hadgett v. Commissioners of Inland Revenue*, 3 Ex. D. 46. No order will be passed by the registrar until it has been duly stamped as required by this section (*Daniell*, 2129).

16 & 17 Vict.
c. 137.

CHARITABLE TRUSTS ACT, 1853.

16 & 17 VICT. CAP. 137, s. 28.

An Act for the better Administration of Charitable Trusts.

[20th Aug. 1853.]

Jurisdiction in chambers, where income of charities does not exceed 30*l.* to appoint or remove trustees or give other relief.

XXVIII. Where the appointment or removal of any trustee (*a*) or any other relief, order, or direction relating to any charity of which the gross annual income for the time being exceeds thirty pounds shall be considered desirable, and such appointment, removal, or other relief, order, or direction might now be made or given by the Court of Chancery, in respect either of its ordinary or its special or statutory jurisdiction, or by the Lord Chancellor intrusted with the care and commitment of the custody of lunatics, it shall be lawful for any person authorised in this behalf by the order or certificate of the said Board (*b*) or for the Attorney-General to make application (without any information, bill, or petition) to the Master of the Rolls, or one of the Vice-Chancellors (*c*) sitting at chambers, for such order, direction, or relief as the nature of the case may require; and the Master of the Rolls or the Vice-Chancellor (*c*) to whom any such application shall be made, shall and may proceed upon and dispose of such application in chambers, save where he may think fit otherwise to direct, and shall and may have and exercise thereupon all such jurisdiction, power, and authority, and make such orders, and give such directions in relation to the matter of such application as might now be exercised, made, or given by the Court of Chancery, or by the Lord Chancellor, intrusted as aforesaid, in a suit regularly instituted, or upon petition as the case may require; and the Master of the Rolls and Vice-Chancellors (*c*) respectively shall, in relation to such applications as

aforesaid, and the proceedings thereon (subject to any rules which may be made by the Lord Chancellor, with the advice and consent of them or any two of them) have all such powers of directing matters to be heard in open Court, and of ordering what matters shall be heard and investigated by themselves and their chief clerks respectively, and such other powers and authorities as by the Act of the last session of Parliament, chapter eighty (*d*), are vested in or authorised to be exercised by them at chambers, and the provisions of the said Act applicable to orders made by the Master of the Rolls or any of the Vice-Chancellors (*c*) at chambers, shall extend to all orders so made under this Act: Provided always, that save as may be otherwise provided by any new rules to be made by the Lord Chancellor, with such advice and consent as aforesaid, the determinations of the Master of the Rolls and Vice-Chancellors (*c*) respectively, upon and in relation to such applications as aforesaid, shall not be subject to appeal in any case where the gross annual income of the charity does not exceed one hundred pounds: Provided also, that it shall be lawful for the Master of the Rolls or any Vice-Chancellor (*c*), where, under the circumstances of any application as aforesaid, he may so see fit, to direct that for obtaining the relief, order, or direction sought for by such application, an information, bill or petition, as the case may require, shall be filed or presented and prosecuted as now by law required, and to abstain from further proceeding on such application (*e*).

16 & 17 Vict.
c. 137, s. 28.

(*a*) The jurisdiction to appoint new trustees, on petition, under the Trustee Act, is not taken away, though it is seldom exercised; see note (*h*), p. 79, *ante*. Trustee Act.

The district Courts of Bankruptcy and County Courts were given similar jurisdiction over charities with an income not exceeding 30*l.* (s. 32); and now, by the Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136, s. 11), over charities with an income up to 50*l.* Jurisdiction of Bankruptcy and County Courts;

By the Act of 1860, sect. 2, a concurrent jurisdiction over charities is given to the Charity Commissioners, as to charities with an income exceeding 50*l.*, on the application of the majority of the trustees; and as to charities with a less income, on the application of the Attorney-General, the trustees, or any person interested in the charity, or inhabiting the place where it is situate, unless they think the case from some difficulty of law or fact, fitter for the adjudication of a Court. of Charity Commissioners.

(*b*) *I. e.* the Charity Commissioners for England and Wales sitting as a Board (16 & 17 Vict. c. 137, s. 66). "The said Board."

(*c*) The application is now made to a judge of the Chancery Division of the High Court (Judicature Act, 1873, ss. 34, 74). Application, to whom made.

(*d*) The Act here referred to is the Master in Chancery Abolition Act, 1852, most of which is now repealed. 15 & 16 Vict. c. 80.

(*e*) The application under this section is by summons in chambers (Ord. LV. r. 13, R. S. C. 1883, *infra*). As to appealing from an order, see Ord. LV. r. 14, *infra*; and as to fees and costs, see Ord. LXV. rr. 24, 25, *infra*. Proceedings.

18 & 19 Vict.
c. 43.

INFANTS' SETTLEMENT ACT.

18 & 19 VICT. CAP. 43.

An Act to enable Infants, with the Approbation of the Court of Chancery, to make binding Settlements of their Real and Personal Estate on Marriage. [2nd July, 1855.]

WHEREAS great inconveniences and disadvantages arise in consequence of persons who marry during minority being incapable of making binding settlements of their property: For remedy whereof be it enacted, &c., as follows:

Settlements by infants with the approbation of the Court.

I. From and after the passing of this Act it shall be lawful for every infant upon or in contemplation of his or her marriage, with the sanction of the Court of Chancery (*a*), to make a valid and binding settlement (*b*) or contract for a settlement of all or any part of his or her property, or property over which he or she has any power of appointment, whether real or personal, and whether in possession, reversion, remainder, or expectancy; and every conveyance, appointment, and assignment of such real or personal estate, or contract to make a conveyance, appointment, or assignment thereof, executed by such infant, with the approbation of the said Court, for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years: Provided always, that this enactment shall not extend to powers of which it is expressly declared that they shall not be exercised by an infant.

(*a*) Now the Chancery Division of the High Court (Jud. Act, 1873, s. 34 (2), *infra*).

Duty of Court under this Act.

(*b*) The Act did not impose on the Court any other duty than that of looking to the propriety of the settlement; and consequently, the propriety of the marriage itself is not a question for its consideration, though of course "what in each case may be a proper settlement must sometimes lead to an inquiry as to all the circumstances connected with the marriage" (*Re Dalton*, 6 De G. M. & G. 201; 2 Jur. N. S. 1077, overruling *S. C.* 3 Sm. & G. 331). See, however, *Re Strong*, 2 Jur. N. S. 1241; 26 L. J. Ch. 64.

Draft how settled.

See as to the employment of the conveyancing counsel, *Re Williams*, 8 W. R. 678; 6 Jur. N. S. 1064. Where the infant was a ward of Court in a suit, two petitions were presented, the first to obtain an order for a strict settlement, and the second to sanction the settlement when prepared (*Powell v. Oakley*, 34 Beav. 575); and see *Re Yates*, 7 W. R. 711.

Reference to chambers.

Where a female infant's fortune was very considerable, the Court referred the whole matter to chambers (*Re Olive*, 11 W. R. 819); but under special circumstances the reference to chambers was dispensed with (*Ex parte Smith*, 22 W. R. 294). See now note (*d*) to sect. 3.

What clauses inserted in settlement.

The Master of the Rolls refused to allow a clause providing that, in the event of any person professing the Roman Catholic religion becoming entitled, he should forfeit his interest under the settlement (*Re Williams*). But the insertion of the usual name and arms clause was permitted (*ibid.*). For the form of settlement adopted when a man married an infant ward of Court in defiance of an order of the Court, see *Re Sampson*, 25 Ch. D. 482; 53 L. J. Ch. 457.

Settlement made out of Court.

The Court has no jurisdiction under this Act to approve a settlement of an infant's property originally made without its concurrence (*per V.-C. Stuart in Re Fuller's Settlement*, Feb. 10, 1860).

Post-nuptial settlement.

The Act extends to post-nuptial settlements (*Re Sampson*; *Powell v. Oakley*, 34 Beav. 575; and see *Re Hoare*, 11 W. R. 181). But the Court has no jurisdiction

over the property of an infant, not a ward of Court, who marries after she is of an age to contract marriage (*Re Potter*, 7 Eq. 484). 18 & 19 Vict. c. 43.

Proceedings commenced with respect to an infant under the Act in no way prevent the payment out to the infant when of age, if no settlement has been made (*Sams v. Cronin*, 22 W. R. 204).

II. Provided always, that in case any appointment under a power of appointment, or any disentailing assurance, shall have been executed by any infant tenant in tail under the provisions of this Act, and such infant shall afterwards die under age, such appointment or disentailing assurance shall thereupon become absolutely void. In case infant dies under age, appointment, &c., to be void.

III. The sanction of the Court of Chancery (*c*) to any such settlement or contract for a settlement may be given, upon petition (*d*) presented by the infant or his or her guardian (*e*), in a summary way, without the institution of a suit; and if there be no guardian, the Court may require a guardian to be appointed or not, as it shall think fit; and the Court also may, if it shall think fit, require that any person interested or appearing to be interested in the property should be served with notice of such petition (*f*). The sanction of the Court of Chancery to be given upon petition.

(*c*) Now the Chancery Division of the High Court (Jud. Act, 1873, s. 34 (2), *infra*).

(*d*) The application is now made by summons (Ord. LV. r. 2 (10), *infra*). A petition was necessary (under the former practice), although a suit had been instituted (*Peareth v. Marriott*, W. N. (1866), 48). Application is now by summons.

(*e*) In *Re Strong*, 26 L. J. Ch. 64; 2 Jur. N. S. 1241, L. J. Knight Bruce thought that an affidavit of the respectability of the person who acted as guardian ought to be produced. The application must not be by a next friend, and a petition presented by a next friend without the infant's concurrence was dismissed with costs. (*Re Potter*, 7 Eq. 484; but see *Worham v. Pemberton*, 1 De G. & Sm. 644). Guardian petitioning.

(*f*) As to the evidence required on an application under the Act, see Ord. LV. r. 26, *infra*. Evidence.

IV. Provided always, that nothing in this Act contained shall apply to any male infant under the age of twenty years, or to any female infant under the age of seventeen years (*g*). Not to apply to males under 20, or to females under 17 years of age.

(*g*) Evidence must be produced to show the age of the infant (Ord. LV. r. 26, R. S. C., *infra*).

CUSTODY OF INFANTS ACT.

36 & 37 Vict. c. 12.

36 & 37 VICT. CAP. 12.

An Act to amend the Law as to the Custody of Infants.

[24th April, 1873.]

WHEREAS it is expedient further to amend the law relating to the custody of infants (*a*).

(*a*) See 3 & 4 Vict. c. 90, which gives the Court of Chancery jurisdiction to assign the care of any infant convicted of felony to a voluntary guardian. Infant felon.

36 & 37 Vict.
c. 12, s. 1.

Order that
mother may
have access to
and custody of
infant under
16 years.

Be it therefore enacted, &c., as follows:—

I. From and after the passing of this Act it shall be lawful for the High Court of Chancery (*b*) in England or in Ireland respectively, upon hearing the petition by her next friend (*c*) of the mother of any infant or infants under sixteen years of age, to order that the petitioner shall have access to such infant or infants at such times and subject to such regulations as the Court shall deem proper, or to order that such infant or infants shall be delivered to the mother, and remain in or under her custody or control, or shall, if already in her custody or under her control, remain therein until such infant or infants shall attain such age, not exceeding sixteen, as the Court shall direct; and further, to order that such custody or control shall be subject to such regulations as regards access by the father or guardian of such infant or infants, and otherwise, as the said Court shall deem proper (*d*).

The Court.

(*b*) Now the Chancery Division of the High Court of Justice (Jud. Act, 1873, ss. 33, 34).

Married
woman may
petition alone.

(*c*) Having regard to the provisions of the Married Women's Property Act, 1882, it would appear that a next friend is no longer required; see the Act, *infra*. The mother may by leave petition *in forma pauperis* (*Re Lewin*, W. N. (1884), 224).

Principles on
which juris-
diction exer-
cised.

(*d*) The effect of this section is to give the Court an absolute discretionary power as to the custody of the infant on the application of the mother; but in exercising this jurisdiction the Court takes into consideration three matters—the paternal right, the marital duty, and the interests of the infant (*Re Taylor*, 4 Ch. D. 157; 25 W. R. 69; *Re Elderton*, 25 Ch. D. 220; 32 W. R. 227). Where by a covenant in a separation deed executed after the passing of the Act (see sect. 2, *infra*), the father had agreed that his infant daughter should remain in his wife's custody during eleven months in each year, but she held atheistical opinions, and had published and circulated an obscene book, and refused to allow the child to receive any religious instruction, the child was removed from the custody of the mother (*Re Besant*, 11 Ch. D. 508; and see *Besant v. Wood*, 12 Ch. D. 605). As to a breach of the marital duty by the father, see *Re Elderton*. The Court will look at all the surrounding circumstances before it will remove a female infant of tender years from the custody of the mother, and other relations, whose conduct with regard to the child is unimpeached, and place her under the control of the father (*Re Ethel Brown*, 13 Q. B. D. 614).

Father's right
to custody.

As to the general right of a father to the custody of his children, and his corresponding obligations, and the jurisdiction of the Court to remove the children from his care if he neglects his duties, or in consequence of his profligacy and immorality, see notes to *Eyre v. Countess of Shaftesbury*, 2 W. & T. Leading Cases; *Swift v. Swift*, 34 Beav. 266; *Re Kaye*, 1 Ch. 387; *Andrews v. Salt*, 8 Ch. 622; *Wellesley v. Duke of Beaufort*, 2 Russ. 1; *Re Plumley*, 47 L. T. 283; *Re Agar-Ellis*, 24 Ch. D. 317.

Education of
infants.

See generally for the principles of the Court as to guardianship and religious education of infants, *Austin v. Austin*, 34 Beav. 257; on app. 13 W. R. 761; *Re Newbery*, 1 Eq. 431; 1 Ch. 263; *Nugent v. Vetzera*, 2 Eq. 704; *Re Kaye*, 1 Ch. 387; *Re Agar-Ellis*, 10 Ch. D. 49; *Re Clarke*, 21 Ch. D. 817.

Illegitimate
child.

As to the right of the mother to the custody of an illegitimate child, see *R. v. Nash*, 10 Q. B. D. 454.

Variation of
order giving
custody to
mother.

Where an order is made giving the custody to the mother "until further order," an application to vary the order by reason of something subsequent to its date should be made, not by way of appeal, but by motion before the judge of first instance; and such a motion can be made by the respondent to the original petition. The provision in the section, that the application shall be made by the mother, applies only to the original petition (*Re Holt*, 16 Ch. D. 115).

In case of
separation
deed between
father and
mother.

II. No agreement contained in any separation deed made between the father and mother of an infant or infants shall be held to be invalid by reason only of its providing that the father of such infant or infants shall give up the custody or control thereof to the mother:

Provided always, that no Court shall enforce any such agreement if the Court shall be of opinion that it will not be for the benefit of the infant or infants to give effect thereto (e). 36 & 37 Vict.
c. 12, s. 2.

(e) This enactment was rendered necessary by such cases as *Vansittart v. Vansittart*, 2 De G. & J. 249, and the other cases referred to in *Hamilton v. Hector*, 6 Ch. 701. See *Re Besant*, 11 Ch. D. 608; *Besant v. Wood*, 12 Ch. D. 605, cited in note (d) to s. 1.

III. The Act of the second and third Victoria, chapter fifty-four, intituled "An Act to amend the law relating to the custody of infants," shall be and is hereby repealed (f). Repeal of
2 & 3 Vict.
c. 54.

(f) For the practice under this Act, see 2 Dan. Ch. Pr., 5th ed., pp. 1926, 1927.

LAW OF PROPERTY AND TRUSTEES RELIEF AMENDMENT ACT.

22 & 23 Vict.
c. 35.

22 & 23 VICT. CAP. 35.

An Act to further amend the Law of Property, and to relieve Trustees.
[13th August, 1859.]

[Sections 1 and 2 relate to *provisoes for re-entry on breach of covenants in a lease*, and enact that a lessor giving license for, or waiving *one breach of covenant* (23 & 24 Vict. c. 38, s. 6, *post*), or in the case of *one of several lessees*, is not to lose the benefit of the covenants.] Leases.

[By section 3 the apportionment of rent among lessors is not to destroy the right of re-entry. See Conv. Act, 1881, s. 12, *infra*.]

[Sections 4 to 9 are repealed by the Conv. Act, 1881.]

[The 10th section relates to apportionment of rentcharge, which is not to extinguish the rentcharge; see *Booth v. Smith*, W. N. (1884), 230.] Apportionment of rent-charges.

[Section 11 provides that the release of part of land charged is not to affect a judgment; but see now 27 & 28 Vict. c. 112, *post*.]

[Section 12 relates to appointments under powers; and as, by common law, if the *formalities* required by the instrument creating the power were not *strictly* complied with, the appointment was void, while Courts of Equity went to the other extreme, and aided defective execution of powers, in favour of purchasers, &c., even where the defect was in matter of substance, *e. g.*, the want of a *consent* required by an instrument, this section provides that "a deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed, or by any instrument in writing not testamentary: Provided always, that this provision shall not operate to defeat any direction in the instrument creating the power that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment."'] Defective appointments.

[By section 13 a *bonâ fide* sale under a power is not to be avoided by reason of mistaken payment to tenant for life. This section was to meet the case of *Cockerell v. Cholmeley*, 1 R. & M. 418.] Sale under power.

[Sections 14 to 18 provide that (subject to the savings contained in section 18, see Lewin, 420, *seq.*) where by any will which shall come into operation after the passing of this Act the testator shall have charged his real estate with the payment of a sum of money, the trustees and executors shall be bound to pay the same out of the real estate so charged.] Sale by trustees and executors.

22 & 23 Vict. c. 35. *of his debts*, or with the payment of any legacy or other specific sum of money, and shall have devised the estate so charged to any trustee or trustees, the devisee in trust may raise money by sale, notwithstanding want of express power in the will; but if he shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors (see *Re Clay*, 16 Ch. D. 3) are to have the power of raising money.]

[Sections 19 and 20 supply a deficiency in the law of inheritance, 3 & 4 Will. 4, c. 106, and will be found in Sugden's R. P. Statutes, 259.]

Assignment to self and others. [Section 21 relates to the assignment of personalty, and provides that "any person shall have power to assign personal property, now by law assignable, including chattels real, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another." See Conv. Act, 1881, s. 50, *infra*.]

Registration of judgments. [Section 22 enacts that after December 31, 1859, the provisions as to registration of judgments shall apply to Crown debts.]

[Section 23 relates to trustees' receipts; see now Conv. Act, 1881, s. 36, *infra*.]

Concealment of incumbrances a misdemeanor. [Section 24 provides that any vendor or mortgagor concealing any settlement, deed, will, or other instrument material to the title, or any incumbrance, from the purchaser [*or mortgagee*], shall be guilty of a misdemeanor, and punishable accordingly.]

The insertion of the words "or mortgages," which were accidentally omitted, was provided for by 23 & 24 Vict. c. 38, s. 8, *post*, p. 104. *Semble*, s. 24 does not apply to the concealment of an incumbrance prior to the date before which the conditions of sale stipulate that no title shall be shown (*Smith v. Robinson*, 13 Ch. D. 148).

Interpretation of terms. [Section 25 interprets "land," "mortgage," "mortgagor," "mortgagee," and "judgment," as used in the previous provisions of the Act.]

Trustees and executors. [By section 26 trustees, executors, or administrators making payment under a power of attorney are not to be liable by reason of death of party giving such power. See now Conv. Act, 1881, s. 47, and Conv. Act, 1882, ss. 8, 9, *infra*.]

As to liability of executor or administrator in respect of rents, covenants, or agreements. **XXVII.** Where an executor or administrator, liable as such to the rents, covenants, or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed or ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof (*a*), he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part, or any further part (as the case may be), of the personal estate of the deceased to meet any future liability under the said lease or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease; but nothing herein con-

tained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed. 22 & 23 Vict.
c. 35, s. 27.

(a) This section is retrospective (*Smith v. Smith*, 1 Dr. & Sm. 384; *Re Green*, 2 De G. F. & J. 121; and see *Reilly v. Reilly*, 34 Beav. 406; *Bennett v. Lytton*, 2 J. & H. 155, 158). Section retro-
spective.

The case of a leasehold assigned to a residuary legatee is not within this section, such legatee not being a purchaser (*Dodson v. Sammell*, 1 Dr. & Sm. 575; 9 W. R. 887). Legatee not a
purchaser.

See as to the effect of the section, *Dodson v. Sammell*; *Re Howkins*, 10 Hare, App. xxxiii.; *Re Forest*, W. N. (1868), 194; and see *England v. Lord Tredegar*, 1 Eq. 344; *Seton*, 891.

XXVIII. In like manner, where an executor or administrator liable as such to the rents, covenants, or agreements, contained in any conveyance on chief rent or rentcharge (whether any such rent be by limitation of use, grant or reservation), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance, or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said conveyance or agreement for a conveyance; and the executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance, or agreement for conveyance; but nothing herein contained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed. As to liability
of executor,
&c., in respect
of rents, &c.,
in convey-
ances on rent-
charge.

XXIX. Where an executor or administrator shall have given such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the Court of Chancery in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices or the last of the said notices for sending in such claims (b), be at liberty to distribute the As to dis-
tribution of
the assets of
testator or
intestate after
notice given
by executor or
administrator.

22 & 23 Vict.
c. 35, s. 29.

assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof, as the case may be; but nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

Indemnity of
executors
issuing notices
to creditors.

(b) As to the advertisements, see Ord. LV. r. 44 *et seq. post*; *Wood v. Weightman*, 13 Eq. 434. Executors acting under the provisions of this section, whether they have actually paid legacies over, or only appropriated them, have complete protection against future claims (*Clegg v. Rowland*, 3 Eq. 368; and see *Hunter v. Young*, 4 Ex. D. 256).

This section does not protect executors against claims of which they have in fact notice (*Re Land Credit Company of Ireland*, W. N. (1872), 210); and see *Wood v. Wood*, 21 W. R. 135.

Claims by
next of kin.

The section protects an administrator who has given the required notices from claims by the next of kin (*Newton v. Sherry*, 1 C. P. D. 246; 24 W. R. 371).

Trustee,
executor, &c.,
may apply by
petition to
Chancery for
judge's
opinion, ad-
vice, &c., in
management,
&c., of trust
property.

XXX. Any trustee, executor, or administrator shall be at liberty, without the institution of a suit, to apply by petition to any judge of the High Court of Chancery, or by summons upon a written statement to any such judge at chambers, for the opinion, advice, or direction of such judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate, such application to be served upon or the hearing thereof to be attended by all persons interested in such application, or such of them as the said judge shall think expedient; and the trustee, executor, or administrator acting upon the opinion, advice, or direction given by the said judge shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator in the subject matter of the said application: Provided nevertheless, that this Act shall not extend to indemnify any trustee, executor, or administrator in respect of any act done in accordance with such opinion, advice, or direction as aforesaid, if such trustee, executor, or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction; and the costs of such application as aforesaid shall be in the discretion of the judge to whom the said application shall be made (c).

Ord. LII.
rr. 19—22.

(c) The practice under this section is now regulated by Ord. LII. rr. 19—22, *infra*.

Application,
how made.

Petition to be
signed by
counsel.

The application is generally made by petition (*Re Dennis*, 5 Jur. N. S. 1388); though it may be made by summons (Seton, 492). The petition or statement should be signed by counsel (23 & 24 Vict. c. 38, s. 9; *Re Boulton*, 30 W. R. 596; W. N. (1882), 62); and the "judge by whom it is to be answered, may require the petitioner or applicant to attend him by counsel, either in chambers or in Court, where he deems it necessary to have the assistance of counsel" (sect. 9). The Court made an order under the section on the petition of a *cestui que trust* (*Re Ward*, 14 W. R. 96); and of one trustee without his co-trustee's concurrence (*Re Muggeridge*, Johns. 625).

Services.

The applicant should serve the petition or summons on the persons beneficially interested (*Re Green*, 6 Jur. N. S. 530; 8 W. R. 403); but see *Re Tuck*, W. N. (1869), 15; *Re Larken*, W. N. (1872), 85; *Re French*, 15 Eq. 68.

“As the Act does not give any right of appeal, it was not intended to decide nice questions of law, its object being to procure for trustees at a small expense the assistance of the Court upon points of minor importance arising in the management of the trust” (Lewin, 535; *Re Mugeridge*, Johns. 625; *Re Mockett*, Johns. 628; *Re Spiller*, 2 L. T. 71; 8 W. R. 333; *Re Leslie*, W. N. (1876), 93; *Re Jacob*, 9 W. R. 474). So the Court will give advice as to investments (*Re Lorenz*, 1 Dr. & Sm. 401; *Re Knowles*, 18 L. T. 809); or payment of debts (*Re Box*, 1 H. & M. 552); or the propriety of trustees consenting to a sale (*Earl Powlett v. Hood*, 5 Eq. 115); or advancing money for maintenance, or repairs (*Re Lord Hotham*, 12 Eq. 76; *Culbertson v. Wood*, 19 W. R. 260); but as to leasing, see *Re Shaw*, 12 Eq. 124.

So the Court has determined whether a power to invest in the purchase of lands and hereditaments authorized a purchase of ground rents (*Re Peyton*, 7 Eq. 463; and see further as to investments, *Re Langdale*, 10 Eq. 39; *Re Wedderburn*, 9 Ch. D. 112; *Re Cardross*, 7 Ch. D. 728; *Re T.* 15 Ch. D. 78, where the consent of a person of unsound mind not so found, was required); whether an appropriation of a legacy ought to have been made (*Re Murray*, W. N. (1868), 195); and whether part of the capital of infants' shares might be applied to their maintenance (*Re Tibbs*, 17 W. R. 304). See also *Re De la Warr*, 16 Ch. D. 587; *Re Mackintosh*, 42 L. J. Ch. 208; *Re T.* 15 Ch. D. 78; *Re Smith*, W. N. (1872), 134; 20 W. R. 695; *Re Leslie*, 2 Ch. D. 185; *Re Thatcher*, 26 Ch. D. 426; Daniell, 2229.

But where trustees were authorized by the settlement to lay out trust funds in purchasing real estate, which was accordingly purchased, and a petition was presented to obtain a direction of the Court as to the employment of a further portion of the trust funds in the permanent improvement of the purchased estates, the Court having no means of ascertaining the amount required or directing its application, refused to make an order on petition (*Re Barrington*, 1 J. & H. 142; comp. *Re Mockett*, Johns. 628). In another case (*Re Simson*, 1 J. & H. 89), where the question was whether a trustee would be justified in investing in East India stock or in railway debentures, or on mortgage of freeholds, copyholds, or leaseholds, V.-C. Wood answered the inquiry by simply stating that the trustees would be justified in investing in freehold securities in England or Wales, and gave no answer to the rest of the question; and see *Marsh v. Att.-Gen.*, 2 J. & H. 61, where the Court thought the question too difficult to decide on petition, and directed a bill to be filed.

So, where questions of construction arise, an action must be instituted, or the advice of the Court taken under the Trustees Relief Act or Ord. LV. r. 3; see *Re Evans*, 30 Beav. 232; *Re Mugeridge*, Johns. 625; *Re Lorenz*, 1 Dr. & Sm. 401, where V.-C. Kindersley refused, on a petition under this Act, to advise a sole trustee of a marriage settlement as to his discretionary power to make advances to the husband at the written request of the wife; and *Re Hooper*, 29 Beav. 657, where the Master of the Rolls stated that the object of the Act was to enable trustees to obtain the opinion of the Court on matters of discretion vested in them, and not to determine questions of construction. These cases seem to over-rule cases where questions as to the validity (*Re Michel*, 28 Beav. 39) or construction (*Re Green*, 8 W. R. 403; *Re Davies*, 9 W. R. 134; *Re Elmore*, 6 Jur. N. S. 1325; *Re Jacob*, 29 Beav. 402) of a bequest have been determined upon petition under the section, and *Re Pett's Will*, 27 Beav. 576, where an opinion was given turning to a certain extent upon extrinsic evidence admitted with a view to the construction of a will. See, however, *Re Peyton's Settlement*, 10 W. R. 515, where the Master of the Rolls on a petition under this Act decided that an absolute power of sale given to trustees, authorized them on a sale to fix a reserved bidding.

The Court will not pronounce an opinion on a hypothetical case; and, therefore, refused to give any advice as to the incidence of future calls which might be made on account of shares bequeathed (*Re Box*, 1 H. & M. 552; 11 W. R. 945).

The opinion of the Court was held not to be subject to appeal (*Re Mockett*, Johns. 628); but see Jud. Act, 1873, s. 19; *Re Norris*, W. N. (1883), 35, 65.

No evidence is admissible on the application (*Re Mockett*); the facts must be taken to be as represented, the responsibility of such representations resting with the trustees (*Re Mugeridge*, Johns. 625), and no inquiries will be directed (*Re Mockett*).

As a general rule the costs of an application under this section will be ordered to come out of the corpus of the trust property (*Re M'Veagh*, Seton, 491; *Re Elwes*, *ibid.*).

But where the question arose as to the application of income, the costs came out of the income (*Anon.* 8 W. R. 333).

[By sect. 31, trust instruments are to be deemed to contain clauses for the indemnity of trustees. See *Re Brier*, 26 Ch. D. 238.]

[Sect. 32 relates to investments by trustees, and this section is made retrospective by Lord St. Leonards' Act, 1860, sect. 12, *post*, p. 105, where this and the other sections relating to investments will be found.]

[Sect. 33 provides that the Act shall not extend to Ireland.]

22 & 23 Vict. c. 35, s. 30.

What questions entertained on petition.

Questions of management.

Not (1) questions of detail where affidavits are required;

nor (2)

questions of difficulty;

nor (3)

questions of construction;

nor (4) hypothetical cases.

No appeal.

Costs.

23 & 24 Vict. c. 38. **LAW OF PROPERTY FURTHER AMENDMENT ACT.**

23 & 24 VICT. CAP. 38.

An Act to further amend the Law of Property.

[23rd July, 1860.]

Judgments.
Writs of
execution of
judgments
should be re-
gistered (see
now 27 & 28
Vict. c. 112,
post).

[Section 1 provided that no judgment entered up after the passing of this Act (23 July, 1860) shall affect any land as to a *bonâ fide* purchaser for valuable consideration, or a mortgagee (whether such purchaser or mortgagee have notice or not of any such judgment), unless a writ or other due process of execution is issued and registered before the execution of the conveyance or mortgage, and the payment of the purchase or mortgage money by him: And no judgment entered up after the passing of the Act, nor any writ of execution or other process thereon, shall affect any land of whatever tenure as to a *bonâ fide* purchaser or mortgagee, although execution or other process shall have issued thereon, and have been duly registered, unless such execution or other process shall be executed and put in force within three calendar months from the time when it was registered. See now the Act of 1864, *post*; judgments registered before the date of this Act (23 July, 1860) affect purchasers, &c., according to the old law, though no writ of execution has been issued, see *Evans v. Williams*, 2 Dr. & Sm. 324; and as regards the debtor himself, and volunteers under him, the old law was in force until 27 & 28 Vict. c. 112, which is general in its provisions.]

Mode of
registering.

[By section 2 the registry of any writ of execution, or other due process on any judgment, in order to bind a purchaser or mortgagee, was to be made by a memorandum or minute referring to the judgment already registered, so as to connect the registry of the writ of execution or other process therewith; and the senior master of the Court of Common Pleas at Westminster was to enter the particulars in a book in alphabetical order by the name of the person in whose behalf the judgment was registered. The registry of the writ of execution is now to be made in the name of the debtor by 27 & 28 Vict. c. 112, s. 3, *post*.]

Double search
necessary.

Protection of
executors
against
unregistered
judgments.

[Section 3, reciting 4 & 5 W. & M. c. 20 (since repealed), and other Acts as to the registration of judgments, provided that no judgment which had not already been, or which should not thereafter be entered or docketed so as to bind lands, tenements, or hereditaments as against purchasers, mortgagees, or creditors, should have any preference against heirs, executors, or administrators in their administration of their ancestors', testators', or intestates' estates. See as to this section, *Van Gheulve v. Nerinckx*, 21 Ch. D. 189; *Re Williams*, 15 Eq. 270; *Jennings v. Rigby*, 33 Beav. 198.

The section applies to judgments signed before the Act (*Kemp v. Waddingham*, L. R. 1 Q. B. 355); and to County Court judgments (*Re Turner*, 12 W. R. 337; 33 L. J. Ch. 232).]

[Section 4 provided that judgments, in order to have preference in administration, must be re-registered every five years according to the Acts of 1 & 2 Vict., 2 & 3 Vict., and 18 & 19 Vict.]

[Section 5 defined judgments as they are now defined by the latest judgment Act, 27 & 28 Vict. c. 112, s. 2, *post*.]

[Section 6 amended the law of waiver as between lessor and lessee, see p. 99, *ante*.]

[Section 7 relates to the law of uses, and the doctrine of *scointilla juris*, as to which see Sandars on Uses, pp. 112, 152.]

[Section 8 corrected a clerical error in sect. 24 of 22 & 23 Vict. c. 35, p. 100, *ante*.]

[Section 9 provides that when trustees apply for the opinion, advice, or direction of a judge, under section 30 of 22 & 23 Vict. c. 35, the petition or statement should be signed by counsel, see p. 102, *ante*.]

Power to Lord
Chancellors,
&c. of Eng-

X. It shall be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of England, with the

advice and assistance of the Master of the Rolls, the Lords Justices of the Court of Appeal in Chancery, and the Vice-Chancellors of the said Court, or any three of them, and for the Lord Chancellor of Ireland, with the advice and assistance of the Lords Justices of Appeal and the Master of the Rolls in Ireland, to make such general orders from time to time as to the investment of cash under the control of the Court, either in the Three per Cent. Consolidated or Reduced or New Bank Annuities, or in such other stocks, funds, or securities as he or they shall, with such advice or assistance, see fit; and it shall be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners in England, and for the Lord Chancellor in Ireland, to make such orders as he or they shall deem proper for the conversion of any Three per Cent. Bank Annuities now standing or which may hereafter stand in the name of the Accountant-General of the said Court of Chancery, in trust in any cause or matter, into any such other stocks, funds, or securities upon which, by any such general order as aforesaid, cash under the control of the Court may be invested; all orders for such conversion of Bank Annuities into other funds or securities to be made upon petition to be presented by any of the parties interested in a summary way, and such parties shall be served with notice thereof as the Court shall direct (a).

23 & 24 Vict.
c. 38, s. 10.

land and
Ireland to
make general
orders as to
investment
of cash under
the control of
the Court.

(a) See Ord. XXII. r. 18, and note thereto, *infra*.

XI. When any such general order as aforesaid shall have been made it shall be lawful for trustees, executors, or administrators having power to invest their trust funds upon Government securities, or upon Parliamentary stocks, funds, or securities, or any of them, to invest such trust funds, or any part thereof, in any of the stocks, funds, or securities in or upon which by such general order cash under the control of the Court may from time to time be invested (b).

Powers of
trustees to
invest in the
stocks in
which cash
under the
control of the
Court may be
invested.

(b) This section applies notwithstanding a prohibition clause in the instrument (*Re Wedderburn*, 9 Ch. D. 112).

See also the following enactments as to investments by trustees:
22 & 23 Vict. c. 35, s. 32, made retrospective by sect. 12 of the Act in the text, *infra* (but not so as to interfere with rights already accrued, *Hume v. Richardson*, 10 W. R. 528; 4 De G. F. & J. 29), provides that when a trustee, executor, or administrator "shall not, by some instruments creating his trust, be expressly forbidden "to invest any trust fund on real securities in any part of the United Kingdom, or "on the stock of the Bank of England or Ireland, or on East India Stock, it shall "be lawful for such trustee, executor, or administrator to invest such trust fund on "such securities or stock; and he shall not be liable on that account as for a breach "of trust, provided that such investment shall in other respects be reasonable and "proper." It has been held that this section does not apply where a particular fund is settled and there is no power to vary investments (*Re Warde*, 2 J. & H. 191); but see *Waite v. Littlewood*, 41 L. J. Ch. 636; *Re Clergy Corporation*, 18 Eq. 280.

30 & 31 Vict. c. 132, s. 1, provides that "the words 'East India Stock' in the "said Act (22 & 23 Vict. c. 35) shall include and express as well the East India "Stock which existed previously to the 13th August, 1859, when the said Act re- "ceived the assent of her Majesty, as East India Stock charged on the revenues of "India, and created under and by virtue of any Act or Acts of Parliament which "received her Majesty's assent on or after the 13th August, 1859; and it shall be "lawful for every trustee, executor, or administrator to invest any trust fund in his "possession or under his control in the stock created by the last-mentioned Act or "Acts to the same extent, and for the same purposes and objects, as he can now

Investments
by trustees
(22 & 23 Vict.
c. 35).

30 & 31 Vict.
c. 132, s. 1.
"East India
Stock."

23 & 24 Vict.
c. 38, s. 11.

Sect. 2.

“invest such trust fund in the East India Stock, which existed previously to the “13th August, 1859.” Railway Stock, with a charge on the revenues of India, is not within this Act (*Green v. Angell*, W. N. (1867), 305).

30 & 31 Vict. c. 132, s. 2, provides that “it shall be lawful for every trustee, “executor, or administrator to invest any trust fund in his possession, or under his “control, in any securities the interest of which is or shall be guaranteed by par- “liament to the same extent and in the same manner as he may invest such trust “fund in such securities as aforesaid.”

See also 33 & 34 Vict. c. 34, as to investment of charity funds on real security; 34 Vict. c. 27, authorizing trustees having power to invest in mortgages or bonds of a company, to invest in the debenture stock of such company; 34 & 35 Vict. c. 47, as to investment in Metropolitan Consolidated Stock; and the Local Loans Act, 1875, as to investment by trustees in debentures or debenture stock issued under that Act.

[Section 12 made 22 & 23 Vict. c. 35, s. 32, retrospective. See note (b), *supra*.]

Right to
property of
intestate
barred after
twenty years.

[Section 13 recites 3 & 4 Will. 4, c. 27, s. 40, which provides that money charged on land and legacies are to be deemed satisfied at the end of twenty years, if there shall be no interest paid or acknowledgment in writing in the meanwhile, and extends that enactment to the case of claims to the estates of persons dying in- testate. See now 37 & 38 Vict. c. 57.]

[Section 14 is repealed by Statute Law Revision and Civil Procedure Act, 1883.]

Act not to
extend to
Scotland, &c.

XV. This Act is not to extend to Scotland, nor are any of the clauses, except clause six and the subsequent clauses, to extend to Ireland.

37 & 38 Vict.
c. 78.

VENDOR AND PURCHASER ACT, 1874.

37 & 38 VICT. CAP. 78.

*An Act to amend the Law of Vendor and Purchaser, and further to
simplify Title to Land.* [7th August, 1874.]

WHEREAS it is expedient to facilitate the transfer of land by means of certain amendments in the law of vendor and purchaser :

Be it enacted, &c., as follows :

[By sect. 1, in the completion of any contract of sale of land made after Dec. 31, 1874, forty years is substituted for sixty years as the root of title.]

[By sect. 2—

First. Under a contract to grant or assign a term of years, the lessee or assign shall not be entitled to call for the title to the freehold. See *Patman v. Harland*, 17 Ch. D. 353.

Second. Recitals, &c., contained in instruments, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be sufficient evidence. See *Bolton v. London School Board*, 7 Ch. D. 766.

Third. The inability of the vendor to furnish a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will have an equitable right to the production.

Fourth. Covenants for production shall be furnished at the purchaser's expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself.

Fifth. Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents.]

Sales by
trustees.

III. Trustees who are either vendors or purchasers may sell or buy without excluding the application of the second section of this Act.

IV. *The legal personal representative of a mortgagee of a freehold estate, or of a copyhold estate to which the mortgagee shall have been admitted, may, on payment of all sums secured by the mortgage, convey or surrender the mortgaged estate, whether the mortgage be in form an assurance subject to redemption, or an assurance upon trust (a).*

37 & 38 Vict.
c. 78, s. 4.

Legal personal representative may convey legal estate of mortgaged property.

(a) This section has been repealed in cases of death after Dec. 31st, 1881, by the Conveyancing Act, 1881, s. 30 (2), *post*, p. 117. It did not apply to a transfer of a mortgage (*Re Spradbery*, 14 Ch. D. 514; *Re Brook*, 25 W. R. 841), or to a sale under a power in the mortgage (*Re White*, W. N. (1881), 115; 29 W. R. 820).

V. *Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real in the legal personal representative from time to time of such trustee (b).*

Bare legal estate in fee simple to vest in executor or administrator.

(b) Sect. 48 of the Land Transfer Act, 1875, provided as follows:—"Section five of the Vendor and Purchaser Act, 1874, shall be repealed on and after the commencement [1st January, 1876] of this Act, except as to anything duly done thereunder before the commencement of this Act; and, instead thereof, be it enacted that upon the death of a bare trustee *intestate as to any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real in the legal personal representative from time to time of such trustee*; but the enactment by this section substituted for the aforesaid section of 'The Vendor and Purchaser Act, 1874,' shall not apply to lands registered under this Act."

38 & 39 Vict.
c. 87, s. 48.

This section of the Land Transfer Act has been itself repealed, in cases of death after 31st Dec. 1881, by the Conveyancing Act, 1881, s. 30 (2), *post*, p. 117. As to Ireland, see sect. 73 of the Conveyancing Act, 1881.

For the meaning of "bare trustee," see *Christie v. Ovington*, 1 Ch. D. 279; *Morgan v. Swansea Sanitary Authority*, 9 Ch. D. 582.

"Bare trustee."

VI. When any freehold or copyhold hereditament shall be vested in a married woman as a bare trustee (c) she may convey or surrender the same as if she were a feme sole.

Married woman who is a bare trustee may convey, &c.

(c) As to the meaning of "bare trustee," see note (b) to sect. 5. See now as to married women, the Married Women's Property Act, 1882, *infra*.

[The 7th section, by which protection and priority by legal estates and tacking was not to be allowed after the commencement of the Act, was repealed by sect. 129 of the Land Transfer Act, 1875, except as to anything duly done thereunder before 1st January, 1876; see *Robinson v. Trevor*, 12 Q. B. D. 432. But see now as to lands in Yorkshire, the Yorkshire Registries Act, 1884, s. 16.]

Tacking.

[By sect. 8 the non-registration of a will in Middlesex or Yorkshire is cured if an assurance to a purchaser by the devisee or by some one deriving title under him, is registered before an assurance from the testator's heir-at-law. See now as to Yorkshire, the Yorkshire Registries Act, 1884.]

Non-registration in Middlesex or Yorkshire.

IX. A vendor or purchaser of real or leasehold estate in England, or their representatives respectively, may at any time or times and from time to time apply in a summary way to a judge of the Court of Chancery in England in chambers, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid (d).

Vendor or purchaser may obtain decision of judge in chambers as to requisitions or objections, or compensation, &c.

(d) The Act was not intended to enable the Court to decide disputed questions of

37 & 38 Vict.
c. 78, s. 9.

fact (*Re Popple and Barratt*, 25 W. R. 248; *Re Burroughs*, 5 Ch. D. 601); but evidence is admissible as on a reference as to title under a judgment where the contract had been established (*Re Burroughs*); and it is convenient and not unusual for a concise written statement of the circumstances of the case to be agreed upon, which is signed by the solicitors, and a copy left at the Chambers, either before or upon the return of the summons (Daniell, 1382). Where a witness refused to make an affidavit, his evidence was directed to be taken before a special examiner (*Re Springall*, W. N. (1875), 225).

Applications
under s. 9.

Applications have been made to the Court under the Act in a great variety of cases which will be found collected in Daniell, p. 1382 *et seq.* For instances of applications see *Re Coward*, 20 Eq. 179; *Re Ford and Hill*, 10 Ch. D. 365; *Osborne to Rowlett*, 13 Ch. D. 774; *Re Tanqueray-Willoume*, 20 Ch. D. 465; *Royal Society and Thompson*, 17 Ch. D. 407; *Whiting to Loomes*, 14 Ch. D. 822; 17 Ch. D. 10; *Re Lechmere and Lloyd*, 18 Ch. D. 524; *Re Brown and Sibly*, 3 Ch. D. 156; *Re Cooper and Allen*, 4 Ch. D. 802; *Re Hall Dare*, 21 Ch. D. 41; *Re Foster and Lister*, 6 Ch. D. 87; *Re Pigott and G. W. Ry.*, 18 Ch. D. 146. The Act does not apply in cases of voluntary grants, but a nominal consideration is sufficient as a foundation for proceedings under it (*Re Marquis of Salisbury*, 23 W. R. 824). The summons may be leave be served out of the jurisdiction (*Drapers' Co. v. McCann*, 1 L. R. Ir. 13).

Order a bar
to action for
specific per-
formance.

An action for specific performance cannot be brought after an order has been made under the Act disposing of the matters in dispute (*Thompson v. Ringer*, W. N. (1881), 48; 29 W. R. 520).

Appeal.
Costs.

The time within which an appeal can be brought from an order under the section is twenty-one days (*Re Blyth and Young*, 13 Ch. D. 416).

The general rule is, that the purchaser must pay the costs if he fails on a vendor's summons caused by an objection to the title (*Osborne to Rowlett*, 13 Ch. D. 774; 28 W. R. 365; *Re Waddell's Contract*, 2 Ch. D. 172; *Re Cooke's Contract*, 4 Ch. D. 454). Where, however, the purchaser failed on an objection as to incumbrances, but the case was a proper one to be brought before the Court, each party had to pay his own costs of a vendor's summons (*Finch v. Jukes*, W. N. (1877), 211; and see *Re Coward*, 20 Eq. 179; 23 W. R. 605). So, where the difficulty had arisen entirely from conflicting decisions no costs were given (*Osborne to Rowlett*); and so, where there was a fair point for discussion (*Re Metrop. Ry. Co. and Cosh*, 13 Ch. D. 613).

If the vendor is in the wrong his summons will be dismissed with costs (*Re Packman and Moss*, 1 Ch. D. 214; 24 W. R. 170; and see *Re Higgins*, 21 Ch. D. 99; *Re Hill*, W. N. (1884), 15).

Where the purchaser makes an improper requisition and takes out a summons for an order on the vendors to answer it, the summons should be dismissed with costs (*Re Ford and Hill*, 10 Ch. D. 365, where on appeal the order below was reversed, and the vendors got the costs of the appeal, but apparently paid the costs below).

A vendor or purchaser of real or leasehold estate in Ireland, or their representatives respectively, may in like manner and for the same purpose apply to a judge of the Court of Chancery in Ireland, and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

Extent of
Act.

X. This Act shall not apply to Scotland, and may be cited as the Vendor and Purchaser Act, 1874.

CONVEYANCING AND LAW OF PROPERTY ACT, 1881. 44 & 45 Vict.
c. 41.

44 & 45 VICT. CAP. 41.

An Act for simplifying and improving the practice of Conveyancing; and for vesting in Trustees, Mortgagees, and others various powers commonly conferred by provisions inserted in Settlements, Mortgages, Wills, and other Instruments; and for amending in various particulars the Law of Property; and for other purposes. [22nd August, 1881.]

BE IT ENACTED, &c. as follows :

I.—PRELIMINARY.

1.—(1) This Act may be cited as the Conveyancing and Law of Short title; Property Act, 1881.

(2) This Act shall commence and take effect from and immediately commence- after the thirty-first day of December, one thousand eight hundred and eighty-one. ment;

(3) This Act does not extend to Scotland. extent.

2. In this Act—

(i.) Property, unless a contrary intention appears, includes real and personal property, and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest: Interpretation of property, land, &c.

(ii.) Land, unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments, corporeal or incorporeal, and houses and other buildings, also an undivided share in land :

(iii.) In relation to land, income includes rents and profits, and possession includes receipt of income :

(iv.) Manor includes lordship, and reputed manor or lordship :

(v.) Conveyance, unless a contrary intention appears, includes assignment, appointment, lease, settlement, and other assurance, and covenant to surrender, made by deed, on a sale, mortgage, demise, or settlement of any property, or on any other dealing with or for any property; and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance :

(vi.) Mortgage includes any charge on any property for securing money or money's worth; and mortgage money means money, or money's worth, secured by a mortgage; and mortgagor includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest, or right, in the mortgaged property; and mortgagee includes any person from time to time deriving title under the original mortgagee; and mortgagee in possession is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property :

44 & 45 Vict.
c. 41, s. 2.

(vii.) Incumbrance includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and incumbrancer has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof:

(viii.) Purchaser, unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for any property; and purchase, unless a contrary intention appears, has a meaning corresponding with that of purchaser; but sale means only a sale properly so called:

(ix.) Rent includes yearly or other rent, toll, duty, royalty, or other reservation, by the acre, the ton, or otherwise; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift:

(x.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease is a lease for building purposes or purposes connected therewith:

(xi.) A mining lease is a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes:

(xii.) Will includes codicil:

(xiii.) Instrument includes deed, will, inclosure award, and Act of Parliament:

(xiv.) Securities include stocks, funds, and shares:

(xv.) Bankruptcy includes liquidation by arrangement, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy; and bankrupt has a meaning corresponding with that of bankruptcy:

(xvi.) Writing includes print; and words referring to any instrument, copy, extract, abstract, or other document include any such instrument, copy, extract, abstract, or other document being in writing or in print, or partly in writing and partly in print:

(xvii.) Person includes a corporation:

(xviii.) Her Majesty's High Court of Justice is referred to as the Court.

II.—SALES AND OTHER TRANSACTIONS.

Contracts for Sale.

[Sect. 3 provides that on sales made after the commencement of the Act certain stipulations commonly inserted in conditions of sale shall be implied, unless a contrary intention is expressed in the contract. See sect. 2 of the Vendor and Purchaser Act, 1874, *ante*, p. 106; and see also *Re Johnson*, 28 Ch. D. 84.]

Completion
of contract
after death.

4.—(1) Where at the death of any person there is subsisting a contract enforceable against his heir or devisee, for the sale of the fee simple or other freehold interest, descendible to his heirs general, in any land, his personal representatives shall, by virtue of this Act,

have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract. 44 & 45 Vict.
c. 41, s. 4.

(2) A conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition or as heir or next of kin of a testator or intestate.

(3) This section applies only in cases of death after the commencement of this Act.

Discharge of Incumbrances on Sale.

5.—(1) Where land subject to any incumbrance, whether immediately payable or not, is sold by the Court, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason thinks fit to require a larger additional amount. Provision by
Court for in-
cumbrances,
and sale freed
therefrom.

(2) Thereupon, the Court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the Court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(3) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(4) This section applies to sales not completed at the commencement of this Act, and to sales thereafter made (a).

(a) An order under this section for the sale of land free from an incumbrance, the incumbrancer not being a party to the action, should follow the words of the Act, and after directing payment into Court of the purchase-money, and setting aside of an amount sufficient to meet the incumbrance, proceed to declare that thereupon any person should be at liberty to apply in chambers for a declaration that the land is free from the incumbrance (*Dickin v. Dickin*, W. N. (1882), 113; 30 W. R. 887). See also *Patching v. Bull*, 30 W. R. 244. The Court will not compel a vendor to pay money into Court for the purpose of discharging an incumbrance when the result would be to inflict a great hardship on him (*Re Great Northern Ry.*, 25 Ch. D. 788; 32 W. R. 519). Form of
order.

[Sect. 6 provides that general words shall be implied in conveyances of land, buildings and manors.] General
words.

44 & 45 Vict.
c. 41, s. 7.

[Sect. 7 provides that covenants for title shall be implied in assurances where the conveyance is expressed to be made in one or other of the characters mentioned in the section.]

Covenants
for title.

Execution of Purchase Deed.

Rights of
purchaser as
to execution.

8.—(1) On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his solicitor, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor (*b*).

(2) This section applies only to sales made after the commencement of this Act.

(*b*) See note (*s*) to sect. 56, *infra*, p. 123.

Production and Safe Custody of Title Deeds.

Acknowledg-
ment of right
to production,
and under-
taking for safe
custody of
documents.

[By sect. 9 (1—6), an acknowledgment of the right to production and to delivery of copies of documents has the effect of and is substituted for the old covenant for production.]

(7.) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the Court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the Court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(8.) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

[By sub-sects. 9 and 11, an undertaking for safe custody of documents satisfies any liability for safe custody of documents.]

(10.) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss, destruction of, or injury to the documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(12.) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13.) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking. 44 & 45 Vict.
c. 41, s. 9

(14.) This section applies only to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the commencement of this Act.

III.—LEASES.

[Sect. 10 provides that rent and the benefit of the lessee's covenants shall run with the reversion.] Leases.

[Sect. 11 provides that the obligation of the lessor's covenants shall run with the reversion.]

[Sect. 12 provides for the apportionment of conditions on severance, &c.]

[Sect. 13 provides, that on a sub-demise the title to the leasehold reversion shall not be required.]

Forfeiture.

14.—(1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach (c). Restrictions
on and relief
against for-
feiture of
leases.

(c) See *Ex parte Gould*, W. N. (1884), 154; *Scott v. Matthew Brown & Co.*, W. N. (1884), 209.

(2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit (d).

(d) This sub-section is not confined to breaches taking place after the Act, but extends to breaches committed before the Act, and to proceedings pending when it came into operation (*Quilter v. Mapleson*, 9 Q. B. D. 672; 52 L. J. Q. B. 44; 31 W. R. 75; 47 L. T. 561). For a case in which, under special circumstances, and where no proper notice had been given, equitable mortgagees of a lessee were relieved from a forfeiture, see *North London Co. v. Jacques*, W. N. (1883), 187; *Jacques v. Harrison*, 12 Q. B. D. 136. Where the forfeiture had been incurred through breach of a covenant to repair, relief was granted on the terms of the defendant executing proper repairs and paying arrears of rent and costs (*Bond v. Freke*, W. N. (1884), 47). Where the right of renewing a lease for lives had been lost by non-payment of renewal fees, though demanded by the reversioners, the Court refused to relieve (*Ruttledge v. Whelan*, 10 L. R. Ir. 263); and see *Scott v. Matthew Brown & Co.*, W. N. (1884), 209.

44 & 45 Vict.,
c. 41, s. 14.

(3.) For the purposes of this section a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4.) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(5.) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6.) This section does not extend—

(i.) To a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or

(ii.) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

(7.) The enactments described in Part I. of the Second Schedule to this Act are hereby repealed.

(8.) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(9.) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

IV.—MORTGAGES.

Obligation on mortgagee to transfer instead of re-conveying.

15.—(1.) Where a mortgagor is entitled to redeem, he shall, by virtue of this Act, have power to require the mortgagee, instead of re-conveying, and on the terms on which he would be bound to re-convey, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly (e).

(e) See now Conveyancing Act, 1882, s. 12, *infra*, and note thereto. A tenant for life of mortgaged premises, who has failed to keep down the interest, and who has obtained the usual order permitting him to redeem, is not entitled as of right to require the mortgagee to transfer to a third person (*Alderson v. Elgey*, 26 Ch. D. 567).

(2.) This section does not apply in the case of a mortgagee being or having been in possession.

(3.) This section applies to mortgages made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary. 44 & 45 Vict. c. 41, s. 15.

[Sect. 16 empowers the mortgagor to inspect the title deeds.]

17.—(1.) A mortgagor seeking to redeem any one mortgage, shall, by virtue of this Act, be entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem (*f*). Restriction on consolidation of mortgages.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.

(3.) This section applies only where the mortgages or one of them are or is made after the commencement of this Act.

(*f*) In an action to foreclose two mortgages the mortgagor cannot redeem either estate without paying the *whole* costs of the action (*Clapham v. Andrews*, 27 Ch. D. 679).

The recent tendency of the Courts (apart from this Act) has been to restrict the doctrine of consolidation; see *Jennings v. Jordan*, 6 App. Cas. 698; *Harter v. Colman*, 19 Ch. D. 630; *Re Raggett*, 16 Ch. D. 117; *Cummins v. Fletcher*, 14 Ch. D. 699.

[Sect. 18 gives power to the person in possession, whether mortgagor or mortgagee, to make leases; see *Re Nugent*, W. N. (1883), 147.]

[Sect. 19 provides that a mortgagee, where the mortgage is made by deed, shall have power (i) to sell; (ii) to insure; (iii) to appoint a receiver (see *Tillett v. Nixon*, 25 Ch. D. 238; *Bayly v. Went*, W. N. (1884), 197); (iv) if in possession, to cut and sell timber.]

[Sect. 20 provides that the power of sale shall not be exercised unless (i) Notice has been given to pay off the principal, and default has been made for three months; or (ii) interest is two months in arrear; or (iii) there has been a breach of some provision in the mortgage other than the covenants for payment of principal and interest.]

[Sect. 21 relates to conveyance, &c. on an exercise of the power of sale, and prescribes the application of the purchase-money.]

[Sect. 22 empowers the mortgagee to give receipts.]

[Sect. 23 relates to the amount and application of the insurance money.]

[Sect. 24 deals with the appointment, powers, remuneration, and duties of the receiver, who is to be deemed the agent of the mortgagor. Where an action is pending the receiver should be appointed by the Court rather than by the mortgagee under the Act (*Tillett v. Nixon*, 25 Ch. D. 238). If the mortgagee has appointed a receiver the mortgagor will not be allowed to distrain for rent due from the tenants (*Bayly v. Went*, W. N. (1884), 197).]

Action respecting Mortgage.

25.—(1.) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption in the alternative. Sale of mortgaged property in action for foreclosure, &c.

(2.) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding the dissent of any other person, and notwithstanding

44 & 45 Vict.
c. 41, s. 25.

that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure performance of the terms.

(3.) But, in an action brought by a person interested in the right of redemption and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4.) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

(5.) This section applies to actions brought either before or after the commencement of this Act (g).

15 & 16 Vict.
c. 86, s. 48.

(6.) The enactment described in Part II. of the second schedule to this Act is hereby repealed.

(7.) This section does not extend to Ireland.

Order for
sale.

(g) The Court has power at any time before foreclosure absolute to order a sale (*Union Bank v. Ingram*, 20 Ch. D. 463; 51 L. J. Ch. 508; 30 W. R. 375; 46 L. T. 507; *Weston v. Davidson*, W. N. (1882), 28; *South Western Bank v. Turner*, 31 W. R. 113). As to the form of order where the mortgagor has not appeared, see *Wade v. Wilson*, 22 Ch. D. 235; 52 L. J. Ch. 399; 31 W. R. 237; 47 L. T. 696; *South Western Bank v. Turner*. Although a sale may be directed in a foreclosure action without the plaintiff's consent, even where the mortgaged property is only an equity of redemption, and there are prior mortgagees not parties, a sale will not be directed at the request of a defendant who will not give security (*Cripps v. Wood*, 51 L. J. Ch. 584).

Where the application for a sale was made by the defendant, the mortgagor, after the time appointed for the payment of the mortgage money, the Court directed that on the defendant paying within one month into Court the sum of 150*l.* as a deposit to meet the expenses of sale, and also paying the plaintiff's costs of the application, there should be a sale of the property, but otherwise a foreclosure (*Weston v. Davidson*, W. N. (1882), 28). Where there were several mortgages a sale was directed, in a redemption action, upon the application, soon after the issue of the writ of summons, of the plaintiff who was the owner of the equity of redemption; but it was held that a reserved price large enough to cover what was due to mortgagees who opposed the sale must be fixed, and that the plaintiff must give security for the costs of the sale, the conduct of which was given to him, and which was directed to take place out of Court, the proceeds of sale being directed to be brought into Court (*Woolley v. Colman*, 21 Ch. D. 169). A tenant in common who has mortgaged his share to another tenant in common cannot enforce a partition or sale of the whole property against the will of the mortgagee without paying off the mortgage (*Gibbs v. Haydon*, 30 W. R. 726).

An equitable mortgagee by deposit may have a sale though there is no memorandum of deposit and no agreement to execute a legal mortgage (*Oldham v. Stringer*, W. N. (1884), 235).

V.—STATUTORY MORTGAGE.

[Sects. 26—29 provide for forms of statutory mortgages, transfers and reconveyances.]

VI.—TRUST AND MORTGAGE ESTATES ON DEATH.

Devolution of
trust and
mortgage

30.—(1.) Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal

or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him; and, for the purposes of this section, the personal representatives, for the time being, of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers (*h*).

44 & 45 Vict.
c. 41, s. 30.
estates on
death.

(2.) Section four of the Vendor and Purchaser Act, 1874, and section forty-eight of the Land Transfer Act, 1875, are hereby repealed (*i*).

37 & 38 Vict.
c. 78.
38 & 39 Vict.
c. 87.

(3.) This section, including the repeals therein, applies only in cases of death after the commencement of this Act.

(*h*) The section applies to copyholds (*Re Hughes*, W. N. (1884), 53). *Qu.* What becomes of the legal estate when there is no personal representative? See *Re Pilling*, 26 Ch. D. 432.

(*i*) See these sections, *ante*, p. 107.

VII.—TRUSTEES AND EXECUTORS.

31.—(1.) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the instrument, if any, creating the trust (*k*), or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee (*l*), may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing or being unfit, or being incapable, as aforesaid (*m*).

Appointment
of new
trustees,
vesting of
trust prop-
erty, &c.

(*k*) See *Re Walker*, 24 Ch. D. 698.

(*l*) The representative of a deceased trustee is not bound, at the request of the *cestui que trust*, to exercise the power (*Re Sarah Knight*, 26 Ch. D. 82).

(*m*) Where the power given by this section can be exercised, application ought not to be made to the Court (*Re Gibbon*, W. N. (1882), 12; 30 W. R. 287).

(2.) On an appointment of a new trustee, the number of trustees may be increased.

(3.) On an appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee, where only one trustee was originally appointed, or to fill up the original number of trustees,

4 & 45 Vict.
c. 41, s. 31.

where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust.

(4.) On an appointment of a new trustee any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(5.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(6.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator (*U*); and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(7.) This section applies only if and as far as a contrary intention (*mm*) is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(8.) This section applies to trusts created either before or after the commencement of this Act.

(*U*) If *all* the trustees predecease the testator, then (in the absence of an express power) recourse must be had to the Court (*Re Orde*, 24 Ch. D. 271; *Re Lightbody*, W. N. (1885), 3).

(*mm*) See *Cecil v. Langdon*, 28 Ch. D. 1.

Retirement
of trustee.

32.—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this Act.

Powers of new
trustee ap-
pointed by
Court.

33.—(1.) Every trustee appointed by the Court of Chancery, or by the Chancery Division of the Court, or by any other Court of competent jurisdiction, shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act as if

he had been originally appointed a trustee by the instrument, if any, creating the trust. 44 & 45 Vict.
o. 41, s. 33.

(2.) This section applies to appointments made either before or after the commencement of this Act.

34.—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right. Vesting of
trust property
in new or
continuing
trustees.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under Act of Parliament (*n*).

(4.) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5.) This section applies only to deeds executed after the commencement of this Act.

(*n*) See *Re Harrison*, W. N. (1883), 31.

[Sect. 35 provides that trustees with a trust for or power of sale under an instrument coming into operation since the Act, may sell in lots, by auction or private contract, subject to special conditions, &c.]

[Sect. 36 enables trustees to give receipts for money or personal property payable or transferable to them.]

[Sect. 37 empowers executors and trustees to compound, and compromise debts and claims.]

[Sect. 38 provides that powers or trusts given since the Act to two or more executors or trustees jointly may be exercised by the survivors or survivor of them.]

VIII.—MARRIED WOMEN.

39.—(1.) Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Power for
Court to bind
interest of

44 & 45 Vict.
c. 41, s. 39.

married
woman.

Where order
binding mar-
ried woman's
interest made.

Court to be for her benefit, by judgment or order, with her consent, bind her interest in any property (o).

(2.) This section applies only to judgments or orders made after the commencement of this Act.

(o) An order binding the interest of a married woman will only be made where it is clear that the removal of the restraint will be for her benefit, and not merely for the benefit of her husband (*Tamplin v. Miller*, W. N. (1882), 44; 30 W. R. 422). The order has been made where land in which a married woman had an interest settled to her separate use without power of anticipation, having been sold, part of the proceeds of the sale was to be paid to a mortgagee (*Re Landfield, Landfield v. Landfield*, 30 W. R. 377); where the sanction of the Court was required to a compromise of the claims of a married woman to trust property, to which she was entitled for her separate use without power of anticipation (*Tamplin v. Miller*); and where a married woman was entitled for her separate use for life without power of anticipation to the income of a fund in Court, to the corpus of which, in the event which had happened, she, in default of the exercise of a testamentary power of appointment vested in herself, was entitled absolutely, the Court (she having contracted a number of debts, for payment of which her creditors were pressing her and causing her great annoyance) considered that the restraint on anticipation ought to be removed, and ordered part of the fund to be paid out to her in order to enable her to pay her debts (*Hodges v. Hodges*, 30 W. R. 483; 20 Ch. D. 749). See also *Ex parte Thompson*, W. N. (1884), 28; *Musgrave v. Sandeman*, 48 L. T. 215; *Sedgwick v. Thomas*, 48 L. T. 100. An order has been made under special circumstances authorizing the sale of a married woman's life interest in order to provide funds for the purpose of emigration; see *Re Flood*, 11 L. R. Ir. 355, where the form of the order is given. But it must be clearly shown that the removal of the restraint will benefit the married woman (*Re Warren*, W. N. (1883), 125; 52 L. J., Ch. 928, where the object was to put an end to a marriage settlement on the ground that the wife was past child-bearing, and the Court of Appeal refused to allow it). As to married woman tenant for life, see the Settled Land Act, 1882, s. 61, *infra*.

Form of
order.

Application
for order;
how made.

The order is made under the general power of the Court, conferred by the statute, and where made in any pending action or proceeding it need not be intitled in the Act (*Re Landfield, Landfield v. Landfield*, 30 W. R. 377). The application for the order is, where the subject of an independent proceeding, made by summons (s. 69 (3)); *Re Lillwall*, W. N. (1882), 6; 30 W. R. 243.

[Sect. 40 empowers a married woman, whether an infant or not, to appoint an attorney.]

IX.—INFANTS.

Sales and
leases on be-
half of infant
owner.

40 & 41 Vict.
c. 18.

41. Where a person in his own right seised of or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877 (p).

(p) See *Re Liddell*, W. N. (1882), 183; 31 W. R. 238.

Management
of land and
receipt and
application
of income
during
minority.

42.—(1.) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the Court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply.

[Sub-sections 2 and 3 confer extensive powers of management on the trustees.]

(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance, education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes. 44 & 45 Vict.
c. 41, s. 42.

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, with power to vary investments; and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

- (i.) If the infant attains the age of twenty-one years, then in trust for the infant;
- (ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt after she marries, and though still an infant, shall be a good discharge; but
- (iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase tenant in tail or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate; but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8.) This section applies only where that instrument comes into operation after the commencement of this Act.

43.—(1.) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not (*g*).

Application
by trustees of
income of
property of
infant for
maintenance,
&c.

(*g*) Trustees cannot under this section apply the income of an infant's contingent legacy for the benefit of the infant, unless the income will go along with the capital of the legacy if and when such capital vests (*Re Judkin*, 25 Ch. D. 743); and see *Re Dickson* W. N. (1884), 235. Under this and the next sub-section trustees may apply past accumulations of income in payment of past maintenance (*Re Pitts*, W. N. (1884), 225).

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise (*gg*); but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(*gg*) See *Re Buckley*, 22 Ch. D. 583.

44 & 45 Vict.
c. 41, s. 43.

(3.) This section applies only if and as far as a contrary intention (*r*) is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies whether that instrument comes into operation before or after the commencement of this Act.

(*r*) A direction for accumulation of income until the happening of the contingency on which infants are to become entitled does not show a "contrary intention" (*Re Thatcher*, 26 Ch. D. 426).

X.—RENT-CHARGES AND OTHER ANNUAL SUMS.

[Sect. 44 provides remedies for recovery of annual sums charged on land; it is limited to the case of instruments coming into operation since the Act.]

[Sect. 45 provides for the redemption of quit rents and other perpetual charges.]

XI.—POWERS OF ATTORNEY.

[Sect. 46 provides that an attorney may execute his power in his own name.]

[Sect. 47 provides that acts done in pursuance of a power of attorney without notice of revocation shall be good.]

Deposit of
original
instruments
creating
powers of
attorney.

48.—(1.) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office of the Supreme Court of Judicature.

(2.) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

(3.) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

(4.) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Central Office.

(5.) General Rules may be made for purposes of this section, regulating the practice of the Central Office, and prescribing, with the concurrence of the Commissioners of her Majesty's Treasury, the fees to be taken therein (*rr*).

(6.) This section applies to instruments creating powers of attorney executed either before or after the commencement of this Act.

(*rr*) See *post*, p. 133.

XII.—CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

[Sect. 49 renders the use of the word "grant" unnecessary.]

[Sect. 50 provides that freeholds or a thing in action may be conveyed by a person to himself and another jointly, and by a husband to his wife, and by a wife to her husband, alone or jointly with another person.]

[Sect. 51 provides that the words "in fee simple," and "in tail," may be used instead of the old words of limitation.]

[Sect. 52 authorises the release of powers whether coupled with an interest or not. See *Re Eyre*, 49 L. T. 259; *W. N.* (1883), 153; *Conv. Act*, 1882, s. 6, *post*, p. 129.]

[Sect. 53 relates to the construction of supplemental or annexed deeds.]

[Sect. 54 enacts that a receipt in the body of a deed shall be sufficient.]

[Sect. 55 provides that a receipt in a deed or endorsed upon it, shall in favour of a subsequent purchaser, be sufficient evidence of payment.]

56.—(1.) Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

Receipt in deed or indorsed, authority for payment to solicitor.

(2.) This section applies only in cases where consideration is to be paid or given after the commencement of this Act (s).

(s) This section does not authorize fiduciary vendors to require the purchaser to pay the purchase-money to their solicitor on production of a duly-executed conveyance in cases where before the Act they could not have required the purchaser to pay the purchase-money to their solicitor under a special authority (*Re Bellamy*, 24 Ch. D. 387; *Re Flower and Metropolitan Board of Works*, 27 Ch. D. 592).

Sales by trustees.

[Sect. 57 provides for statutory forms of deeds.]

[Sects. 58—60 relate to the construction of covenants.]

[Sect. 61 dispenses with the necessity for the joint account clause in mortgages.]

[Sect. 62 relates to the grant of easements, &c., by way of use.]

[Sect. 63 dispenses with the necessity for the "all the estate" clause.]

[Sect. 64 relates to the construction of the covenants, &c., implied by the Act.]

XIII.—LONG TERMS.

[Sect. 65 authorises the enlargement in certain cases of long terms of years into fee simple estates. See *Re Smith and Stott*, 31 W. R. 411. The section is amended by sect. 11 of the Conv. Act, 1882.]

XIV.—ADOPTION OF ACT.

66.—(1.) It is hereby declared that the powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are to be deemed included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations, and words, to be given by or to be contained in any such instrument, or to be adopted in connexion with, or applied to, any such contract or transaction; and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connexion with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his doing so.

Protection of solicitor and trustees adopting Act.

(2.) But nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connexion with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations, or words is improper.

(3.) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4.) Where such persons are acting without a solicitor, they shall also be protected in like manner.

44 & 45 Vict.
c. 41, s. 67.

Regulations
respecting
notice.

XV.—MISCELLANEOUS.

67.—(1.) Any notice required or authorized by this Act to be served shall be in writing.

(2.) Any notice required or authorized by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3.) Any notice required or authorized by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor; or other person to be served, or, in case of a notice required or authorized to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4.) Any notice required or authorized by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5.) This section does not apply to notices served in proceedings in the Court.

Short title of
5 & 6 Will. 4,
c. 62.

68. The Act described in Part II. of the First Schedule to this Act shall, by virtue of this Act, have the short title of the Statutory Declarations Act, 1835, and may be cited by that short title in any declaration made for any purpose under or by virtue of that Act, or in any other document, or in any Act of Parliament.

XVI.—COURT ; PROCEDURE ; ORDERS.

Regulations
respecting
payments into
Court and
applications.

69.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court shall effectually exonerate therefrom the person making the payment.

(3.) Every application to the Court shall, except where it is otherwise expressed, be by summons at chambers.

(4.) On an application by a purchaser notice shall be served in the first instance on the vendor.

(5.) On an application by a vendor notice shall be served in the first instance on the purchaser.

(6.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(7.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application.

39 & 40 Vict.
c. 59, s. 17.

(8.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, and may be made accordingly.

(9.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(10.) General Rules, and Rules of the Court of Chancery of the County Palatine, under this Act may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act. 44 & 45 Vict.
c. 41, s. 69.

70.—(1.) An order of the Court under any statutory or other jurisdiction shall not as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of any such want or not. Orders of
Court con-
clusive.

(2.) This section shall have effect with respect to any lease, sale, or other act under the authority of the Court, and purporting to be in pursuance of the Settled Estates Act, 1877, notwithstanding the exception in section forty of that Act, or to be in pursuance of any former Act repealed by that Act, notwithstanding any exception in such former Act. 40 & 41 Vict.
o. 18, s. 40.

(3.) This section applies to all orders made before or after the commencement of this Act, except any order which has before the commencement of this Act been set aside or determined to be invalid on any ground, and except any order as regards which an action or proceeding is at the commencement of this Act pending for having it set aside or determined to be invalid (*t*).

(*t*) See *Re Hall Dare*, 21 Ch. D. 41.

XVII.—REPEALS.

71.—(1.) The enactments described in Part III. of the Second Schedule to this Act are hereby repealed. Repeal of
enactments in
Part III. of
Second
Schedule;
restriction on
all repeals.

(2.) The repeal by this Act of any enactment shall not affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act, or any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act; but this provision shall not be construed as qualifying the provision of this Act relating to section forty of the Settled Estates Act, 1877, or any former Act repealed by that Act.

XVIII.—IRELAND.

[Sects. 72 and 73 relate only to Ireland.]

SCHEDULES.

THE FIRST SCHEDULE.

ACTS AFFECTED.

PART I.

- 1 & 2 Vict. c. 110.—An Act for abolishing arrest on mesne process in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England.
- 2 & 3 Vict. c. 11.—An Act for the better protection of purchasers against judgments, crown debts, *lis pendens*, and *fiats* in bankruptcy.
- 18 & 19 Vict. c. 15.—An Act for the better protection of purchasers against judgments, crown debts, cases of *lis pendens*, and life annuities or *rentcharges*.
- 22 & 23 Vict. c. 35.—An Act to further amend the law of property and to relieve trustees.
- 23 & 24 Vict. c. 38.—An Act to further amend the law of property.
- 23 & 24 Vict. c. 115.—An Act to simplify and amend the practice as to the entry of satisfaction on Crown debts and on judgments.

- 44 & 45 Vict. c. 41. 27 & 28 Vict. c. 112.—An Act to amend the law relating to future judgments, statutes, and recognizances.
 28 & 29 Vict. c. 104.—The Crown Suits, &c. Act, 1865.
 31 & 32 Vict. c. 54.—The Judgments Extension Act, 1868.

PART II.

- 5 & 6 Will. 4. c. 62.—An Act to repeal an Act of the present session of Parliament, intituled “An Act for the more effectual abolition of oaths and affirmations taken and made in various Departments of the State, and to substitute declarations in lieu thereof; and for the more entire suppression of voluntary and extra-judicial oaths and affidavits;” and to make other provisions for the abolition of unnecessary oaths.

THE SECOND SCHEDULE.

REPEALS.

A description or citation of a portion of an Act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning, or as forming the end, of the portion comprised in the description or citation.

PART I.

- | | | |
|--|--|---------------------|
| 22 & 23 Vict. c. 35.
in part. | An Act to further amend the law of property and to relieve trustees. . .
Sections four to nine. | } in part; namely,— |
| 23 & 24 Vict. c. 126.
in part. | The Common Law Procedure Act, 1860.
Section two. | } in part; namely,— |

PART II.

- | | | |
|---------------------------------------|---|---------------------|
| 15 & 16 Vict. c. 86.
in part. | An Act to amend the practice and course of proceeding in the High Court of Chancery
Section forty-eight. | } in part; namely,— |
|---------------------------------------|---|---------------------|

PART III.

- | | | |
|--|--|---------------------|
| 8 & 9 Vict. c. 119. | An Act to facilitate the conveyance of real property. | |
| 23 & 24 Vict. c. 145.
in part. | An Act to give to trustees, mortgagees, and others certain powers now commonly inserted in settlements, mortgages, and wills
Parts II. and III. (sections eleven to thirty). | } in part; namely,— |

THE THIRD SCHEDULE.

[This schedule contains the statutory mortgages referred to in Part V. of the Act.]

THE FOURTH SCHEDULE.

[This schedule contains the forms of deeds referred to in sect. 57.]

CONVEYANCING ACT, 1882.

45 & 46 Vict.
c. 39.

45 & 46 VICT. CAP. 39.

An Act for further improving the Practice of Conveyancing; and for other purposes.
[10th August, 1882.]

BE IT ENACTED, &c. as follows:—

Preliminary.

1.—(1.) This Act may be cited as the Conveyancing Act, 1882; and the Conveyancing and Law of Property Act, 1881 (in this Act referred to as the Conveyancing Act of 1881) and this Act may be cited together as the Conveyancing Acts, 1881, 1882.

Short titles;
commence-
ment;
extent;
interpreta-
tion.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December, one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

44 & 45 Vict.
c. 41.

(3.) This Act does not extend to Scotland.

(4.) In this Act and in the schedule thereto—

(i.) Property includes real and personal property, and any debt, and any thing in action, and any other right or interest in the nature of property, whether in possession or not;

(ii.) Purchaser includes a lessee or mortgagee, or an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for property, and purchase has a meaning corresponding with that of purchaser;

(iii.) The Act of the session of the third and fourth years of King William the Fourth (chapter seventy-four) “for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance” is referred to as the Fines and Recoveries Act; and the Act of the session of the fourth and fifth years of King William the Fourth (chapter ninety-two) “for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance in Ireland” is referred to as the Fines and Recoveries (Ireland) Act.

3 & 4 Will. 4,
c. 74.

4 & 5 Will. 4,
c. 92.

Searches.

2.—(1.) Where any person requires, for purposes of this section, search to be made in the Central Office of the Supreme Court of Judicature for entries of judgments, deeds, or other matters or documents, whereof entries are required or allowed to be made in that office by any Act described in Part I. of the First Schedule to the Conveyancing Act of 1881 (*a*), or by any other Act, he may deliver in the office a requisition in that behalf, referring to this section (*b*).

Official, nega-
tive and other
certificates of
searches for
judgments,
deeds, crown
debts,
&c.

(2.) Thereupon the proper officer shall diligently make the search required, and shall make and file in the office a certificate setting forth

45 & 46 Vict.
c. 39, s. 2. the result thereof; and office copies of that certificate shall be issued on requisition, and an office copy shall be evidence of the certificate.

(3.) In favour of a purchaser, as against persons interested under or in respect of judgments, deeds, or other matters or documents, whereof entries are required or allowed as aforesaid, the certificate, according to the tenour thereof, shall be conclusive, affirmatively or negatively, as the case may be.

(4.) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires an office copy certificate of result of search, and other sufficient particulars; and the person making any such requisition shall not be entitled to a search, or an office copy certificate, until he has satisfied the proper officer that the same is required for the purposes of this section.

39 & 40 Vict.
c. 59.
44 & 45 Vict.
c. 68.

(5.) General rules shall be made for purposes of this section, prescribing forms and contents of requisitions and certificates, and regulating the practice of the office, and prescribing, with the concurrence of the Commissioners of her Majesty's Treasury, the fees to be taken therein; which rules shall be deemed rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made, at any time after the passing of this Act, to take effect on or after the commencement of this Act (*bb*).

(6.) If any officer, clerk, or person employed in the office commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate or office copy under this section, he shall be guilty of a misdemeanor.

(7.) Nothing in this section or in any rule made thereunder shall take away, abridge, or prejudicially affect any right which any person may have independently of this section to make any search in the office; and every such search may be made as if this section or any such rule had not been enacted or made.

(8.) Where a solicitor obtains an office copy certificate of result of search under this section, he shall not be answerable in respect of any loss that may arise from error in the certificate.

(9.) Where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable.

(10.) Where such persons obtain such an office copy without a solicitor, they shall also be protected in like manner.

3 & 4 Will. 4,
c. 74.

(11.) Nothing in this section applies to deeds enrolled under the Fines and Recoveries Act, or under any other Act, or under any statutory rule.

(12.) This section does not extend to Ireland.

(a) See this Schedule, *ante*, p. 125.

(b) See R. S. C. 1883, Ord. LXI. r. 23, *infra*.

(bb) See *post*, p. 132.

Notice.

45 & 46 Vict.
c. 39, s. 3.

3.—(1.) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing unless—

Restriction on
constructive
notice.

- (i.) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or
- (ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

(2.) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

(3.) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4.) This section applies to purchases made either before or after the commencement of this Act; save that, where an action is pending at the commencement of this Act, the rights of the parties shall not be affected by this section.

Leases.

[Sect. 4 provides that a contract for a lease shall not form part of the title to the lease.]

Separate Trustees.

5.—(1.) On an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.

Appointment
of separate
sets of
trustees.

(2.) This section applies to trusts created either before or after the commencement of this Act.

Powers.

[Sect. 6 authorizes any person to whom any power, whether with or without an interest, is given, to disclaim it by deed, and thereupon the power may be exercised by the other donees.]

Married Women.

7.—(1.) In section seventy-nine of the Fines and Recoveries Act, and section seventy of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the words "two of the perpetual commissioners, or two special commissioners," the words "one of the perpetual commissioners, or one special commissioner;" and in section eighty-three of the Fines and Recoveries Act, and section seventy-four of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly.

Acknowledgment of deeds
by married
women.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorized to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after the commencement of this Act by a married woman, before a judge of the High Court of Justice in England or Ireland, or before a judge of a county court in England, or before a chairman in Ireland, or before a perpetual commissioner or a special commissioner, shall not be impeached or impeachable by reason only that such judge, chairman, or commissioner was interested or concerned either as a party, or as solicitor, or clerk to the solicitor for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment; and general rules shall be made for preventing any person interested or

45 & 46 Vict. c. 39, s. 7. concerned as aforesaid from taking an acknowledgment; but no such rule shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and shall, as regards Ireland, be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, for England and Ireland respectively, at any time after the passing of this Act, to take effect on or after the commencement of this Act (c).

(4.) The enactments described in the schedule to this Act are hereby repealed.

(5.) The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act.

(6.) Notwithstanding the repeal or any other thing in this section, the certificate, if not lodged before the commencement of this Act, of the taking of an acknowledgment by a married woman of a deed executed before the commencement of this Act, with any affidavit relating thereto, shall be lodged, examined, and filed in the like manner and with the like effects and consequences as if this section had not been enacted.

(7.) There shall continue to be kept in the proper office of the Supreme Court of Judicature an index to all certificates of acknowledgments of deeds by married women lodged therein, before or after the commencement of this Act, containing the names of the married women and their husbands, alphabetically arranged, and the dates of the certificates and of the deeds to which they respectively relate, and other particulars found convenient; and every such certificate lodged after the commencement of this Act shall be entered in the index as soon as may be after the certificate is filed.

(8.) An office copy of any such certificate filed before or after the commencement of this Act shall be delivered to any person applying for the same; and every such office copy shall be received as evidence of the acknowledgment of the deed to which the certificate refers.

(c) See p. 131, *infra*.

Powers of Attorney.

[Sect. 8 provides in favour of purchasers that powers of attorney, given for value and expressed to be irrevocable, shall not be revoked.]

[Sect. 9 makes powers of attorney expressed to be irrevocable (whether given for value or not) absolutely valid in favour of purchasers for a fixed time not exceeding one year.]

Executory Limitations.

[Sect. 10 contains a restriction on executory limitations contained in instruments coming into operation after the Act.]

Long Terms.

[Sect. 11 amends sect. 65 of the Conveyancing Act, 1881; see *ante*, p. 123.]

Mortgages.

Reconveyance on mortgage.

12. The right of the mortgagor, under section fifteen of the Conveyancing Act of 1881, to require a mortgagee, instead of re-conveying, to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer (cc).

(cc) This section was passed for the purpose of getting over the decision in *Tevan v. Smith*, 20 Ch. D. 724; see *Alderson v. Elgey*, 26 Ch. D. p. 570, cited in note (e) to sect. 15 of the Conveyancing Act, 1881, *ante*, p. 114.

Saving.

Restriction on repeals in this Act.

13. The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any

instrument executed or made, or of anything done or suffered, before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act. 45 & 46 Vict. c. 39, s. 13.

SCHEDULE.

REPEALS.

Section 7 (4).

3 & 4 Will. IV. c. 74 .. in part.	|	The Fines and Recoveries Act ... in part; namely,— Section eighty-four, from and including the words “and the same judge,” to the end of that section. Sections eighty-five to eighty-eight, inclusive.
4 & 5 Will. IV. c. 92 .. in part.	|	The Fines and Recoveries (Ireland) } in part; namely,— Act } Section seventy-five, from and including the words “and the same judge,” to the end of that section. Sections seventy-six to seventy-nine, inclusive.
17 & 18 Vict. c. 75 ....	|	An Act to remove doubts concerning the due acknowledgments of deeds by married women in certain cases.
41 & 42 Vict. c. 23 ....	|	The Acknowledgment of Deeds by Married Women (Ireland) Act, 1878.

RULES UNDER THE ACT FOR THE ABOLITION OF FINES AND RECOVERIES, AND SECT. 7 OF THE CONVEYANCING ACT, 1882.

1. No person authorized or appointed under the Act 3 & 4 Will. IV. c. 74 (in these rules referred to as the Fines and Recoveries Act) to take the acknowledgments of deeds by married women shall take any such acknowledgment if he is interested or concerned either as a party or as solicitor or clerk to the solicitor for one of the parties or otherwise in the transaction giving occasion for the acknowledgment.

2. Before a Commissioner shall receive an acknowledgment, he shall inquire of the married woman separately and apart from her husband and from the solicitor concerned in the transaction whether she intends to give up her interest in the estate to be passed by the deed without having any provision made for her; and where the married woman answers in the affirmative and the Commissioner shall have no reason to doubt the truth of her answer, he shall proceed to receive the acknowledgment; but if it shall appear to him that it is intended that provision is to be made for the married woman, then the Commissioner shall not take her acknowledgment until he is satisfied that such provision has been actually made by some deed or writing produced to him; or if such provision shall not have been actually made before, then the Commissioner shall require the terms of the intended provision to be shortly reduced into writing, and shall verify the same by his signature in the margin, at the foot, or at the back thereof.

3. The memorandum to be indorsed on or written at the foot or in the margin of a deed acknowledged by a married woman shall be in the following form in lieu of the form set forth in sect. 84 of the Fines and Recoveries Act:

“This deed was this day produced before me and acknowledged by therein named to be her act and deed [or their several acts and deeds] previous to which acknowledgment [or acknowledgments] the said was [or were] examined by me separately and apart from her husband [or their respective husbands] touching her [or their] knowledge of the contents of the said deed and her [or their] consent thereto and [each of them] declared the same to be freely and voluntarily executed by her.”

4. When an acknowledgment is taken by any person other than a judge, the following declaration shall be added to the memorandum of acknowledgment:—

“And I declare that I am not interested or concerned either as a party or as a solicitor or clerk to the solicitor for one of the parties or otherwise in the transaction giving occasion for the said acknowledgment.”

5. A memorandum of acknowledgment purporting to be signed according to any

of the following forms shall be deemed to be a memorandum purporting to be signed by a person authorized to take the acknowledgment:—

(Signed) A. B.

A judge of the High Court of Justice in England,
 or a judge of the County Court of
 or a perpetual commissioner for taking acknowledgments of deeds
 by married women,
 or the special commissioner appointed to take the aforesaid acknow-
 ledgment.

But this rule is not to derogate from the effect of any memorandum purporting to be signed by a person authorized to take the acknowledgment, though not signed in accordance with any of the above forms.

6. Nothing in the five preceding rules contained shall make invalid any acknowledgment which would have been valid if these rules had not been enacted.

7. Every commission appointing a special commissioner to take an acknowledgment by a married woman shall be returned to the office of the registrar of certificates of acknowledgments of deeds by married women, and shall be there filed. An index shall be prepared and kept in the said office, giving the names and addresses of the married women named in all such commissions filed in the said office after the 31st December, 1882. The same rules shall apply to searches in the index so to be prepared as to searches in the other indexes and registers kept in the Central Office.

8. The costs to be allowed to solicitors in respect of the matters hereinafter mentioned, when not otherwise regulated by the general orders in force for the time being under the Solicitors' Remuneration Act, 1881, or by special agreement, shall be as follows: anything in the Rules of the Supreme Court as to costs, dated the 12th August, 1875, to the contrary notwithstanding:—

Charges under the Act 3 & 4 Will. IV. c. 74 (the Fines and Recoveries Act).

For the endorsements on deeds required by the Fines and Recoveries Act, to be entered on the Court rolls of manors of the memorandum of production and memorandum of entry on Court rolls, to be signed by the lord steward or deputy steward, each indorsement of memorandum 5s., together	£ s. d. 0 10 0
For the entries on the Court rolls of deeds and the indorsements thereon, at per folio of 72 words	0 0 6
For taking the consent of each protector of settlement of lands	0 13 4
For taking the surrender by each tenant in tail of lands	0 13 4
For entries of such surrenders or the memorandums thereof in the Court rolls, at per folio of 72 words	0 0 6

9. The following Rules and Orders are hereby repealed, except as to certificates not lodged before the 1st January, 1883, of acknowledgments by married women of deeds executed before the 1st January, 1883, and the affidavits relating thereto:—

- The General Rules of the Court of Common Pleas, Hilary Term, 1834.
 - The General Rules of the Court of Common Pleas, Trinity Term, 1834.
 - The General Order of the Court of Common Pleas, dated the 24th November, 1862.
 - The General Order of the Court of Common Pleas, dated the 13th January, 1863.
10. These Rules shall take effect from and after the 31st December, 1882.

RULES UNDER SECTION 2 OF THE CONVEYANCING ACT, 1882.

1. Every requisition for an official search shall state the name and address of the person requiring the search to be made. Every requisition and certificate shall be filed in the office where the search was made.

2. Every person requiring an official search to be made pursuant to section 2 of the Conveyancing Act, 1882, shall deliver to the officer a declaration according to the Forms I. and II. in the Appendix, purporting to be signed by the person requiring the search to be made, or by a solicitor, which declaration may be accepted by the officer as sufficient evidence that the search is required for the purposes of the said section. The declaration may be made in the requisition, or in a separate document.

3. Requisitions for searches under section 2 of the Conveyancing Act, 1882, shall be in the Forms III. to VI. in the Appendix, and the certificates of the results of such searches shall be in the Forms VII. to X., with such modifications as the circumstances may require.

4. Where a certificate setting forth the result of a search in any name has been issued, and it is desired that the search be continued in that name, to a date not more than one calendar month subsequent to the date of the certificate, a requisition in writing in the Form XI. in the Appendix may be left with the proper officer, who shall cause the search to be continued, and the result of the continued search shall be endorsed on the original certificate and upon any office copy thereof which may have been issued, if produced to the officer for that purpose. The endorsement shall be in the Form XII. in the Appendix with such modifications as circumstances require.

5. Every person shall upon payment of the prescribed fee be entitled to have a copy of the whole or any part of any deed or document enrolled in the Enrolment Department of the Central Office.

RULE UNDER THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

6. An alphabetical index of the names of the grantors of all powers of attorney filed under section 48 of the Conveyancing and Law of Property Act, 1881, shall be prepared and kept by the proper officer, and any person may search the index upon payment of the prescribed fee. No person shall take copies of or extracts from any power of attorney or other document filed under that section and produced for his inspection. All copies or extracts which may be required shall be made by the Office.

(Signed) SELBORNE, C.
COLERIDGE, L. C. J.
G. JESSEL, M. R.
NATH. LINDLEY, L. J.
H. MANISTY, J.
EDW. FRY, J.

APPENDIX.

FORM I.

DECLARATION BY SEPARATE INSTRUMENT AS TO PURPOSES OF SEARCH.

Supreme Court of Judicature,
Central Office.
To the Clerk of Enrolments
or The Registrar of
Royal Courts of Justice,
London.

In the matter of A.B. and C.D.

I declare that the search (or searches) in the name (or names) of _____ required to be made by the requisition for search, dated the _____ is (or are) required for the purposes of a sale (or mortgage, or lease, or as the case may be), by A.B. to C.D.

Signature, }
address, and }
description. }

Dated _____

FORM II.

DECLARATION AS TO PURPOSES OF SEARCH CONTAINED IN THE REQUISITION.

I declare that the above-mentioned search is required for the purposes of a sale (or mortgage, or lease, or as the case may be), by A.B. to C.D.

CONVEYANCING ACT RULES, 1882.

FORM III.

REQUISITION FOR SEARCH IN THE ENROLMENT OFFICE, UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Clerk of Enrolments,
Royal Courts of Justice,
London.

In the matter of A.B. and C.D.

Pursuant to section 2 of the Conveyancing Act, 1882, search for deeds and other documents enrolled during the period from 18 to 18 both inclusive, in the following name (or names).

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(Add declaration, Form II.)

(State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.)

Signature, address, and
description of person
requiring the search. }

Dated

FORM IV.

REQUISITION FOR SEARCH IN THE BILLS OF SALE DEPARTMENT UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Bills of Sale,
Royal Courts of Justice,
London.

In the matter of A.B. and C.D.

Pursuant to section 2 of the Conveyancing Act, 1882, search for instruments registered or re-registered as bills of sale during the period from 18 to 18 both inclusive in the following name (or names).

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(Add declaration, Form II.)

(State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.)

Signature, address, and
description of person
requiring the search. }

Dated

FORM V.

REQUISITION FOR SEARCH IN THE REGISTRY OF CERTIFICATES OF ACKNOWLEDGMENTS OF DEEDS BY MARRIED WOMEN UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Certificates of Acknowledgments of Deeds by Married Women.
Royal Courts of Justice,
London.

In the matter of A.B. and C.D.

Pursuant to section 2 of the Conveyancing Act, 1882, search for Certificates of Acknowledgments of Deeds by Married Women during the period from 18 to 18 both inclusive, according to the particulars mentioned in the schedule hereto.

THE SCHEDULE.

Surname.	Christian Name or Names of Wife and Husband.	Date of Certificate if the Search relates to a particular Certificate.	Date of Deed, if the Search relates to a particular Deed.	County, Parish, or Place in which the Property is situate, or other description of the Property.

(Add declaration, Form II.)

(State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.)

Signature, address, and }
description of person }
requiring the search. }

Dated

FORM VI.

REQUISITION FOR SEARCH IN THE REGISTRY OF JUDGMENTS UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Judgments,
Royal Courts of Justice,
London.

In the matter of A.B. and C.D.

Pursuant to section 2 of the Conveyancing Act, 1882, search for judgments, revivals, decrees, orders, rules, and *lis pendens*, and for judgments at the suit of the Crown, statutes, recognizances, Crown bonds, inquisitions, and acceptances of office for the period from 18 to 18, both inclusive and for executions for the period from the 29th July, 1864, (or as the case may require) to the 18, both inclusive, and for annuities for

CONVEYANCING ACT RULES, 1882.

the period from the 26th April, 1855 (or as the case may require) to the 18 , both inclusive in the following name (or names).

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(Add declaration, Form II.)

(State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.)

Signature, address, and }
description of person }
requiring the search. }

Dated _____

FORM VII.

CERTIFICATE OF SEARCH BY ENROLMENT DEPARTMENT UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office,
Enrolment Department.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.

In the matter of A.B. and C.D.

This is to certify that a search has been diligently made in the Enrolment Office for deeds and other documents in the name (or names) of _____ for the period from _____ to _____, both inclusive, and that no deed or other document has been enrolled in the said office in that name (or in any one or more of those names) during the period aforesaid.

or and that except the _____ described in the schedule hereto no deed or document has been enrolled in that name (or in any one or more of those names) during the period aforesaid.

THE SCHEDULE.

Dated _____

FORM VIII.

CERTIFICATE OF SEARCH BY THE REGISTRAR OF BILLS OF SALE UNDER THE CONVEYANCING ACT, 1882.

Supreme Court of Judicature,
Central Office,
Bills of Sale Department.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.

In the matter of A.B. and C.D.

This is to certify that a search has been diligently made in the Register of Bills of Sale in the name (or names) of _____ for the period from _____ 18 to _____ 18 both inclusive, and that no instrument has been registered or re-registered as a bill of sale in that name (or in any one or more of those names) during that period,

or, and that except the described in the schedule hereto, no instrument has been registered or re-registered as a bill of sale in that name (or in any one or more of those names) during the period aforesaid.

THE SCHEDULE.

Dated .

FORM IX.

CERTIFICATE OF SEARCH BY REGISTRAR OF CERTIFICATES OF ACKNOWLEDGMENTS OF DEEDS BY MARRIED WOMEN UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Registry of Certificates of Acknowledgments of Deeds by Married Women.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.

In the matter of A.B. and C.D.

This is to certify that a search has been diligently made in the Office of the Registrar of Certificates of Acknowledgments of Deeds by Married Women in the name (or names) of for the period from to 18 , both inclusive, for a certificate dated the or for certificates of acknowledgment of a deed dated the

or for certificates of acknowledgments of deeds relating to (fill in the description of the property from the Requisition) and that no such certificate has been filed in that name (or in any one or more of those names) during the period aforesaid,

or and that except the certificate (or certificates) described in the Schedule hereto, no such certificate has been filed in that name (or in any one or more of those names) during the period aforesaid.

Surname.	Christian Names of Wife and Husband.	Date of Certificate.	Date of Deed.	County, Parish, or Place in which Property situated, or other description of the Property.

Dated day of 188 .

FORM X.

CERTIFICATE OF SEARCH BY REGISTRAR OF JUDGMENTS UNDER CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

The Registry of Judgments.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.

In the matter of A.B. and C.D.

This is to certify that a search has been diligently made in the Office of the Registrar of Judgments for judgments, revivals, decrees, orders, rules, lis pendens,

judgments at the suit of the Crown, statutes, recognizances, Crown bonds, inquiries, and acceptances of office, for the period from 18 to 18, both inclusive, and for executions for the period from 18 to 18, both inclusive, and for annuities for the period from to 18, both inclusive, in the name (or names) of and that no judgment, revival, decree, order, rule, *lis pendens*, judgment at the suit of the Crown, statute, recognizance, Crown bond, inquiry, acceptance of office, execution, or annuity has been registered or re-registered in that name (or in any one or more of those names) during the respective periods covered by the aforesaid searches,

or and that except the mentioned in the Schedule hereto, no judgment, revival, decree, order, rule, *lis pendens*, judgment at the suit of the Crown, statute, recognizance, Crown bond, inquiry, acceptance of office, execution, or annuity has been registered or re-registered in that name (or in any one or more of those names) during the respective periods covered by the aforesaid search.

THE SCHEDULE.

Dated the day of 188 .

FORM XI.

REQUISITION FOR CONTINUATION OF SEARCH UNDER THE CONVEYANCING ACT, 1882.

Supreme Court of Judicature,
Central Office.

Requisition for continuation of Search.

To the Clerk of Enrolments
or The Registrar of
Royal Courts of Justice,
London, W.C.

In the matter of A. B. and C. D.

Pursuant to section 2 of the Conveyancing Act, 1882, continue the search for [], made pursuant to the requisition dated the day of 18, in the name (or names) of , from the day of to the day of 18, both inclusive.

Signature, address, and
description of person
requiring the search. }

Dated .

FORM XII.

CERTIFICATE OF RESULT OF CONTINUED SEARCH UNDER THE CONVEYANCING ACT, 1882,
S. 2, TO BE ENDORSED ON ORIGINAL CERTIFICATE.

This is to certify that the search (or searches) mentioned in the within written certificate has (or have) been diligently continued to the day of , 18, and that up to and including that date [except the mentioned in the schedule hereto (*these words to be omitted where nothing is found*)], no deed or other document has been enrolled, or no instrument has been registered, or re-registered, as a bill of sale, or no certificate has been filed, or no judgment, revival, decree, order, rule, *lis pendens*, judgment at the suit of the Crown, statute, recognizance, Crown bond, inquiry, acceptance of office, execution or annuity, has been registered or re-registered in the within-mentioned name (or in any one or more of the within-mentioned names).

Dated .

SETTLED LAND ACT, 1882.

45 & 46 Vict.
c. 38.

45 & 46 VICT. CAP. 38.

An Act for facilitating Sales, Leases, and other dispositions of Settled Land, and for promoting the execution of Improvements thereon.

[10th August, 1882.]

BE IT ENACTED, &c. as follows :

I.—PRELIMINARY.

- 1.—(1.) This Act may be cited as the Settled Land Act, 1882. Short title ;
 (2.) This Act, except where it is otherwise expressed, shall commence commence-
 and take effect from and immediately after the thirty-first day of ment ;
 December, one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.
 (3.) This Act does not extend to Scotland. extent.

II.—DEFINITIONS.

- 2.—(1.) Any deed, will, agreement for a settlement, or other agree- Definition of
 ment, covenant to surrender, copy of court roll, Act of Parliament, or settlement,
 other instrument, or any number of instruments, whether made or tenant for
 passed before or after, or partly before and partly after, the commence- life, &c.
 ment of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires (a).
 (2.) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.
 (3.) Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.
 (4.) The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.
 (5.) The person who is for the time being, under a settlement, beneficially entitled to possession of settled land, for his life, is for purposes of this Act the tenant for life of that land, and the tenant for life under that settlement (aa).
 (6.) If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act.

45 & 46 Vict.
c. 38, s. 2.

(7.) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent.

(8.) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement (*b*).

(9.) Capital money arising under this Act, and receivable for the trusts and purposes of the settlement, is in this Act referred to as capital money arising under this Act.

(10.) In this Act—

(i.) Land includes incorporeal hereditaments, also an undivided share in land; income includes rents and profits; and possession includes receipt of income :

(ii.) Rent includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, payment includes delivery; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift :

(iii.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease is a lease for any building purposes or purposes connected therewith :

(iv.) Mines and minerals mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and mining purposes include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works, suitable for those purposes; and a mining lease is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes :

(v.) Manor includes lordship, and reputed manor or lordship :

(vi.) Steward includes deputy steward, or other proper officer of a manor :

(vii.) Will includes codicil, and other testamentary instrument, and a writing in the nature of a will :

(viii.) Securities include stocks, funds, and shares :

(ix.) Her Majesty's High Court of Justice is referred to as the Court :

(x.) The Land Commissioners for England as constituted by this Act are referred to as the Land Commissioners: 45 & 46 Vict.
c. 38, s. 2.

(xi.) Person includes corporation.

(a) Where a share under a settlement has been settled, the original settlement nevertheless remains the "settlement" under the Act, and a summons for the appointment of new trustees need not be entitled in the matter of the derivative settlement nor be served on the trustees of it (*Re Knowles*, 27 Ch. D. 707, where Pearson, J. declined to appoint two members of the same family trustees). "Settle-
ment."

(aa) See *Re Jones*, 24 Ch. D. 583; *affd.* 26 Ch. D. 736.

(b) Where property had been devised to trustees upon trust, subject to an annuity (which had ceased) and a mortgage, to pay the rents to a person for his life, or to permit him to receive the same, and after his death to sell the property and stand possessed of the proceeds for the benefit of his children, and the tenant for life was of advanced age, and had only one child, who had sold her reversionary interest in the property, it was held that the property was settled land within the meaning of the Act, and that the tenant for life had a power of sale over it; but that there were not, under the settlement, any trustees who, as required by the Act, had power to sell, or consent to a sale, and to whom notice had to be given, and accordingly the tenant for life was, at the instance of the purchaser of the reversion, restrained from selling the property until judgment or further order, or until trustees for the purposes of the Act were appointed, and due notice given to them of an intention to sell: and the Court, under the circumstances of the case, directed that notice should be given to the plaintiff of any application to appoint such trustees (*Wheelwright v. Walker*, 23 Ch. D. 752; 31 W. R. 363). See also as to the construction of this sub-section, *Re Garnett Orme*, 25 Ch. D. 595.

III.—SALE; ENFRANCHISEMENT; EXCHANGE; PARTITION.

General Powers and Regulations.

3. A tenant for life—

(i.) May sell the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same (c); and

Powers to
tenant for life
to sell, &c.

(ii.) Where the settlement comprises a manor,—may sell the seignory of any freehold land within the manor, or the freehold and inheritance of any copyhold or customary land, parcel of the manor, with or without any exception or reservation of all or any mines or minerals, or of any rights or powers relative to mining purposes, so as in every such case to effect an enfranchisement; and

(iii.) May make an exchange of the settled land, or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and

(iv.) Where the settlement comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares,—may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition.

(c) As to the very extensive nature of the power of sale conferred on tenants for life by the Act, see *Re Chaytor*, 25 Ch. D. 651, where there was a previous private Act authorizing the trustees to sell subject to a certain restriction, and it was held that the tenant for life could sell free from the restriction; *Thomas v. Williams*, 24 Ch. D. 558. See, however, sect. 53, *infra*.

[Sect. 4 lays down certain rules to be observed in the exercise of the powers conferred by sect. 3. See sect. 53, *infra*.]

45 & 46 Vict.
c. 38, s. 5.

Special Powers.

[Sect. 5 provides for the transfer of incumbrances on land sold, exchanged, or partitioned.]

IV.—LEASES.

General Powers and Regulations.

Power for tenant for life to lease for ordinary or building or mining purposes.

6. A tenant for life may lease the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding—

- (i.) In case of a building lease, ninety-nine years :
- (ii.) In case of a mining lease, sixty years :
- (iii.) In case of any other lease, twenty-one years.

[Sect. 7 lays down certain rules to be observed in the granting of leases generally; they are to be by deed, at the best rent, &c.]

Building and Mining Leases.

[Sect. 8 lays down regulations to be observed respecting building leases.]

[Sect. 9 lays down regulations to be observed in granting mining leases.]

Variation of building or mining lease according to circumstances of district.

10.—(1.) Where it is shown to the Court with respect to the district in which any settled land is situate, either—

- (i.) That it is the custom for land therein to be leased or granted for building or mining purposes for a longer term or on other conditions than the term or conditions specified in that behalf in this Act, or in perpetuity ; or
- (ii.) That it is difficult to make leases or grants for building or mining purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Act, or except in perpetuity ;

the Court may, if it thinks fit, authorize generally the tenant for life to make from time to time leases or grants of or affecting the settled land in that district, or parts thereof, for any term or in perpetuity, at fee-farm or other rents, secured by condition of re-entry, or otherwise, as in the order of the Court expressed, or may, if it thinks fit, authorize the tenant for life to make any such lease or grant in any particular case.

(2.) Thereupon the tenant for life, and subject to any direction in the order of the Court to the contrary, each of his successors in title being a tenant for life, or having the powers of a tenant for life under this Act, may make in any case, or in the particular case, a lease or grant of or affecting the settled land, or part thereof, in conformity with the order (d).

(d) As to the procedure on an application to the Court, see generally the Settled Land Act Rules, 1882, *post*, p. 157, and as to orders under this section see *ibid.* r. 9.

[By sect. 11, part of the rent under a mining lease (in the absence of a contrary intention in the settlement) is to be set aside as capital money. See *Re Duke of Newcastle*, 24 Ch. D. 129.]

Special Powers.

[Sect. 12 confers leasing powers for special objects.]

Surrenders.

[Sect. 13 authorises the tenant for life to accept surrenders and grant new leases.]

45 & 46 Vict.
c. 38, s. 13.

Copyholds.

[Sect. 14 empowers the tenant for life to grant licences to copyholders.]

V.—SALES, LEASES, AND OTHER DISPOSITIONS.

Mansion and Park.

15. Notwithstanding anything in this Act, the principal mansion house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, shall not be sold or leased by the tenant for life, without the consent of the trustees of the settlement, or an order of the Court (*ad*). Restriction as to mansion house, park, &c.

(*ad*) Where the tenant for life, who was in ill-health and resided permanently elsewhere, was about to sell the whole estate, which was in proximity to a large town, so that the bulk of it could not be sold advantageously without the mansion house and grounds, it was held a proper case for selling the house (*Re Brown's Will*, 27 Ch. D. 179). As to service, see S. L. A. Rules, r. 4, *infra*.

Streets and Open Spaces.

[Sect. 16 authorises the tenant for life on a sale or grant for building purposes or a building lease to lay out any part of the settled estate for streets, open spaces, &c., for the benefit of the residents on the settled land.]

Surface and Minerals apart.

[Sect. 17 authorises separate dealing with the surface and the minerals, with or without a grant or reservation of wayleaves. See *Re Duke of Newcastle*, 24 Ch. D. 129.]

Mortgage.

[Sect. 18 authorises the raising of money for equality of exchange, &c., by way of mortgage; the money to be capital money arising under the Act.]

Undivided Share.

[Sect. 19 empowers the tenant for life of an undivided share to concur in the exercise of any power.]

Conveyance.

[Sect. 20 relates to the completion of any sale, lease, exchange, &c., by conveyance, &c.]

VI.—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

21. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorized object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely):

Capital money under Act; investment, &c. by trustees or Court.

- (i.) In investment on Government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the

45 & 46 Vict.
c. 38, s. 21.

- date of investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities (e) :
- (ii.) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land-tax, rentcharge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land (f) :
 - (iii.) In payment for any improvement authorized by this Act :
 - (iv.) In payment for equality of exchange or partition of settled land :
 - (v.) In purchase of the seignory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land :
 - (vi.) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life :
 - (vii.) In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land :
 - (viii.) In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes :
 - (ix.) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge :
 - (x.) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions, of this Act :
 - (xi.) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

Investment
on debenture
stock.

(e) Money bequeathed to trustees to be laid out in the purchase of land to be settled in strict settlement may be invested in debenture stock (*Re Mackenzie*, 23 Ch. D. 750). The Court will not dispense with evidence that the company has paid the dividend on its ordinary stock (*Re Byron*, 31 W. R. 517). See S. L. A. Rules, r. 12, *infra*.

(f) Sub-section 2 must be read thus : "In discharge of incumbrances affecting the inheritance of the settled land which is sold, or any other land which is the subject of the settlement." (*Re Chaytor*, 25 Ch. D. 651). The word "incumbrances" in sect. 21 does not include terminable charges, such as those created under the Improvement of Land Act, 1864, and similar statutes (*Re Knatchbull*, 27 Ch. D. 349).

Regulations
respecting
investment,

22.—(1.) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees

of the settlement or into Court, at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the Court, as the case may be, accordingly.

45 & 46 Vict.
c. 38, s. 22.

devolution,
and income of
securities, &c.

(2.) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and in default thereof, according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees.

(3.) The investment or other application under the direction of the Court shall be made on the application of the tenant for life, or of the trustees.

(4.) Any investment or other application shall not during the life of the tenant for life be altered without his consent.

(5.) Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same persons successively, in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.

(6.) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

(7.) Those securities may be converted into money, which shall be capital money arising under this Act.

23. Capital money arising under this Act from settled land in England shall not be applied in the purchase of land out of England, unless the settlement expressly authorizes the same.

Investment
in land in
England.

[Sect. 24 directs how the land acquired by purchase, or in exchange, or on partition, is to be made subject to the settlement.]

VII.—IMPROVEMENTS.

Improvements with Capital Trust Money.

25. Improvements authorized by this Act are the making or execution on, or in connection with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes (namely):

Description of
improvements
authorized by
Act.

- (i.) Drainage, including the straightening, widening, or deepening of drains, streams, and watercourses:
- (ii.) Irrigation; warping:

45 & 46 Vict.
c. 38, s. 25.

- (iii.) Drains, pipes, and machinery for supply and distribution of sewage as manure :
- (iv.) Embanking or weiring from a river or lake, or from the sea, or a tidal water :
- (v.) Groynes ; sea walls ; defences against water :
- (vi.) Inclosing ; straightening of fences ; re-division of fields :
- (vii.) Reclamation ; dry warping :
- (viii.) Farm roads ; private roads ; roads or streets in villages or towns :
- (ix.) Clearing ; trenching ; planting :
- (x.) Cottages for labourers, farm-servants, and artisans, employed on the settled land or not :
- (xi.) Farmhouses, offices, and outbuildings, and other buildings for farm purposes :
- (xii.) Saw-mills, scutch-mills, and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise :
- (xiii.) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption :
- (xiv.) Tramways ; railways ; canals ; docks :
- (xv.) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes :
- (xvi.) Markets and market-places :
- (xvii.) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connexion with the conversion of land into building land :
- (xviii.) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connexion with any of the objects aforesaid :
- (xix.) Trial pits for mines, and other preliminary works necessary or proper in connexion with development of mines :
- (xx.) Reconstruction, enlargement, or improvement of any of those works.

Approval by
Land Com-
missioners of
scheme for
improvement
and payment
thereon.

26.—(1.) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorized by this Act, he may submit for approval to the trustees of the settlement, or to the Court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.

(2.) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on—

45 & 46 Vict.
c. 38, s. 26.

- (i.) A certificate of the Land Commissioners certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or on
- (ii.) A like certificate of a competent engineer or able practical surveyor nominated by the trustees and approved by the Commissioners, or by the Court, which certificate shall be conclusive as aforesaid; or on
- (iii.) An order of the Court directing or authorizing the trustees to so apply a specified portion of the capital money.

(3.) Where the capital money to be expended is in Court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of the Commissioners, or of a competent engineer or able practical surveyor, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement (*ff*).

(*ff*) This section is not retrospective; see *Re Knatchbull*, 27 Ch. D. 349, cited in note (*f*) to sect. 21, *ante*, p. 144.

[By sects. 27, 28, and 29, the tenant for life may join or concur with any other person in executing any improvement authorized by the Act, or contributing to the cost thereof, and is bound to maintain and repair and keep insured every such improvement, and is not to be liable for waste in executing or repairing any such improvement.]

[Sect. 30 extends sect. 9 of the Improvement of Land Act, 1864.]

VIII.—CONTRACTS.

31. [Sub-sects. 1 and 2 empower the tenant for life to contract for sale, partition, lease, &c., such contracts to bind and enure for the benefit of the settled land.]

Power for tenant for life to enter into contracts.

(3.) The Court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof.

[By sub-sect. 4 any preliminary contract under the Act for a lease is not to form part of the title to the lease.]

IX.—MISCELLANEOUS PROVISIONS.

32. Where, under an Act incorporating or applying, wholly or in part, the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, or under the Settled Estates Act, 1877, or under any other Act, public, local, personal, or private, money is at the commencement of this Act

Application of money in Court under Lands Clauses and other Acts.

45 & 46 Vict.
c. 38, s. 32.

8 & 9 Vict.
c. 18.
23 & 24 Vict.
c. 106.
32 & 33 Vict.
c. 18.
40 & 41 Vict.
c. 18.

in Court, or is afterwards paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorized by the Act under which the money is in Court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure as if the modes of investment or application authorized by this Act were authorized by the Act under which the money is in Court (*g*).

(*g*) See as to costs, *Re Hanbury*, W. N. (1883) 116; 31 W. R. 784. The fund has been ordered to be paid to trustees appointed for the purposes of the Act (*Re Wright*, 24 Ch. D. 662; *Re Harrop*, 24 Ch. D. 717).

Money paid into Court under the Lands Clauses Act, in respect of land belonging to the trustees of a charity without power of sale is money "liable to be laid out in the purchase of land to be made subject to a settlement," and may be invested as capital money arising under this Act (*Re Byron*, 23 Ch. D. 171).

Application of money in hands of trustees under powers of settlement.

33. Where, under a settlement, money is in the hands of trustees and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under this Act.

Application of money paid for lease or reversion.

34. Where capital money arising under this Act is purchase money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease estate, or interest, the trustees of the settlement or the Court, as the case may be, and in the case of the Court on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested, accumulated and paid in such manner as, in the judgment of the trustees or of the Court, as the case may be, will give to the parties interested in the money the like benefit therefrom as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be (*h*).

(*h*) Cf. sect. 74 of the Lands Clauses Act and notes thereto, *ante*, p. 33, and sect. 37 of the Settled Estates Act, 1877. As to service on an application under this section, see S. L. A. Rules, 1882, r. 4, *infra*.

Cutting and sale of timber, and part of proceeds to be set aside.

35.—(1.) Where a tenant for life is impeachable for waste in respect of timber (*hh*), and there is on the settled land timber ripe and fit for cutting, the tenant for life, on obtaining the consent of the trustee of the settlement or an order of the Court, may cut and sell the timber, or any part thereof.

(2.) Three fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act, and the other fourth part shall go as rents and profits.

(*hh*) As to what trees are timber, see *Honywood v. Honnywood*, 18 Eq. 306.

Proceedings for protection

36. The Court may, if it thinks fit, approve of any action, defence

petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement (*i*).

45 & 46 Vict.
c. 38, s. 36.
or recovery of
land settled
or claimed
as settled.

(*i*) This section takes the place of sect. 17 of the Settled Estates Act, 1877, which is repealed by sect. 64 of this Act, *infra*. See *Re De La Warr*, 16 Ch. D. 587; *Re Twyford Abbey*, 30 W. R. 268.

37.—(1.) Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them. **Heirlooms.**

(2.) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels, of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

(3.) A sale or purchase of chattels under this section shall not be made without an order of the Court (*j*).

(*j*) See *Re Brown's Will*, 27 Ch. D. 179, where an order was made for sale with liberty for the tenant for life to bid.

X.—TRUSTEES.

38.—(1.) If at any time there are no trustees of a settlement within the definition in this Act (*k*), or where in any other case it is expedient, for purposes of this Act, that new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of the tenant for life or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder, or otherwise, or, in the case of an infant, of his testamentary or other guardian, or next friend, appoint fit persons to be trustees under the settlement for purposes of this Act (*l*). **Appointment of trustees by Court.**

(*k*) See *Re Garnett Orme*, 25 Ch. D. 595.

(*l*) See *Wheelwright v. Walker*, 23 Ch. D. 752; 31 W. R. 363, cited in note (*b*) to s. 2, *ante*, p. 141; *Re Taylor*, 31 W. R. 596; W. N. (1883) 95, cited in note to sect. 62, *infra*. The solicitor of the tenant for life (*Wheelwright v. Walker*; *Re Kemp*, 24 Ch. D. 485), or the tenant for life himself (*Re Harrop*, 24 Ch. D. 717), should not be appointed trustee. As to payment of the fund to trustees appointed for the purposes of the Act, see *Re Wright*, 24 Ch. D. 662; *Re Harrop*, 24 Ch. D. 717. As to the title of the summons, see *Re Parry*, W. N. (1884) 43. The application to appoint new trustees is made by summons; see Settled Land Act Rules, r. 2, *infra*; and as to service, see *ibid.*, r. 4.

(2.) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative

45 & 46 Vict.
c. 38, s. 38.

for the time being of the last surviving or continuing trustee, shall for purposes of this Act become and be the trustees or trustee of the settlement.

Number of
trustees to
act.

39.—(1.) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the settlement authorizes the receipt of capital trust money of the settlement by one trustee.

(2.) Subject thereto, the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

[By sect. 40 trustees' receipts are to be good discharges, and sects. 41, 42 and 43 contain usual provisions for the protection and reimbursement of trustees.]

Reference of
differences -
to Court.

44. If at any time a difference arises between a tenant for life and the trustees of the settlement, respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the Court may, on the application of either party, give such directions respecting the matter in difference, and respecting the costs of the application, as the Court thinks fit (*m*).

(*m*) See for directions as to costs of sales, *Re Beck*, 24 Ch. D. 608. As to service, see Settled Land Act Rules, r. 4, *infra*.

[By sect. 45 a tenant for life intending to make a sale, exchange, partition, lease, mortgage or charge, is required to give notice to the trustees. It was held that a merely general notice of intention to sell, &c. was not sufficient (*Re Ray*, 25 Ch. D. 464). See now sect. 5 of the Settled Land Act, 1884, *infra*.]

XI.—COURT; LAND COMMISSIONERS; PROCEDURE.

Regulations
respecting
payments into
Court, appli-
cations, &c.

46.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court effectually exonerates therefrom the person making the payment.

(3.) Every application to the Court shall be by petition, or by summons at Chambers.

(4.) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.

(5.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(6.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.

(7.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made accordingly (*n*).

(8.) The powers of the Court may, as regards land in the County

39 & 40 Vict.
c. 59.
44 & 45 Vict.
c. 68.

Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

45 & 46 Vict.
c. 38, s. 46.

(9.) General Rules, and Rules for the Court of Chancery of the County Palatine, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act ⁽ⁿ⁾.

(10.) The powers of the Court may, as regards land not exceeding in capital value five hundred pounds, or in annual rateable value thirty pounds, and, as regards capital money arising under this Act, and securities in which the same is invested, not exceeding in amount or value five hundred pounds, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding in value five hundred pounds, be exercised by any County Court within the district whereof is situate any part of the land which is to be dealt with in the Court, or from which the capital money to be dealt with in the Court arises under this Act, or in connexion with which the personal chattels to be dealt with in the Court are settled.

⁽ⁿ⁾ For the rules made under this provision, see the Settled Land Act Rules, 1882, *infra*.

47. Where the Court directs that any costs, charges, or expenses be paid out of property subject to a settlement, the same shall, subject and according to the directions of the Court, be raised and paid out of capital money arising under this Act, or other money liable to be laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money, or out of income of any such money or investments, or out of any accumulations of income of land, money, or investments, or by means of a sale of part of the settled land in respect whereof the costs, charges, or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the Court directs, and either by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term, or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the Court thinks fit.

Payment of
costs out of
settled pro-
perty.

[Sects. 48 and 49 provide that the Enclosure Commissioners, the Copyhold Commissioners and the Tithe Commissioners shall constitute one body, to be styled the Land Commissioners for England; and define their powers, &c.]

[By sect. 50 the powers under the Act of a tenant for life are not assignable, and remain exercisable by him notwithstanding any assignment, by law or otherwise, of his interest under the settlement; and a contract not to exercise any of his powers under the Act is void.]

[By sects. 51 and 52 any prohibition or limitation against the exercise of the powers is void, and no exercise of any power under the Act is to create a forfeiture.]

45 & 46 Vict. c. 38, ss. 51-55. A tenant for life, in exercising any of the powers, is to be deemed a trustee for all the persons entitled under the settlement (s. 53); a general protection is given to purchasers, &c. dealing in good faith (s. 54); and the powers and authorities conferred by the Act are to be exerciseable from time to time (s. 55).]

Saving for other powers.

56.—(1.) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exerciseable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative.

(2.) But, in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exerciseable for any purpose provided for in this Act.

(3.) If a question arises, or a doubt is entertained, respecting any matter within this section, the Court may, on the application of the trustees of the settlement, or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon (o).

(o) See as to this section, *Re Barrs-Haden*, W. N. (1883) 188; 32 W. R. 194, where an order had been made under the Settled Estates Act, 1877, enabling the trustees to sell, but it had not been acted on; *Re Duke of Newcastle*, 24 Ch. D. 129. See also sect. 6 of the Settled Land Act, 1884, *infra*.

A tenant for life with leasing powers under a will became bankrupt. The trustee in bankruptcy presented a petition asking that the powers of leasing might be exercised by the trustees of the will; it was suggested, but denied, that the tenant for life declined to do anything. Kay, J., held that it would be improper to grant general leasing powers to the trustees, and that the proper course would be for the parties interested to come to the Court with a scheme, and show that it was for the benefit of the estate that some particular lease should be granted; and then, if the tenant for life contumaciously refused to exercise his powers, the Court would know how to deal with the case; and his lordship, with the consent of all parties, ordered the petition to stand over, with liberty to amend (*Re Mansel*, W. N. (1884) 209).

[By sect. 57, additional powers may be conferred by the settlement, and will be exerciseable as if conferred by the Act.]

XIII.—LIMITED OWNERS GENERALLY.

Enumeration of other limited owners, to have powers of tenant for life.

58.—(1.) Each person as follows shall, when the estate or interest of each of them is in possession (p) have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act (namely):

(i.) A tenant in tail, including a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with

money provided by Parliament in consideration of public services : 45 & 46 Vict.
c. 38, s. 58.

- (ii.) A tenant in fee simple, with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event (*q*):
- (iii.) A person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown :
- (iv.) A tenant for years determinable on life, not holding merely under a lease at a rent (*r*) :
- (v.) A tenant for the life of another, not holding merely under a lease at a rent :
- (vi.) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose (*r*) :
- (vii.) A tenant in tail after possibility of issue extinct :
- (viii.) A tenant by the curtesy :
- (ix.) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not (*s*), or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event.

(2.) In every such case the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised.

(3.) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

(*p*) See *Re Parry*, W. N. (1884) 43.

(*q*) See as to this sub-section, *Re Morgan*, 24 Ch. D. 114.

(*r*) See *Re Hazle*, 26 Ch. D. 428.

(*s*) A person may be "entitled to the income of land under a trust or direction for payment thereof to him during his life, subject to expenses of management," within this sub-section, although the estates are so heavily encumbered that he has never received anything, and is not likely to do so (*Re Jones*, 24 Ch. D. 583; affirmed, 26 Ch. D. 736).

XIV.—INFANTS; MARRIED WOMEN; LUNATICS.

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof (*t*).

Infant absolutely entitled to be as tenant for life.

(*t*) See *Re Wells*, 31 W. R. 764; W. N. (1883) 111.

45 & 46 Vict.
c. 38, s. 60.

Tenant for
life, infant.

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant; either generally or in a particular instance, orders (*u*).

(*u*) See *Re Duke of Newcastle*, 24 Ch. D. 129; 31 W. R. 782; *Re James*, W. N. (1884) 172. In appointing trustees to sell an infant's estate the Court may authorise the sale to be made out of Court (*Re Price*, 27 Ch. D. 552).

Married
woman, how
to be affected.

61.—(1.) The foregoing provisions of this Act do not apply in the case of a married woman.

(2.) Where a married woman who, if she had not been a married woman, would have been a tenant for life or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a feme sole, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(4.) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5.) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

Tenant for
life, lunatic.

62. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of lunatics, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate (*v*).

(*v*) Where there were no trustees of the settlement in existence it was considered that new trustees should be appointed before the powers of the Act could be exercised, and a petition by the committee of the tenant for life, who was a lunatic, for power to grant a building lease of part of the settled property was directed to stand over for the purpose of appointing new trustees, with liberty to amend by stating the appointment of trustees, and that they had been served with notice of the

petition (*Re Taylor*, 31 W. R. 596 ; W. N. (1883) 95). The committee of a lunatic tenant for life cannot give a valid notice under sect. 45 unless he has obtained authority from the L.J.J. so to do (*Re Ray*, 25 Ch. D. 464). 45 & 46 Vict. o. 38, s. 62.

XV.—SETTLEMENT BY WAY OF TRUSTS FOR SALE.

63.—(1.) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, is subject to a trust or direction for sale of that land, estate, or interest, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale, or any part of that money or income, for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period (*w*), and whether absolutely, or subject to a trust for accumulation of income for payment of debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons, if any, who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to, or approval of, or control over the sale, or if under the settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act are for purposes of this Act trustees of the settlement.

(2.) In every such case the provisions of this Act referring to a tenant for life, and to a settlement, and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised, subject and except as in this section provided (that is to say):

- (i.) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen, or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, or the income of that money, or the income of the land, until sale (as the case may require).
- (ii.) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorized by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled

45 & 46 Vict.
c. 38, s. 63.

land, but may, in addition to any other mode of application authorized by this Act, be applied in any mode in which capital money arising under the settlement from any such sale or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement.

- (iii.) Capital money arising under this Act from the settled land and the securities in which the same is invested, shall not for any purpose of disposition, transmission or devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land, have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interests, and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly.
- (iv.) Land of whatever tenure acquired under this Act by purchase, or in exchange, or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts, and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power of appointment or charging therein contained, are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging (*x*).

(*w*) See *Allaway v. Oakley*, W. N. (1884)67.

(*x*) See the Settled Land Act, 1884, ss. 6 & 7, and notes thereto, *infra*, p. 166.

XVI.—REPEALS.

Repeal of
enactments
in schedule.

64.—(1.) The enactments described in the schedule to this Act are hereby repealed.

(2.) The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, or of any order made, before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act.

XVII.—IRELAND.

[Sect. 65 relates only to Ireland.]

THE SCHEDULE.

45 & 46 Vict.
p. 38.
Section 64.

REPEALS.

23 & 24 Vict. c. 145. .. in part. ..	An Act to give to trustees, mortgagages, and others, certain powers now commonly inserted in settlements, mortgages, and wills	} in part; namely,—
	Parts I. and IV.	
	(being so much of the Act as is not repealed by the Conveyancing and Law of Property Act, 1881).	
27 & 28 Vict. c. 114. .. in part. ..	The Improvement of Land Act, 1864. in part; namely,— Sections seventeen and eighteen : Section twenty-one, from “either by a party” to “benefice) or” (inclusive); and from “or if the land owner” to “minor or minors” (inclusive); and “or circumstance” (twice): Except as regards Scotland.	
40 & 41 Vict. c. 18. in part. ..	The Settled Estates Act, 1877 in part; namely,— Section seventeen.	

RULES UNDER THE SETTLED LAND ACT, 1882.

[The Rules as issued have no marginal notes.]

1. The expression “the Act” used in these rules means the Settled Definitions. Land Act, 1882.

Words defined by the Act when used in these rules have the same meanings as in the Act.

The expression “the tenant for life” includes the tenant for life as defined by the Act, and any person having the powers of a tenant for life under the Act.

2. All applications to the Court under the Act may be made by summons in chambers; and if in any case a petition shall be presented without the direction of the judge, no further costs shall be allowed than would be allowed upon a summons. Applications to be by summons.

3. The forms in the appendix to these rules are to be followed as far as possible, with such modification as the circumstances require. All summonses, petitions, affidavits, and other proceedings under the Act are to be entitled according to Form 1 in the Appendix. Forms.

4. The persons to be served with notice of applications to the Court shall, in the first instance, be as follows:— Persons to be served.

In the case of applications by the tenant for life under sects. 15 and 34, the trustees.

In the case of applications under sect. 38, the trustees (if any), and the tenant for life if not the applicant.

In the case of applications under sect. 44, the tenant for life, or the trustees, as the case may be.

No other person shall in the first instance be served. Except as hereinbefore provided where an application under the Act is made by

any person other than the tenant for life, the tenant for life alone shall be served in the first instance.

Where no service required.

5. Except in the cases mentioned in the last rule, applications by a tenant for life shall not in the first instance be served on any person.

Judge may direct service or dispense with service.

6. The judge may require notice of any application under the Act to be served upon such persons as he thinks fit, and may give all necessary directions as to the persons (if any) to be served, and such directions may be added to or varied from time to time as the case may require. Where a petition is presented, the petitioner may, after the petition has been filed, apply by summons in chambers (Appendix, Form XXIII.) for directions with regard to the persons on whom the petition ought to be served. If any person not already served is directed to be served with notice of an application, the application shall stand over generally, or until such time as the judge directs. The judge may in any particular case, upon such terms (if any) as he thinks fit, dispense with service upon any person upon whom, under these rules, or under any direction of the judge, any application is to be served.

Title of tenant for life to be verified by affidavit.

7. It shall be sufficient upon any application under the Act to verify by affidavit the title of the tenant for life and trustees or other persons interested in the application unless the judge in any particular case requires further evidence. Such affidavit may be in the form or to the effect of Form No. VIII. in the Appendix.

Sales to be carried into effect out of Court.

8. Any sale authorised or directed by the Court under the Act, shall be carried into effect out of Court, unless the judge shall otherwise order, and generally in such manner as the judge may direct.

Orders, when to direct leases, &c. to be settled by the judge.

9. Where the Court authorises generally the tenant for life to make from time to time leases or grants for building or mining purposes under section 10 of the Act, the order shall not direct any particular lease or grant to be settled or approved by the judge unless the judge shall consider that there is some special reason why such lease or grant should be settled or approved by him. Where the Court authorises any such lease or grant in any particular case, or where the Court authorises a lease under section 15 of the Act, the order may either approve a lease or grant already prepared or may direct that the lease or grant shall contain conditions specified in the order or such conditions as may be approved by the judge at chambers without directing the lease or grant to be settled by the judge.

Payment of capital money into Court.

10. Any person directed by the tenant for life to pay into court any capital money arising under the Act may apply by summons at chambers for leave to pay the money into court. (Appendix, Forms IX., X., XI.)

Evidence.

11. The summons shall be supported by an affidavit setting forth—
1. The name and address of the person desiring to make the payment.
 2. The place where he is to be served with notice of any proceeding relating to the money.

3. The amount of money to be paid into court and the account to the credit of which it is to be placed.
4. The name and address of the tenant for life under the settlement by whose direction the money is to be paid into court.
5. The short particulars of the transaction in respect of which the money is payable.

12. The order made upon the summons for payment into court, may contain directions for investment of the money on any securities authorised by section 21, sub-section 1 of the Act, and for payment of the dividends to the tenant for life, either forthwith or upon production of the consent in writing of the applicant; the signature to such consent, to be verified by the affidavit of a solicitor. But if the transaction in respect of which the money arises, is not completed at the date of payment into court, the money shall not, without the consent of the applicant, be ordered to be invested in any securities other than those upon which cash under the control of the court may be invested.

Order may contain directions for investment.

13. Money paid into court under the Act shall be paid to an account, to be entitled in the matter of the settlement, with a short description of the mode in which the money arises if it is necessary or desirable to identify it, and in the matter of the Act. (Appendix Forms IX., X., and XI.).

Title of account.

14. Any person paying into court any capital money arising under the Act shall be entitled first to deduct the costs of paying the money into court.

Costs of payment in.

15. In all cases not provided for by the Act or these rules, the existing practice of the court as to costs and otherwise, so far as the same may be applicable, shall apply to proceedings under the Act.

Saving of existing practice.

16. The fees and allowances to solicitors of the court in respect to proceedings under the Act shall be those provided by the Rules of the Supreme Court as to costs for the time being in force, so far as they are applicable to such proceedings.

Solicitors' allowances.

17. The fees to be taken by the officers of the court in respect to proceedings under the Act shall be those provided by the Rules of the Supreme Court as to court fees for the time being in force, so far as they are applicable to such proceedings.

Court fees.

18. These rules shall come into operation from and after the 31st December, 1882.

Date of commencement of rules.

19. These rules may be cited as the Settled Land Act Rules, 1882.

Short title.

(Signed) SELBORNE, C.
 COLERIDGE, L. C. J.
 G. JESSEL, M. R.
 NATH. LINDLEY, L. J.
 H. MANISTY, J.
 E. FRY, J.

APPENDIX.

FORM I.

TITLE OF PROCEEDINGS.

In the High Court of Justice,
Chancery Division,
Vice-Chancellor Bacon,
or

Mr. Justice Chitty,

[*or other judge before whom the application is to be heard.*]

In the matter of the estate [*or, of the timber upon the estate*],
situate at in the county of , [*or, of the chattels*], settled by a
settlement made by an indenture dated the day of , and made
between [*or, by the Will of dated or, as the case may be*].

And in the matter of the Settled Land Act, 1882.

FORM II.

FORMAL PART OF SUMMONS.

Title as in Form I.

Let all parties concerned attend at my chambers at the Royal Courts of Justice
on day, the day of 18 , at o'clock in the forenoon, on
the hearing of an application—

(*a.*) On the part of *A.B.*, the tenant for life [*or, tenant in tail, or as the case may be, describing the nature of the applicant's estate*] under the above-mentioned settlement.

Or, (b.) On the part of *A.B.*, the tenant for life (*or, as the case may be*) under the above-mentioned settlement an infant, by *X.Y.*, his testamentary guardian [*or, guardian appointed by order dated the , or next friend*].

Or, (c.) On the part of *C.D.* and *E.F.*, the trustees of the above-mentioned settlement for the purposes of the above-mentioned Act.

Or, (d.) On the part of *G.H.*, the tenant for life in remainder [*or, tenant in tail in remainder, or as the case may be, describing the applicant's interest*] under the above-mentioned settlement subject to the life interest of *A.B.* [*or as the case may be*].

Or, (e.) On the part of *I.J.*, the purchaser of the lands [*or, the timber upon the lands, or chattels, or as the case may be*] settled by the above-mentioned settlement.

Or, (f.) On the part of *I.J.*, the lessee under a mining lease dated the 18 , granted under the powers of the above-mentioned Act of the mines and minerals under the lands settled by the above-mentioned settlement.

Or, (g.) On the part of *I.J.*, the mortgagee under a mortgage intended to be created under sect. 18 of the above-mentioned Act of the lands settled by the above-mentioned settlement.

Or, (h.) On the part of *K.L.*, interested under the contract herein-after mentioned.

Dated the day of 18

This summons was taken out by of , solicitor for the applicant.

To

(*Add the names of the persons (if any) on whom the summons is to be served.*)

FORM III.

SUMMONS UNDER SECT. 10 FOR GENERAL LEASING POWERS.

Title and formal parts as in Forms I. and II. *a.* or *b.*

1. That the applicant [*or in the case of an infant that the said X.Y. during the infancy of the said A.B.*], and each of his successors in title [*or in the case of an infant, each of the successors in title of the said A.B.*], being a tenant for life or having the powers of a tenant for life under the above-mentioned Act, may pursuant to sect. 10 of the said Act be authorised from time to time to make building [*or mining*] leases of the lands comprised in the said settlement for the term of years [*or in perpetuity*] on the conditions specified in the said Act [*or on other conditions than those specified in sects. 7 to 9 of the said Act*].

2. That the costs of this application may be directed to be taxed as between

solicitor and client, and that the same when taxed may be paid out of the property subject to the said settlement, and that for that purpose all necessary directions may be given.

Note.—The proposed conditions ought not, except in simple cases, to be set forth in the summons.

FORM IV.

SUMMONS UNDER SECTIONS 10 OR 15 FOR AUTHORITY TO GRANT A PARTICULAR LEASE WHERE THE TENANT FOR LIFE HAS ENTERED INTO A CONTRACT.

Title as in Form I. ;

Formal parts as in Form II. *a.* or *b.*

1. That the conditional contract, dated the 18 , and made between the applicant [*or* the said X.Y.] of the one part and of the other part, for a [*building or mining*] lease to the said of the hereditaments therein mentioned for the term, and upon the conditions therein stated, may, pursuant to sect. 10 [*or* 15] of the above-mentioned Act be approved, and that the said A.B. [*or* X.Y.] may be authorised to execute a lease in pursuance of the said contract.

2. (*Add application for costs as in Form III. 2.*)

FORM V.

SUMMONS UNDER SECTIONS 10 OR 15 FOR AUTHORITY TO GRANT A PARTICULAR LEASE WHEN NO CONTRACT HAS BEEN ENTERED INTO.

Title as in Form I.

Formal parts as in Form II. *a.* or *b.*

1. That the [*building or mining*] lease intended to be granted to of the lands [*or* of the mansion house, &c.], settled by the said settlement may, pursuant to sect. 10 [*or* 15] of the above-mentioned Act be approved, and that the applicant [*or* the said X.Y.] may be authorised to execute the same.

2. (*Add application for costs as in Form III. 2.*)

FORM VI.

SUMMONS UNDER SECTIONS 15, 35, OR 37 FOR A SALE OUT OF COURT OF THE PRINCIPAL MANSION HOUSE, AND DEMESNES, OR OF TIMBER OR CHATTELS.

Title as in Form I.

Formal parts as in Form II. *a.* or *b.*

1. That the applicant [*or in the case of an infant the said X.Y.*] may be authorised to sell the principal mansion house [*or* the timber ripe and fit for cutting] on the land [*or* the furniture and chattels] settled by the above-mentioned settlement in such manner and subject to such particulars, conditions, and provisions as he may think fit.

2. That the costs of this application may be taxed as between solicitor and client, and that C.D. and E.F., the trustees of the said settlement, may be at liberty to pay the costs when taxed out of the proceeds of the said sale [*or, in the case of timber, out of the three-fourths of the proceeds of the said sale to be set aside as capital money arising under the said Act*], *or if this Form is not applicable as in Form III. 2.*

FORM VII.

SUMMONS UNDER SECTIONS 15, 35, OR 37 FOR SALE BY THE COURT OF THE PRINCIPAL MANSION HOUSE, AND DEMESNES, OR OF TIMBER OR CHATTELS.

Title as in Form I.

Formal parts as in Form II. *a.* or *b.*

1. That the principal mansion house [*or* the timber ripe and fit for cutting] on the land [*or* the furniture and chattels], settled by the above-mentioned settlement, may be sold under the direction of the Court.

2. (*Application for costs as in Form III. 2.*)

FORM VIII.

AFFIDAVIT VERIFYING TITLE.

Title as in Form I.

I of make oath and say as follows:

1. By the above-mentioned settlement the above-mentioned lands [or certain chattels, *shortly describing them*] stand limited to uses [or upon trusts] under which A.B. is [or I am] beneficially entitled in possession as tenant for life [or tenant in tail or tenant in fee simple, with an executory gift over or as the case may be].

2. (*If it is the fact.*) The said A.B. is an infant of the age of years or thereabouts.

3. C.D. of and E.F. of are trustees under the said settlement, with a power of sale of the said lands [or with power of consent to or approval of the exercise of a power of sale of the said lands contained in the said settlement, or are the persons by the said settlement declared to be trustees thereof for purposes of the above-mentioned Act].

FORM IX.

SUMMONS UNDER SECTION 22 BY PURCHASER FOR PAYMENT INTO COURT OF PURCHASE-MONEY OF SETTLED LAND, TIMBER, OR CHATTELS.

Title as in Form I.

Formal parts as in Form II. e.

1. That the applicant may be at liberty to pay into Court to the credit of "In the matter of the settlement, dated the and made between [or will, &c.] proceeds of sale of the A. estate [or as the case may be], and in the matter of "the Settled Land Act, 1882," the sum of £ on account of the purchase-money of the said A. estate [or as the case may be], settled by the said settlement [or will, &c.].

2. That such directions may be given for the investment of the said sums when paid into Court, and the accumulation or payment of the dividends of the securities representing the same, as the Court may think proper.

FORM X.

SUMMONS UNDER SECTION 22 FOR PAYMENT INTO COURT BY LESSEE UNDER A MINING LEASE (*see* Section 11).

Title as in Form I.

Formal parts as in Form II. f.

1. That the applicant may be at liberty to pay into Court to the credit of "In the matter of the settlement dated the and made between [or the will, &c.] mineral rents under lease dated the and in the matter of the "Settled Land Act, 1882," the sum of £ being three-fourths [or one-fourth] of the rents payable by him under the said lease for the half-year ending the less £ the costs of payment into Court.

2. That the applicant may be at liberty on or before the day of and the day of in every year during the term created by the said lease to pay into Court to the credit aforesaid, so much of the rents payable by him under the said lease as is by section 11 of the above-mentioned Act directed to be set aside as capital money arising under the said Act after deducting therefrom the costs of payment in, the amount paid in to be verified by affidavit.

3. That the said sum of £ and all other sums to be paid into Court to the credit aforesaid, may be invested in the purchase of [*name the investment*], to the like credit, and that the dividends on the said when purchased, may be paid to A.B., the tenant for life under the above-mentioned settlement, during his life or until further order.

FORM XI.

SUMMONS UNDER SECTION 22 FOR PAYMENT INTO COURT BY MORTGAGEE (see Section 18).

Title as in Form I.

Formal parts as in Form II. *g*.

1. That the applicant may be at liberty to pay into Court to the credit of "Money advanced on mortgage of lands settled by the settlement dated the and made "between [or the will, &c.], and in the matter of the Settled Land Act, 1882," the sum of £ being the amount agreed to be advanced by him on mortgage of the lands comprised in the above-mentioned settlement, less the costs of payment in.

2. (*Add directions for investment as in Form VIII. 2.*)

FORM XII.

SUMMONS UNDER SECTION 26 (1).

Title as in Form I.

Formal parts as in Form II. *a*. or *b*.

1. That the scheme left at my chambers this day for the execution of improvements on the lands settled by the above-mentioned settlement may be approved.

2. (*Add application for costs as in Form III. 2.*)

FORM XIII.

SUMMONS UNDER SECTION 26, SUB-SECTION (2) (ii), FOR APPOINTMENT OF AN ENGINEER OR SURVEYOR.

Title as in Form I.

Formal parts as in Form II. *a*. or *b*.

1. That M.N., of engineer [or surveyor], may be approved as engineer [or surveyor], for the purposes of section 26, sub-section (2) (ii) of the above-mentioned Act.

2. (*Add application for costs as in Form III. 2.*)

FORM XIV.

NOMINATION OF AN ENGINEER OR SURVEYOR BY THE TRUSTEES.

Title as in Form I.

We C.D. of and E.F. of the trustees of the above-mentioned settlement for the purposes of the above-mentioned Act, hereby nominate of engineer [or surveyor], for the purposes of section 26, sub-section (2) (ii) of the said Act.

(Signed) C.D.
E.F.

FORM XV.

SUMMONS UNDER SECTION 26, SUB-SECTION (2) (iii).

Title as in Form I.

Formal parts as in Form II. *a*. or *b*.

1. That C.D. and E.F. the trustees of the above-mentioned settlement, for the purposes of the above-mentioned Act may be directed to apply the sum of £ out of the capital money arising under the said Act in their hands subject to the said settlement in payment for [describe the work or operation] being [part of] an improvement executed upon the lands subject to the said settlement pursuant to a scheme approved by the said C.D. and E.F. under the said Act.

2. (*Add application for costs as in Form III. 2.*)

SETTLED LAND ACT RULES, 1882.

FORM XVI.

SUMMONS UNDER SECTION 26, SUB-SECTION 3.

Title as in Form I.

Formal parts as in Form II. *a.* or *b.*

1. That the sum of £ may be ordered to be raised out of the in Court to the credit of and that the same when raised may be paid to upon his undertaking to apply the same in payment for [*describe the works or operation*] being part of an improvement executed upon the land settled by the above-mentioned settlement pursuant to the scheme approved by Order dated the .
2. (*Add application for costs as in Form III. 2.*)

FORM XVII.

SUMMONS UNDER SECTION 31.

Title as in Form I.

Formal parts as in Form II. *a.* or *b.*

1. That the applicant may be at liberty to enforce [*or carry into effect or vary or rescind as the case may be*] the contract entered into between the applicant of the one part, and of the other part.
2. Or that such directions may be given relating to the said contract as the judge may think fit.
3. (*Add application for costs as in Form III. 2.*)

FORM XVIII.

SUMMONS UNDER SECTION 34 FOR APPLICATION OF MONEY PAID FOR A LEASE OR REVERSION.

Title as in Form I.

Formal parts as in Form II. *a.*, *b.*, or *d.*

1. That the sum of £ being the proceeds of sale of a lease for years [*or life or a reversion or other interest, describing it*] settled by the above-mentioned settlement, may, pursuant to section 34 of the above-mentioned Act, be directed to be applied for the benefit of the parties interested under the said settlement in such manner as the court may think fit.
2. (*Add application for costs as in Form III. 2.*)

FORM XIX.

SUMMONS UNDER SECTION 38 FOR THE APPOINTMENT OF NEW TRUSTEES.

Title as in Form I.

Formal parts as in Form II. *a.*, *b.*, *c.*, or *d.*

1. That G.H. and I.J. may be appointed trustees under the above-mentioned settlement for the purposes of the above-mentioned Act.
2. (*Add application for costs as in Form III. 2.*)

FORM XX.

SUMMONS UNDER SECTION 44.

Title as in Form I.

Formal parts as in Form II. *a.*, *b.*, or *c.*

1. That it may be declared that (*set out the declaration required*).
2. (*Add application for costs as in Form III. 2, or as the circumstances require.*)

FORM XXI.

SUMMONS UNDER SECTION 56 FOR ADVICE AND DIRECTION.

Title as in Form I.

Formal parts as in Form II. a. to h.

For the opinion, advice, and direction of the judge on the following questions:—

1. Whether
2. Whether
3. Whether

(or if the questions involve complicated facts)

for the opinion, advice and direction of the judge on the facts and questions submitted by the statement left in my chambers this day.

(Add application for costs as in Form III. 2.)

FORM XXII.

SUMMONS UNDER SECTION 60 FOR APPOINTMENT OF PERSONS TO EXERCISE POWERS ON BEHALF OF INFANT.

Title as in Form I.

Formal parts as in Form II. b.

1. That the powers conferred upon a tenant for life by sections 6 to 13, both inclusive, and sections 16 to 20, both inclusive, of the above-mentioned Act (or such other powers as it is desired to exercise) may be exercised by the said on behalf of the said during his minority.

2. (Add application for costs as in Form III. 2.)

FORM XXIII.

SUMMONS FOR DIRECTIONS AS TO SERVICE OF A PETITION.

Title as in Form I.

Formal parts as in Form II.

That directions may be given as to the persons to be served with the petition presented in the above matter on the day of 18 .

SETTLED LAND ACT, 1884.

47 & 48 Vict.
c. 18.

47 & 48 VICT. CAP. 18.

An Act to amend the Settled Land Act, 1882.

[3rd July, 1884.]

BE IT ENACTED, &c., as follows :

- | | |
|--|----------------------|
| 1. This Act may be cited as the Settled Land Act, 1884. | Short title. |
| 2. The expression "the Act of 1882" used in this Act means the Settled Land Act, 1882. | Interpretation. |
| 3. The Act of 1882 and this Act are to be read and construed together as one Act, and expressions used in this Act are to have the same meanings as those attached by the Act of 1882 to similar expressions used therein. | Construction of Act. |

[By sect. 4, a fine on a lease is to be capital money.]

[By sect. 5, the notice required by sect. 45 of the Settled Land Act, 1882, may, as to a sale, exchange, partition, or lease, be general.]

47 & 48 Vict.
c. 18, s. 6.

As to consents
of tenants for
life.

6.—(1.) In the case of a settlement within the meaning of section sixty-three of the Act of 1882, any consent not required by the terms of the settlement is not by force of anything contained in that Act to be deemed necessary to enable the trustees of the settlement, or any other person, to execute any of the trusts or powers created by the settlement.

(2.) In the case of every other settlement, not within the meaning of section sixty-three of the Act of 1882, where two or more persons together constitute the tenant for life for the purposes of that Act, then, notwithstanding anything contained in sub-section (2) of section fifty-six of that Act, requiring the consent of all those persons, the consent of one only of those persons is by force of that section to be deemed necessary to the exercise by the trustees of the settlement, or by any other person, of any power conferred by the settlement exercisable for any purpose provided for in that Act.

(3.) This section applies to dealings before, as well as after, the passing of this Act (*a*).

(*a*) See note to sect. 7.

Powers given
by s. 63 to be
exercised only
with leave of
the Court.

7. With respect to the powers conferred by section sixty-three of the Act of 1882, the following provisions are to have effect:—

- (i.) Those powers are not to be exercised without the leave of the Court.
- (ii.) The Court may by order, in any case in which it thinks fit, give leave to exercise all or any of those powers, and the order is to name the person or persons to whom leave is given.
- (iii.) The Court may from time to time rescind, or vary, any order made under this section, or may make any new or further order.
- (iv.) So long as an order under this section is in force, neither the trustees of the settlement, nor any person other than a person having the leave, shall execute any trust or power created by the settlement, for any purpose for which leave is by the order given, to exercise a power conferred by the Act of 1882.
- (v.) An order under this section may be registered and re-registered, as a *lis pendens*, against the trustees of the settlement named in the order, describing them on the register as "Trustees for the purposes of the Settled Land Act, 1882."
- (vi.) Any person dealing with the trustees from time to time, or with any other person acting under the trusts or powers of the settlement, is not to be affected by an order under this section, unless and until the order is duly registered, and when necessary re-registered as a *lis pendens*.
- (vii.) An application to the Court under this section may be made by the tenant for life, or by the persons who together constitute the tenant for life, within the meaning of section sixty-three of the Act of 1882.

- (viii.) An application to rescind or vary an order, or to make any new or further order under this section, may be made also by the trustees of the settlement, or by any person beneficially interested under the settlement. 47 & 48 Vict.
c. 18, s. 7.
- (ix.) The person or persons to whom leave is given by an order under this section, shall be deemed the proper person or persons to exercise the powers conferred by section sixty-three of the Act of 1882, and shall have, and may exercise those powers accordingly.
- (x.) This section is not to affect any dealing which has taken place before the passing of this Act, under any trust or power to which this section applies (b).

(b) This and the preceding section were passed in consequence of the difficulties which arose in *Re Earle and Webster*, 24 Ch. D. 144, and *Taylor v. Poncia*, 25 Ch. D. 646, where the question was raised whether trustees, selling under the common trust for sale, could make a good title without the concurrence of the tenants for life of the purchase-money.

8. For the purposes of the Act of 1882 the estate of a tenant by the curtesy is to be deemed an estate arising under a settlement made by his wife. Curtesy to be
deemed to
arise under
settlement.

RAILWAY COMPANIES ACT, 1867.

30 & 31 Vict.
c. 127.

30 & 31 VICT. CAP. 127.

An Act to amend the Law relating to Railway Companies.

[20th August, 1867.]

BE IT ENACTED, &c. as follows:—

Preliminary.

- I. This Act may be cited as The Railway Companies Act, 1867. Short title.
- II. Except as in this Act expressly otherwise provided, this Act shall not extend to Scotland. Extent of
Act.
- III. In this Act—
- The term “company” means a railway company; that is to say, a company constituted by Act of Parliament, or by certificate under Act of Parliament, for the purpose of constructing, maintaining, or working a railway (either alone or in conjunction with any other purpose): Interpreta-
tion of terms.
- The term “action” includes suit or other proceeding:
- The term “judgment” includes decree, order, or rule:
- The term “share” includes stock:
- The term “person” includes corporation:
- The term “Court of Chancery” or “Court” means the Court of Chancery* in England or Ireland, as the case requires: * See now
Judicature
Act, 1873,
s. 34 (2).

30 & 31 Vict.
c. 127, s. 3.

The term "Gazette" means, with respect to England, the "London Gazette," and with respect to Ireland, the "Dublin Gazette."

Protection of Rolling Stock and Plant.

Interim
restrictions
on executions
against pro-
perty of rail-
way open for
traffic.

IV. The engines, tenders, carriages, trucks, machinery, tools, fittings, materials, and effects, constituting the rolling stock and plant used or provided by a company for the purposes of the traffic on their railway, or of their stations or workshops, shall not, after their railway or any part thereof is open for public traffic, be liable to be taken in execution at law or in equity at any time after the passing of this Act [and before the first day of September, one thousand eight hundred and sixty-eight] (a), where the judgment on which execution issues is recovered in an action on a contract entered into after the passing of this Act, or in an action not on a contract commenced after the passing of this Act, but the person who has recovered any such judgment may obtain the appointment of a receiver, and, if necessary, of a manager, of the undertaking of the company, on application by petition in a summary way to the Court of Chancery in England or in Ireland, according to the situation of the railway of the company; and all money received by such receiver or manager shall, after due provision for the working expenses of the railway and other proper outgoings in respect of the undertaking, be applied and distributed under the direction of the Court in payment of the debts of the company and otherwise according to the rights and priorities of the persons for the time being interested therein; and on payment of the amount due to every such judgment creditor as aforesaid the Court may, if it think fit, discharge such receiver or such receiver and manager (b).

(a) This time was extended to 1st September, 1870, by 31 & 32 Vict. c. 79; and the Act is now made perpetual by 38 & 39 Vict. c. 31, which repealed the words in brackets.

Extent of
protection
from seizure.

(b) The protection under the section from seizure of the rolling stock and plant of a railway which has been opened for public traffic continues, although the railway is afterwards closed for traffic (*Midland Waggon Co. v. The Potteries, Shrewsbury, and North Wales Ry. Co.*, 6 Q. B. D. 36), and applies to the railway plant of every company constituted by statute to construct or work a railway, though that may be a subordinate part of its undertaking (*Great Northern Ry. Co. v. Tahourdin*, 13 Q. B. D. 320). Where a railway company, being in want of money, and being advised that it had no power to borrow, sold part of its rolling stock to a waggon company, at the same time making a contract with the waggon company for the hire of the same rolling stock at a rent which would repay the purchase-money with interest in five years, and then for its repurchase at a nominal price, the payment of the rent being also guaranteed by three of the directors of the railway company, it was held, that the transaction was not a borrowing of money, but a *bonâ fide* sale and hiring of the rolling stock, and was valid against both the railway company and the directors (*Yorkshire Ry. Waggon Co. v. Maclure*, 21 Ch. D. 309).

Open for
public traffic.

A railway, part of which had been occupied by another company, but not opened by the company which made it, was held not to be open for public traffic within the Act (*Re Beddgelert Ry.*, 19 W. R. 427; W. N. (1871), 3).

Contract after
the Act.

Where a judgment was recovered for money due for services rendered both before and after the passing of the Act, the Act was held not to apply (*Re Beddgelert Ry.*).

Form of
order.

For form of order, see *Re Stafford and Uttoxeter Ry.*, W. N. (1868), 113; *Contract Corporation v. Tottenham Ry.*, *ibid.* 242; Seton, 422. See also note (c) to sect. 5.

V. If in any case where property of a company has been taken in execution a question arises whether or not it is liable to be so taken notwithstanding this Act, the same may be heard and determined on an application by either party by summons in a summary way to the Court out of which the execution issued, or if the Court is one of the superior Courts of law, then to a judge of any one of those Courts, and such determination shall be final and binding (c).

30. & 31 Vict.
o. 127, s. 5.

Determina-
tion of
questions
respecting
executions.

(c) The rules 29—32 of the Order of 24 Jan. 1868, which regulate the practice under these sections (see 3 Ch. xlii.) are as follows:—

29. Every petition under “The Railway Companies Act, 1867,” sect. 4, shall be intitled in the matter of the Act, and in the matter of the company in question, and shall be marked either with the words “Lord Chancellor,” and the name of one of the Vice-Chancellors, or with the words “Master of the Rolls.”

30. Such petition shall be served on the company only, but the Court may at the hearing, if it shall so think fit, adjourn the same for the purpose of service on such other parties, if any, as the Court shall think fit.

31. Every order appointing a receiver or manager under the last-mentioned section, shall direct such accounts and inquiries as the Court may think fit for ascertaining the debts of the company, and the rights and priorities of the persons interested in the money, to come to the hands of such receiver or manager.

32. Every summons in Chancery under “The Railway Companies Act, 1867,” sect. 5, shall be intitled in the matter of the said Act, and in the cause or matter in which the execution in question was issued, and such summons shall be issued out of the chambers of the judge to whose Court such cause or matter is attached, and such rules and practice of the Court of Chancery as are applicable to summonses for the purpose of proceedings not originating in chambers, and to the proceedings thereunder, shall be applicable to such summons and the proceedings thereunder.

The only evidence required in support of a petition by an unpaid judgment creditor is an affidavit that he is such a creditor, and that his judgment debt is unsatisfied; and that the company is a going concern carrying on its own business, and conducting its own traffic in the ordinary way (*Re Manchester and Milford Ry. Co.*, 14 Ch. D. 645, C. A.).

Evidence on
application.

A railway company which has never commenced to acquire the lands, or to construct the railway authorised by its special Act, is not an “undertaking” within the meaning of the Act, of which a receiver can be appointed (*Re Birmingham and Lichfield Junction Ry. Co.*, 18 Ch. D. 155, M. R.).

What com-
panies not
within Act.

Wherever the judgment creditor of a railway company is unpaid, the appointment of a receiver or manager is a matter of right; and where the company is carrying on its business in the ordinary way, conducting its own traffic arrangements, the appointment of a receiver is necessary within the meaning of the Act, and, as a general rule, the directors, or secretary, or some of them, will be appointed managers where they are acting fairly; and the order for the appointment of a manager will be made without prejudice to any application on the part of the directors to propose themselves, or some of their number, to act as managers (*Re Manchester and Milford Ry. Co.*, 14 Ch. D. 645).

When
receiver
appointed.

The powers of the receiver do not, it seems, extend to getting in unpaid calls (*Re Birmingham and Lichfield Junction Ry. Co.*, 18 Ch. D. 155).

Arrangements.

VI. Where a company are unable to meet their engagements with their creditors, the directors may prepare a scheme of arrangement between the company and their creditors (with or without provisions for settling and defining any rights of shareholders of the company as among themselves, and for raising, if necessary, additional share and loan capital, or either of them), and may file the same in the Court of Chancery* in England or in Ireland, according to the situation of the principal office of the company, with a declaration in writing under the common seal of the company to the effect that the company are unable to meet their engagements with their creditors, and with an affidavit of the truth of such declaration made by the chairman of the

Preparation
and filing of
scheme of
arrangement.

* See Judi-
cature Act,
1873, s. 34
(2).

30 & 31 Vict.
c. 127, s. 6.

board of directors and by the other directors, or the major part in number of them, to the best of their respective judgment and belief (*d*).

Form of
scheme.

(*d*) For a form of scheme, see *Re Teign Valley Ry. Co.*, 18 L. T. 809; and for leave given to vary a scheme when filed, see *Re Cambrian Ry.*, 3 Ch. 278; 17 L. T. 394.

Form of
advertisement
for persons to
apply for
copies.

The General Order of Jan. 24, 1868, provides in the third schedule the following form for advertisement of the scheme:—

In the Matter of the Railway Company; and
In the Matter of the Railway Companies Act, 1867.

Notice is hereby given, that on the _____ day of _____ 18____, a Scheme of Arrangement between the above-named company and their creditors [state here whether the scheme contains or not any provisions for settling the rights of any and what classes of shareholders as among themselves, or for raising additional share or loan capital, and which, and to what extent] was filed in the Court of Chancery, and a copy of the said scheme will be furnished to any person requiring the same by the undersigned, or at the office of the company at on payment of the regulated charges for the same.

A. and B., of [Agents for C. and D., of _____],
Solicitors for the Company.

Ord. Jan. 24,
1868.

The same order provides with reference to the preparation and filing of the scheme as follows:—

Title of
scheme and
proceedings.

1. Every scheme to be filed in the Court of Chancery, pursuant to the statute 30 & 31 Vict. c. 127, s. 6, and every declaration, affidavit, petition, summons, notice, or other proceeding relative thereto, shall be intitled in the matter of "*The Railway Companies Act, 1867*," and in the matter of the company in question.

To be attached
to Court.

2. Every such scheme shall be marked either with the words "*Lord Chancellor*," and the name of one of the *Vice-Chancellors*, or with the words "*Master of the Rolls*," and the matter of such scheme (unless removed by some special order of the *Lord Chancellor* or the *Lords Justices*) shall accordingly be attached to the Court of such *Vice-Chancellor*, or to the Court of the *Master of the Rolls*, as the case may be, in like manner and for the same purposes as causes are attached to a particular Court.

To be printed.

3. Every scheme to be filed as aforesaid shall be printed on paper of the same size and description, and in the same style and manner as bills in Chancery are required to be printed, or shall be written bookwise upon paper of the same size and description as last aforesaid.

Form of
affidavits, &c.

4. Every declaration and affidavit to be filed as mentioned in the 6th section of the said Act shall be written* bookwise upon paper of the same size and description as that on which bills are printed.

* See now
Ord. LXVI.
infra.

5. Every such scheme shall be filed in the office of the Clerks of Records and Writs,† and the declaration and affidavit required by section 6 of the said Act shall be annexed to such scheme and filed at the same time therewith, and the Clerks of Records and Writs shall not file any such scheme unless accompanied by such declaration and affidavit.

Filing of
scheme.

6. There shall be indorsed upon every scheme so filed as aforesaid the name and address of the solicitor and London agent (if any) of the company, and also the address for service of such solicitor in cases where an address for service is required by the General Orders of the Court.

† See now
Judicature
(Officers) Act,
1879;

7. Where a written scheme is filed, the person bringing the same to be filed shall, at the same time, leave with the Clerks of Records and Writs† a fair copy thereof, and the Clerks of Records and Writs are to examine such copy with the scheme filed, and return it so examined with a certificate thereon that it is correct and proper to be printed.

Ords. LX. and
LXI. *infra*.

8. The directors are then to cause the scheme to be printed from such certified copy, on paper of the same size and description, and in the same type, style, and manner, as bill are required to be printed, and, before the expiration of four days from the filing of the scheme are to leave a printed copy thereof with the Clerks of Records and Writs, with a written certificate thereon by the solicitor of the company that such print is a true copy of the scheme so certified, and after the expiration of such four days no evidence of the scheme having been filed shall be admissible until such printed copy thereof has been filed.

Address for
service.

Filing a
written
scheme.

To be printed
in four days.

Lines to be
numbered.

9. Every fifth line of each page of a printed scheme shall be numbered.

Copies of Scheme.

.. Copies of
scheme.

10. At any time after the expiration of four days from the filing of a scheme, whether printed or written, any person may demand, by a requisition in writing, delivered at the principal office of the company, or at the office of their solicitor, or of his London agent

(if any) any number, not exceeding ten, of printed copies* of the scheme, and the copies so required shall on such demand be delivered to the person so requiring the same, with a written certificate thereon by the solicitor of the company that they are true copies of the scheme filed.

11. Every such copy is on delivery to be paid for at the rate of one halfpenny per folio, except in the case provided for by the 20th section of the said Act,† in which case it is to be paid for at the rate prescribed by the said Act.

12. The notice to be published in the "Gazette," of the filing of the scheme,‡ shall be signed by the solicitor of the company, or his London agent, and shall state whether the scheme contains any provisions for settling and defining any rights of shareholders among themselves, or for raising any and what amount of share or loan capital, and which, and shall set forth the name and address of the solicitor and London agent (if any) of the company, and may be in the form No. 1 in the 3rd schedule hereto, with such variations as the circumstances of the case may require.

13. When a scheme has been filed one of the Clerks of Records and Writs shall, at the request of any person, give and sign a certificate of the filing thereof, or of the filing of a printed copy thereof; and such certificate may be in the following form, with such variations as the circumstances of the case may require:—

In the Matter of the Railway Companies Act, 1867, and In the Matter of The Railway Company.

I do hereby certify that a [printed or written, as the case may be] Schemes of Arrangement between the above-named company and their creditors, under the statute 30 & 31 Victoria, chapter 127, section 6, was on the day of 18 , duly filed in the High Court of Chancery in England, together with the declaration and affidavit required by the said statute [and that a printed copy of such scheme was on the day of duly filed in the said Court pursuant to the General Order of Court made in that behalf], as appears by my book. Dated, &c.

A. B.,
Clerk of Records and Writs, of the High Court of
Chancery in England.

VII. After the filing of the scheme, the Court may, on the application of the company on summons or motion in a summary way, restrain any action against the company on such terms as the Court thinks fit (e).

(e) Under a special Act it was provided that a company might issue debenture stock to certain creditors, and a suspense period was created within which no action was to be commenced without leave, except in respect of liabilities contracted after the passing of the Act, and it was held that the debenture stock so created was within the protection of the Act, and that the holders thereof could not without leave institute a suit for the purpose of obtaining payment of interest in arrear (*London Financial Association v. Wrexham Ry. Co.*, 18 Eq. 566); see *Re Cambrian Ry. Co.*, 3 Ch. 278; *Re Devon and Somerset Ry.*, 6 Eq. 610, as to the jurisdiction to restrain suits by landowners under these sections while the scheme is maturing.

As the scheme when confirmed will not bind (under section 18) such outside creditors or unpaid landowners without their individual consent (only mortgagees, holders of rent-charges, shareholders, and leasing companies, being bound by majorities, as mentioned in ss. X—XIV.), the Court ought not during the maturing of the scheme, to suspend the remedies of such outside creditors or unpaid landowners (*Re Cambrian Ry. Co.*, *supra*), nor without their written consent confirm any scheme which purports to bind them (*Re Bristol and North Somerset Ry. Co.*, 6 Eq. 448), unless it is satisfied that a scheme is proposed in good faith which, if it reaches maturity, will afford a reasonable prospect of providing for the payment of the claim of the person whose remedies are thus interfered with, and thus compensate the claimant for the temporary suspension of his remedies (*Re Cambrian Ry. Co.*, 3 Ch. 278). See *Robertson v. Wrexham, &c., Ry. Co.*, 17 W. R. 137.

When the scheme is confirmed and enrolled, outside creditors not included or bound by it may pursue their remedies without any leave of the Court (*Re Teign Valley Ry. Co.*, 17 W. R. 817; *Re East and West Junction Ry. Co.*, 8 Eq. 87, 91), and this section and the 9th have no longer any application, as they only give the Court an interim jurisdiction during the period of suspense (*Re Potteries, Shrewsbury, and North Wales Ry. Co.*, 5 Ch. 67).

The scheme, though not confirmed within three months under section 17, *infra*, was held to be pending so far as regarded protection by interim orders against creditors (*Robertson v. Wrexham, &c., Ry. Co.*, 17 W. R. 137).

30 & 31 Vict.
c. 127, s. 6.

* See form of advertisement for such persons to come in, *supra*.

Payment for copies.

† P. 175, *post*.

Form of notice.

‡ See sect. 8, *infra*.

Certificate of filing scheme.

Stay of actions.

Restraint of actions, &c., during suspended period.

Whether landowners and outside creditors not capable of being bound by majorities can be restrained from suing.

No jurisdiction under sects. 7 and 9 after enrolment of scheme.

30 & 31 Vict.
c. 127, s. 7.

The Order of 24 Jan., 1868, provides as to restraining actions after scheme filed, as follows:—

Ord. 24 Jan.
1868.
Undertaking
as to damages.

14. *No order, under section 7 of the said Act, for restraining an action against the company, by reason of a scheme having been filed, shall be made, except on an undertaking by the company to be answerable in such damages (if any) as the Court, or the judge in chambers, may think fit to award in the event of the plaintiff being ultimately held entitled to proceed with such action; and on such further terms (if any) as the Court or judge may think reasonable.*

Notices in
"Gazette."

VIII. Notice of the filing of the scheme shall be published in the "Gazette" (*f*).

(*f*) See Sched. III. to the Order 24 Jan. 1868, cited in note (*d*), p. 170, *ante*.

Stay of exe-
cutions, &c.

IX. After such publication of notice no execution, attachment, or other process against the property of the company (*g*) shall be available without leave of the Court, to be obtained on summons or motion in a summary way (*h*).

Stay of *scire
facias* against
shareholders.

(*g*) Unpaid calls are property of the company within this section, and an injunction will issue to restrain execution against shareholders in a *scire facias* action (*Re Devon and Somerset Ry. Co.*, 6 Eq. 610). As to the circumstances under which a creditor will be allowed to pursue his remedies notwithstanding this section, see *Griffiths v. Cambrian Railway*, 17 W. R. 979, decided under a special act containing similar provisions.

Application
by creditor
after sanction
or enrolment
of scheme.

(*h*) An application to issue execution notwithstanding the pendency of the scheme should, if it is confirmed, be made before the judge who sanctioned it (*Dean of Christchurch v. East and West Junction Railway*, 17 W. R. 819). After the enrolment of the scheme this section has no longer any application (*Re Potteries, &c. Rail. Co.*, 5 Ch. 67).

Assent by
mortgagees,
&c.

X. The scheme shall be deemed to be assented to by the holders of mortgages or bonds issued under the authority of the company's special Acts when it is assented to in writing by three-fourths in value of the holders of such mortgages or bonds, and shall be deemed to be assented to by the holders of debenture stock of the company when it is assented to in writing by three-fourths in value of the holders of such stock.

Assent by
holders of
rentcharge,
&c.

XI. Where any rentcharge or other payment is charged on receipts of or is payable by the company in consideration of the purchase of the undertaking of another company, the scheme shall be deemed to be assented to by the holders of such rentcharge or other payment when it is assented to in writing by three-fourths in value of such holders.

Assent by
preference
shareholders.

XII. The scheme shall be deemed to be assented to by the guaranteed or preference shareholders of the company when it is assented to in writing as follows: If there is only one class of guaranteed or preference shareholders, then by three-fourths in value of that class, and if there are more classes of guaranteed or preference shareholders than one, then by three-fourths in value of each such class.

Assent by
ordinary
shareholders.

XIII. The scheme shall be deemed to be assented to by the ordinary shareholders of the company when it is assented to at an extraordinary general meeting of the company specially called for that purpose.

XIV. Where the company are lessees of a railway the scheme shall be deemed to be assented to by the leasing company when it is assented to as follows:—

30 & 31 Vict.
c. 127, s. 14.

Assent by
leasing com-
pany.

In writing by three-fourths in value of the holders of mortgages, bonds, and debenture stock of the leasing company;

If there is only one class of guaranteed or preference shareholders of the leasing company, then in writing by three-fourths in value of that class, and if there are more classes of guaranteed or preference shareholders in the leasing company than one, then in writing by three-fourths in value of each such class;

By the ordinary shareholders of the leasing company at an extraordinary general meeting of that company specially called for that purpose.

XV. Provided that the assent to the scheme of any class of holders of mortgages, bonds, or debenture stock, or of any class of holders of a rentcharge or other payment as aforesaid, or of any class of guaranteed or preference shareholders, or of a leasing company, shall not be requisite in case the scheme does not prejudicially affect any right or interest of such class or company.

Assent of
creditors, &c.,
not affected,
unnecessary.

XVI. If at any time within three months (i) after the filing of the scheme, or within such extended time as the Court from time to time thinks fit to allow, the directors of the company consider the scheme to be assented to as by this Act required, they may apply to the Court by petition in a summary way for confirmation of the scheme.

Application
for confirma-
tion of
scheme.

Notice of any such application, when intended, shall be published in the Gazette.

(i) A scheme was considered to be pending after the three months so as to afford protection against creditors (*Robertson v. Wrexham, &c. Ry.*, 17 W. R. 137).

XVII. After hearing the directors, and any creditors shareholders, or other parties whom the Court thinks entitled to be heard on the application (k), the Court, if satisfied that the scheme has been within three months after the filing of it, or such extended time (if any) as the Court has allowed (l), assented to as required by this Act, and that no sufficient objection to the scheme has been established, may confirm the scheme.

Confirmation
of scheme.

(k) Debenture holders will not be heard, if there was a statutory majority, unless in case of fraud (*Re East and West Junction Ry.*, 8 Eq. 87). The Court required the consent of outside creditors (who are not within the classes of creditors who can be bound by a majority) before it confirmed a scheme, in *Re Bristol and North Somerset Ry.*, 6 Eq. 448; but in *Re Somerset and Dorset Ry.*, 18 W. R. 333, Stuart, V.-C., said that if a creditor came to oppose the confirmation, who could not show that his dissent was reasonable or based upon a due regard for his own interests, he would not regard the dissent of a creditor of that kind, but would confirm the scheme. In *Re East and West Junction Ry.* (*ubi sup.*) it was held that the assent of outside creditors was not wanted. In any case they ought not to be put in a better position by the scheme (*Stevens v. Mid-Hants Rail. Co.*, 8 Ch. 1064). See also *Re Manchester and Milford Ry.*, W. N. (1881), 121; *Re Stafford Ry.* W. N. (1872), 165, 174; 20 W. R. 921. As to unpaid vendors appearing on the petition and their costs, see *Re Kington Ry.*, W. N. (1877), 33.

Who will
be heard.
Outside
creditors.

(l) The Order of Jan. 24, 1868, provides with reference to the petition for confirmation of scheme, as follows:—

Ord. 24 Jan.
1868.

15. Every petition for confirmation of a scheme shall be presented by the directors or the major part of them. Such petition shall not set forth the scheme, but only refer thereto; Petition to be by directors.

30 & 31 Vict.
c. 127, s. 17.

and may be in the form No. 2, in the 3rd schedule hereto, with such variations as the circumstances of the case may require.

Company not to appear.
24 Jan. 1868.
Order under Railway Act, 1867.

The following is the form referred to:—

No. 2. *Petition to confirm Scheme.*

In the Matter of the Railway Company; and in the Matter of the Railway Companies Act, 1867.

The humble petition of Directors of the above-named company Showeth

That on the _____ day of _____, the directors of the above-named company filed in this Honourable Court a Scheme of Arrangement between the above-named company and their creditors.

Your petitioners therefore humbly pray that the scheme so filed as aforesaid may be confirmed by the Order of this Honourable Court.

And your petitioners will ever pray, &c.

Company not to appear.

16. *The petitioners presenting such petition as aforesaid shall, for the purposes of such petition, be treated as representing the company, and the company shall not otherwise appear on the hearing of such petition.*

Hearing of petition for confirmation after notice.

17. *When any petition to confirm a scheme is presented, the directors shall apply to the judge in chambers to appoint the day on which the same is to come into the paper for hearing, such day not to be before the expiration of three weeks from the time of such application, and shall cause a notice of the presentation thereof to be inserted as follows (that is to say):*

(1) *In the case of a company whose principal office is within ten miles from the General Post Office in the "London Gazette," and in such two London daily morning newspapers as the judge in chambers shall direct.*

(2) *In the case of any other company, in the "London Gazette," and in such two local newspapers circulating in the district where the principal office of such company is situate, as the judge in chambers shall direct.*

Such notice shall state the day on which the scheme was filed, and the day on which the petition was presented, and the day on which the same is directed to come into the paper for hearing, and the name and address of the solicitor and London agent (if any) of the company, and may be in the form No. 3 in the 3rd schedule hereto, with such variations as the circumstances of the case may require.

The following is the form referred to:—

Advertisement of petition to confirm scheme.

In the Matter of the _____ Railway Company, and In the Matter of the Railway Companies Act, 1867.

Notice is hereby given that a petition was, on the _____ day of _____ 18, presented to the Lord Chancellor [or the Master of the Rolls] by the Directors of the above-named company, praying the confirmation of a Scheme of Arrangement between the said company and their creditors, filed in the Court of Chancery on the _____ day of _____. And that the said petition is directed to be heard before the Vice-Chancellor Sir _____ [or before the Master of the Rolls] on the _____ day of _____, 18, and any person whose interests are affected by such scheme, and who may be desirous to oppose the making of an order for the confirmation thereof under the above Act, should enter an appearance at the Office of the Clerks of Records and Writs on or before the _____ day of _____, 18, and appear by himself or counsel at the hearing of the said petition. And a copy of the scheme and petition will be furnished to any person requiring the same by the undersigned, or at the office of the company, at _____, on payment of the regulated charge for the same.

A. and B., of [Agents for C. and D., of _____], Solicitors for the Petitioners.

Further notice directed in chambers.

18. *The petition shall not come on to be heard until at least fourteen clear days after the insertion of such notice as aforesaid. Such notice shall, at least once in every entire week, reckoned from Sunday morning to Saturday evening, which shall have elapsed between the time of the first insertion thereof, and the day on which such petition is directed to come into the paper for hearing, be again inserted in such two London or local newspapers as aforesaid on such day or days as the judge in chambers shall direct.*

Parties to be heard in opposition.

19. *Any creditor, shareholder, or other party whose rights or interests are affected by such scheme, and who shall be desirous to be heard in opposition to the confirmation thereof, shall, at least two clear days before the day on which the petition for confirmation is directed to come into the paper for hearing, enter an appearance at the Office of the Clerks*

of Records and Writs; and, in default of so doing, shall not be entitled to be heard, unless by the special leave of the Court.

20. Any person so entering an appearance shall be deemed to have submitted himself to the jurisdiction of the Court as to the payment of costs and otherwise.

Rules 21—28 of the Order of 24th Jan. 1868, which related to the enrolment of the Scheme, were annulled by R. S. C., April, 1880. See now as to enrolment, Ord. LXI. rr. 10, 11, *infra*.

30 & 31 Vict.
c. 127, s. 17.

Jurisdiction
as to costs.

Enrolment.

XVIII. The scheme when confirmed shall be enrolled in the Court (*m*), and thenceforth the same shall be binding and effectual to all intents, and the provisions thereof shall, against and in favour of the company and all parties assenting thereto or bound thereby, have the like effect as if they had been enacted by parliament.

Enrolment of
scheme.

(*m*) An application by a judgment creditor to restrain a company from enrolling an order confirming a scheme was granted under the powers given by the 35th rule, *post*, p. 176 (*Re Devon and Somerset Ry.*, 6 Eq. 615).

XIX. Notice of the confirmation and enrolment of the scheme shall be published in the Gazette.

Notice of
confirmation
of scheme.

XX. The company shall at all times keep at their principal office printed copies of the scheme, when confirmed and enrolled, and shall sell such copies to all persons desiring to buy the same at a reasonable price, not exceeding sixpence for each copy.

Company to
keep printed
copies of
scheme for
sale.

If the company fail to comply with this provision they shall be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for every day during which such failure continues after the first penalty is incurred, which penalties shall be recovered and applied as penalties under "The Railways Clauses Consolidation Act, 1845," are recoverable and applicable.

Penalty for
neglect.

XXI. Where a company whose principal office is situate in England have a railway or part of a railway in Scotland the following provisions shall have effect:

Provision for
cases where
railways or
part in Scot-
land.

- (1.) Any scheme under this Act shall be filed in the Court of Chancery* in England;
- (2.) Where, after the filing of the scheme, any person who is not amenable to the jurisdiction of the Court of Chancery* in England brings any action against the company in Scotland, the Court of Session may, on the application of the company by petition in a summary way, sist, stay, or interdict the same on such terms as the Court thinks fit;
- (3.) Notice of the filing of the scheme shall be published in the "Edinburgh Gazette," and after such publication no diligence against the property of the company in Scotland shall be available for any person who is not amenable to the jurisdiction of the Court of Chancery in England without the leave of the Court of Session, to be obtained on petition in a summary way.

* See Judi-
cature Act,
1873, s. 34 (2).

In this section the term "Court of Session" means either division of the Court of Session, or in time of vacation the Lord Ordinary officiating on the Bills.

30 & 31 Vict.
c. 127, s. 22.

General orders
for regulation
of practice in
Court of
Chancery.

XXII. The Lord Chancellor of Great Britain, with the advice and assistance of the Lords Justices of the Court of Appeal in Chancery, the Master of the Rolls, and the Vice-Chancellors, or any two of those judges, and the Lord Chancellor of Ireland, with the advice and assistance of the Lord Justice of Appeal in Chancery and the Master of the Rolls, or one of them, may from time to time make general orders for the regulation of the practice of the Courts of Chancery in England and Ireland respectively under this Act (n).

(n) The order of 24th January, 1868, provided as to the general practice under this Act as follows:—

Orders in
chambers
under the
Act.

General
practice
applicable.

Powers of
judge in
chambers.

Order to be
a General
Order.

Date of order.

33. *All orders made in chambers under "The Railway Companies Act, 1867," shall be drawn up in chambers unless specially directed to be drawn up by the registrar, and shall be entered in the same manner and in the same office as other orders drawn up in chambers.*

34. *In cases not expressly provided for by the said Act or by the rules of this order, the General Orders and practice of the Court (including the course of proceeding and practice in the judges' chambers, and the course of proceeding and practice as to rehearings before the same judge, or before the Lord Chancellor or Lords Justices) shall, so far as such General Orders and practice are applicable and not inconsistent with the said Act or this order, apply to all proceedings in the Court of Chancery under the said Act.*

35. *The power of the Court and of the judge in chambers to enlarge or abridge the time for doing any act or taking any proceeding, to adjourn or review any proceeding, and to give any direction as to the course of proceeding, shall be the same in proceedings in Chancery under the said Act, as in proceedings under the ordinary jurisdiction of the Court.*

38. *The general interpretation clauses contained in the Consolidated Orders of the Court of Chancery shall extend and apply to this order, and this order shall be deemed one of the General Orders of the Court.*

39. *This order shall come into operation on Monday the 3rd day of February, 1868, and shall apply to all schemes filed under the said Act, and to all proceedings in Chancery to be had under the same Act, provided always, that all proceedings taken under the said Act before this order shall have come into operation shall have the same validity as they would have had if this order had not been made.*

Loan Capital.

Priority of
mortgages.

XXIII. All money borrowed or to be borrowed by a company on mortgage or bond or debenture stock under the provisions of any Act authorizing the borrowing thereof shall have priority against the company and the property from time to time of the company over all other claims on account of any debts incurred or engagements entered into by them after the passing of this Act: Provided always, that this priority shall not affect any claim against the company in respect of any rentcharge granted or to be granted by them in pursuance of "The Lands Clauses Consolidation Act, 1845," or "The Lands Clauses Consolidation Acts Amendment Act, 1860," or in respect of any rent or sum reserved by or payable under any lease granted or made to the company by any person in pursuance of any Act relating to the company which is entitled to rank in priority to, or *pari passu* with, the interest or dividends on the mortgages, bonds, and debenture stock; nor shall anything hereinbefore contained affect (o) any claim for land taken, used, or occupied by the company for the purposes of the railway, or injuriously affected by the construction thereof, or by the exercise of any powers conferred on the company.

(o) These words only relate to the contents of *this section*, and landowners are not exempted from the operation of the previous clauses of the Act (*Re Cambrian Ry. Co.*, 3 Ch. 278).

[Sects. 24—26 relate to the issue of railway debenture stock, subject to the provisions of the Companies Clauses Act, 1863. By sects. 27—29, railway companies may issue shares or stock at a discount. Sect. 30 relates to the audit of railway accounts. By sects. 31—35 the provisions as to abandonment of railways under stat. 13 & 14 Vict. c. 83, are amended, and it is provided that on the abandonment of a railway being authorized, the parliamentary deposit shall be paid out to the persons who would have been entitled to it if the railway had been opened; see 9 & 10 Vict. c. 20, p. 49, *ante*. Sect. 36 amended sect. 85 of 8 & 9 Vict. c. 18; see marginal note, p. 46, *ante*. Sect. 37 relates to the costs of arbitrations as to lands taken under the Lands Clauses Act.]

30 & 31 Vict.
c. 127.
ss. 24—37.

Sections
XXIV.—
XXXVII.

JUDGMENT ACT, 1864.

27 & 28 Vict.
c. 112.

27 & 28 VICT. CAP. 112.

An Act to amend the Law relating to future Judgments, Statutes, and Recognizances. [29th July, 1864.]

WHEREAS it is desirable to assimilate the law affecting freehold, copyhold, and leasehold estates to that affecting purely personal estates in respect of future judgments, statutes, and recognizances (a): Therefore be it enacted, &c. as follows:—

(a) This must mean common law recognizances, and not those which are entered into by persons who give security to the Court of Chancery (now the Chancery Division), for the latter are never registered but enrolled. See Fisher on Mortgages, 111, note (o).

I. No judgment, statute, or recognizance to be entered up after the passing of this Act shall affect any land (of whatever tenure) until such land shall have been actually delivered in execution (b) by virtue of a writ of *elegit* or other lawful authority (c) in pursuance of such judgment, statute, or recognizance.

Future judgments, &c., not to affect land until land delivered in execution.

(b) These words mean that in the case of lands as in the case of chattels no lien is obtained by a delivery of the writ, unless followed by a return to the writ and actual execution, but the question of priority of judgments *inter se*, depends on the date at which the active step of delivery of the writ to the sheriff was taken (*Champneys v. Burland*, 19 W. R. 148; *Re Cowbridge Ry.*, 5 Eq. 413; *Guest v. Cowbridge Ry.*, 6 Eq. 619; *Re Bailey*, W. N. (1869), 43; *Re Duke of Newcastle*, 8 Eq. 700; *Earl of Cork v. Russell*, 13 Eq. 210).

Priority of judgments *inter se*.

(c) The Act does not apply to an interest which cannot be taken in execution, *e. g.*, a remainder (*Re South*, 9 Ch. 369). If there is any obstacle, *e. g.*, if the debtor's interest is an equity of redemption, the creditor's remedy was to institute an action to remove the obstacle (*Re Cowbridge Ry.*, 5 Eq. 413; *Thornton v. Finch*, 4 Giff. 515; *Guest v. Cowbridge Ry.*, 6 Eq. 619; 17 W. R. 7; *Beckett v. Buckley*, 17 Eq. 435; *Hatton v. Haywood*, 9 Ch. 229; *Wells v. Kilpin*, 18 Eq. 298).

Interest which cannot be taken in execution.

Equitable interests.

Under the present practice it is not necessary to institute a fresh action for the purpose; and "equitable execution," as it is called, may be obtained by the appointment of a receiver in the original action (*Anglo-Italian Bank v. Davies*, 9 Ch. D. 275; *Smith v. Cowell*, 6 Q. B. D. 75; *Salt v. Cooper*, 16 Ch. D. 544); who may be appointed even after final judgment (*Salt v. Cooper*). Nor is it necessary now for the creditor previously to sue out an *elegit* where the interest is not extendible (*Ex parte Evans*, *Re Watkins*, 11 Ch. D. 691; 13 Ch. D. 252); and a receiver may be appointed of debts and sums of money to which garnishee proceedings are not applicable (*Westhead v. Riley*, 25 Ch. D. 413). A receiver may also be appointed of the separate estate of a married woman at the instance of a solicitor whose bill she had taxed under the Solicitors Act, 1843 (*Re Peace*, 24 Ch. D. 405).

27 & 28 Vict. c. 112, s. 1. As to the power of the Court to direct inquiries before appointing a receiver, see Ord. L. r. 15a, *infra*.

Sequestration. Where persons holding the debtor's land under a voluntary conveyance yielded their claims and gave up possession to sequestrators, this was held delivery in execution by lawful authority (*Re Rush*, 10 Eq. 442).

Right of judgment creditor to redeem. As to the judgment creditor's right to redeem prior incumbrances, see *Mildred v. Austin*, 8 Eq. 220.

Interpretation of terms.

II. In the construction of this Act the term "judgment" shall be taken to include registered decrees, orders of Courts of Equity and Bankruptcy, and other orders having the operation of a judgment; and the term "land" shall be taken to include all hereditaments, corporeal or incorporeal, or any interest therein; and the term "debtor" shall be taken to include husbands of married women, assignees of bankrupts, committees of lunatics, and the heirs or devisees of deceased persons.

[By sect. 3 every writ or other process of execution of any such judgment, statute or recognizance, by virtue whereof any land shall have been actually delivered in execution, shall be registered in the name of the debtor. See 23 & 24 Vict. c. 38, s. 2, p. 104, *ante*. The registration may be made before the return to the writ, *Champneys v. Burland*, 19 W. R. 148.]

Creditor to whom land delivered in execution entitled to obtain summary order.

IV. Every creditor to whom (*d*) any land of his debtor shall have been actually delivered in execution (*dd*) by virtue of any such judgment, statute, or recognizance, and whose writ or other process of execution shall be duly registered, shall be entitled forthwith, or at any time afterwards while the registry of such writ or process shall continue in force, to obtain from the Court of Chancery, upon petition in a summary way, an order for the sale (*e*) of his debtor's interest in such land, and every such petition may be served upon the debtor only; and thereupon the Court shall direct all such inquiries to be made as to the nature and particulars of the debtor's interest in such land, and his title thereto, as shall appear to be necessary or proper; and in making such inquiries, and generally in carrying into effect such order for sale, the practice of the said Court with respect to sales of real estates of deceased persons for the payment of debts shall be adopted and followed, so far as the same may be found conveniently applicable (*f*).

(*d*) A creditor who had obtained an order in an administration suit against a defendant for payment of *money into Court*, which order had been enforced by the sequestration of the Court, was held not to be within the section, the land having been delivered in execution not to him but to the Court (*Johnson v. Burgess*, 15 Eq. 398).

(*dd*) That is, "delivered in execution"; see *Anglo-Italian Bank v. Davies*, 9 Ch. D. p. 283.

(*e*) The section applies only to judgments entered up after the passing of the Act, 29th July, 1864; see sect. 1, and *Re Isle of Wight Ferry Co.*, 34 L. J. Ch. 194; 11 Jur. N. S. 279.

A railway company's lands may be ordered to be sold under the section; but the Court will not order a sale if the debtor's interest is not of a saleable nature, but will direct inquiries (*Re Bishop's Waltham Ry. Co.*, 2 Ch. 382; *Gardner v. London, Chatham and Dover Ry. Co.*, *ibid.* 385); and see now 30 & 31 Vict. c. 127, *ante*, p. 167, protecting the rolling stock and plant of railways from execution, and authorising railway companies, who are unable to meet their engagements, to file schemes of arrangement, and after filing such schemes to apply for stay of actions, suits, and executions.

"Actually delivered in execution." Sale at instance of judgment creditor.

Railway Companies Act, 1867.

(f) For form of inquiries in the case of lands belonging to a railway company, see *ibid.*, and *Re Hull and Hornsea Ry. Co.*, 2 Eq. 262; and *Re Ventnor Harbour Co.*, W. N. (1866), 9; 13 L. T. 793; and for form of inquiries in ordinary cases, see *Ex parte Clark*, 6 N. R. 335, and compare Seton, 1140. Where surplus lands had been taken under an *elegit* a sale was ordered without inquiries (*Re Colne Valley Co.*, 9 Eq. 658). 27 & 28 Vict. c. 112, c. 4.
Form of inquiry.

V. If it shall appear on making such inquiries that any other debt due on any judgment, statute, or recognizance is a charge on such land, the creditor entitled to the benefit of such charge (whether prior or subsequent to the charge of the petitioner) shall be served with notice of the said order for sale, and shall after such service be bound thereby, and shall be at liberty to attend the proceedings under the same, and to have the benefit thereof; and the proceeds of such sale shall be distributed among the persons who may be found entitled thereto, according to their respective priorities (g). Where there are other creditors, notice of sale to be served upon them.

(g) See *Guest v. Cowbridge Ry.*, 5 Eq. 413; *Re Duke of Newcastle*, 8 Eq. 700.

VI. Every person claiming any interest in such land through or under the debtor, by any means subsequent to the delivery of such land in execution as aforesaid, shall be bound by every such order for sale, and by all the proceedings consequent thereon. Parties claiming interest through debtor bound by order for sale.

VII. This Act shall not extend to Ireland. Extent of Act.

PARTITION ACT, 1868.

31 & 32 Vict. c. 40.

31 & 32 VICT. CAP. 40.

An Act to amend the Law relating to Partition.

[25th June, 1868.]

BE IT ENACTED, &c. as follows :

I. This Act may be cited as the Partition Act, 1868. Short title.

II. In this Act the term "the Court" means the Court of Chancery in *England* (a), the Court of Chancery in *Ireland*, the Landed Estates Court in *Ireland*, and the Court of Chancery of the County Palatine of *Lancaster*, within their respective jurisdictions. As to the term "the Court."

(a) Now the Chancery Division of the High Court (Jud. Act, 1873, sect. 34 (2), *infra*). The Court.

III. In a suit for partition where, if this Act had not been passed, a decree for partition might have been made (aa), then if it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a Power to Court to order sale instead of division.

31 & 32 Vict.
c. 40, s. 3.

distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested (b), and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions (bb).

(aa) See *Biggs v. Peacock*, 20 Ch. D. 200; 22 Ch. D. 284, and *Boyd v. Allen*, 2 Ch. D. 622; 31 W. R. 544, cited in note (c) to sect. 4; *Miles v. Jarvis*, W. N. (1883), 203.

“Parties interested.”

(b) Incumbrancers upon the shares of persons entitled in common to real estate are parties interested within the section (*Davenport v. King*, W. N. (1883), 133; 31 W. R. 911).

Act retrospective.

(bb) As to the Act being retrospective, see *Lys v. Lys*, 7 Eq. 126; *Pryor v. Pryor*, 19 Eq. 595.

Sale of interest subject to executory devise over.

Where property had been left to three persons, subject to an executory devise over, if all died without issue, the Court directed a sale, subject to the executor gift over (*Groves v. Carbert*, 29 L. T. 129; W. N. (1873), 29).

Sale of part.
Sale, where ordered.

A decree was made for sale of part of a property and partition of the rest (*Roebuck v. Chadebet*, 8 Eq. 127).

This section gives the Court power to sell where for any reason it thinks a sale would be more beneficial than a partition; and the sale may be directed on the application of any person interested (*Drinkwater v. Ratcliffe*, 20 Eq. 528). The power is discretionary and is not controlled by the provisions of sect. 5 (*Gilbert v. Smith*, 11 Ch. D. 78, affirmed, *nom. Pitt v. Jones*, 5 App. Cas. 651). The term “beneficial” means beneficial in a pecuniary sense (*Drinkwater v. Ratcliffe*); see also *Allen v. Allen*, 21 W. R. 842. A sale was directed where the property consisted of a farmhouse and buildings and thirty acres of land divisible into thirty-six shares (*Drinkwater v. Ratcliffe*); and so, where houses were divisible into 336 parts, and the owners of 63 parts requested a sale (*Gilbert v. Smith*, affirmed *nom. Pitt v. Jones*). But a sale must be more beneficial for all parties interested (*Corporation of Huddersfield v. Jacomb*, W. N. (1874), 80; *Fleming v. Crouch*, W. N. (1884), 111).

Form of order.

If the plaintiff claims a sale, he should allege in his pleadings that it will be more beneficial than a partition (*Evans v. Evans*, W. N. (1883), 48; 31 W. R. 495).

For form of order see Seton, 1005, No. 3; as varied in *Sykes v. Schofield*, 1 Ch. D. 629; *Re Hardiman*, 16 Ch. D. 360; *Waite v. Bingley*, 21 Ch. D. 674; 3 W. R. 698.

Sale on application of certain proportion of parties interested.

IV. In a suit for partition, where, if this Act had not been passed a decree for partition might have been made, then if the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the property to which the suit relates, request the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions (c).

What discretion the Court has under this section.

(c) “The 4th section seems to me to be perfectly distinct from the 3rd, for whereas the 3rd section in terms applies only where the Court is satisfied that a partition is inconvenient and not beneficial for the parties, there is no such condition inserted in the 4th section; and whereas under the 3rd section a discretionary power was given to the Court to order a sale, if it thought a sale more beneficial than a partition, the 4th section makes it imperative on the Court, in a certain state of circumstances, to order a sale, and if less than half desire a partition, the half requiring the sale shall have the preponderating voice, and the Court shall be bound to give them a sale wholly irrespective of the 3rd section. But still there is a certain discretion left to the Court, so that the Court can refuse a sale where it is manifestly asked through vindictive feeling, or is on any other ground unreasonable.”—*Per Lord Hatherley*, in *Pemberton v. Barnes*, 6 Ch. 681. See also *Lys v. Lys*, 7 Eq. 126; *Saxton v. Bartley*, W. N. (1879), 94; 27 W. R. 61; where a sale was refused; *Wilkinson v. Joberns*, 16 Eq. 14, where it was held the

though the owner of one moiety of property was yearly tenant of the whole, and occupied it for commercial purposes, and also resided thereon, this was no sufficient reason against a sale under the section; *Roughton v. Gibson*, W. N. (1877), 32; 46 L. J. Ch. 366; 25 W. R. 269; *Rowe v. Gray*, 5 Ch. D. 263, where it was held that the fact that the income of an infant defendant was likely to be materially diminished was not a good reason against a sale (but see *Langmead v. Cockerton*, W. N. (1877), 43; 25 W. R. 315); *Porter v. Lopes*, 7 Ch. D. 358; *Fleming v. Crouch*, W. N. (1884), 111. A married woman, tenant for life of a moiety for her separate use with remainder as she shall appoint, is an owner of that moiety within the section (*Parker v. Trigg*, W. N. (1874), 27).

Where there is a *subsisting trust* for sale the Court has no jurisdiction under the Act at all, the property being money and not land (*Biggs v. Peacock*, 22 Ch. D. 284; 20 Ch. D. 200); *secus*, where there is a mere *power* (*Boyd v. Allen*, 24 Ch. D. 622; 31 W. R. 544). See also *Taylor v. Grange*, 15 Ch. D. 165; 13 Ch. D. 223; *Swaine v. Denby*, 14 Ch. D. 326, where the testator had himself fixed the time at which a sale was to take place, and it was held that the Court could not anticipate it.

V. In a suit for partition where, if this Act had not been passed, a decree for partition might have been made, then if any party interested in the property to which the suit relates requests the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court may, if it thinks fit, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions, and in case of such undertaking being given the Court may order a valuation of the share of the party requesting a sale in such manner as the Court thinks fit, and may give all necessary or proper consequential directions (*d*).

(*d*) The 3rd and 4th sections having provided that a decree for sale shall be made when a sale is beneficial, or when persons entitled to more than a moiety of the property ask for it, the 5th section is an extension, not a limitation, of those sections, and provides that any party, plaintiff or defendant, may ask for and have a sale whether the Court considers it beneficial or not, unless the other parties interested undertake to purchase the applicant's share (*Drinkwater v. Ratcliffe*, 20 Eq. 528; *Gilbert v. Smith*, 11 Ch. D. 78). If the other parties undertake to purchase the applicant's share, and so prevent the sale of the property as a whole, the applicant for the sale of the property as a whole may decline to sell his share, and may withdraw his application and ask for a partition (*Williams v. Games*, 10 Ch. 204). See, however, Lord *Hatherley's* remarks as to the connection of ss. 3, 4, 5, 6, in *Pemberton v. Barnes*, 6 Ch. 685.

VI. On any sale under this Act the Court may, if it thinks fit, allow any of the parties interested in the property to bid at the sale, on such terms as to non-payment of deposit, or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same, or as to any other matters, as to the Court seem reasonable (*e*).

(*e*) The party having the conduct of the sale will not usually be allowed to bid (*Verrall v. Cathcart*, W. N. (1879), 100; 27 W. R. 645); but under special circumstances this may be permitted (*Pennington v. Dalbiac*, 18 W. R. 684); see also *Wilkinson v. Joberns*, 16 Eq. 14; *Roughton v. Gibson*, W. N. (1877), 32; 25 W. R. 269; 46 L. J. Ch. 366.

VII. Section thirty of the Trustee Act, 1850, shall extend and apply to cases where, in suits for partition, the Court directs a sale instead of a division of the property (*f*).

(*f*) See sect. 30 of the Trustee Act, 1850, *ante*, p. 77, and note thereto. Sect. 1

31 & 32 Vict.
c. 40, s. 4.

Trust for sale
Trust for sale.

Any party
may call for
sale unless
other parties
purchase
share of party
desiring sale.

Sale on
application
of any party
entitled.

Authority for
parties to bid.

Leave to bid.

Application of
Trustee Act.

31 & 32 Vict.
c. 40, s. 8.

of the Trustee Extension Act, 1852, applies to sales under the Partition Acts, and is not limited to cases of persons under disability (*Beckett v. Sutton*, 19 Ch. D. 646).

Application
of proceeds
of sale.

VIII. Sections twenty-three to twenty-five (both inclusive) of the Act of the session of the nineteenth and twentieth years of her Majesty's reign (chapter one hundred and twenty), "to facilitate leases and sales of settled estates" (g), shall extend and apply to money to be received on any sale effected under the authority of this Act (h).

Leases and
Sales of
Settled
Estates Act,
1856.

(g) The Leases and Sales of Settled Estates Act, 1856, the Act here referred to, was repealed by the Settled Estates Act, 1877, s. 58, but this does not affect the application of these sections to proceedings under the Partition Act, 1868; see *Mordaunt v. Benwell*, 19 Ch. D. 302; *Re Barker*, 17 Ch. D. 241. The sections are as follows: "All money to be received on any sale effected under the authority of this Act, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone, or minerals as aforesaid, may, if the Court shall think fit, be paid to any trustees of whom it shall approve, or otherwise the same shall be paid into the Bank of England or Ireland, as the case may be, to the account of the Accountant-General of the Court of Chancery, *ex parte* the applicant in the matter of this Act, and in either case such money shall be applied as the Court shall from time to time direct to some one or more of the following purposes (namely):

"The purchase or redemption of the land tax, or the discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid; or, affecting any other hereditaments subject to the same uses or trusts; or,

"The purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid; or

"The payment to any person becoming absolutely entitled" (sect. 23).

"The application of the money in manner aforesaid may, if the Court shall so direct, be made by the trustees (if any) without any application to the Court, or otherwise upon an order of the Court upon the petition of the person who would be entitled to the possession or the receipt of the rents and profits of the land if the money had been invested in the purchase of land" (sect. 24).

"Until the money can be applied as aforesaid, the same shall be from time to time invested in Exchequer Bills, or in Three per Centum Consolidated Bank Annuities, as the Court shall think fit: and the interest and dividends of such Exchequer Bills or Bank Annuities shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land" (sect. 25).

The corresponding sections of the Settled Estates Act, 1877, are ss. 34—36.

Sale out of
Court.

(h) A sale may be directed to take place out of Court, and without bringing the proceeds of sale into Court (*Hayward v. Smith*, W. N. (1869), 37; 20 L. T. 70; *Chubb v. Pettipher*, W. N. (1872), 110). But the Court refused to direct payment of the proceeds of sale to trustees where the only persons interested were a married woman and an infant (*Higgs v. Dorkis*, 13 Eq. 280), and where some of the persons interested were married women resident in Australia (*Aston v. Meredith*, 13 Eq. 492); and see *Strugnell v. Strugnell*, 27 Ch. D. 258. A judgment for sale in a partition action converts the shares of parties not under disability who die before the sale (*Arnold v. Dixon*, 19 Eq. 113; *Steed v. Preece*, 18 Eq. 192); and this is also the case with respect to the shares of infants (*Hyett v. Meekin*, 25 Ch. D. 735), or married women who may have re-converted, or consented to the sale (*Wallace v. Greenwood*, 16 Ch. D. 362); and where a married woman has elected to treat the property as converted (*Fowler v. Scott*, 19 W. R. 972). In the case of persons under disability, however, an equity for re-conversion arises by force of the above sections of the Settled Estates Act, 1856; and consequently the share of an infant (*Foster v. Foster*, 1 Ch. D. 588), of a married woman who has done nothing to affect her equity to re-conversion (*Mildmay v. Quicke*, 6 Ch. D. 553), and of a lunatic (*Grimwood v. Bartels*, W. N. (1877), 177; 25 W. R. 843; *Re Barker*, 17 Ch. D. 241; *Re Pares*, 12 Ch. D. 333), so dying, will be treated as realty; but the heir takes it as personal estate (*Mordaunt v. Benwell*, 19 Ch. D. 302). The share of a married woman who elects by examination in Court to take it as personal estate may with her consent be paid to her husband (*Standerling v. Hall*, 11 Ch. D. 652). Where the fund was under 200*l.* it was paid to her on her separate receipt, without separate examination, on an affidavit of no settlement (*Wallace v. Greenwood*). See further as to married women, the Married Women's Property Act, 1882, *infra*.

Judgment for
sale, how far
a conversion.

Parties to
partition
suits.

IX. Any person who, if this Act had not been passed, might have maintained a suit for partition, may maintain such suit against any one

or more of the parties interested, without serving the other or others (if any) of those parties; and it shall not be competent to any defendant in the suit to object for want of parties; and at the hearing of the cause the Court may direct such inquiries as to the nature of the property, and the persons interested therein and other matters, as it thinks necessary or proper with a view to an order for partition or sale being made on further consideration; but all persons, who, if this Act had not been passed, would have been necessary parties to the suit, shall be served with notice of the decree or order on the hearing, and after such notice shall be bound by the proceedings as if they had been originally parties to the suit, and shall be deemed parties to the suit; and all such persons may have liberty to attend the proceedings; and any such person may, within a time limited by general orders, apply to the Court to add to the decree or order (i).

31 & 32 Vict.
c. 40, s. 9

Further
consideration.

(i) A sale cannot be ordered until all persons interested are before the Court (*Mildmay v. Quicke*, 20 Eq. 537), or service on absent persons has been dispensed with (Partition Act, 1876, ss. 3, 4, *post*). If all persons interested are parties, then, if the title is proved at the hearing, an immediate judgment for sale may be given (*Lees v. Coulton*, 20 Eq. 20; *Gilbert v. Smith*, 2 Ch. D. 686; *Burnell v. Burnell*, 11 Ch. D. 213); but if their titles are not proved at the hearing an order for sale may be made conditional on it being certified that all persons interested are parties (*Senior v. Hereford*, 4 Ch. D. 494; *Seton*, 1004, 1005). If all persons interested are not parties, the Court can only order a sale on further consideration, or give liberty to apply in chambers with reference to a sale, when it shall have been certified that all persons interested are either parties or have been served with notice of the judgment (*Mildmay v. Quicke*; *Buckingham v. Sellick*, 22 L. T. 370; *Powell v. Powell*, 10 Ch. 130; *Gilbert v. Smith*, 2 Ch. D. 686), or the Court dispenses with service on the absent party, or presumes his death (*Jackson v. Lomas*, 23 W. R. 744; *Rawlinson v. Miller*, 1 Ch. D. 52). An inquiry may be directed as to incumbrances (*Fawthrop v. Stooks*, W. N. (1884), 118).

Where an
order for sale
will be made.

The application for a sale should be made in the judge's chambers, though inquiries may be directed in a district registry (*Sykes v. Schafeld*, 14 Ch. D. 629).

Trustees represent their *cestuis que trust* in actions for partition or sale (*Stace v. Gage*, 8 Ch. D. 451; *Goodrich v. Marsh*, W. N. (1878), 186; *Simpson v. Denny*, 10 Ch. D. 26).

Trustees
represent
cestuis que
trust.

The Act does not compel the Court to act in the absence of any parties interested (*Dodds v. Gronow*, 20 L. T. 104; 17 W. R. 511; *Lester v. Alexander*, W. N. (1869), 75); and where a decree for sale had been made in the absence of such parties who were out of the jurisdiction, the Court refused to allow the decree to be acted on in their absence, and directed notice to be given to them by advertisement (*Peters v. Bacon*, 8 Eq. 125; and see *Teall v. Watts*, 11 Eq. 213); and when the parties out of the jurisdiction were interested in the legal estate it was held that they must be served (*Hurry v. Hurry*, 10 Eq. 346; 18 W. R. 829); but not where the legal estate was in trustees who were before the Court (*Silver v. Udall*, 9 Eq. 227).

Services on
parties not
before the
Court.

The words "further consideration" in this section do not necessarily imply that there must be a further consideration in Court (*Powell v. Powell*, 10 Ch. 130). The Court may give liberty to apply that the hearing on further consideration may be in chambers (*Gilbert v. Smith*, 2 Ch. D. 686; 24 W. R. 568).

"Further
considera-
tion."

X. In a suit for partition the Court may make such order as it thinks just respecting costs up to the time of the hearing (k).

Costs in
partition
suits.

(k) See R. S. C. 1883, Ord. LXV. The general rule is that the entire costs of the action are borne by the parties in proportion to their shares (*Cannon v. Johnson*, 11 Eq. 90; 40 L. J. Ch. 46; 19 W. R. 175; 23 L. T. 583; *Osborn v. Osborn*, 6 Eq. 338; 18 L. T. 679; *Miller v. Marriott*, 7 Eq. 1; 17 W. R. 41; 19 L. T. 304; *Simpson v. Ritchie*, 16 Eq. 103; *Ball v. Kemp-Welch*, 14 Ch. D. 512; 49 L. J. Ch. 528; 43 L. T. 116, where a sale was directed; *Bowes v. Marquis of Bute*, 27 W. R. 750, where there was a partition). But the Court has a discretion, and this rule may be departed from under special circumstances. See *Wilkinson v. Joberns*, 16 Eq. 14; *Wilkinson v. Castle*, 37 L. J. Ch. 467; 16 W. R. 501; *Porter v. Lopes*, 7 Ch. D. 367. See also *Morgan & Wurtzburg on Costs*, p. 240 *et seq.*

Costs.

31 & 32 Vict.
c. 40, s. 12.

[Sect. 11 is repealed by Statute Law Revision and Civil Procedure Act, 1881.]

Jurisdiction
of County
Courts in
partition.

XII. In *England* the County Courts shall have and exercise the like power and authority as the Court of Chancery in suits for partition (including the power and authority conferred by this Act) in any case where the property to which the suit relates does not exceed in value the sum of five hundred pounds, and the same shall be had and exercised in like manner and subject to the like provisions as the power and authority conferred by sect. 1 of the County Courts Act, 1865.

28 & 29 Vict.
c. 99.

39 & 40 Vict.
c. 17.

PARTITION ACT, 1876.

39 & 40 VICT. CAP. 17.

An Act to amend the Partition Act, 1868.

[27th June, 1876.]

Short title.

I. This Act may be cited as the Partition Act, 1876, and shall be read as one with the Partition Act, 1868.

Application
of Act.

II. This Act shall apply to actions pending at the time of the passing of this Act as well as to actions commenced after the passing thereof, and the term "action," includes a suit, and the term "judgment" includes decree or order.

Power to dis-
pense with
service of
notice of
decree or
order in
special cases.

III. Where in an action for partition it appears to the Court that notice of the judgment on the hearing of the cause cannot be served on all the persons on whom that notice is by the Partition Act, 1868, required to be served, or cannot be so served without expense disproportionate to the value of the property to which the action relates, the Court may, if it thinks fit, on the request of any of the parties interested in the property, and notwithstanding the dissent or disability of any others of them, by order, dispense with that service on any person or class of persons specified in the order, and, instead thereof, may direct advertisements to be published at such times and in such manner as the Court shall think fit, calling upon all persons claiming to be interested in such property who have not been so served to come in and establish their respective claims in respect thereof before the Judge in Chambers within a time to be thereby limited. After the expiration of the time so limited all persons who shall not have so come in and established such claims, whether they are within or without the jurisdiction of the Court (including persons under any disability), shall be bound by the proceedings in the action as if on the day of the date of the order dispensing with service they had been served with notice of the judgment, service whereof is dispensed with ;

and thereupon the powers of the Court under the Trustee Act, 1850, shall extend to their interests in the property to which the action relates as if they had been parties to the action; and the Court may thereupon, if it shall think fit, direct a sale of the property and give all necessary or proper consequential directions (a).

(a) For form of order giving leave to apply at Chambers for an order dispensing with service, see *Re Hardiman*, 16 Ch. D. 360. An order dispensing with service can only be made by the Judge himself. Where two of the persons interested were out of the jurisdiction, and one of them had not been heard of for seven and the other for three years, service was dispensed with, and no advertisement was issued (*Barton v. Barton*, W. N. (1877), 23); but service of the judgment, and advertisements, should not both be dispensed with (*Hacking v. Whalley*, W. N. (1882), 135).

Dispensing with service of judgment.

IV. Where an order is made under this Act dispensing with service of notice on any person or class of persons, and property is sold by order of the Court, the following provisions shall have effect:—

Proceedings where service is dispensed with.

- (1.) The proceeds of sale shall be paid into Court to abide the further order of the Court.
- (2.) The Court shall, by order, fix a time, at the expiration of which the proceeds will be distributed, and may from time to time, by further order, extend that time.
- (3.) The Court shall direct such notices to be given by advertisements or otherwise as it thinks best adapted for notifying to any persons on whom service is dispensed with, who may not have previously come in and established their claims, the fact of the sale, the time of the intended distribution, and the time within which a claim to participate in the proceeds must be made.
- (4.) If at the expiration of the time so fixed or extended the interests of all the persons interested have been ascertained, the Court shall distribute the proceeds in accordance with the rights of those persons.
- (5.) If at the expiration of the time so fixed or extended the interests of all the persons interested have not been ascertained, and it appears to the Court that they cannot be ascertained, or cannot be ascertained without expense disproportionate to the value of the property or of the unascertained interests, the Court shall distribute the proceeds in such manner as appears to the Court to be most in accordance with the rights of the persons whose claims to participate in the proceeds have been established, whether all those persons are or are not before the Court, and with such reservations (if any) as to the Court may seem fit in favour of any other persons (whether ascertained or not) who may appear from the evidence before the Court to have any *prima facie* rights which ought to be so provided for, although such rights may not have been fully established, but to the exclusion of all other persons, and thereupon all such other persons shall by virtue of this Act be excluded from participation in those

39 & 40 Vict.
c. 17, s. 4.

proceeds on the distribution thereof, but notwithstanding the distribution any excluded person may recover from any participating person any portion received by him of the share of the excluded person.

Provision for
case of succes-
sive sales in
same action.

V. Where in an action for partition two or more sales are made, if any person who has by virtue of this Act been excluded from participation in the proceeds of any of those sales establishes his claim to participate in the proceeds of a subsequent sale, the shares of the other persons interested in the proceeds of the subsequent sale shall abate to the extent (if any) to which they were increased by the non-participation of the excluded person in the proceeds of the previous sale, and shall to that extent be applied in or towards payment to that person of the share to which he would have been entitled in the proceeds of the previous sale if his claim thereto had been established in due time.

Request by
married
woman,
infant, or
person under
disability.

VI. In an action for partition a request for sale may be made or an undertaking to purchase given on the part of a married woman, infant, person of unsound mind, or person under any other disability, by the next friend, guardian, committee in lunacy (if so authorized by order in lunacy), or other person authorized to act on behalf of the person under such disability; but the Court shall not be bound to comply with any such request or undertaking on the part of an infant, unless it appear that the sale or purchase will be for his benefit (*b*).

Request for
sale.

(*b*) The request for a sale made on behalf of a person under disability should be made by a person specially authorized to act on his behalf in the action (*Wallace v. Greenwood*, 16 Ch. D. 362; *Grange v. White*, 18 Ch. D. 612; *contra*, *Crookes v. Whitworth*, 10 Ch. D. 289).

Person of un-
sound mind.

A person of unsound mind not so found may, by his next friend, be plaintiff in an action for sale (*Watt v. Leach*, 26 W. R. 475). Where a lunatic is tenant in tail of an undivided share the committee may be directed to request a sale (*Re Pares*, 12 Ch. D. 333).

Infant.

The request for a sale may be made by the guardian *ad litem* of an infant defendant (*Rimington v. Hartley*, 14 Ch. D. 630).

Prayer for
partition
unnecessary.

VII. For the purposes of the Partition Act, 1868, and of this Act, an action for partition shall include an action for sale and distribution of the proceeds, and in an action for partition it shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.

DEBTORS ACT, 1869.

32 & 33 Vict.
c. 62.

32 & 33 VICT. CAP. 62.

An Act for the Abolition of Imprisonment for Debt, for the punishment of fraudulent Debtors, and for other purposes.

[9th August, 1869.]

BE IT ENACTED, &c. as follows:—

Preliminary.

I. This Act may be cited for all purposes as “The Debtors Act, 1869.” Short title.

II. This Act shall not extend to Scotland or Ireland.

Extent of Act.

III. This Act shall not come into operation until the day on which the Bankruptcy Act, 1869, comes into operation, which day is hereinafter referred to as the commencement of this Act, and words and expressions defined or explained in the Bankruptcy Act, 1869, shall have the same meaning in this Act (*a*). Commencement and construction of Act.

(*a*) The Bankruptcy Act, 1869, came into operation on January 1st, 1870. See now Bankruptcy Act, 1883.

PART I.

Abolition of Imprisonment for Debt.

IV. With the exceptions hereinafter mentioned, no person shall after the commencement of this Act be arrested or imprisoned (*b*) for making default in payment of a sum of money. No imprisonment for debt except—

There shall be excepted from the operation of the above enactment:—

1. Default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract (*c*): (1) Upon default in payment of a penalty;
2. Default in payment of any sum recoverable summarily before a justice or justices of the peace (*d*): (2) Under order of justices;
3. Default by a trustee or person acting in a fiduciary capacity (*e*) and ordered to pay by a Court of equity (*f*) any sum in his possession or under his control (*g*): (3) By trustee;
4. Default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the Court making the order (*h*): (4) By attorney;
5. Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any Court having jurisdiction in bankruptcy is authorized to make an order: (5) In payment of income to creditors.
6. Default in payment of sums in respect of the payment of which orders are in this Act authorized (*i*) to be made: (6) In payment under this Act.

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year (*j*); No imprisonment beyond a year.

32 & 33 Vict.
c. 62, s. 4.

and, secondly, that nothing in this section shall alter the effect of any judgment or order of any Court for payment of money except as regards the arrest and imprisonment of the person making default in paying such money (*k*).

Imprisonment
for contempt.

(*b*) The power of the Court to imprison for contempt of Court in cases not provided for by the Act remains unaffected (*Harvey v. Hall*, 11 Eq. 31; and see Ord. XLII. r. 7, *infra*).

Special contempt by
arresting
officers of
Court.

Officers and attendants upon the Court, suitors, and witnesses, have privilege, eundo, redeundo, et morando, for their necessary attendance, but not otherwise, and where any of them are arrested at such times of necessary attendance, it is a contempt of Court. And any one who uses violence or abusive language to a person serving the process or orders of the Court, or uses scandalous or contemptuous words against the Court or the process thereof, is liable to be committed upon motion, on notice to the person so offending (Cons. Ord. XLII. rr. 1, 2).

By violent
language.

Special contempt.

See *Price v. Hutchison*, 9 Eq. 534; 18 W. R. 204; *Re Clements*, 46 L. J. Ch. 375, as to abusive words against officers of the Court. As to publication by a newspaper of evidence in a cause with comments, before the hearing, being a contempt of Court, see *Tichborne v. Mostyn*, 7 Eq. 55, n.; *Daw v. Eley*, *Ibid.* 42; *General Exchange Bank v. Horner*, W. N. (1868), 259; but see *Re London Flour Co.*, 16 W. R. 474. Publication without comment of a pleading, affidavit, petition, or other *ex parte* statement before trial is a contempt (*Re Cheltenham Wagon Co.*, 8 Eq. 580; *Coleman v. West Hartlepool Co.*, 8 W. R. 734; 2 L. T. 766; *Tichborne v. Mostyn*; *Robson v. Dodds*, 17 W. R. 782). See also *Bowden v. Russell*, W. N. (1877), 55; *Buenos Ayres Gas Co. v. Wilde*, 29 W. R. 43; 42 L. T. 657; W. N. (1880), 95.

Extent of
solicitor's
privilege.

The privilege of a solicitor as officer of the Court extends to him when proceeding to attend an appointment with a person for whom he is acting in a suit (*Eyre v. Barrow*, 6 W. R. 767); or on his way to attend a summons at judge's chambers (*Re Jewitt*, 33 Beav. 559); and see *Attorney-General v. Leathersellers' Company*, 7 Beav. 157; *Gibbs v. Phillipson*, 1 R. & M. 19; *Piomor v. Macdonough*, 1 De G. & S. 232; *Andrews v. Walton*, 1 M. & G. 380, and the other cases cited in Seton, 1590. See, however, *Re Freston* and *Re Dudley*, cited in note (*h*) *post*, p. 189.

Party in contempt
may take
defensive
proceedings.

A defendant in contempt may take any step necessary for his defence (*Fry v. Ernest*, 12 W. R. 97). Thus, he may be heard to show that proceedings subsequent to the order placing him in contempt were irregular (*Morrison v. Morrison*, 4 Hare, 590; *King v. Bryant*, 3 M. & Cr. 191; and see *Wilson v. Bates*, *id.* 197; *Hawkins v. Hall*, 1 Beav. 73; 4 M. & Cr. 280). Or he may apply for taxation of a bill of costs (*Newton v. Rickatts*, 11 Beav. 67; and see *Everett v. Prythergh*, 12 Sim. 363; *Daniell*, 904).

Waiver of
contempt.

A contempt may be waived, *e. g.*, if the defendant is in contempt for want of sufficient answer, the plaintiff, by taking a step in the cause, waives the contempt, and cannot claim the costs of it (*Roberts v. Albert Bridge Company*, 8 Ch. 753).

Release of
person im-
prisoned for
contempt
of Court.

The Act makes this difference as to imprisonment for contempt, that a person imprisoned for contempt of Court, cannot, *after clearing his contempt*, be kept in prison till he pays costs of the contempt (*Jackson v. Mawby*, 1 Ch. D. 86; 24 W. R. 92; 45 L. J. Ch. 53; *Michelthwait v. Fletcher*, 27 W. R. 793); *secus*, where the contempt is not cleared (*S. v. L.*, W. N. (1876), 220; *S. C. nom. Re M.*; 46 L. J. Ch. 24). See also *Baker v. Baker*, W. N. (1876), 256.

Privilege of
bankrupt.

A person who is excepted from the operation of the section, and therefore liable to be attached, will, nevertheless, if he become a bankrupt, be protected pending the bankruptcy proceedings (*Cobham v. Dalton*, 10 Ch. 655; 23 W. R. 865; *Re Neil*, W. N. (1882), 46; *Phosphate Sewage Co. v. Hartmont*, 25 W. R. 743); *secus*, where the attachment is not for non-payment of a sum of money, but for punishment (*Re Deere*, 10 Ch. 658), or the bankruptcy takes place after the attachment (*Earl of Levese v. Barnett*, 6 Ch. D. 252; 26 W. R. 101). A compounding debtor is not protected (*Pashler v. Vincent*, 8 Ch. D. 825; 27 W. R. 2).

Where two trustees were ordered in an action to pay money into Court, and on their failing to do so one of them was served with a notice of motion for attachment, but before the motion came on he filed a petition in bankruptcy, *Cave*, J. refused to stay further proceedings in the action (*Re Mackintosh*, W. N. (1884), 114).

Penalty.

(*c*) When the Act allows imprisonment for default in payment of a penalty, it means a penalty for non-observance of a positive law. See *Middleton v. Chichester*, 6 Ch. 152, 155. See also *Morris v. Ingram*, 13 Ch. D. 342.

Sum recover-
able before
justices.

(*d*) See *R. v. Pratt*, L. R. 5 Q. B. 176; 18 W. R. 626; *S. C. nom. Ex parte Cole*, 21 L. T. 750.

(e) A "person acting in a fiduciary capacity," means a person who stands in a fiduciary relation towards any other person who may be entitled to call upon him to pay a sum of money, whether such person is or is not the plaintiff, or one of the plaintiffs, in the action in which the order for payment has been made (*Marris v. Ingram*, 13 Ch. D. 338); and see *Hutchinson v. Hartmont*, W. N. (1877), 29. A director ordered to pay the full value of shares received from promoters, on which no money had been paid, was held not to be in a fiduciary capacity in relation thereto (*Metcalf's Case*, 13 Ch. D. 815; 28 W. R. 435; 42 L. T. 178; and see *Phosphate Sewage Co. v. Hartmont*, 25 W. R. 743; W. N. (1877), 167; *Ex parte Hooson*, 8 Ch. 231; 21 W. R. 152; 28 L. T. 4).

32 & 33 Vict.
c. 62, s. 4.

Fiduciary
capacity.

(f) These words must now be read "High Court of Justice" (*Marris v. Ingram*).
(g) A trustee who has not made away with trust funds, but has only neglected to get them in, is not a defaulting trustee within the section, for the money has not been in his possession or under his control (*Ferguson v. Ferguson*, 10 Ch. 661); but a trustee who has had the money in his possession or control is liable to imprisonment, though he has lost the money, and is not therefore, strictly speaking, cotumacious in not paying (*Middleton v. Chichester*, 6 Ch. 152; and see *Digby v. Turner*, W. N. (1873), 65; 21 W. R. 471). An attachment, however, issued against a trustee on an order directing the payment of a sum composed of principal and interest not distinguished was discharged, inasmuch as the interest might not, at any time, have been in his possession or under his control (*Middleton v. Chichester*; and see *Re Hincks*, W. N. (1876), 188; 24 W. R. 931).

"Court of
Equity."

Defaulting
trustee.

Possession
and control.

A trustee may be attached though the trust funds were only under his control jointly with another trustee (*Evans v. Bear*, 10 Ch. 76); and see *Re A. and B.*, W. N. (1877), 207.

Joint control.

The amount to be paid must be specified in the order for payment (*Re Spicer*, W. N. (1881), 85).

Amount must
be specified.

(h) For an order for attachment against a solicitor who had failed to pay costs which he had been ordered to pay for misconduct, see *Tiney v. Stansfeld*, 28 W. R. 582; W. N. (1880), 77.

Attachment
of solicitor.

A solicitor may be attached for default in payment of a balance found due from him upon taxation of his bill of costs under the common order (*Re Rush*, 9 Eq. 147; 18 W. R. 331; *Re White*, 19 W. R. 39; 23 L. T. 387; and see *Re V—*, Ir. R., 8 Eq. 355). But he cannot be attached for non-payment of costs incurred simply as an unsuccessful litigant (*Re Hope*, 7 Ch. 523; overruling *Re Barfield and Rush*, 19 W. R. 466; 24 L. T. 248); *sees*, where he is ordered to pay the costs of an action brought by him without authority (*Jenkins v. Fereday*, L. R. 7 C. P. 358).

The right to an attachment may be lost by making terms with the solicitor (*Harvey v. Hall*, 16 Eq. 324).

A solicitor cannot claim privilege when arrested under this sub-section (*Re Freston*, 11 Q. B. D. 545; 31 W. R. 804; 49 L. T. 290; *Re Dudley*, 12 Q. B. D. 44).

The words "sum of money" in this sub-section include stock (*Digby v. Turner*, 21 W. R. 471; W. N. (1873), 65).

"Sum of
money."

(i) See sect. 5 of the Act.

(j) As to an action by the debtor for detaining him beyond the year, see *Greaves v. Keene*, 4 Ex. D. 73; 27 W. R. 416; 40 L. T. 216. No order is necessary for the discharge of the prisoner where the writ is in the ordinary form (*Re Edwards*, 21 Ch. D. 230; 30 W. R. 656); see also *Moore v. Rose*, L. R. 4 Q. B. 486; *Natty v. Aylett*, W. N. (1874), 182; 43 L. J. Ch. 721; 22 W. R. 857.

Length of
imprison-
ment.

(k) The Debtors Act, 1878, 41 & 42 Vict. c. 54, s. 1, provides as follows:—"In any case coming within the exceptions numbered 3 and 4 in the fourth section of the Debtors Act, 1869, and in the fifth section of the Debtors Act (Ireland), 1872, respectively, or within either of those exceptions, any Court or judge, making the order for payment, or having jurisdiction in the action or proceeding in which the order for payment is made, may inquire into the case, and (subject to the provisos contained in the said sections respectively) may grant or refuse, either absolutely or upon terms, any application for a writ of attachment, or other process or order of arrest or imprisonment, and any application to stay the operation of any such writ, process, or order, or for discharge from arrest or imprisonment thereunder."

Debtors Act,
1878.

As to the history and object of this enactment, see *Marris v. Ingram*, 13 Ch. D. p. 343.

The Debtors Act, 1869, is vindictive in this sense, that it is intended for the punishment of fraudulent or dishonest debtors (*Marris v. Ingram*; *Doodson v. Turner*, W. N. (1883), 53; 52 L. J. Ch. 685; 48 L. T. 760); see, however, *Re Freston*, 11 Q. B. D. 545; 31 W. R. 804; 49 L. T. 290; *Barrett v. Hammond*, 10 Ch. D. 285; *Holroyde v. Garnett*, 20 Ch. D. 532; 30 W. R. 604.

Debtors Act,
1869, how far
vindictive.

By G. O., January 7th, 1870, rules were made under the Debtors Act, 1869; see 5 Ch. pp. xxxiii—xxxvi. Though not expressly repealed, these rules appear to be now obsolete, except those under sect. 5 of the Act, and it has accordingly not been thought necessary to reproduce them here.

G. O. Jan. 7,
1870.

32 & 33 Vict.
c. 62, s. 5.

[The jurisdiction and powers of the High Court under sect. 5 of the Act are now vested in the judge and registrars in bankruptcy; see Bankruptcy Act, 1883, s. 103 Bankruptcy Rules, 1883, r. 265; G. O. 1st January, 1884.]

Ord. 7 Jan.
1870.

The Order made under this Act, dated 7th January, 1870 (see 5 Ch. p. xxxvi *et seq.*), contains the following provisions:—

Rule 19.
General prac-
tice under
Act.

19. *The general practice of the Court shall, in all cases not provided for by "the Debtors Act, 1869," or these rules, and so far as the same is applicable, and not inconsistent with the said Act or these rules, apply to all proceedings under the 4th and 5th section of the said Act.*

Rule 20.
Solicitors'
fees.

20. *The charges to be allowed to solicitors for duties performed in respect of such proceedings as last aforesaid, and the fees of Court in respect of the same proceedings, shall be the same as those allowable and payable in respect of other proceedings of the same nature in the cause or matters in which such proceedings respectively are taken.*

Rule 21.
To be read
with General
Orders.

21. *This order shall be read and construed as part of the General Consolidated Order of the Court, and the interpretation clause in the same Consolidated General Orders contained shall apply to the rules of this order.*

Power under
certain cir-
cumstances
to arrest
defendant
about to quit
England.

VI. After the commencement of this Act a person shall not be arrested upon mesne process in any action.

Where the plaintiff in any action in any of her Majesty's Superior Courts of law at Westminster, in which, if brought before the commencement of this Act, the defendant would have been liable to arrest, proves at any time before final judgment by evidence on oath, to the satisfaction of a judge of one of those Courts, that the plaintiff has good cause of action against the defendant to the amount of fifty pounds or upwards, and that there is probable cause for believing that the defendant is about to quit England unless he be apprehended, and that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, such judge may in the prescribed manner order such defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not go out of England without the leave of the Court.

Where the action is for a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, and the security given (instead of being that the defendant will not go out of England) shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison (*l*).

(*l*) See as to proceedings under this section, Ord. LXIX., R. S. C. 1883, *infra*.

[Sect. 7 is repealed by Statute Law Revision Act, 1883.]

Sequestration
against pro-
perty.

VIII. Sequestration against the property of a debtor may, after the commencement of this Act, be issued by any Court of equity in the same manner as if such debtor had been actually arrested (*m*).

(*m*) See *Sykes v. Dyson*, 9 Eq. 228.

IX. Nothing in this part of this Act shall in any way affect any right or power, under the Bankruptcy Act, 1869, to arrest or imprison any person.

32 & 33 Vict.
c. 62, s. 9.

X. In this part of this Act the term "prescribed" means as follows:—

Saving for
Bankruptcy
Act, 1869.
Definition of
"prescribed."

As respects the Superior Courts of common law, prescribed by general rules to be made in pursuance of the Common Law Procedure Act, 1852;

As respects the Superior Courts of equity, prescribed by general rules and orders to be made in pursuance of the Act of the session of the fifteenth and sixteenth years of the reign of her present Majesty, chapter eighty;

As respects the County Courts, prescribed by general rules to be made under the County Court Act, 1856; and

As respects any other Court, prescribed by the rules to be made, with the approval of the Lord Chancellor, by the persons having power to make rules in relation to the practice of such Court; or if there be no such persons, by the judge of such Court;

And general rules and orders may respectively be made by such authorities as aforesaid, for the purpose of carrying into effect this part of this Act.

PART II.

Punishment of Fraudulent Debtors.

[By sect. 11, any bankrupt, or person whose affairs are in liquidation, is to be guilty of misdemeanor, and to be liable to imprisonment, not exceeding two years, for certain specified acts of concealment and fraud. See *Re Stanlake*, 10 Ch. D. 774.]

[Sects. 12 and 13 enact a penalty for absconding with property and for fraudulently obtaining credit.]

[By sect. 14, a false claim in any bankruptcy or liquidation is to be punishable as a misdemeanor.]

[By sect. 15, an arranging or compounding debtor is to remain liable for fraudulent debts. See *Ex parte Hemming*, 13 Ch. D. 163.]

[By sects. 16–20, the mode of prosecution under the preceding sections is pointed out.]

[Sects. 21 and 22 are repealed by Bankruptcy Act, 1883.]

[By sect. 23 punishments under this Act are to be cumulative.]

PART III.

Warrants of Attorney, Cognovits, and Orders for Judgment.

[Sects. 24–28 relate to the manner of executing warrants of attorney and cognovits, and to the filing of the same.]

[Sect. 29 relates to foreign attachment.]

45 & 46 Vict.
c. 75.

MARRIED WOMEN'S PROPERTY ACT, 1882.

45 & 46 VICT. CAP. 75.

An Act to consolidate and amend the Acts relating to the Property of Married Women. [18th August, 1882.]

WHEREAS it is expedient to consolidate and amend the Act of the thirty-third and thirty-fourth Victoria, chapter ninety-three, intituled "The Married Women's Property Act, 1870," and the Act of the thirty-seventh and thirty-eighth Victoria, chapter fifty, intituled "An Act to amend the Married Women's Property Act (1870)":

Be it enacted, &c. as follows:—

Married woman to be capable of holding property and of contracting as a feme sole.

1.—(1.) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee.

(2.) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a feme sole, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her (*a*); and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.

(3.) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown.

(4.) Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire (*b*).

(5.) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a feme sole.

Actions, &c., by and against married women.

(*a*) The husband of a married woman need not be joined as co-petitioner with his wife in a petition presented under the statutory jurisdiction of the Court (*Re Outwin*, 31 W. R. 374; 48 L. T. 410). A married woman may sue in her own name for a tort committed before the Act (*James v. Barraud*, 31 W. R. 786; *Severance v. Civil Service Association*, 48 L. T. 486; *Weldon v. Winslow*, 13 Q. B. D. 784); see, however, *Weldon v. Riviere*, W. N. (1884), 154. See also *Weldon v. Neal*, W. N. (1884), 153 (Statute of Limitations).

Judgment in default, or under Ord. XIV., may be signed against a married woman in respect of her separate estate, but execution should issue only against such separate estate as she is not restrained from anticipating unless such restraint

exists under a settlement by herself of her own property (*Bursill v. Tanner*, 13 Q. B. D. 691; *Perks v. Mylrea*, W. N. (1884), 64); see, however, *Moore v. Mulligan*, W. N. (1884), 34). So judgment may now be ordered against a married woman, third party, as a feme sole, declaring her separate property chargeable in respect of a liability created before the Act (*Gloucestershire Banking Co. v. Phillips*, 12 Q. B. D. 533). Security for costs is not now required from a married woman suing alone (*Threlfall v. Wilson*, 8 P. D. 18).

45 & 46 Vict.
c. 75, s. 1.

(b) This sub-section does not operate retrospectively so as to include contracts entered into by a married woman before the Act (*Conolan v. Leyland*, 27 Ch. D. 632).

2. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

Property of a woman married after the Act to be held by her as a feme sole.

3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

Loans by wife to husband.

4. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act.

Execution of general power.

5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid (c).

Property acquired after the Act by a woman married before the Act to be held by her as a feme sole.

(c) Property, to which a woman married before the Act was entitled in reversion at the commencement of the Act, but which, since the commencement of the Act, has fallen into possession, is within this section (*Baynton v. Collins*, 27 Ch. D. 604).

A marriage settlement made in 1862 contained an agreement for settlement of after-acquired property above a specified amount, except interests settled and limited to the wife's separate use. The wife, after the Act, became absolutely entitled to a bequest above the specified amount, and not to her separate use. It was held that sect. 19 of the Act exempted the settlement from the 5th and other sections, and that the bequest must be dealt with as if the Act had not been passed (*Re Stonor*, 24 Ch. D. 195; 52 L. J. Ch. 776; 48 L. T. 963). See also *Re Queade*, W. N. (1884), 225, where the married woman was an infant when the settlement was executed, and was therefore not bound by it.

As to the effect of a gift to husband and wife and a third person, see *Re March*, 27 Ch. D. 166, reversing S. C. below, 24 Ch. D. 222.

45 & 46 Vict.
c. 75, s. 6.

As to stock,
&c. to which
a married
woman is
entitled.

6. All deposits in any post office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, which at the commencement of this Act are standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this Act are standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England or of any other bank, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient *primâ facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorise and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband, and to indemnify the Postmaster-General, the Commissioners for the Reduction of the National Debt, the Governor and Company of the Bank of England, the Governor and Company of the Bank of Ireland, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

As to stock,
&c. to be
transferred,
&c. to a
married
woman.

7. All sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this Act shall be allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded, or not.

Provided always, that nothing in this Act shall require or authorise any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of Parliament, charter, byelaw, articles of association, or deed of settlement regulating such corporation or company.

8. All the provisions hereinbefore contained as to deposits in any post-office or other savings bank, or in any other bank, annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this Act shall be standing in the sole name of a married woman, or which, after that time, shall be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Act, or at any time afterwards, shall be standing in, or shall be allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any persons or person other than her husband.

45 & 46 Vict.
c. 75, s. 8.

Investments
in joint
names of
married
women and
others.

9. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband.

As to stock,
&c. standing
in the joint
names of a
married
woman and
others.

10. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the Court may, upon an application under section seventeen of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Act contained shall give validity as against creditors of the husband to any gift, by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed.

Fraudulent
investments
with money
of husband.

45 & 46 Vict.
c. 75, s. 11.

Moneys payable under policy of assurance not to form part of estate of the insured.

11. A married woman may by virtue of the power of making contracts hereinbefore contained effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly.

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts: Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any Court having jurisdiction under the provisions of the Trustee Act, 1850, or the Acts amending and extending the same. The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part (*d*).

13 & 14 Vict.
c. 60.

(*d*) For cases decided under the corresponding section (sect. 10) of the Act of 1870 (now repealed, see sect. 22, *post*), see *Re Mellor*, 6 Ch. D. 127; 7 Ch. D. 200; *Re Adam*, 23 Ch. D. 525, where *Re Mellor* was not followed. As to the title of a petition for the appointment of trustees of the policy, see *Re Soutar*, W. N. (1884), 61.

Remedies of married woman for protection and security of separate property.

12. Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a feme sole, but, except as aforesaid, no husband or wife shall be

entitled to sue the other for a tort. In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife (e).

45 & 46 Vict.
c. 75, s. 12.

(e) As to evidence in criminal proceedings, see Married Women's Property Act, 1884.

13. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock companies; and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed.

Wife's ante-nuptial debts and liabilities.

14. A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been bonâ fide recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any court in which a husband shall be sued for any

Husband to be liable for his wife's debts contracted before marriage to a certain extent.

45 & 46 Vict.
c. 75, s. 14.

such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount or value of such property: Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of an husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid.

Suits for
antenuptial
liabilities.

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong contracted or incurred by the wife before marriage as aforesaid, in which the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him; and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

Act of wife
liable to
criminal
proceedings.

16. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband (*f*).

(*f*) See note to s. 12.

Questions
between
husband and
wife as to
property to
be decided in
a summary
way.

17. In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the judge of the County Court of the district, or in Ireland to the chairman of the Civil Bill Court of the division in which either party resides, and the judge of the High Court of Justice or of the County Court, or the chairman of the Civil Bill Court (as the case may be) may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching

the matters in question to be made in such manner as he shall think fit: Provided always, that any order of a judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said Court would be; and any order of a County or Civil Bill Court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same Court would be, and all proceedings in a County Court or Civil Bill Court under this section in which, by reason of the value of the property in dispute, such Court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of certiorari or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the judge of the High Court of Justice or of the County Court, or the chairman of the Civil Bill Court, if either party so require, may hear any such application in his private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

45 & 46 Vict.
c. 76, s. 17.

18. A married woman who is an executrix or administratrix alone or jointly with any other person or persons, of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a feme sole.

Married woman as an executrix or trustee.

19. Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such

Saving of existing settlements, and the power to make future settlements.

45 & 46 Vict.
c. 75, s. 21. woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors (*g*).

(*g*) See *Re Stonor*, cited in note to s. 5, *ante*, p. 193. In *Bursill v. Tanner*, 13 Q. B. D. 691, it was held that an order giving leave to enter judgment against a married woman in respect of her separate estate should state that execution is to be limited to such separate estate as she is not restrained from anticipating, unless such restraint exists under a settlement of her own property made by herself.

[By ssots. 20 and 21, a married woman having separate estate is to be liable to the parish for the maintenance of her husband, children, and grandchildren.]

Repeal of
33 & 34 Vict.
c. 93.
37 & 38 Vict.
c. 50.

22. The Married Women's Property Act, 1870, and the Married Women's Property Act, 1870, Amendment Act, 1874, are hereby repealed: Provided that such repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act (*h*).

(*h*) See *Re Soutar*, W. N. (1884), 61, as to the extent of this repeal.

Legal repre-
sentative of
married
woman.

23. For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

Interpretation
of terms.

24. The word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. The word "property" in this Act includes a thing in action.

Commence-
ment of Act.

25. The date of the commencement of this Act shall be the first of January, one thousand eight hundred and eighty-three.

Extent of
Act.

26. This Act shall not extend to Scotland.

Short title.

27. This Act may be cited as the Married Women's Property Act, 1882.

PETITION OF RIGHT ACT, 1860.

23 & 24 Vict.
c. 34.

23 & 24 VICT. CAP. 34.

[As to the operation of this Act and the history of the remedy by petition of right, see the remarks of Wickens, V.-C., in *Kirk v. The Queen*, 14 Eq. 558. A petition of right will not lie in respect of lands situate in a colony, which have been vested by an Act of the provincial legislature in the Crown for the purposes of the province (*Re Holmes*, 2 J. & H. 527; *S. C. nom. Holmes v. Reg.*, 8 Jur. N. S. 76); nor for damages for the loss occasioned by an act of a servant of the Crown in the supposed performance of a duty imposed upon him by an Act of Parliament (*Tobin v. Reg.*, 16 C. B. N. S. 310; 10 Jur. N. S. 1029); nor for the dismissal, without cause assigned, of an officer in the army (*Re Tufnell*, 3 Ch. D. 164); nor to obtain, out of a fund paid by a foreign government as compensation for debts due to British subjects, the payment of an amount claimed to be due in respect of one of those debts (*Rustomjee v. Reg.*, 1 Q. B. D. 487; 2 Q. B. D. 69); nor to obtain the payment to the persons entitled of booty granted by the Crown to the Secretary of State for India, in trust for the officers and men of certain forces, and to be distributed according to certain scales and proportions (*Re Banda and Kirwee Booty, Kinloch v. Reg.*, W. N. (1882), 164; W. N. (1884), 80). As to the form of a Petition of Right, see sects. 1 and 2 of the Act. The suppliant cannot obtain discovery of documents by the Crown (*Thomas v. Reg.*, L. R. 10 Q. B. 31, but see *Tomline v. Reg.*, 4 Ex. D. 252); but the Crown can have discovery and production of documents as against the suppliant (*Tomline v. Reg.*.)]

The following is the General Order in Chancery under the Act:—

ORDER, 1ST FEBRUARY, 1862.

PETITIONS OF RIGHT.

1. Upon her Majesty's fiat being obtained to any petition of right presented in pursuance of the said Act and intituled in the Court of Chancery, such petition, with the fiat thereon, together with a printed copy of such petition and fiat (if the petition is in writing), shall be filed at the office of the Clerks of Records and Writs (a).

(a) The petition is now filed at the Central Office, the Record and Writ Clerks being abolished; see Jud. (Officers) Act, 1879; R. S. C., Ord. LXI. See as to printing, R. S. C., Ord. LXVI. r. 7, *infra*.

2. Every such petition, or the printed copy thereof, so filed shall be marked with the words "Lord Chancellor" or "Master of the Rolls," and if with the words "Lord Chancellor," then also with the title of the Vice-Chancellor before whom it is intended to be prosecuted.

3. Every copy of a petition of right left at the office of the Solicitor of the Treasury in pursuance of the said Act, and every copy of a petition of right served upon or left at the last, or usual, or last known place of abode of any person under the provisions of that Act shall be a printed copy, sealed with the seal of the office of the Clerks of Records and Writs, in the same manner as copies of bills are now sealed. And the leaving or serving of any copy not printed or not sealed with the office seal shall be of no effect for any of the purposes of the said Act.

4. A suppliant in any petition under the said Act desiring to file interrogatories for the examination of any person or persons who may be required to plead or answer thereto (other than her Majesty's Attorney-General) shall file such interrogatories at the same time as

Ord., 1 Feb.
1862.
Petitions of
right.

Rule 1.
Petition of
right to be
filed.

Rule 2.
Marked with
name of
judge.

Rule 3.
Printed and
stamped
copies for
service.

Rule 4.
Interroga-
tories for
examination
of respond-
ents.

23 & 24 Vict.
c. 34.

such petition. And a copy, examined and marked by the Clerks of Records and Writs, of the interrogatories which any respondent is required to answer shall be served upon such respondent, together with the copy of the petition.

Rule 5.
Right to
petition in
formâ pauperis.

5. Any person who might be admitted to prosecute a suit in this Court in *formâ pauperis* (b) may be admitted to prosecute in *formâ pauperis* a petition of right intituled in this Court. And any person who might, if a defendant to an ordinary suit in this Court, have been admitted to defend in *formâ pauperis* may be admitted to make his defence in *formâ pauperis* to any petition of right instituted in this Court which he may be required to plead or answer to. But no person shall be admitted to prosecute any petition in *formâ pauperis* without a certificate of counsel that he conceives the case to be proper for relief in this Court.

(b) As to suing in *formâ pauperis*, see Ord. XVI. rr. 22—31, *infra*, pp. 340, 341.

Rule 6.
Rules as to
petitioning
in *formâ pauperis*.

6. The same orders and rules shall apply with regard to any person admitted to sue or defend in *formâ pauperis* under those orders as are applicable with regard to paupers in suits between subject and subject.

Rule 7.
Practice in
reference to
suits shall
apply to pro-
ceedings by
petition of
right.

7. So far as the same may be applicable, and except in so far as may be inconsistent with the said Act and with the preceding orders, the general orders from time to time in force as to proceedings in suits in this Court, and the practice and course of proceeding in this Court in reference to such suits, shall be applicable, and apply and extend to proceedings in this Court in petitions under the said Act, which are, for the purposes of this order, to be considered as bills (c).

Rule 8.
Defence to
petition of
right.

(c) The petition being left at the office of the solicitor to the Treasury (r. 3), may be pleaded or demurred to, or answered, for which purpose further time may be allowed. In default it may be taken *pro confesso*, 23 & 24 Vict. c. 34, s. 8; a decree may be made and costs given as in an ordinary suit, *ibid.* ss. 9—14. See *Tobin v. The Queen*, 11 W. R. 915.

Notwithstanding the Act and these rules, any suppliant may proceed according to the practice before the Act (s. 18); under which the Court did not at the hearing of the petition enter into the merits, but directed a commission to inquire whether a suit should be instituted.

Duties and
fees of officers
of the Court.

8. The duties which under the said Act and the said orders may be required to be performed by officers of this Court, shall be performed by the officers respectively, who perform duties of a similar nature in suits in this Court between subject and subject. And the fees and allowances payable to all officers and solicitors of this Court in respect of matters under the said Act shall be such fees and allowances as, by the practice of the Court and the general orders from time to time in force, they are entitled to take and charge for similar proceedings in cases between subject and subject.

CHANCERY FUNDS ACT, 1872.

35 & 36 VICT. CAP. 44.

An Act to abolish the Office of Accountant-General of the High Court of Chancery in England, and to amend the Law respecting the Investment of Money paid into that Court, and the Security and Management of the Moneys and Effects of the Suitors thereof.

[6th August, 1872.]

WHEREAS it is expedient to abolish the office of the Accountant-General of the High Court of Chancery in England, and to make provision respecting the transaction of the business of the office of the said Accountant-General, and the securing on the Consolidated Fund and managing the moneys, effects, and securities of the suitors of the said Court :

And whereas the Commissioners acting under a commission issued by her Majesty to inquire amongst other matters into the provisions for the custody and management of the stocks and funds of the Court of Chancery of England, and to suggest improvements therein, by their report, dated the seventeenth of February, one thousand eight hundred and sixty-four, reported that it was expedient to establish a deposit account for suitors' moneys in the Court of Chancery, and to allow to the suitors interest at the rate of two per cent. per annum upon the moneys belonging to them whilst in the custody of the Court, but without depriving them of the right to require the investment thereof at any time on their own behalf and at their own risk :

And whereas it is expedient to provide for the establishment of such deposit account :

Be it enacted, &c., as follows (that is to say):

Preliminary.

I. This Act may be cited as "The Court of Chancery (Funds) Act, Short title. 1872."

II. This Act shall, save as regards the making of rules and general orders as hereinafter mentioned, come into operation upon a day to be fixed by a rule to be made under this Act in that behalf, which day is hereinafter referred to as the commencement of this Act, and as to the making of any rules and general orders thereunder this Act shall come into operation on the day of the passing thereof (a).

Commence-
ment of Act.

(a) See the Supreme Court Funds Rules, 1884, *infra*.

III. In this Act—

The term "the Treasury" means the Commissioners of her Majesty's Definitions.

Treasury for the time being, or any two or more of them.

The term "Court of Chancery" means the High Court of Chancery of England, and includes the Lord Chancellor and any other

35 & 36 Vict.
c. 44, s. 3.

judge intrusted with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind.

The term "order of the Court of Chancery" means such order, decree, report, certificate, or direction of the Court of Chancery as defined by this Act, or any judge or officer thereof, as may be prescribed by a rule made under this Act.

The term "General Order of the Court of Chancery" means a general order made by the Lord Chancellor, either alone or with the assistance of other judges, and either in Chancery or in Lunacy.

The term "person" includes a body corporate and company.

The term "dividends" includes interest or other periodical produce.

The term "Government securities" means any annuities, exchequer bonds, exchequer bills, and other parliamentary securities of the Government of the United Kingdom.

"Securities."

The term "securities" includes Government securities and any security of any foreign state, any part of her Majesty's dominions out of the United Kingdom, or any body corporate or company, or standing in books kept by any body corporate, company, or person in the United Kingdom, and all stock, funds and effects.

"Securities in Court."

The term "securities in Court" means any securities as defined by this Act standing or deposited in the name or to the credit or account of the Accountant-General of the Court of Chancery or of the Paymaster-General on behalf of the Court of Chancery, or placed to the credit of a cause, matter, or account in that Court.

"Money in Court."

The term "money in Court" means any sum of money paid into the Bank of England with the privity of the Accountant-General of the Court of Chancery or of the Paymaster-General on behalf of the Court of Chancery, or placed to the credit of any cause, matter, or account in the Court of Chancery, and includes dividends on securities in Court and interest on money on deposit.

Accountant-General's Office.

Abolition of office of Accountant-General of the Court of Chancery, and performance of duties by Paymaster-General.

IV. On the commencement of this Act the office of the Accountant-General of the Court of Chancery shall be abolished, and her Majesty's Paymaster-General (in this Act referred to as the Paymaster-General) for the time being shall perform all the duties and exercise all the powers and authorities which before the commencement of this Act were performed by or vested in or capable of being exercised by the Accountant-General of the Court of Chancery: Provided that nothing in this Act shall render the Paymaster-General incapable of being elected to or sitting or voting in the House of Commons, or cause a member of the House of Commons upon becoming Paymaster-General to vacate his seat.

The Paymaster-General may do any act, sign or execute any instrument, and exercise any authority required or authorised to be done, signed, executed, or exercised by him for the purposes of this Act, or

any rule made thereunder, by a deputy or deputies appointed by him in writing under his hand. 35 & 36 Vict.
c. 44, s. 4.

V. The Consolidated Fund of the United Kingdom shall be liable to make good to the suitors of the Court of Chancery all money in Court and all securities in Court, whether the same have been paid, transferred, or deposited into or in Court before or after the commencement of this Act, and all money and securities vested in the Paymaster-General for the time being by or in pursuance of this Act; and if the Lord Chancellor, either with or without a representation made to him by any suitor of the Court of Chancery, certifies to the Treasury in writing that the Paymaster-General has failed to pay any money in Court, or transfer or deliver any securities in Court, required by any order of the Court of Chancery to be paid, transferred, or delivered from his account, or has been guilty of any default with respect to such money or securities, the Treasury shall cause to be paid out of the growing produce of the Consolidated Fund into the Bank of England, to the credit of the Paymaster-General for the time being on behalf of the Court of Chancery, such sum of money as may be certified by the Lord Chancellor in writing to be required to pay the money so required to be paid, or to replace the securities so required to be transferred or delivered or make good such default. Liability of
Consolidated
Fund for
default of
Paymaster-
General.

VI. Where under any Act (whether passed before or after the commencement of this Act), or otherwise, any money or securities would, if this Act had not passed, be capable of being paid, transferred, or deposited to or into or in the name of or to the account or credit of or with the privity of the Accountant-General of the Court of Chancery, or the Accountant-General of the Court of Exchequer, or to or into or in the Court of Chancery, the same shall after the commencement of this Act be paid, transferred, or deposited to the credit or account of or with the privity of the Paymaster-General for the time being (b) on behalf of the Court of Chancery, and shall be subject to the like trusts, orders, directions, powers, and provisions as if he were the Accountant-General of the Court of Chancery or Court of Exchequer, as the case may be, and the orders of the Court of Chancery relating thereto shall have the same effect as the like orders of the Court of Chancery or Court of Exchequer would have had if this Act had not passed. Construction
of Acts, &c.,
referring to
Accountant-
General.

All Acts of Parliament, all rules and orders made in pursuance of any Act of Parliament, all general orders of the Court of Chancery, all orders of the Court of Chancery, and all instruments and proceedings of every description referring to the Accountant-General of the Court of Chancery or Court of Exchequer, shall, subject to the provisions of this Act and of any rule made thereunder, be construed and put into execution as if the Paymaster-General for the time being were therein named or referred to in place of such Accountant-General, so however that all money and securities shall be paid, transferred, or deposited to the credit or account of the Paymaster-General for the time being on behalf of the Court of Chancery, and not into the name of the person who is such Paymaster-General.

35 & 36 Vict.
c. 44, s. 6.

Provided that nothing in this section shall affect the Queen's Remembrancer, or the performance by him of any duties formerly performed by the Accountant-General of the Court of Exchequer, or apply to any act, rule, order, instrument, or proceeding relating to such duties.

(b) No securities will be transferred to the account of the Paymaster-General on which there can be any liability (*Re Stephens*, 8 Ch. 465).

Framing of orders.

VII. All general orders of the Court of Chancery, and all orders of the Court of Chancery, and all instruments and proceedings relative to business of the Court of Chancery to be transacted by the Paymaster-General in pursuance of this Act (in this Act referred to as chancery business) shall, after the commencement of this Act, be framed and expressed in such manner as may be necessary for carrying the provisions of this Act with respect to the Accountant-General and Paymaster-General into effect.

Office of Paymaster-General for Chancery business.

VIII. The Treasury shall cause the Paymaster-General to keep, in the neighbourhood of the place where the Court of Chancery ordinarily holds its sittings, an office for the purpose of carrying on chancery business, and for making for the purpose of chancery business payments of small amount in cash, and shall from time to time provide such clerks and officers as are necessary for conducting such business and making such payments.

Vesting of property in Paymaster-General for time being.
12 Geo. 1, c. 32, s. 7;
54 Geo. 3, c. 14.

IX. All securities and money vested in the Paymaster-General in pursuance of this Act shall vest in the Paymaster-General for the time being on behalf of the Court of Chancery without any conveyance, assignment, or transfer, notwithstanding the death or removal from office of the person who is Paymaster-General, and shall be held by him in trust to attend the orders of the Court of Chancery, and all acts done by the Paymaster-General with reference to such securities and money in pursuance of an order of the Court of Chancery shall be valid and effectual.

Transfer of securities and receipts of dividends.

X. All securities from time to time transferred, standing, or deposited into, in, or to the account of the Paymaster-General in pursuance of this Act, shall be held by the Paymaster-General in trust in the several causes and matters in which such securities are transferred, standing, or deposited respectively, and shall not be transferred, sold, or delivered out except in pursuance of an order of the Court of Chancery, but the certificate of a registrar of the Court of Chancery or of a master or registrar in lunacy countersigned by the Paymaster-General shall be sufficient evidence of the order referred to in the certificate, and of the directions contained in such order, and shall be a necessary and sufficient authority to the Governor and Company of the Bank of England and every person for transferring on sale or otherwise or delivering out any securities standing in the books of or deposited with such bank or person to the credit or account of the Paymaster-General for the time being on behalf of the Court of Chancery, and the securities directed by any such certificate to be

Certificate of registrar.

transferred or delivered out shall be transferred or delivered out accordingly on behalf of the Paymaster-General by some officer of such bank or person. 35 & 36 Vict.
c. 44, s. 10.

The Governor and Company of the Bank of England shall, by one of their cashiers or some other proper officer, from time to time receive all dividends accruing due on all securities which are standing to the account of the Paymaster-General for the time being on behalf of the Court of Chancery, of which a certificate has been sent to them by the Paymaster-General, and shall also receive any principal money payable in respect of any of such securities, and the said certificate shall be a sufficient authority to them to receive such dividends and principal money; and any receipt given by the said Governor and Company, or one of their cashiers or other proper officer, for any dividends on any securities standing to the said account, or any principal money payable in respect of any such securities, shall be a good discharge for the same; and the said Governor and Company shall place all money received by them in pursuance of this section to the credit of the Paymaster-General for the time being, on behalf of the Court of Chancery (c).

(c) See the Supreme Court Funds Act, 1883, s. 7, *infra*.

XI. Section 19 of the Act of the session of the 16th and 17th years of the reign of her present Majesty, c. 59, intituled, "An Act to repeal certain stamp duties, and to grant others in lieu thereof, to amend the laws relating to stamp duties, and to make perpetual certain stamp duties in Ireland" (which section relates to the endorsement of drafts or orders drawn upon bankers for the payment of money), shall extend to any document issued by the Paymaster-General in pursuance of this Act, which authorises the payment of money. Indorsement
on cheques,
&c., of
Paymaster-
General.

XII. The provisions of the Act of the 24th and 25th years of the reign of her present Majesty, c. 98, intituled, "An Act to consolidate and amend the statute law of England and Ireland relating to indictable offences by forgery," which have reference to the forging or altering of any instrument made or purporting to be made by the Accountant-General of the Court of Chancery, shall apply to every instrument made, signed, or countersigned, or purporting to be made, signed, or countersigned, by the Paymaster-General, or any deputy, clerk, or officer of the Paymaster-General, and to the forgery and alteration of any signature or counter-signature of such Paymaster-General, deputy, clerk, or officer. Forgery of
signature of
Paymaster-
General or
his deputy.
24 & 25 Vict.
c. 98, s. 33.

XIII. Nothing in this Act shall be deemed to require the Governor and Company of the Bank of England to keep the account of the Paymaster-General on behalf of the Court of Chancery causewise, and the Governor and Company of the Bank of England are hereby indemnified for all acts and things done or permitted to be done in pursuance of this Act, or of any rule purporting to be made thereunder, or of any order of the Court of Chancery made or purporting to be made in pur- Indemnity
to Bank of
England.

35 & 36 Vict.
c. 44, s. 13.

suance of this Act or of any such rule, or done or permitted to be done in pursuance of any certificate signed and countersigned as directed by this Act, and such acts and things respectively shall not be questioned or impeached in any Court of law or equity to the detriment of such Governor and Company.

Establish-
ment of
suitsors' de-
posit account.

XIV. Save as otherwise provided by any rule made under this Act, all money in Court paid in either before or after the commencement of this Act shall, subject to the provisions of this Act and of any rule made thereunder, be placed on deposit, and in the case of money in Court paid in after the commencement of this Act without any application or request for that purpose, and when so placed on deposit shall bear interest at the rate of 2 per cent. per annum, together with any income tax chargeable thereon.

Any money which may at any time be standing to the credit of the Paymaster-General on behalf of the Court of Chancery beyond the amount which the Paymaster-General considers to be required for meeting current demands shall be placed in the hands of the Commissioners for the Reduction of the National Debt, who shall from time to time pay to the credit of the Paymaster-General on behalf of the Court of Chancery such sum as, with the money to the like credit, may be certified by him to be required to meet current demands, and the Consolidated Fund of the United Kingdom shall be liable to make good all money so placed in the hands of the Commissioners for the Reduction of the National Debt, and the interest payable on sums placed on deposit, in like manner as it is liable to make good money in Court.

Saving for
investments
made under
order of
Court.

XV. Any money in Court paid in either before or after the commencement of this Act which under any general order of the Court of Chancery or rule under this Act, or under an order of the Court of Chancery, is required to be laid out in any particular investment, shall, subject to any rule made under this Act, be so laid out notwithstanding anything in this Act.

[Section 16 (empowering the Court to make orders for the conversion of stock in Court and the transfer of the proceeds to the suitsors' deposit account) was repealed by the Judicature Act, 1875, s. 16, *post*, which directs that rules may be made as to investment of money in Court in securities and conversion of Government securities into money.]

[Section 17 provides for the application of money placed in the hands of the Commissioners for the Reduction of the National Debt.]

Rules and Accounts.

Treasury rules
for regulating
proceedings.
(See 12 Geo. 1,
c. 32, and 32 &
33 Vict. s. 91.)

XVIII. The Lord Chancellor, with the concurrence of the Treasury, may from time to time make rules for carrying this Act into effect, and regulating the deposit, payment, delivery, and transfer in, into, and out of the Court of Chancery of money and securities which belong to the suitsors of that Court, or are otherwise capable of being deposited in or paid or transferred into that Court, or in or into the Bank of England with the privity of the Paymaster-General, or are under the

custody of the Court of Chancery, and the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealing with money and securities in Court in pursuance of the orders of the Court of Chancery, and the execution of the orders of the Court of Chancery and the powers and duties of the Paymaster-General with reference to such money and securities, and in particular for doing all or any of the following things:—

35 & 36 Vict.
c. 44, s. 18.

- (1.) Carrying into effect the transfer of the office of the Accountant-General to the Paymaster-General :
- (2.) Regulating the mode in which the Paymaster-General is to deal with money and securities in pursuance of the orders of the Court of Chancery, and the mode in which effect is to be given to an order of the Court of Chancery which is to be executed by or through the office of the Paymaster-General for Chancery business, and generally the arrangements between that office and the Court of Chancery and the officers thereof, and the certificates and information to be given by the Paymaster-General with reference to Chancery business : Dealing with money and securities in pursuance of orders of Court.
Certificates of Paymaster-General.
- (3.) Regulating the deposit, payment, sale, transfer, and delivery with, to, and by the Paymaster-General of the said money and securities, and the proceedings, evidence, and duties of persons in relation thereto : Payment to Paymaster-General.
(See 12 Geo. 1, c. 32, ss. 3-6.)
- (4.) Determining the mode of ascertaining the value of Government securities transferred to the Commissioners for the Reduction of the National Debt, or otherwise ordered to be dealt with by the Paymaster-General :
- (5.) Regulating the placing on and withdrawal from deposit of money in Court, whether paid in before or after the commencement of this Act, and the payment or crediting of interest on money placed on deposit : Placing money on deposit.
- (6.) Determining the smallest amount which is to be invested in securities, unless directed to be invested notwithstanding the smallness of the amount, and determining the smallest amount which is to be placed or remain on deposit, and the smallest amount of money on deposit on which interest in pursuance of this Act is to be credited to an account to which money placed on deposit belongs :
- (7.) Determining the time at which money in Court is to be placed on deposit, and at which interest on money so placed on deposit is to begin and cease, and the mode of computing such interest : Computing interest.
- (8.) Determining the cases in which interest on money placed on deposit, and the dividends on any securities standing to the account of the Paymaster-General on behalf of the Court of Chancery, is or are to be placed on deposit :
- (9.) Dealing with accounts on which the balance of money and securities together is less than five pounds, and providing for the

35 & 36 Vict.
c. 44, s. 18.

periodical publication of a list of the accounts not dealt with for a period of at least fifteen years :

- (10.) Regulating the mode of framing and expressing orders of the Court of Chancery, instruments and proceedings relative to the Chancery business of the Paymaster-General :
- (11.) Abrogating any general orders of the Court of Chancery relative to the matters aforesaid :
- (12.) Revoking and altering any rules previously made.

Every rule purporting to be made in pursuance of this section shall come into operation at the date of such rule or any later date therein in that behalf mentioned, and have effect as if it were enacted in this Act.

[Sect. 19 authorises the making of general orders for regulating the practice of the Court of Chancery for the purpose of carrying into effect the Act and any rules made thereunder.]

[By sect. 20 the Treasury are to keep accounts and have them audited.]

[Sect. 21 relates to the transfer of buildings.]

[Sects. 22—25 provide for a pension to the then Accountant-General ; the status of the then existing officers of the Accountant-General ; the transfer of securities to the Paymaster-General and alteration of accounts at Bank of England, &c. ; and for dealing with certain slave compensation funds standing in the name of the Accountant-General.]

Repealing
clause.

[Sect. 26 repealed wholly the Acts specified in schedule 2, part 1, and partly those specified in schedule 2, with the usual savings as to anything done or title to land or right to pension, &c., gained under those Acts.]

SCHEDULES.

SCHEDULE ONE.

[Schedule I. enumerated certain Acts relating to Slave Compensation, referred to in sect. 25.]

SCHEDULE TWO.

PART I.—ACTS WHOLLY REPEALED.

12 Geo. 1, c. 32 ; 12 Geo. 1, c. 33 ; 32 Geo. 3, c. 42 ; 37 Geo. 3, c. 135 ; 52 Geo. 3, c. liv. (local) ; 54 Geo. 3, c. 14 ; 55 Geo. 3, c. lxiv. (local) ; 58 Geo. 3, c. lxxx. (local) ; 59 Geo. 3, c. xxvii. (local) ; 5 & 6 Will. 4, c. 45 ; 6 & 7 Will. 4, c. 5 ; 6 & 7 Will. 4, c. 82 ; 4 & 5 Vict. c. 18 ; 9 & 10 Vict. c. 81.

PART II.—ACTS PARTLY REPEALED.

36 Geo. 3, c. 52, Legacy Duty Act (see pp. 51, 52, *ante*). So much of sect. 32 as requires the Accountant-General to invest the money therein mentioned in the purchase of Three per Cent. Consolidated Bank Annuities or to give any certificate.

Part of 3 Geo. 4, c. 69, an Act relating to Fees.

Part of 3 & 4 Will. 4, c. 73, Abolition of Slavery.

Part of 5 Vict. c. 5, Administration of Justice.

10 & 11 Vict. c. 96, an Act for better securing Trust Funds and for the relief of Trustees, section 3, p. 60, *ante*.

15 & 16 Vict. c. 80, sect. 59.

Parts of 15 & 16 Vict. c. 87, Relief of Suitors.

16 & 17 Vict. c. 98, Relief of Suitors. The whole Act, except sect. 11.

30 & 31 Vict. c. 87, The Court of Chancery (Officers) Act, 1867, sects. 11 and 12.

32 & 33 Vict. c. 91, The Courts of Justice (Salaries and Funds) Act, 1869, sects. 4 to 7.

CHANCERY FUNDS AMENDED ORDERS, 1874.

ORDERS OF COURT.

UNDER THE COURT OF CHANCERY (FUNDS) ACT, 1872, 35 & 36 VICT. CAP. 44; AND THE TRUSTEE RELIEF ACT, 1847, 10 & 11 VICT. CAP. 96.

The 22nd day of December, 1874.

[Rule 1 revoked the Chancery Funds Orders, 1872, and provided that these Amended Orders should come into operation on January 11th, 1875.]

Commence-
ment of
orders.
Interpretation
of terms.

2. In these orders, and in orders as herein defined, terms shall have the same meaning as the same terms are defined to have in the Court of Chancery (Funds) Act, 1872, and as prescribed by the Chancery Funds Consolidated Rules, 1874 (a); and the term "Court" shall mean the Court of Chancery, and include a judge thereof, whether sitting in court or at chambers; and the term "order" shall include a decree; and the term "cause or matter" shall, in these orders, include a separate account in a cause or matter, and a matter intituled merely as an account; the words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; the words importing males shall include females.

(a) The Chancery Funds Consolidated Rules, 1874, are expressly revoked by the Supreme Court Funds Rules, 1884, r. 1, *infra*, but the Amended Orders of 1874 appear to be revoked only so far as they are inconsistent with the Supreme Court Rules, and it is therefore considered necessary to retain them in the present edition. The Chancery Funds Rules, 1874, will be found in 9 Ch. xxix.

[Rule 3 abrogated certain orders in Chancery.]

4. A person who shall make a transfer or payment of money or securities into Court or a deposit of securities in Court, as provided by rule 27 of the Chancery Funds Consolidated Rules, 1874 (b), shall forthwith give notice thereof to the solicitors of the persons upon whose application the order directing such transfer, payment, or deposit was made, or to such persons if they have no solicitor; or if the order was made on the application of the person making such transfer or payment, to the solicitors of the other parties appearing on the application.

Notice of
payment,
transfer, or
deposit on
request.

A person making a transfer, payment, or deposit upon request to the credit of a cause or matter, as provided by rule 25 (c) of the said rules, shall forthwith give notice thereof to the solicitors on the record for the parties to the cause, or in case of a matter, to the persons interested, if known, or to their solicitors, if any, stating in such notice what the money or securities comprised in such transfer, payment, or deposit represent, and for what purpose such transfer, payment, or deposit has been made; and such notices may be sent by post (cc).

(b) The rule here referred to is substantially reproduced by r. 36 of the Supreme Court Funds Rules, 1884, *infra*.

Chancery
Funds
Amended
Orders, 1874.

(*o*) The rule here referred to (which related to the bringing of funds into Court otherwise than in pursuance of an order) is substantially reproduced by r. 30 of the Supreme Court Funds Rules, 1884, *infra*.

(*oo*) On the question of giving notice under the present practice in pursuance of this rule, see *Re Stening*, W. N. (1884), 142, a case under the Trustee Relief Act, cited *ante*, p. 53.

Practice
under Trustee
Relief Act.

[Rules 5—10 relating to notice of payment or transfer into Court under the Trustee Relief Act (10 & 11 Vict. c. 96), and to the application by petition or summons for payment out, will be found set out, p. 53, *ante*.]

Petitions to
state whether
duty is paid
or not.

11. Every petition for dealing with money or securities in Court, chargeable with duty payable to the revenue under the Acts relating to legacy or succession duty, or the dividends on such securities, shall contain a statement whether such duty or any part thereof has or has not been paid.

[Rule 12 relating to registrars' certificates appears to be obsolete.]

[Rule 13, providing that certain applications may be made at Chambers, appears to be obsolete.]

Petitions
respecting
money or
securities on
list of
undcalt-with
funds.

14. When a cause or matter has been inserted in the list mentioned in rule 91 (*d*) of the Chancery Funds Consolidated Rules, 1874, the fact shall be stated in every petition or summons affecting any money or securities to the credit of such cause or matter. In cases in which the money or securities affected by such petition shall together amount to or exceed in value 500*l.*, a copy of such petition, and notice of all proceedings in Court or at chambers shall (unless the Court otherwise directs), be served on the official solicitor of the Court, who shall be at liberty to appear and attend thereon (*e*).

(*d*) The rule here referred to is substantially reproduced by r. 101 of the Supreme Court Funds Rules, 1884, *infra*.

(*e*) As to the costs of the official solicitor, see *Re Clarke*, 21 Ch. D. 776.

[Rule 15 is reproduced by Ord. LV. r. 2 (11), *infra*.]

Certain
articles and
securities not
to be received
by Clerks of
Records and
Writs.

16. The Clerks of Records and Writs (*f*) shall not receive into their custody effects of the suitors consisting of jewels or plate, or other articles of a like nature, or negotiable securities.

(*f*) See now Ord. LX. r. 3; Ord. LXI. r. 1, *infra*.

Proceedings
and docu-
ments in a
cause to be
marked with
reference to
record.

17. No order in a cause shall be passed or entered, and no certificate in a cause of a chief clerk, or of a taxing master of the Court, shall be signed or filed, and no petition in a cause shall be answered, and no summons in a cause shall be issued, and no affidavit made in a cause shall be filed, until the same respectively be either marked with the reference to the record, as prescribed by the 1st of the Consolidated Orders, rule 48, or be inscribed with a note indicating that the cause was commenced prior to 2nd November, 1852, and the correctness of such reference may be required to be authenticated by the official seal of the Clerks of Records and Writs being impressed on every such document (*g*).

(*g*) See Ord. LXI. r. 19, *infra*.

18. The duplicate orders or records to be deposited with the clerks of entries pursuant to rule 18 (h) of the Chancery Funds Consolidated Rules, 1874, shall annually (or oftener if the senior registrar shall direct), be bound up in volumes of convenient size, and indexed, and transmitted to the Report Office, in the same manner as written orders are now bound up, indexed, and transmitted, and written office copies or extracts may be made therefrom, subject to the existing regulations relating thereto.

Chancery
Funds
Amended
Orders, 1874.

Duplicate
orders to be
deposited
with clerks
of entries.

(h) The rule here referred to is reproduced *mutatis mutandis* by r. 24 of the Supreme Court Funds Rules, 1884, *infra*.

19. Solicitors shall be entitled to charge and shall be allowed the same fees on proceedings under these orders [and under the Chancery Funds Consolidated Rules 1874] as they are, by the general orders and practice of the Court, entitled to charge and to be allowed in respect to proceedings of a similar or analogous description; and shall be entitled to charge and shall be allowed the same fees for printed copies of orders as they are now entitled to charge and to be allowed for written copies thereof (i).

Solicitors'
fees.

(i) An order of Court of the same date as these Amended Orders gave a schedule of fees to be paid in the Report Office for printed copies of orders to be acted upon by the Chancery Paymaster, and for printed office or certified copies thereof. The Report Office is now merged in the Central Office (Judicature (Officers) Act, 1879, ss. 5, 6); and the fees for copies are those provided by the Order as to Court Fees, 1884, *infra*.

JUDICATURE (FUNDS, &c.) ACT, 1883.

46 & 47 Vict.
c. 29.

46 & 47 VICT. CAP. 29.

An Act to consolidate the Accounting Departments of the Supreme Court of Judicature, and for other purposes.

[20th August, 1883.]

WHEREAS it is expedient that there should be but one accounting department for the Supreme Court of Judicature and all the Courts and divisions thereof, and it is further expedient to amend certain provisions of the Chancery Funds Act, 1872, and to provide for facilitating the business of the said department:

35 & 36 Vict.
c. 44, s. 10.

Be it enacted, &c., as follows:

1. From and after the commencement of this Act there shall be one accounting department for the Supreme Court of Judicature.

Pay office of
the Supreme
Court.

2. All securities and money at the time of the commencement of this Act vested in the Paymaster-General in pursuance of the Chancery Funds Act, 1872 (a), and all securities and money at any time after the commencement of this Act transferred or paid into or deposited in

Funds in
Chancery
Division.

46 & 47 Vict.
c. 29, s. 2.

Court, to the credit of any cause, matter, or account, in the Chancery Division of the High Court of Justice, shall be vested in her Majesty's Paymaster-General for and on behalf of the Supreme Court of Judicature, and shall continue to be and be subject to all the provisions of the Chancery Funds Act, 1872, and to the rules heretofore made and now in force under that Act, subject to such alterations therein and to such other and further rules as shall from time to time be made as thereby provided.

35 & 36 Vict.
c. 44, s. 10.

(a) See this Act, *ante*, p. 203.

[Sections 3 and 4 relate to funds in other divisions.]

Validity of
payments,
&c. pursuant
to Rules of
Court.

5. All acts done by the Paymaster-General with reference to money and securities in Court (whether such money and securities be paid, transferred, or delivered into Court under this Act or under the provisions of the Chancery Funds Act, 1872), pursuant to and in accordance with the provisions of any general rules of the Supreme Court of Judicature made under the provisions of the Supreme Court of Judicature Act, 1875, and Acts amending the same, shall be as valid and effectual as if they had been done in pursuance of an order of the High Court of Justice or of the Court of Appeal.

38 & 39 Vict.
c. 77.

Remittances
by post.

6. If under any rules made by the Lord Chancellor with the concurrence of the Treasury, or any regulations of the Treasury, the Paymaster-General be authorized to make payments of money to persons entitled thereto upon their request by transmitting by post to such persons crossed cheques or other documents intended to enable such persons to obtain payment of the sums expressed therein, the posting of a letter containing such cheque or document, and addressed to any such person entitled thereto at the address given by him in his request, shall, as respects the liability of the Paymaster-General and of the Consolidated Fund respectively, be equivalent to the delivery of such cheque or document to such person himself.

Amendment
of 35 & 36
Vict. c. 44,
s. 10.

7. Any rules made by the Lord Chancellor with the concurrence of the Treasury under the provisions of the Chancery Funds Act, 1872, or this Act, may determine what evidence of an order of the High Court of Justice or Court of Appeal, and of the directions contained in such order, shall be necessary or sufficient, or necessary and sufficient to authorise the Governor and Company of the Bank of England or any other person to transfer on sale or otherwise, or to deliver out, any securities or other things standing in the books of or deposited with such bank or person to the credit or account of the said Paymaster-General for the time being under this or the aforesaid Act; and such securities or things shall be transferred or delivered out accordingly, on behalf of the Paymaster-General, by some officer of such bank or person, anything in sect. 10 of the Chancery Funds Act, 1872, to the contrary thereof notwithstanding.

Short title.

8. This Act may be cited as the Supreme Court of Judicature (Funds, &c.) Act, 1883.

SUPREME COURT FUNDS RULES, 1884.

I, the Right Honourable Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of her Majesty's Treasury, do hereby, in pursuance of the powers contained in "The Court of Chancery Funds Act, 1872," "The Supreme Court of Judicature Act, 1875," "The Supreme Court of Judicature (Funds, &c.) Act, 1883," and of every other power enabling me in that behalf, make the following rules:—

I. OPERATION OF RULES AND INTERPRETATION OF TERMS.

1. These rules shall come into operation on the 1st day of March, 1884, and may be cited as "The Supreme Court Funds Rules, 1884." Commencement of rules and short title.

2. The Chancery Funds Consolidated Rules, 1874,* are hereby revoked as from the day on which these rules come into operation; and all other rules or general orders prescribing the mode of dealing with funds in Court, and containing any provisions relating to funds in Court inconsistent with these rules, are hereby revoked, and these rules substituted therefor, as from the same day:—Provided, that the rules hereby revoked shall continue to apply to orders made but not fully acted upon before these rules come into operation, so far as is indispensable for the purpose of duly giving effect to such orders: but a certificate of a registrar as an authority for a sale or transfer of securities shall not in such cases be required. Repeal of existing rules.
* For these rules, see 9 Ch. xxix.

3. In these rules and in orders as herein prescribed and defined, terms shall have the same meaning as the same terms are defined to have in the Rules of the Supreme Court, 1883, and the following words shall have the several meanings hereby assigned to them, viz.:— Interpretation of terms.

"Paymaster" means her Majesty's Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature, or the Assistant Paymaster-General for Supreme Court business for the time being deputed by the Paymaster-General to act on his behalf for such business:

"Pay Office" means the Paymaster-General's Office for business of the Supreme Court of Judicature:

"Pay Office Account" means the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature:

"Audit Office" means the branch of the Department of the Comptroller and Auditor General, in which the audit of the accounts of the Pay Office is conducted:

"Bank" means the Bank of England, or the Governor and Company of the Bank of England:

"Company" includes corporation or body corporate:

"Government securities" means Consolidated 3l. per centum Annuities, or Reduced 3l. per centum Annuities, or New 3l. per centum Annuities, or 2½l. per centum Annuities:

- “Funds,” or “funds in Court,” means any money, Government stock or annuities, or other securities, or any part thereof standing or to be placed to the Pay Office Account in the books of the Bank of England or of any other company :
- “Lodge in Court” means pay or transfer into Court, or deposit in Court.
- “Lodgment in Court” means payment or transfer into Court, or deposit in Court :
- “Title of the cause or matter” means the short title of the cause or matter, with the reference to the record :
- “Ledger credit” means the title of the cause or matter and the separate account (if any) opened, or to be opened, under an order or otherwise, in the books of the paymaster, to which any funds are credited or to be credited :
- “Order” means an Order of the Supreme Court of Judicature or of the High Court of Justice or Court of Appeal, whether made in Court or in chambers, and an Order in Lunacy, and includes a judgment or decree, and a report of a master in lunacy, confirmed by fiat, and thereby receiving the operation of an order under the Lunacy Regulation Acts for the time being in force ; and a certificate of a master in lunacy to be acted on without further order ; and includes the schedule or schedules to an order :
- “Direction” means any cheque, draft, or authority issued to the Bank of England, or to any other company, which relates to money or securities standing or to be placed to the Pay Office Account :
- “Court” means the Supreme Court of Judicature or the High Court of Justice, or any division thereof, or the Court of Appeal :
- “Registrar” means a registrar of the Chancery or of the Probate, Divorce, and Admiralty Divisions of the High Court of Justice ; and includes the officer whose duty it may be under the General Orders in Lunacy for the time being in force to draw up and issue Orders in Lunacy :
- “Chief clerk’s certificate” or “certificate of a chief clerk” means a certificate made by a chief clerk of the Chancery Division of the Court :
- “Taxing officer” (*a*) means a taxing master in the Chancery Division of the Court, and the master or person whose duty it is to tax the costs in the other divisions or in lunacy :
- “National Debt Commissioners” means the Commissioners for the Reduction of the National Debt :
- In causes and matters proceeding in a district registry, master, chief clerk, and taxing officer means district registrar :
- Words importing the singular number only include the plural number, and words importing the plural number only include the singular number :

Words importing males include females.

Supreme
Court Funds
Rules, 1884.

(a) The term "taxing officer" includes "district registrar," where the Court has directed taxation to be made by that officer, and the paymaster must act on his certificate of taxation accordingly. The costs of an action in a district registry however will almost invariably be taxed in London (*Wilson v. Alltree*, 27 Ch. D. 242; *Day v. Whittaker*, 6 Ch. D. 734).

II. PREPARATION OF ORDERS IN THE CHANCERY DIVISION AND IN LUNACY TO BE ACTED ON BY THE PAYMASTER, AND PARTICULARS RELATING THERETO.

4. The rules next following, numbered severally 5 to 27 inclusive, shall apply only to causes and matters in the Chancery Division, and (so far as the same are applicable) to matters in lunacy.

Application
of rules 5 to
27 inclusive.

5. Every order which directs funds to be lodged in Court, shall have annexed thereto as part thereof a schedule, to be styled the Lodgment Schedule, which shall be headed with the title of the cause or matter, the date of the order, and the title of the ledger credit to which the funds are to be placed; and shall set out in a tabular form:—

Order for
funds to be
brought into
Court to have
a lodgment
schedule.

- (a) The name, or a sufficiently identifying description of the person by whom the funds are to be lodged:
- (b) The amount of money and the description and amount of securities, if ascertained.

The lodgment schedule shall be prepared upon a printed form according to the Form No. 1 in the Appendix to these rules, and as nearly as may be in the manner shown by the specimen entries appended to such form; and may direct the investment and accumulation of the funds or the dividends or interest on the funds to be lodged.

6. Every order which directs funds in Court to be paid, sold, transferred, or delivered to any person, or carried over to any other ledger credit than that to which the same are standing, or to be otherwise dealt with by the paymaster, shall have annexed thereto as part thereof a schedule, to be styled the payment schedule, which shall be headed with the title of the cause or matter, the date of the order, and the ledger credit to which the funds dealt with are standing. The payment schedule shall contain as part of the heading a statement of the funds with which, or with part of which, or with the interest or dividends on which the paymaster is to deal, describing them if already in Court as they appear in the paymaster's certificate, or if not already in Court stating the source from which they are to be derived. The payment schedule shall set out in a tabular form:—

Order for
funds to be
paid out, &c.
to have a
payment
schedule.

- (a) The name of each person to whom a payment, transfer, or delivery of any funds is to be made (the name to be in full and the christian name to precede the surname): unless the name is to be stated in a certificate of a chief clerk or a master in lunacy or a taxing officer, or unless such payment, transfer, or delivery is to be made to trustees or other persons in succession, or to

Supreme
Court Funds
Rules, 1884.

representatives when no probate or letters of administration shall have been taken out at the date of the order :

- (b) The title of the ledger credit or separate account to which any funds are to be carried over :
- (c) The amount of money and the description and amount of the securities in each case to be paid, sold, transferred, or delivered, so far as the same can be then stated; and where the actual amounts to be dealt with cannot be ascertained at the date of the order, and are not to be subsequently ascertained by any means provided for by the order or by these rules, the aliquot parts to be dealt with :
- (d) The nature and necessary particulars of any other dealings with such funds by the paymaster.

In the body of the schedule short descriptions may be used, and it shall not be necessary to add that the specific amounts dealt with form part of the larger amount of any like funds mentioned in the heading. The word "interest" in the schedule shall, unless otherwise specified, mean the dividends and interest on all the funds mentioned in the heading.

The payment schedule shall be prepared upon a printed form according to the Form No. 2 in the Appendix to these rules, and as nearly as may be in the manner shown by the specimen entries appended to such form.

When a
separate
account is
opened.

7. When funds in Court are by an order directed to be carried over to a separate account, the title of the ledger credit to be opened for the purpose shall, unless the order otherwise directs, commence with the title of the cause or matter to which such funds are standing.

When both a
lodgment and
payment
schedule to
be annexed.

8. Every order which both directs or authorises the lodgment of funds in Court and also deals with such funds or any part thereof, or with any funds already in Court to the same ledger credit, shall have annexed thereto as part thereof a combined lodgment and payment schedule, in the Form No. 3 in the Appendix to these rules.

Separate
schedule for
each ledger
credit.

9. When funds to be lodged in Court under an order are by the same order directed to be placed to two or more ledger credits, separate lodgment schedules shall be made out for such respective ledger credits; and when funds standing to two or more ledger credits are dealt with by the same order, separate payment schedules shall be made out for such ledger credits respectively.

Instructions
to paymaster
to be solely
contained in
schedules.

10. The lodgment and payment schedules, respectively, shall contain the whole of the instructions intended by the orders of which they severally form part to be acted upon by the paymaster, and all particulars necessary to be known by him, so far as such instructions and particulars are capable of being expressed at the date of the order, and the paymaster shall only be responsible for giving effect to such instructions so intended to be given by the order as are expressed in the lodgment or payment schedule thereto. The instructions and particulars contained in a lodgment or payment schedule shall not be set

forth in the body of the order, but shall only be therein referred to as appearing by the schedule, unless for any special cause it shall, in the opinion of the judge by whom the order is made, or the registrar by whom the same is drawn up, be necessary to set forth some part of such instructions or particulars, both in the body of the order and in the schedule.

Supreme Court Funds Rules, 1884.

11. When an order directs any sums to be ascertained by the certificate of a chief clerk or taxing officer (*b*), or in any other manner, and to be afterwards dealt with by the paymaster, it shall be so expressed in the payment schedule; and the paymaster shall deal with the amount when ascertained on receipt of the necessary certificate, or other authority, which shall be retained by him.

Schedule to state when sums are to be ascertained by certificate, &c.

(*b*) See *Wilson v. Alltree*, 27 Ch. D. 242, cited in note (*a*) to r. 3.

12. When an order directs payment out of a fund in Court of any costs directed to be taxed by a taxing officer (*c*), the taxing officer shall state in his certificate the name of the solicitor to whom such costs are payable, and the paymaster shall, upon production of such certificate, issue a direction for payment of the same to such solicitor.

Certificate for payment of taxed costs.

(*c*) See *Wilson v. Alltree*, 27 Ch. D. 242, cited in note (*a*) to r. 3.

13. When interest not directed to be certified is payable in respect of any money in Court directed by an order to be dealt with by the paymaster, there shall be stated in the payment schedule the rate per centum at which, and (if the day to which interest is payable can be fixed by the order) the day (inclusive) to which such interest is to be computed, and the amount of such interest (*d*).

Interest how ascertained.

(*d*) This and the four following rules are taken with only slight alteration from r. 10 of the Chancery Funds Rules, 1874.

14. If the day to which interest is payable cannot be fixed by the order, the day from which (exclusive) such interest is to be computed shall (except in the case of a computation of subsequent interest in the certificate of a chief clerk, or a master in lunacy) be stated in the payment schedule, and such interest may be directed to be computed and certified by a chief clerk, or a master in lunacy, or (where the computation is dependent upon the taxation of costs) by a taxing officer (*e*).

When the day to which interest is payable cannot be ascertained.

(*e*) See note (*d*) to r. 13.

15. Interest certified by a chief clerk, or a master in lunacy, or a taxing officer, may, unless the order otherwise directs, be computed to a day subsequent to the date of the certificate and to be named therein as the day for payment, so as to allow a reasonable time for doing all necessary acts to enable the payment to be made; and the chief clerk, or master in lunacy, or taxing officer, may, if he thinks fit, require a statement in writing of such computation, authenticated by the signature of the solicitor of the person having

When interest certified by a chief clerk, &c.

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the carriage of the order, to be produced before preparing the certificate, but no affidavit verifying such computation shall be required (*f*).

(*f*) See note (*d*) to r. 13.

When interest
to be ascer-
tained by
affidavit.

16. When the day for payment is not fixed by the order, and the interest is not directed to be certified as in the last preceding rule mentioned, such interest shall, without any provision in the order for that purpose, be ascertained by an affidavit, or by a statutory declaration under the Act 5 & 6 Will. 4, c. 62, in which case such interest shall be computed to a day (inclusive) to be named in such affidavit or declaration, as the day for payment; which day shall not be more than fourteen days after the day of swearing such affidavit, or making such declaration; and such affidavit or declaration shall be a sufficient authority to the paymaster to pay or apply the amount of interest so ascertained in the manner directed by such order (*g*).

(*g*) See note (*d*) to r. 13.

Deduction of
income tax
from interest.

17. In every case in which interest is to be computed, income tax (if any) shall, in making such computation, be deducted therefrom at the rate payable during the time such interest accrues, unless the order otherwise directs; and if income tax has been deducted, it shall be so stated in every such affidavit or declaration as is mentioned in the last preceding rule (*h*).

(*h*) See note (*d*) to r. 13.

Documents
on which any
dealings by
the paymaster
are made
contingent to
be described.

18. Whenever the dealing by the paymaster with funds in Court is, by an order, made contingent upon the execution of some document, the document shall be described (*i*), and the parties thereto by whom it is to be executed shall be named in the payment schedule, or in a certificate of a master in lunacy or of a chief clerk. The execution of such document shall be certified by a master in lunacy, or by a chief clerk, or may be verified by affidavit, if the order by which such execution is required shall so direct (*k*).

(*i*) See *Re Clough*, 32 L. T. 195.

(*k*) This rule is taken from r. 11 of the Chancery Funds Rules, 1874.

Periodical
payments.

19. When an order directs the payment of dividends, annuities, or other periodical payments, to be made by the paymaster, there shall be stated in the payment schedule (except in the case of dividends directed to be paid as they accrue due), the time when the first of such payments and all subsequent periodical payments, whether quarterly, half-yearly, yearly, or otherwise, are to be made (*l*).

(*l*) This rule is taken from r. 13 of the Chancery Funds Rules, 1874.

Legacy and
succession
duty.

20. When an order directs the payment, transfer, or delivery of funds in Court, in respect of which duty shall be payable to the revenue under the Acts relating to legacy or succession duty, and does

not direct the payment of such duty, it shall be stated in the payment schedule that such payment, transfer, or delivery is subject to duty, and in such case the paymaster is to have regard to the circumstance that such duty is payable; and when by an order funds in respect of which such duty may be chargeable are directed to be invested, carried over, or placed to a separate account, the words "subject to duty" shall be added in the schedule to the separate account directed to be opened (*m*).

(*m*) This rule is taken from r. 14 of the Chancery Funds Rules, 1874.

21. When a person to whom payment, transfer, or delivery of funds in Court is directed is entitled thereto as real estate, or as trustee, executor, or administrator, or otherwise than in his own right or for his own use, the fact that he is entitled to the same as real estate, or the character in which he is so entitled, shall be stated in the payment schedule to the order, or in the certificate of a chief clerk, or of a taxing officer, or of a master in lunacy (*n*).

Payment,
transfer, or
delivery to
trustees, &c.

(*n*) This rule is taken from the first part of r. 53 of the Chancery Funds Rules, 1874.

22. When an order is made dealing in any way with funds in Court or to be brought into Court in accordance with minutes agreed upon by the parties, the solicitor of the party whose duty it is to procure the order to be drawn up and entered shall prepare and lodge with the registrar or other proper officer, for his consideration, draft lodgment and payment schedules, as the case may be, in the same form as the lodgment and payment schedules to an order, and containing the particulars so far as the same have been ascertained, which are required by these rules to be contained in the lodgment and payment schedules of the order.

Draft schedule
to be
prepared by
party having
conduct of
proceedings.

23. Every order which is to be acted upon by the paymaster shall be drawn up and entered by the registrar, and shall either be wholly printed, or, in cases in which printed forms can be used, may be partly in print and partly in writing (*o*).

Orders how
drawn up and
entered.

(*o*) This rule is taken from the first part of r. 15 of the Chancery Funds Rules, 1874.

24. The registrar shall cause a duplicate of every printed or partly printed order and a further copy of the schedules thereto to be made at the same time with the original; and the original order shall be passed by the registrar in the usual way, and together with the further copy of the schedules thereto be stamped with his official seal on every leaf thereof, and transmitted by him to the clerks of entries with the duplicate. The duplicate order shall be retained and filed by the clerks of entries as the record, and the original order and further copy of the schedules, when examined and stamped by them and marked with a reference thereon to the duplicate or record so filed, shall be returned to the registrar to be delivered out to the solicitor

Authentica-
tion and
record of
orders, and
copy of sche-
dules for
paymaster.

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Paymaster to
act on copy of
schedules.

Additional
copies of
printed
orders.

Amendment
of accidental
errors in
printed
orders.

having the carriage of the order, whose duty it shall be forthwith to leave such further copy of the schedules at the pay office.

25. The copy of the schedules to an order left with the paymaster pursuant to the last preceding rule shall be the paymaster's authority for giving effect to the several operations directed therein. No part of the order other than the schedules thereto shall be left with the paymaster.

26. The registrar may cause to be made or printed additional copies of orders or schedules according to the requirements of the parties or their solicitors, and when such orders have been passed and entered, such additional copies shall be transmitted to the Central Office, and upon being duly completed and signed or certified by the proper officer, may be issued as office or certified copies.

27. Clerical mistakes or errors, or accidental omissions in printed orders may be amended in writing; and every such amendment shall be stamped by the clerks of entries or other proper officer, with the official seal, as evidence that the duplicate or record has been also amended: Provided that no amendment shall be made in any order to provide for a new state of circumstances arising after the date of the order; nor shall any order be amended for the purpose of extending the time thereby limited for making any lodgment of funds in Court.

When any such amendment is made in a schedule to an order, the copy of such schedule to be left at the pay office under rule 24 (if not already so left) shall be amended and stamped in the manner above provided. If such copy has prior to the amendment been left at the pay office, a notification of the amendment, signed by a registrar, shall be delivered to the solicitor having the carriage of the order, who shall leave such notification at the pay office, and produce therewith the amended original order; and the paymaster shall note such amendment on his copy of the schedule and act in accordance therewith (*p*).

(*p*) The first part of this rule is taken from rule 16 of the Chancery Funds Rules, 1874.

[Rule 28 relates only to the Queen's Bench and Probate Divisions.]

IV. LODGMENT OF FUNDS IN COURT.

All funds
lodged in
Court to be
placed to the
account of the
paymaster.

29. All money and securities to be paid into or deposited in Court shall be paid or deposited at the Bank of England (Law Courts Branch) and placed in the books of the bank to the account of the Paymaster-General for the time being, for and on behalf of the Supreme Court of Judicature; and the bank shall cause a receipt to be given to the person making the payment or deposit.

All securities to be transferred into Court shall be transferred to the said account in the books of the bank, or other company in whose books such securities are registered.

Manner of
lodgment of
funds in
Chancery

30. In the Chancery Division a lodgment of funds in Court not directed by an order may be made upon a direction to the bank or other company, to be issued by the paymaster on a request signed by

or on behalf of the person desiring to make such lodgment: Provided that no such lodgment shall be placed in the pay office books to a separate account in a cause or matter (except to a security for costs account) unless an order has directed such separate account to be opened.

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Division; and particulars to be stated in request.

A direction for a lodgment directed by an order shall be issued by the paymaster upon receipt of a copy of the lodgment schedule; and a direction for a lodgment under the Trustee Relief Act shall be issued by him, as provided by rule 41, upon receipt of an office copy of the schedule mentioned in that rule.

The request for a direction under this rule shall state the name of the person by or on whose behalf the funds are to be lodged, the ledger credit in the pay office books to which the funds are to be placed, and the date of the authority or certificate (if any) in pursuance of which the funds are to be lodged.

In cases of funds to be lodged in pursuance of the Lands Clauses Consolidation Act, 1845, or of the Copyhold Acts, the further particulars required under rules 39 and 40 shall be stated in the request. And when (otherwise than as hereinbefore provided) funds are lodged in Court in pursuance of an Act of Parliament, under which some specific authority is necessary for such lodgment, the request for a direction for lodgment shall contain a reference to such Act and authority, and the requisite authority shall be left at the pay office.

Except in the cases next mentioned, the requests under this rule shall be in the Forms No. 5 (for money) and No. 6 (for securities), in the Appendix to these Rules.

When money is to be lodged (in any action brought to recover a debt or damages) under the provisions of Order XXII. or of Rule 26 of Order XXXI. of the Rules of the Supreme Court, 1883, the request shall be in the Form No. 7 in the Appendix to these Rules, and shall contain a statement of the circumstances under which the money is to be lodged, in such of the following terms as may be applicable to the case, viz.:—

Lodgment in Court in actions for debt or damages.

(A.) When the money is to be lodged under the provisions of Rule 5 of the said Order XXII., a statement in the following terms:—

“Paid in in satisfaction of claim of above-named [*name of party*].”

(B.) When the money is to be lodged under the provisions of Rule 6 of Order XXII., a statement in the following terms:—“Paid in against claim of above-named [*name of party*], with defence denying liability.”

(C.) When the money is to be lodged under the provisions of Rule 26 of Order XXXI., a statement in the following terms:—“Paid in to Security for Costs Account.”

31. When it is desired to bring money into Court in the Chancery Division without waiting the time necessary to obtain a direction for the bank to receive such money, it may be lodged at the bank to the

Conditional lodgment of money at the bank in urgent cases.

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credit of a Supreme Court Suspense Account (subject to being dealt with as hereinafter mentioned, and not otherwise), upon an application signed by the person desiring to lodge the same, or his solicitor, and addressed to the bank, specifying the amount, and the title of the ledger credit to which it is desired to be lodged, and upon such lodgment being made one of the cashiers of the bank shall give a certificate that the amount has been lodged to the credit of the said Suspense Account; and in every case the person making such lodgment, or his solicitor, shall forthwith request the direction of the paymaster for the bank to receive the money in the manner provided by the last preceding rule, and shall leave such direction at the bank for the purpose of having the money so previously lodged transferred to the Pay Office Account, and placed in the books of the Pay Office to the ledger credit mentioned in such direction (g).

(g) This rule is taken from rule 31 of the Chancery Funds Rules, 1874.

[Rule 32 relates to the Queen's Bench Division.]

Lodgments
under Ords.
XXII. and
XXXI. to be
distinguished
in pay office
books.

33. In every case of a lodgment in the Chancery and Queen's Bench Divisions under the provisions of the said Orders XXII. and XXXI., as provided in the preceding Rules 30 and 32, the paymaster shall cause an entry to be made in his books indicating the circumstances under which the money is stated to be lodged.

[Rule 34 relates to the Probate, &c. Division.]

Request and
directions may
be sent by
post.

35. A request or authority for the issue by the paymaster of a direction for the lodgment of funds in Court may be sent to the paymaster by post, and, if so desired by the person sending the same, the paymaster shall send such direction by post to the address specified by such person.

Persons may
bring funds
into Court in
Chancery
Division,
though time
limited by
order has
expired.

36. A person directed by an order in the Chancery Division to make a lodgment in Court shall be at liberty to make the same without further order, notwithstanding the order may not have been served, or the time thereby limited for making such lodgment may have expired; and if any further sum of money has by reason of such default become payable by such person for interest, or in respect of dividends, he shall be at liberty to lodge in Court such further sum upon a request as hereinbefore provided: Provided, that any such subsequent lodgment shall not affect or prejudice any liability, process, or other consequences which such person may have become subject to by reason of his default in making the same within the time so limited (r).

(r) This rule is substantially identical with rule 27 of the Chancery Funds Rules, 1874. See rule 4 of the Chancery Funds Amended Orders, 1874, *ante*, p. 211.

Upon receipt
or transfer of
funds, direc-
tion to be
returned to
paymaster

37. When funds have been received by the bank, and when securities have been transferred in the books of the bank or any other company to the Pay Office Account in accordance with a direction, the bank or other company shall forthwith send such direction to the paymaster,

with a certificate thereon that the funds specified have been received or transferred as therein authorized.

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38. In the Chancery and Queen's Bench Divisions, when any direction or other authority for the lodgment of funds in Court is returned to the Pay Office, with a certificate thereon that the funds therein mentioned have been lodged, the paymaster shall file at the Central Office a certificate of such lodgment, and shall therein state the ledger credit to which such funds have been placed in the books at the Pay Office; and an office copy of such certificate of the paymaster shall be received as evidence of the lodgment (s).

Certificate of lodgment to be filed.

(s) This is taken from rule 30 of the Chancery Funds Rules, 1874.

39. Money lodged in Court in the Chancery Division pursuant to the 69th section of the Lands Clauses Consolidation Act, 1845, in respect of lands in England or Wales, shall be placed in the books at the Pay Office to the credit of ex parte the promoters of the undertaking, in the matter of the special Act (citing it), and some words shall be added in each case briefly expressive of the nature of the disability to sell and convey, by reason of which the money shall be so paid in, which particulars shall be stated in the request for the direction to receive the money (t).

When money is lodged under Act 8 Vict. c. 18, s. 69, disability to be stated.

(t) This rule is almost identical with rule 32 of the Chancery Funds Rules, 1874.

40. Money lodged in Court in the Chancery Division pursuant to the Copyhold Acts shall be placed in the books at the Pay Office to the credit of "Ex parte the Land Commissioners for England," and of the particular manor in respect of which the money shall be so paid in; and in the request for a direction to receive such money the name and locality of such particular manor shall be stated (u).

Money lodged under the Copyhold Acts to be specially described.

(u) This is taken from rule 33 of the Chancery Funds Rules, 1874.

41. When a trustee or other person desires to lodge funds in Court in the Chancery Division under the Act 10 & 11 Vict. c. 96, he shall annex to the affidavit to be filed by him pursuant to the said Act a schedule in the same printed form as the lodgment schedule to an order, setting forth:—

Lodgments under the Trustee Relief Act.

- (a.) His own name and address:
- (b.) The amount of money and description and amount of securities proposed to be lodged in Court:
- (c.) The ledger credit to be opened in the Pay Office books, in the matter of the particular trust, to which the funds are to be placed:
- (d.) A statement whether legacy or succession duty (if chargeable) or any part thereof has or has not been paid:
- (e.) A statement whether the money or the dividends on the securities so to be lodged in Court, and all accumulations of dividends thereon, are desired to be invested in any and what description

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of Government securities, or whether it is deemed unnecessary so to invest the same.

The paymaster, on receipt of an office copy of such schedule (which is to be retained by him), shall issue the necessary direction for giving effect to such lodgment (*v*).

(*v*) This rule is taken from rule 34 of the Chancery Funds Rules, 1874, 9 Ch. xliii; but whereas that rule required the trustee to *file an affidavit*, setting forth certain things, this one requires him to *annex to his affidavit a schedule*, setting forth certain things; and the things to be set forth are not quite the same. As to the notice to be given of payment in (as required by rule 5 of the Chancery Funds Amended Orders, 1874), see *Re Stening*, W. N. (1884), 142, cited *ante*, p. 53. The affidavit under the present practice should contain in the body of it a short description of the instrument creating the trust (Trustee Relief Act, s. 1), and the names and addresses of the persons entitled (*Re Stening*); and the schedule to be appended should contain the particulars mentioned in this rule.

Credit to
which pro-
ceeds of secu-
rities and divi-
dends are to
be placed.

42. Any principal money or dividends received by the bank in respect of securities standing to the Pay Office account shall be placed in the books at the Pay Office, in the case of principal money to the ledger credit to which the securities whereon such money arose were standing at the time of the receipt thereof, and in the case of dividends to the ledger credit to which the securities whereon such dividends accrued were standing at the time of the closing of the transfer books of such securities previously to the dividends becoming due (*w*).

(*w*) This is taken from rule 35 of the Chancery Funds Rules, 1874.

[Rule 43 relates to the appropriation in the Queen's Bench Division of money lodged under Ord. XIV.]

VI. PAYMENT, DELIVERY, AND TRANSFER OF FUNDS OUT OF COURT, AND OTHER DEALINGS WITH FUNDS.

Payment out
of Court of
money lodged
in actions for
debts and
damages.

44. In the Chancery and Queen's Bench Divisions, when money has been lodged in actions for debts and damages under Orders XXII. and XXXI. of the Rules of the Supreme Court, 1883 (as described in rules 30 and 32 of these Rules), and when and so far as money lodged under Order XIV. of the said Rules of the Supreme Court has been appropriated in the manner provided in the last preceding rule, payment of the money shall be made to the person in satisfaction of whose claim it has been lodged, or to the person otherwise entitled thereto, or, on the written authority of either such person respectively, to his solicitor, as under:—unless an order restraining such payment has been lodged at the Pay Office prior to the issue of the paymaster's direction for payment.

(A.) When the money has been lodged or appropriated in satisfaction of a claim, under rules 30 (A.) and 32 (A.) of these Rules, or the last preceding rule, a direction for payment shall be issued by the paymaster upon a request in the Form No. 11 (A.) in the Appendix to these Rules.

(B.) When the money has been lodged or appropriated against a claim, with a defence denying liability, under rules 30 (B.) and

32 (B.) of these Rules, or the last preceding rule, a direction for payment shall be issued by the paymaster upon receipt of a notification that the plaintiff accepts the sum lodged in satisfaction, and that due notice has been given of such acceptance, and upon a request for payment of the same; such notification and request to be in the form No. 11 (B.) in the Appendix to these Rules.

(C.) When the money has been lodged to a Security for Costs Account under rules 30 (C.) and 32 (C.) of these Rules, a direction for payment shall be issued by the paymaster upon receipt of a certificate of a taxing officer, master or chief clerk (as the case may be), as to the person who is entitled to have paid out to him the money so lodged (x).

When a request is made for payment of money lodged on a notice or pleading, the original receipted notice or pleading must be produced at the Pay Office.

Except as in this rule is provided, the money so lodged or appropriated as mentioned herein, shall only be paid out in pursuance of an order.

(x) This paragraph (C.) was substituted for that originally contained in the rule by the Supreme Court Funds Rules (October), 1884, to take effect from and after October 24th, 1884 (W. N. (1884), Pt. II. p. 495).

45. Except as provided in the last preceding rule, and subject to the provisions contained in rules 55, 56, 57, 70, 73, and 74, funds in Court shall not be paid, delivered, or transferred out of Court, nor invested, sold, or carried over unless in pursuance of an order, or in the case of an investment of money or application of dividends unless in pursuance of an authority contained in a certificate of a Master in Lunacy (y).

In other cases
funds to be
dealt with
only in pur-
suance of an
order.

(y) This rule is taken from rule 36 of the Chancery Funds Rules, 1874. A prospective order for payment out of sums hereafter to be paid in was made in *Re Chamberlain*, 22 Beav. 286; *Lambie v. Lambie*, 9 Ha. App. 84; but see *Re Bowes*, 12 W. R. 569. For examples of prospective orders for sale of funds in Court, and payment to persons who would become entitled in the vacation, see *Fielden v. Hornby*, W. N. (1870), 213. As to transfer from the English to the Irish Chancery, see *Vaughan v. Marquis of Headfort*, 5 Eq. 173.

46. A duly-authenticated copy of every payment schedule in the Chancery Division and in Lunacy, and of every order in the Queen's Bench and Probate, Divorce and Admiralty Divisions which directs funds to be dealt with, shall be left at the Pay Office, and shall be the paymaster's authority for the issue of directions giving effect to such orders.

A copy of
every pay-
ment schedule
or order deal-
ing with
funds in
Court to be
left at the
pay office.

In the Chancery Division it shall be the duty of the solicitor having the carriage of the order forthwith to leave such copy (as provided in rule 24). In the Queen's Bench and Probate, Divorce and Admiralty Divisions such copy shall be left by or on behalf of the person entitled to payment or interested in any other dealings with such funds directed or authorized by the order.

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Paymaster to
prepare direc-
tions giving
effect to orders
upon receipt
of the neces-
sary authority
and informa-
tion.

Payments
may be made
by post.

Paymaster's
directions to
be sufficient
authority to
the Bank or
other com-
pany.

Discharge to
paymaster.

47. The directions of the paymaster for the payment of money under these rules, and for the delivery of securities out of Court in pursuance of an order shall be prepared by the paymaster forthwith, or from time to time, upon receipt of a copy of the order and any further necessary authority or information; and except as provided in the next following rule such directions shall be delivered upon the personal application of the persons entitled thereto.

Investments of money, transfers of securities out of Court, and carrying over of funds, in pursuance of an order, shall be made by the paymaster upon receipt of the necessary authority and information.

Sales of securities in pursuance of an order, of which a copy has been left at the pay office, shall be made by the paymaster upon application by or on behalf of the persons interested therein, and such application may be sent by post.

48. Any person residing within the United Kingdom entitled under an order to any dividend, annuity, or other periodical payment, and any person so resident entitled to any other payment not exceeding 500*l.*, may obtain a remittance of the same by post, by sending to the paymaster a request in the Form No. 12 in the Appendix to these Rules, attested by two witnesses, of whom one shall be a justice of the peace, a commissioner to administer oaths, or a clerk in holy orders, or notary public. Upon receipt of such request (and, when necessary, of evidence of the fulfilment of any conditions of payment, as referred to in Rule 95), the paymaster shall send by post to the address specified in the request a direction or other document by which payment may be obtained; and such direction or other document shall be crossed, so as to be payable only through a bank: Provided that the paymaster may refuse to comply with any such request if he see reason for so doing, and provided also that the said transmission of such crossed direction or other document shall be at the sole risk of the person sending the said request. The proper attestation of the said request pursuant to this rule shall be sufficient evidence to the paymaster that the person making the request is the person named in the order referred to in such request.

49. The directions of the paymaster issued under these rules (signed and countersigned by such officers as may be prescribed or approved by the Treasury, under Rule 107) shall be sufficient authority to the bank for the payment of the money specified in any such directions, and shall be the necessary and sufficient evidence of an order of the Court to authorize the bank or other company to transfer, on sale or otherwise, or to deliver, any securities standing to the pay office account which may be specified in any such directions.

50. A direction or other document by which payment of money is effected, when indorsed or signed by the payee or his lawful attorney, shall be a good discharge to the paymaster for the amount therein expressed (z).

(z) A similar provision was contained in rule 38 of the Chancery Funds Rules, 1874.

[Rule 51 applies to the Queen's Bench Division.]

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52. When money in Court or any sum payable thereout is by an order directed to be paid to any public officer or department or to the official liquidator of any company, or any other official persons for whom an account is kept at the bank, payment thereof shall, on a requisition to that effect, be made by a direction to the bank to transfer the amount of such payment to the account at the bank of such public officer or official person accordingly. When any duty is directed to be paid out of funds in Court, such duty shall, without any words in the order to that effect, be assessed, and on a requisition made by or on behalf of the Commissioners of Inland Revenue be transferred to the proper account at the bank (a).

Payments to
official persons to be
made by
transfer.

(a) The first part of this rule is taken from rule 41 of the Chancery Funds Rules, 1874.

53. When money in Court is invested by purchase, the payment for such investment, which, unless otherwise ordered, shall include brokerage, shall be made conditionally upon the transfer or deposit to the pay office account of the securities purchased. And when securities in Court are sold, the transfer or delivery of such securities shall not be made until the money proceeds of such sale, after deduction, unless otherwise ordered, of brokerage, shall have been paid to the pay office account.

Payments for
securities
purchased;
and transfers
of securities
sold.

54. Upon an investment of money in Court or the sale of securities in Court, the securities purchased by such investment or the money realised by such sale, respectively, shall in every case be placed to the ledger credit to which the money invested or the securities sold previously stood, unless, in the case of an investment, otherwise specially ordered.

Accounts to
which invest-
ments, sales,
&c. are to be
credited.

55. When securities in Court are directed to be transferred, delivered out, or carried over, dividends accruing thereon subsequently to the date of the order directing the transfer, delivery, or carrying over (when the amount of the securities to be transferred, delivered, or carried over is specified in such order, or if not so specified then subsequently to the time when the amount of such securities shall be ascertained) shall be paid to the persons to whom or carried over to the ledger credit to which the securities are to be transferred, delivered, or carried over unless such order otherwise directs. When securities in Court are directed to be realised, and the whole of the proceeds paid out or carried over in one sum, or in aliquot parts (except when the realisation is to raise a specific sum of money), any dividends accruing on such securities subsequent to the date of the order directing the realisation (if the amount of such securities is specified in the order, or if not so specified, then subsequently to the time when such amount shall be ascertained) shall be added to such proceeds, and applied in like manner therewith, unless such order otherwise directs (b).

Application
of dividends
accruing on
securities
transferred.

(b) This rule is substantially identical with rule 46 of the Chancery Funds Rules, 1874.

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When such
dividends
have been
invested.

56. When such dividends as in the last preceding rule mentioned have pursuant to a general or other previous order been invested, the securities purchased with such dividends shall, unless otherwise directed, be transferred or delivered, and any dividends accrued in respect thereof be paid, to the persons to whom or carried over to the ledger credit to which such first-mentioned dividends would if uninvested have been paid or carried over (*c*).

(*c*) This is taken from rule 47 of the Chancery Funds Rules, 1874.

When divi-
dends other-
wise appli-
cable have
been invested.

57. In every case (other than that provided for by the last preceding rule), when by an order money or dividends are directed to be dealt with so that the same ought not to be invested, and subsequently to the date of such order such money or dividends or any part thereof shall have been invested, the securities purchased with such dividends shall, unless otherwise directed, be sold, and the proceeds of such sale and any dividends accrued in respect of such securities shall be applied in the same manner as the money or dividends so invested would have been applied under such order, if they had not been so invested (*d*).

(*d*) This is from rule 48 of the Chancery Funds Rules, 1874.

Dividends on
residue.

58. When under any order dividends on securities in Court are directed to be dealt with, and a subsequent order is made dealing with part of such securities, the dividends on the residue shall, unless such subsequent order shall otherwise direct, continue to be dealt with in the same manner as the dividends on such securities were by the prior order directed to be dealt with.

Application
of money or
dividends
placed on
deposit after
date of order
dealing there-
with.

59. When subsequently to the date of an order dealing with money in Court such money shall have been placed on deposit, as hereinafter provided, or when dividends accruing subsequently to the date of an order under which such dividends are applicable shall have been placed on deposit, the same when withdrawn from deposit, and any interest accredited in respect thereof, shall, unless the order otherwise directs, be applied in the same manner as such money or dividends would have been applied had the same not been so placed on deposit (*e*).

(*e*) This is taken from rule 50 of the Chancery Funds Rules, 1874.

Application of
interest on
money placed
on deposit
after date of
order direct-
ing its invest-
ment.

60. When an order directs money in Court to be invested, and subsequently to the date of such order the money shall have been placed on deposit, interest accruing in respect of such money shall be applied in the same manner as the dividends arising from such investment are directed to be applied (*f*).

(*f*) This is taken from rule 51 of the Chancery Funds Rules, 1874.

Funds ordered
to be paid or
transferred to
women who

61. When funds in Court are by an order directed to be paid, transferred, or delivered to a woman who is not married at the date of the order, or who, being married at that date, shall become a widow, and

such woman shall marry before payment, transfer or delivery of such funds, upon an affidavit of such woman and her husband that no settlement or agreement for a settlement whatsoever has been made or entered into, before, upon, or since their marriage, or in case any such settlement or agreement for a settlement has been made or entered into, then upon an affidavit of such woman and her husband identifying such settlement or agreement for a settlement, and stating that no other settlement or agreement for a settlement has been made or entered into as aforesaid, and an affidavit of the solicitor of such woman and her husband that such solicitor has carefully perused such settlement or agreement for a settlement, and that, according to the best of his judgment, such funds are not, nor is any part thereof, subject to the trusts of such settlement or agreement for a settlement, or in any manner comprised therein or affected thereby, such funds shall be paid, transferred, or delivered to such woman without the intervention or concurrence of her husband in the same manner as if she had remained unmarried (g).

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afterwards marry.

(g) This rule is taken from rule 52 of the Chancery Funds Rules, 1874, but with important alterations. See as to the Court dispensing wholly or partially with the affidavit of no settlement, *Anon.*, 3 Jur. N. S. 839; *Hedges v. Clarke*, 1 De G. & Sm. 354; *Clark v. Woodward*, 25 Beav. 455; *Veal v. Veal*, 4 Eq. 115; *Wilkinson v. Schneider*, 9 Eq. 424; *Woodward v. Pratt*, 16 Eq. 127; *Guest v. Neames*, W. N. (1884), 227.

62. When funds in Court are by an order directed to be paid, transferred, or delivered to any person named or described in an order, or in a certificate of a chief clerk, or of a taxing officer, or of a master in lunacy (except to a person therein expressed to be entitled to such funds as real estate, or to be entitled thereto as a trustee, executor or administrator, or otherwise than in his own right, or for his own use), such funds, or any portion thereof for the time being remaining unpaid or untransferred or undelivered, may, unless the order otherwise directs, on proof of the death of such person, whether on or after, or, in the case of payment directed to be made to creditors as such, before the date of such order, be paid or transferred or delivered to the legal personal representatives of such deceased person, or to the survivors or survivor of them (h).

Payments, &c. to representatives of deceased persons.

(h) This is taken from part of rule 53, Chancery Funds Rules, 1874.

63. When money in Court is by an order directed to be paid to any persons described in the order, or in a certificate of a chief clerk, or of a taxing officer, or of a master in lunacy, as co-partners, such money may be paid to any one or more of such co-partners, or to the survivor of them (i).

Payments, &c. to partners.

(i) Cf. rule 53, Chancery Funds Rules, 1874.

64. When funds in Court are by an order directed to be paid, transferred, or delivered to any persons as legal personal representatives, such funds, or any portion thereof for the time being remaining

Payments, &c. to surviving representatives.

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Court Funds
Rules, 1884.

unpaid, untransferred, or undelivered, may, upon proof of the death of any of such representatives, whether on or after the date of the order directing such payment, transfer, or delivery, be paid, transferred, or delivered to the survivors or survivor of them (*k*).

(*k*) This rule is from rule 54 of the Chancery Funds Rules, 1874.

Within what
time probate
or letters of
administra-
tion must
have been
granted.

65. No funds shall, under Rules 62 and 64, be paid, transferred, or delivered out of Court to the legal personal representatives of any person under any probate or letters of administration purporting to be granted at any time subsequent to the expiration of six years from the date of the order directing such payment, transfer, or delivery, or in case such funds consist of interest or dividends from the date of the last receipt of such interest or dividends under such order (*l*).

(*l*) This rule is taken from rule 56 of the Chancery Funds Rules, 1874. See *Edwards v. Harvey*, 11 W. R. 330, where the Court would not pay out money to the personal representatives of a person long dead but required the consent of the beneficiaries.

Payment of
legacy or
succession
duty.

66. The paymaster, before acting upon an order for the payment, transfer, or delivery of funds in respect of which legacy or succession duty is (under Rule 20) stated to be payable, shall require the production of the official receipt for such duty, or a certificate from the proper officer of the payment thereof, or that no such duty is payable; and the paymaster, on receiving notice from the proper officer in any case that such duty is payable, shall cause a memorandum to that effect to be made in his books (*m*).

(*m*) This rule is from rule 57 of the Chancery Funds Rules, 1874.

Carrying
over fees on
proceedings
and taxation.

67. When costs are by an order directed to be paid out of funds in Court, the taxing officer shall certify the names of the solicitors respectively to whom such costs are payable, and the amount of any fees which have not been paid but are payable, and are proper to be paid out of such funds, in respect of any proceedings in the cause or matter, whether the amount shall or shall not have been previously ascertained, and in respect of the taxation of such costs. The paymaster shall carry over the amount so certified to be payable from the account to which such funds are placed to an account in the Pay Office books for fees on proceedings and taxation; and the amount so carried over shall from time to time, as the Treasury may direct, be paid to the account of her Majesty's Exchequer (*n*).

(*n*) This is from rule 58 of the Chancery Funds Rules, 1874.

Deduction of
income tax
on payments
of or out of
dividends.

68. In acting on orders directing any annuities or maintenance to be paid, or any other periodical payments to be made, out of dividends to accrue on securities in Court in respect of which dividends income tax shall have been deducted, the paymaster shall draw only for so much of the sums directed by such orders respectively to be paid as shall remain after making a deduction therefrom at the same rate as the bank shall certify to have been deducted from such dividends for

income tax, except in cases in which such sums shall be directed to be paid without making any such deduction (o).

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(o) This is from rule 59 of the Chancery Funds Rules, 1874.

VII. INVESTMENTS.

69. When an order directs the investment and accumulation of dividends accruing on securities in Court, or to be transferred into Court, or directed to be purchased with money in Court, or to be lodged in Court, the paymaster upon receipt of the copy of such order shall, without any request, from time to time (until he shall receive a request or copy of an order to the contrary) invest such dividends, if amounting to or exceeding 40%. half-yearly, together with all accumulations of dividends thereon, as soon as conveniently may be after they shall accrue due and have been received, in the particular description of securities named in the order directing such investment and accumulation (p).

Investment
of accruing
dividends
under an
order.

(p) This and the six following rules are taken from rules 61—67 of the Chancery Funds Rules, 1874.

70. When money in Court is invested in exchequer bills or exchequer bonds, and when exchequer bills or exchequer bonds are, in pursuance of an order, deposited in Court to any ledger credit, any principal money or interest which may thereafter be received and paid into the bank in respect of such bills or bonds, or in respect of any such bills or bonds for which the same may be exchanged, shall from time to time, as the same shall be so received and paid into the bank, be also invested by the paymaster, unless such order otherwise directs, or until he receives a request or a notice of a further order to the contrary, in exchequer bills or exchequer bonds which shall be placed to the same credit (q).

Purchase of
exchequer
bills or bonds.

(q) See note (p) to rule 69.

71. When and so often as any exchequer bills or other securities deposited at the bank to the credit of the pay office account shall be in course of payment, the bank shall, without any direction from the paymaster, cause all such bills or other securities so in course of payment to be delivered to one of the cashiers of the bank, who is to receive the principal money or interest due thereon, or in the case of exchequer bills to exchange the same for new bills, if new bills are issued, or otherwise to receive the principal money and interest due on such of the said bills so in course of payment as cannot be exchanged, and pay such interest or principal and interest (as the case may be) into and deposit all such new bills in the bank to the pay office account; and the bank shall forthwith after every such exchange or receipt of principal or interest certify to the paymaster, without any direction from him for that purpose, the numbers, dates, and amounts of the exchequer bills or other securities so exchanged or paid off, and also the

Bank to
renew ex-
chequer bills,
and to receive
principal and
interest of
securities
when paid off.

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numbers, dates, and amounts of the new bills taken in exchange, and the amount of the interest, or principal money and interest (as the case may be), received on each bill or set of bills or other securities; and upon receiving such certificate the paymaster shall place such new bills and such principal money and interest to the ledger credit in the books at the pay office to which the bills or other securities so exchanged or paid off were placed (*r*).

(*r*) See note (*y*) to rule 69.

Limit of
amount to be
invested.

72. A sum of money in Court less than 40*l.* shall not be invested in securities, except in the cases provided for by the two rules next following, and unless an order directs such investment notwithstanding the smallness of the amount. This rule shall extend to the investment of dividends accruing on securities in Court which are directed to be invested, and such dividends when amounting to less than 40*l.* half-yearly, and not less than 10*l.* (subject to the two rules next following) to be placed on deposit (*s*).

(*s*) See note (*y*) to rule 69.

Investment
of money
lodged under
36 Geo. 3,
c. 52.
(Infant
legatees.)

73. A sum of money amounting to or exceeding 40*l.* lodged in Court, under the 32nd section of the Act 36 Geo. 3, c. 52, shall, upon a request signed by or on behalf of the person paying it in, or by or on behalf of a person claiming to be entitled thereto or interested therein, be invested (without an order) in the Government securities specified in such request; and the dividends accruing in respect thereof, when or so soon as they shall amount to or exceed 10*l.*, shall be from time to time invested in like securities. And if such money shall have been placed on deposit before such request shall be left at the pay office, such money and any interest to be credited in respect thereof, if amounting to 40*l.*, shall, upon a like request, be withdrawn from deposit and invested as before mentioned. Dividends accruing on funds or on investments or accumulations of funds lodged in Court under the said Act prior to the commencement of the Chancery Funds Rules, 1872, may, when or so soon as they amount to or exceed 10*l.*, be invested in like manner (*t*).

(*t*) See note (*y*) to rule 69. For the Act here referred to see *ante*, p. 51.

Investment
of money
lodged under
the Trustee
Relief Act.

74. When it is stated in the schedule to the affidavit made pursuant to rule 41 that it is desired that any money to be lodged in Court, or the dividends accruing on any securities to be lodged in Court in pursuance of the Act 10 & 11 Vict. c. 96, and the accumulations thereof, shall be invested in any description of Government securities, the paymaster shall (if or so soon as such money shall amount to or exceed 40*l.*, or so soon as dividends accruing on such securities shall amount to or exceed 10*l.*) invest the same accordingly, without any order or further request for that purpose. If such money does not amount to 40*l.* (and is not less than 10*l.*) the paymaster shall place such money on deposit without a request for that purpose, unless the said schedule

contains a statement that it is deemed unnecessary to place such money on deposit, or unless notice in writing be left at the pay office of an order having been made, or of an intended application to the Court, affecting such money, securities, or dividends. Dividends accruing on funds or on investments or accumulations of funds lodged in Court under the said Act prior to the commencement of the Chancery Funds Rules, 1872, may, when or so soon as they amount to or exceed 10*l.*, be invested without any request (*u*).

(*u*) See note (*p*) to rule 69.

75. In all cases, upon a request signed by a solicitor acting on behalf of any person claiming to be entitled to or interested in securities in Court, that the dividends or interest accruing on any specified securities may not be invested, being at any time left at the pay office, the paymaster shall be at liberty to cease to invest any more dividends or interest accruing on such securities or to place the same on deposit until he has received notice of an order in that behalf (*v*).

Investing
stayed or
discontinued
on request.

(*v*) See note (*p*) to rule 69.

VIII. MONEY ON DEPOSIT, AND INTEREST THEREON.

76. Subject to the two rules next following all money to be lodged in Court in the Chancery Division shall be placed on deposit without a request. But money arising by the sale, conversion, or payment off of securities in Court in that division shall only be placed on deposit upon a request to that effect (*w*).

Money to be
placed on
deposit.

(*w*) This and the nine following rules are taken with certain alterations from rules 68—80 of the Chancery Funds Rules, 1874.

77. Money shall not be placed on deposit in the following cases:—
(a.) In any cause or matter in the Queen's Bench or Probate Divorce and Admiralty Divisions.

Money not
to be placed
on deposit in
certain cases.

(b.) When lodged under the standing orders of either House of Parliament, pursuant to the Act 9 & 10 Vict. c. 20, or any Act amending the same, in respect of works or undertakings to be executed under the authority of Parliament.

(c.) If lodged prior to the commencement of the Court of Chancery Funds Act, 1872, pursuant to the Copyhold Acts, or to sect. 69 of the Lands Clauses Consolidation Act, 1845.

(d.) When the amount is less than 10*l.*

(e.) When a payment schedule dealing with the money otherwise than by directing it to be placed on deposit has been left at the pay office.

(f.) When a request that the money shall not be placed on deposit, signed by a solicitor acting on behalf of a person claiming to be entitled to or interested in the money, is left at the pay office: Provided that the person making such request may at any time

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withdraw the same, and request that the money may be placed on deposit (*x*).

(*x*) See note (*w*) to rule 76.

When money
shall be
withdrawn
from deposit.

78. Money shall be withdrawn from deposit in the following cases:—

(a.) When an order directs the money to be dealt with to such an amount as may be sufficient to comply therewith:

(b.) When the amount is reduced below 10%:

(c.) Upon a request signed by a solicitor acting on behalf of a person interested, and countersigned by a chief clerk or registrar, containing a notification that the money is about to be dealt with by an order (*y*).

(*y*) See note (*w*) to rule 76.

Time for
placing
money on
deposit.

79. The placing on deposit of money lodged in Court shall not be deferred beyond the 15th or the last day of the month in which it shall be lodged in Court, whichever day shall first happen after such lodgment, or in the case of money lodged in Court on the last day of a month, the placing on deposit shall not be deferred beyond the 15th day of the following month; and when a request to place money in Court on deposit shall be sent to or left at the Pay Office, the money shall be so placed on the day succeeding the day on which such request shall be so left or received at the Pay Office (*z*).

(*z*) See note (*w*) to rule 76.

As to placing
on deposit
cash arising
from con-
version of
government
securities.

80. When an order directs Government securities to be sold and the whole of the money arising thereby to be placed on deposit, and when such securities are realized by exchange as hereinafter provided, such money shall be deemed to have been placed on deposit (without a request for that purpose) on the day on which such exchange shall be effected (*a*).

(*a*) See note (*w*) to rule 76.

No interest
computed on
a fraction
of 1%.

81. Interest upon money on deposit shall not be computed on a fraction of 1% (*b*).

(*b*) See note (*w*) to rule 76.

For what
periods in-
terest is to be
computed.

82. Except as in this rule otherwise provided, interest upon money on deposit shall accrue by half calendar months, and shall not be computed for any less period. The periods from the 1st to the 15th of a month, both days inclusive, and from the 16th to the last day of a month, both days inclusive, shall, for the purpose of computing such interest, be reckoned as half calendar months; and such interest shall begin on the first day of the half calendar month next succeeding that in which the money is placed on deposit, and shall cease from the last day of the half calendar month next preceding the withdrawal of the money from deposit: Provided that when a sum of money in Court

amounting to not less than 500%. shall be placed on deposit, pursuant to a request signed by or on behalf of a person claiming to be interested therein, and shall remain on deposit undealt with until the 1st of April or the 1st of October next succeeding the day on which it is placed on deposit, interest shall begin on the day inclusive next succeeding such day of placing on deposit (c).

(c) See note (w) to rule 76.

83. Interest which has accrued for or during the half years ending respectively the 31st of March and the 30th of September in every year on money then on deposit shall, on or before the 20th days of the months respectively following, be placed by the paymaster to the ledger credit to which such money shall be standing on every such half-yearly day. And when money on deposit is withdrawn from deposit, except as to money withdrawn during the first 15 days of the months of April and October respectively, the interest thereon which has accrued and has not been credited shall, at the time of withdrawal, be placed to the ledger credit to which the money is then standing (d).

When interest is to be credited.

(d) See note (w) to rule 76.

84. When money on deposit to a ledger credit consists of sums which have been placed on deposit at different times, and an order is made dealing with the money, and part of such money has to be withdrawn from deposit for the purpose of executing such order, the part or parts of the money dealt with by such order last placed and remaining on deposit at the time of such withdrawal shall, for the purpose of computing interest, be treated as so withdrawn, unless the order otherwise directs (e).

Mode of calculating interest in certain cases on parts of money withdrawn.

(e) See note (w) to rule 76.

85. Unless otherwise directed by an order, interest credited pursuant to rule 83 on money on deposit shall, when or so soon as it amounts to or exceeds 10%, be placed on deposit, and for the purpose of computing interest upon it shall be treated as having been placed on deposit on the last half-yearly day on which any such interest became due (f).

Placing of interest on deposit.

(f) See note (w) to rule 76.

IX. EXCHANGE OR CONVERSION OF GOVERNMENT SECURITIES AND TRANSACTIONS WITH THE NATIONAL DEBT COMMISSIONERS.

86. When Government securities in Court are directed to be sold, such securities may be realised by exchange in the pay office books in the manner hereinafter provided. And when money in Court is required to be invested in Government securities, such investment may be made by exchange in like manner.

Exchanges of securities in lieu of actual purchases and sales.

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[Rules 87—93 provide for the manner of recording exchanges; the commission to be charged on exchanges and paid to the Exchequer; the periodical adjustment of the exchange account; the adjustment of dividends on Government securities in Court; and the settling of accounts between the pay office and the National Debt Commissioners.]

X. CALCULATION OF RESIDUES, EVIDENCE OF LIFE, &C.

Calculations
of residues to
be made in
pay office.

94. For the purpose of ascertaining the amounts of any residue or aliquot part of money or securities dealt with by an order, when such amounts cannot be stated in the payment schedule and are not directed to be certified, the necessary calculations shall be made in the pay office: Provided that the paymaster may require such calculations to be first stated in a certificate signed by the solicitor of the party interested.

Evidence of
life, &c.

95. When any person is entitled, under an order, to receive dividends or other periodical payments from the pay office, and the paymaster requires evidence of life or of the fulfilment of any conditions affecting such payments, such evidence may be furnished by a declaration signed by a solicitor acting on behalf of such person, or by a declaration signed by the person entitled to the payment, and attested by a justice of the peace, commissioner to administer oaths, clerk in holy orders, or notary public; and the paymaster shall act on such evidence unless in any case he thinks fit to require such evidence to be by affidavit. The paymaster may prescribe, with the approval of the Treasury, the terms in which such declaration or affidavit shall be made, and the forms to be used for that purpose. The provisions of this rule shall apply to orders made before these rules come into operation, notwithstanding anything as to evidence in such orders contained.

Affidavits in
other cases.

96. When in carrying into effect the directions of an order evidence is required by the paymaster for any purposes other than those included in the immediately preceding rules, he may receive and act upon an affidavit, or upon a statutory declaration under the Act of 5 & 6 Will. 4, c. 62, instead of an affidavit, and every such affidavit or statutory declaration shall be filed in the Central Office when the paymaster shall consider it necessary (*g*).

(*g*) Cf. rule 26 of the Chancery Funds Rules, 1874.

XI. COPIES OF ORDERS AND OTHER DOCUMENTS FOR AUDIT OFFICE.

Office copy
of schedules,
&c. to be sent
to audit office.

97. An office copy of the schedules to every order in the Chancery Division and in Lunacy, and of every order in the Queen's Bench and Probate, Divorce and Admiralty Divisions, to be left with and acted upon by the paymaster, shall be transmitted by the proper officer to the audit office; and in case of any amendments being made in any such schedule or order, such office copy shall be likewise amended.

Office copies
of certificates
and other

98. An office copy of every certificate or other authority of a master of the Supreme Court, chief clerk, or taxing officer, or of a master in

lunacy, which is to be acted upon by the paymaster, or so much thereof as may be necessary, and an office copy of any certificate, affidavit, or statutory declaration which may be received in evidence by the paymaster, shall, when requested, be transmitted by the proper officer to the audit office.

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documents to be sent.

XII. MISCELLANEOUS.

99. The paymaster, upon a request signed by or on behalf of a person claiming to be interested in any funds in Court standing to a ledger credit specified in such request, may, in his discretion, issue a certificate of the amount and description of such funds, and such certificate shall have reference to the morning of the day of the date thereof, and shall not include the transactions of that day, and the paymaster shall notify on such certificate the dates of any orders restraining the transfer, sale, delivery out, or payment, or other dealing with the funds in Court to the ledger credit mentioned in such certificate, and whether such orders affect principal or interest, and any charging orders, affecting such funds, of which respectively he has received notice, and the names of the persons to whom notice is to be given, or in whose favour such restraining or charging orders have been made. The paymaster may re-date any such certificate, provided that no alteration in the amount or description of the funds has been made since the certificate was issued. And when a cause or matter has been inserted in the list referred to in Rule 101, the fact shall be notified on the certificate relating thereto (*h*).

Paymaster to give certificates of funds in Court.

(*h*) This rule is taken with certain alterations from rule 87 of the Chancery Funds Rules, 1874.

100. Upon a request signed by or on behalf of a person claiming to be interested in funds in Court, the paymaster may, in his discretion, issue a transcript of the account in his books of the ledger credit specified in such request; and if so required by the person to whom it is issued, such transcript shall be authenticated at the audit office. He may also upon a like request supply such other information or issue such certificates with respect to any transactions or dealings with funds in Court as may from time to time be required in any particular case (*i*).

Paymaster may issue transcripts of accounts and furnish other information.

(*i*) This is taken from rule 88 of the Chancery Funds Rules, 1874.

101. On or before the 1st day of March in every third year the paymaster shall prepare, in such form and with such particulars as the Treasury may from time to time direct, a list or statement of the ledger credits of causes and matters in the books of the pay office (other than those referred to in the next following rule) to which there stood on the 1st day of September then next preceding any securities or any money not less than 50*l.*, which money or the dividends on which securities have not been dealt with, otherwise than by the continuous investment or placing on deposit of dividends, during the fifteen years immediately preceding the last-mentioned date.

List of dormant funds, &c. to be made triennially and published.

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The said list or statement shall be filed in the Central Office, and a copy thereof shall be inserted in the "London Gazette" and exhibited in the several offices of the Court.

The paymaster shall not give any information respecting any funds in Court mentioned in such list or statement except upon a request signed by the person applying for such information. If such request be made by a solicitor, such information shall not be given unless the request states the name of the person on whose behalf it is made, and that such person is in the opinion of the applicant beneficially interested in such funds. If such request be made by any person other than a solicitor, such information shall not be given unless the applicant is able to satisfy the paymaster that the request is such as may in the particular case be properly complied with (*k*).

(*k*) This is taken from rule 91 of the Chancery Funds Rules, 1874.

Transfer of
small
balances
to a special
account.

102. The paymaster may from time to time carry over to a special ledger account for small balances such ledger credit balances of money and securities as do not together amount to 5*l.*, and on which the money or securities shall not have been dealt with during the preceding five years. When an order dealing with funds carried over under this rule is to be acted upon, the paymaster shall carry back such funds and any dividends accrued thereon to the ledger credit from which they were so carried over, and shall deal therewith as directed by such order (*l*).

(*l*) This is taken from rule 92 of the Chancery Funds Rules, 1874.

Titles of
accounts not
to exceed
36 words.

103. The length of the title of any ledger credit shall not exceed thirty-six words, exclusive, in the case of a separate account in a cause or matter, of the title of the cause or matter in which such separate account is opened: Provided that if a sufficient reason be assigned to the satisfaction of the registrar or master of the Supreme Court for extending beyond thirty-six words the title of a ledger credit, such title may be so extended; and the registrar or master shall in such case add to the instruction to open such credit the words "notwithstanding rule 103;" and provided that the paymaster may extend the title of a ledger credit if in his opinion a sufficient reason be assigned for so doing. In such title four figures shall be reckoned as one word (*m*).

(*m*) This is taken from rule 94 of the Chancery Funds Rules, 1874.

Outstanding
cheques
of late
Accountant-
General.

104. Unpaid cheques signed by the late Accountant-General, or any of his predecessors, shall be a sufficient authority to the paymaster for making the payments therein purporting to be intended to be made (*n*).

(*n*) This is taken from rule 40 of the Chancery Funds Rules, 1874.

Index of
documents
filed.

105. An index shall be made and kept in the Central Office of all documents by these rules directed to be filed there (*o*).

(*o*) This is taken from rule 95 of the Chancery Funds Rules, 1874.

106. Upon the request of any person, or of a solicitor acting on behalf of any person, named in an order and entitled to or interested in funds in Court, the paymaster shall record in such manner as he shall consider convenient for reference, the name and address of such person, or of the solicitor for the time being acting on his behalf, and also any change of such address which may be notified to him.

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Names and addresses of suitors.

107. The directions of the paymaster for giving effect to these rules shall be prepared and issued in such form and manner as the Treasury may from time to time direct, and shall be signed by such officers as the Treasury may prescribe or approve.

Paymaster's directions to be issued and signed as Treasury may prescribe.

108. It shall be the duty of the paymaster to comply with any instructions which may be given to him by the Treasury as to the means of identifying any person to whom a direction for payment of money or for delivery of securities out of Court is issued, when such identification may be deemed necessary.

Identification of persons to be paid, &c.

109. Whenever any amount or number of stock, shares, or other security in Court (in this rule referred to as the original security) is converted into any other stock, shares, or other security (in this rule referred to as the substituted security), so that the description thereof will differ from the description given of the original security in the order or other authority under which the paymaster acts respecting the same, the paymaster shall write off from the ledger credit to which the same may be standing the original security so converted, and shall place to the same ledger credit a proportionate part of the substituted security; and except in so far as any original security may be affected by any order brought to the Pay Office in due time for that purpose, the paymaster shall, as far as may be practicable, give effect to every part of any order or other authority under which he has been acting which shall refer to any such original security so converted as aforesaid, or the dividends thereon, as if it referred to the substituted security or the dividends thereon, but no payments of income shall be made in pursuance hereof without an order in any case where the substituted security is in the nature of a terminable annuity.

When stocks or shares of companies or other securities are converted.

110. Whenever any allotment letters, scrip allotments, or other securities are allotted or assigned in respect of any sums of stock, or of any shares or other security in Court, such allotment letters, scrip allotments, or other securities (excepting such of them, if any, as may be affected by any order of which the paymaster has notice) shall be sold. The money to arise by the said sale shall be paid (without deduction for brokerage) by the broker to the Pay Office Account at the bank and placed in the books of the Pay Office to the respective ledger credits to which the said stock or shares or other security are standing, in respect of which such allotment letters, scrip allotments, or other securities have been allotted or assigned.

When allotments of new stock are made by companies.

111. These rules shall not apply in district registries to funds in Court or hereafter lodged in Court (p).

Rules not to apply to district registries.

(p) See *Wilson v. Alltree*, 27 Ch. D. 242, cited in note (a) to rule 3, ante, p. 217.

Supreme
Court Funds
Rules, 1884.
App. 1.

APPENDIX No. 1.
[Form of Lodgment Schedule, referred to in Rule 5.]

LODGMET SCHEDULE.

In the High Court of Justice, Chancery Division. Date of Order, 18 .
Title of Cause or Matter 1883. A. No.
Ledger credit. [If same as title of cause, state "As above."]

Particulars of Funds to be lodged.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		

[Specimen Lodgment Schedules.]

In the High Court of Justice, Chancery Division.
21st July, 1883.
Re Morton, deceased, *Morton v. Matthews*. 1881. M. 391.
Ledger credit. As above.

Particulars of Funds to be lodged.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	s.	d.	£	s.	d.
Balance to be certified to be due on passing final account as receiver.	Edmund James White (the receiver).						
Balance of the 87l. 5s. 9d. certified to be due from him as executor after retaining thereout his costs.	James Matthews (defendant).						

In the High Court of Justice, Chancery Division.
15th June, 1883.
A. v. B. 1883. A. 16.
Ledger credit. As above.

Particulars of Funds to be lodged.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	s.	d.	£	s.	d.
Consols	J. A. and J. B.....				15,000	—	—
Great Western Railway 4 per cent. Debenture Stock.	Do.....				1,500	—	—
Balance of cash to be certified by chief clerk, and to be invested and accumulated in consols.	J. B.						

APPENDIX No. 2.

[Form of Payment Schedule, referred to in Rule 6.]

Supreme Court Funds Rules, 1884. App. 2.

PAYMENT SCHEDULE.

In the High Court of Justice, Chancery Division.

Date of Order, 18 .

Title of Cause or Matter 1883. A. No.

Ledger credit. [If same as title of cause, state "As above."]

Funds in Court.

Particulars of payments, transfers, or other operations ordered.	Payees and transferees, or separate accounts.	Amounts.					
		Money.			Securities.		

[Specimen Payment Schedules.]

In the High Court of Justice, Chancery Division.
2nd August, 1883.

B. v. D. 1883. B. 165.

Ledger credit. As above.

Funds in Court { 730l. 7s. 7d. New 3 per Cent. Annuities.
10l. 13s. 2d. Cash.

Particulars of payments, transfers, or other operations ordered.	Payees and transferees, or separate accounts.	Amounts.					
		Money.			Securities.		
		£	s.	d.	£	s.	d.
Pay	John Park	5	6	7			
Sell New 3 per Cent. Annuities.	....	—	—	—	730	7	7
Out of proceeds and balance of funds pay:—							
Costs of petitioners to be taxed.							
Legacy duty in respect of fund in Court.							
Divide residue in fourths, and pay as under:—							
One-fourth	John Smith (petitioner).						
One-fourth	Emma Joy (petitioner), wife of Wm. Joy, on her separate receipt.						
Out of one-fourth	Eliza Joy (widow)....	79	10	6			
Residue of last-named one-fourth	Edward Sparkes.						
Invest one-fourth in New 3 per Cent. Annuities, and carry over same, and accumulate the dividends in like annuities.	Separate account of William Peters (plaintiff).						

II. PAYMENT.

Funds (if any) already in Court and now dealt with.

Particulars of payments, transfers, or other operations ordered.	Payees and transferees, or separate accounts.	Amounts.			
		Money.		Securities.	

APPENDIX No. 5.

[Form of Request for Lodgment of Money in Chancery Division, referred to in Rule 30.]

HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

I.—Request for Direction for Lodgment.

Title of Cause or Matter v. 1883. A. No.

Ledger credit to which lodged. } [If same as title of cause, state "As above."]

Date of order or certificate (if any) under which lodged 18 .

Further particulars (if any) required to be stated .

The Paymaster is hereby requested to issue a direction to the bank to receive from the sum of £ for the ledger credit in the books of the Pay Office above specified. (Signature) .

II.—Paymaster's Direction for Lodgment.

To the Cashier of the Bank of England (Law Courts Branch).

Please receive the above-stated sum, and place it to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature. (Signature) .

III.—Bank Certificate of Receipt.

To the Assistant Paymaster-General.

Bank of England 18 .

The above-stated sum has been this day received.

[Entd. No. .] (Signature) .

APPENDIX No. 6.

[Form of Request for Lodgment or Transfer of Securities in Chancery Division, referred to in Rule 30.]

HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

I.—Request for Direction for Lodgment or Transfer of Securities.

Title of Cause or Matter v. 1883. A. No.

Ledger credit to which lodged. } [If same as title of cause, state "As above."]

Authority is hereby requested for the lodgment or transfer to the account of the Paymaster-General for and on behalf of the Supreme Court of Judicature of the securities mentioned below, for the ledger credit in the books of the Pay Office above specified.

To be lodged or transferred by .

Description and amount of securities .

Date of order (if any) 18 . (Signature) .

Supreme
Court Funds
Rules, 1884.
App. 6.

II.—*Paymaster's Direction for Lodgment or Transfer.*

Authority is hereby given for the lodgment or transfer of the above-mentioned securities to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature.

(Signature) .

III.—*Certificate of Lodgment or Transfer.*

Address . Date 18 .

It is hereby certified that in accordance with the above authority the securities herein mentioned have this day been lodged or transferred to the account of the Paymaster-General.

(Signature) .

N.B.—Under rules made in pursuance of Acts of Parliament, the bank or other company in whose books the transfer herein authorized is made, must certify such transfer hereon, and return this document to Assistant Paymaster-General, Royal Courts of Justice, London.
[Entd. No. .]

APPENDIX No. 7.

[*Form of Request for Lodgment in Chancery Division in an Action for Debt or Damages, referred to in Rule 30.*]

HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

I.—*Request for Lodgment of Money in an Action for Debt or Damages (under Order XXII. or Rule 26 of Order XXXI.*

Title of Cause or Matter v. 1883. A. No.

Ledger credit to which lodged. } [If same as title of cause, state "As above."]

The Paymaster is requested to issue a direction to the Bank to receive £ for the ledger credit in the books of the Pay Office above specified; which amount is paid in*

(Signature) .

* Insert one of the following statements, in accordance with the circumstances:—

- (A.) "in satisfaction of claim of above-named" [*state name of party*].
(B.) "against claim of above-named" [*state name of party*] "with defence denying liability."
(C.) "to security for costs account."

II.—*Paymaster's Direction for Lodgment.*

To the Cashier of the Bank of England (Law Courts Branch).

Please receive the above-stated sum and place it to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature.

(Signature) .

III.—*Bank Certificate of Receipt.*

To the Assistant Paymaster-General.

Bank of England 18 .

The above-stated sum has been this day received.

(Signature) .

[Entd. No. .]

APPENDIX No. 11 (A).

[Form of Request for Payment of Money lodged "in satisfaction," referred to in Rule 44 (A).]

Supreme
Court Funds
Rules, 1884.
App. 11 (A).

HIGH COURT OF JUSTICE, DIVISION.

Request for Payment of Money lodged, or appropriated, in satisfaction of Claim [under Rule 5 or Rule 11 of Order XXII].

Title of Cause or Matter v. 1883. A. No.

Ledger credit to which the money is standing } [If same as title of cause, state "As above."]

To the Assistant Paymaster-General.

I hereby request that payment of the sum of £ , paid in in the above action may be made to*

(Signature)
(Address)

(Date) 18 .

* N.B.—If this request is signed by the plaintiff's solicitor (or other person on his behalf) the words "the said plaintiff" (naming him) must be inserted here. But if signed by the plaintiff, he may insert either "me, the said plaintiff," or "the solicitor to me, the said plaintiff" (naming the person to be paid), and payment will be made accordingly. Such payment will be made by a crossed cheque or crossed form of receipt, which must be passed through a bank.

[Direction No. .]

APPENDIX No. 11 (B).

[Form of Request for Payment of Money lodged "against Claim," referred to in Rule 44 (B).]

HIGH COURT OF JUSTICE, DIVISION.

Request for Payment of Money lodged or appropriated against Claim, with Defence denying Liability [under Rule 6 or Rule 11 of Order XXII].

Title of Cause or Matter v. 1883. A. No.

Ledger credit to which the money is standing } [If same as title of cause, state "As above."]

To the Assistant Paymaster-General.

I hereby notify that the sum of £ paid in in the above action has been accepted by the plaintiff in satisfaction, and I declare that due notice has been given of such acceptance thereof. And I request that payment of the said sum may be made to*

(Signature)
(Address)

(Date) 18 .

* N.B.—If this request is signed by the plaintiff's solicitor (or other person on his behalf) the words "the said plaintiff" (naming him) must be inserted here. But if signed by the plaintiff, he may insert either "me, the said plaintiff," or "the solicitor to me, the said plaintiff," (naming the person to be paid), and payment will be made accordingly. Such payment will be made by a crossed cheque or crossed form of receipt, which must be passed through a bank.

[Direction No. .]

Supreme
Court Funds
Rules, 1884.
App. 12.

APPENDIX No. 12.

[Form of Request for a Remittance by Post of Money payable under an Order of the Court, referred to in Rule 48.]

	Postal Address	
	Date	18 .
		Division.
Reference to	{	1883. A. No.
Order of Court.		18 .
	In the High Court of Justice, Title of Cause or Matter, Date of Order,	
Precise title of ledger credit of cause } or matter in pay office books. }		

I, the undersigned, declare that I am the person to whom the sum of £ [or, a sum of £ half-yearly, or as the case may be] is directed to be paid by the above-cited order of the High Court of Justice, and I request the Paymaster-General to transmit to me by post, to the above address, the necessary direction or other authority to enable me to obtain payment of the said sum.

(Signature) :

We certify that the person who has signed this request is known to us, and is the person to whom the sum therein mentioned is directed to be paid by the above-mentioned Order.

Signatures * { :

To the Assistant Paymaster-General,
Royal Courts of Justice, London.

* To be signed by two persons, one of whom must be a justice of the peace, a commissioner to administer oaths, or a clerk in holy orders, or a notary public.

SELBORNE, C.

7th February, 1884.

We certify that these rules are made with the concurrence of the Commissioners of her Majesty's Treasury.

HUGH C. E. CHILDERS.
HERBERT J. GLADSTONE.

36 & 37 Vict.
c. 66.

JUDICATURE ACT, 1873.

36 & 37 VICT. CAP. 66.

An Act for the constitution of a Supreme Court, and for other purposes relating to the better Administration of Justice in England; and to authorise the transfer to the Appellate Division of such Supreme Court of the Jurisdiction of the Judicial Committee of Her Majesty's Privy Council. [5th August, 1873.]

WHEREAS it is expedient to constitute a Supreme Court, and to make provision for the better administration of justice in England:

And whereas it is also expedient to alter and amend the law relating to the Judicial Committee of her Majesty's Privy Council:

Be it enacted, &c. as follows:—

36 & 37 Vict.
c. 66, s. 1.

Preliminary.

1. This Act may be cited for all purposes as the “Supreme Court of Judicature Act, 1873” (a). Short title.

(a) Sect. 2 named Nov. 2nd, 1874, for the commencement of the Act. This section was repealed by s. 1 of the Judicature (Commencement) Act, 1874, s. 2 of which substituted Nov. 1st, 1875, as the date of the commencement, except as to any provisions directed to take effect on the passing of the Act. Sect. 1 of the Judicature (Commencement) Act was itself repealed by the Statute Law Revision Act, 1883, 46 & 47 Vict. c. 39, s. 1. Commencement of the Act

PART I.

Constitution and Judges of Supreme Court.

3. From and after the time appointed for the commencement of this Act, the several Courts hereinafter mentioned, (that is to say,) the High Court of Chancery of England, the Court of Queen’s Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, and the London Court of Bankruptcy, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in England (b). Union of existing Courts into one Supreme Court.

(b) By ss. 9 and 33 of the Judicature Act, 1875, so much of this section as related to the Bankruptcy Court was repealed. But by s. 93 of the Bankruptcy Act, 1883, the London Bankruptcy Court is united with the Supreme Court, and its jurisdiction transferred to the High Court.

4. The said Supreme Court shall consist of two permanent divisions, one of which, under the name of “Her Majesty’s High Court of Justice,” shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is hereinafter mentioned, and the other of which, under the name of “Her Majesty’s Court of Appeal,” shall have and exercise appellate jurisdiction, with such original jurisdiction as hereinafter mentioned as may be incident to the determination of any appeal (c). Division of Supreme Court into a Court of original and a Court of appellate jurisdiction.

(c) As to the jurisdiction of the Court of Appeal, see ss. 18, 19, *post*, pp. 252, 253. And see R. S. C. 1883, Ord. LVIII., *infra*.

5. Her Majesty’s High Court of Justice shall be constituted as follows:—The first judges thereof shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the several Vice-Chancellors of the High Court of Chancery, the Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, the several puisne justices of the Courts of Queen’s Bench and Common Pleas respectively, the several junior barons of the Court of Exchequer, and the judge of the High Court of Admiralty, except such, if any, of the aforesaid judges as shall be appointed ordinary judges of the Court of Appeal. Constitution of High Court of Justice.

36 & 37 Vict.
c. 66, s. 5.

Subject to the provisions hereinafter contained, whenever the office of a judge of the said High Court shall become vacant, a new judge may be appointed thereto by her Majesty, by letters patent. All persons to be hereafter appointed to fill the places of the Lord Chief Justice of England, the Master of the Rolls (*d*), the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron (*e*), and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner, respectively as heretofore. Every judge who shall be appointed to fill the place of any other judge of the said High Court of Justice shall be styled in his appointment "*Judge of her Majesty's High Court of Justice*," and (*f*) shall be appointed in the same manner in which the puisne justices and junior barons of the Superior Courts of Common Law have been heretofore appointed (*g*).

All the judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction; and shall be addressed in the manner which is now customary in addressing the judges of the Superior Courts of Common Law.

The Lord Chief Justice of England for the time being shall be President of the said High Court of Justice in the absence of the Lord Chancellor.

Master of the
Rolls.

(*d*) By the Judicature Act, 1881, s. 2, the Master of the Rolls was made a judge of the Court of Appeal only; and by s. 5 of the same Act an additional judge of the High Court may be appointed in his place; see the Act, *post*, p. 296.

Chief Justice
of the Com-
mon Pleas and
Chief Baron.

(*e*) These words in italics were repealed by the Statute Law Revision Act, 1883, 46 & 47 Vict. c. 39, s. 1. By Order in Council dated December 16, 1880, the offices of Chief Justice of the Common Pleas and Chief Baron were abolished.

(*f*) These words in italics were repealed by the Statute Law Revision Act, 1883, s. 1; the judges are now styled "*Justices of the High Court*" (Judicature Act, 1877, s. 4).

(*g*) A proviso followed here as to the number of judges, which was repealed by Judicature Act, 1875, s. 3.

Court of
Appeal.

[Sect. 6, as to the constitution of the Court of Appeal, was repealed by the Judicature Act, 1875; the constitution of the Court of Appeal is now governed by sect. 4 of the latter Act, as modified by sect. 15 of the Appellate Jurisdiction Act, 1876.]

[Sect. 7 relates to vacancies by resignation of judges, and effect of vacancies generally.]

Qualifications
of judges.
Not required
to be ser-
jeants-at-
law.

8. Any barrister of not less than ten years' standing shall be qualified to be appointed a judge of the said High Court of Justice; and any person who if this Act had not passed would have been qualified by law (*h*) to be appointed a lord justice of the Court of Appeal in Chancery, or has been a judge of the High Court of Justice of not less than one year's standing shall be qualified to be appointed an ordinary judge of the said Court of Appeal: Provided, that no person appointed a judge of either of the said Courts shall henceforth be required to take, or to have taken, the degree of serjeant-at-law.

(*h*) Under 14 & 15 Vict. c. 83, s. 1, any barrister of fifteen years' standing might be appointed a Lord Justice.

[Sects. 9 and 10, as to the office and precedence of judges, were repealed by Judicature Act, 1875, and the substance of them re-enacted by sects. 5 and 6 of that Act.]

[Sect. 11 (extended by sect. 8 of the Act of 1875 to the judge of the Admiralty Court) saved the rights of patronage, &c., and obligations of existing judges.] 36 & 37 Vict. c. 66, s. 12.

12. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of justice in any Court, whose jurisdiction is transferred by this Act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the judges or any judge of any of such Courts, save as hereinafter mentioned, every judge of the said High Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a judge liable to such duty, or possessing such authority or power, before the passing of this Act. Any such duty, authority, or power imposed or conferred by any statute, law or custom, in any such case as aforesaid, upon the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed.

Provisions for extraordinary duties of judges of the former Courts.

[Sects. 13—15 relate to salaries and pensions of judges. One clause of sect. 13 was repealed by the Act of 1875.]

PART II.

Jurisdiction and Law.

16. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following; (that is to say,)

Jurisdiction of High Court of Justice.

- (1.) The High Court of Chancery, as a Common Law Court as well as a Court of Equity, including the jurisdiction of the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common Law Court;
- (2.) The Court of Queen's Bench;
- (3.) The Court of Common Pleas at Westminster;
- (4.) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court;
- (5.) The High Court of Admiralty;
- (6.) The Court of Probate;
- (7.) The Court for Divorce and Matrimonial Causes;
- (8.) The London Court of Bankruptcy (i);
- (9.) The Court of Common Pleas at Lancaster;
- (10.) The Court of Pleas at Durham;
- (11.) The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions.

36 & 37 Vict.
c. 66, s. 16.

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions hereinafter contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts, respectively, sitting in Court or Chambers, or elsewhere, when acting as Judges or a Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any such Judges or Judge, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred (*k*).

(*g*) As to the London Court of Bankruptcy, see note (*b*) to sect. 3, *ante*, p. 249.

(*k*) As to the jurisdiction of the High Court, see *Salt v. Cooper*, 16 Ch. D. p. 549. A Chancery judge has jurisdiction (but see *Priestman v. Thomas*, 9 P. D. 210) to grant or recall probate of a will, but as a matter of discretion will not exercise it (*Finney v. Hunt*, 6 Ch. D. 98; *Re Ivory*, 10 Ch. D. p. 375; *Bradford v. Young*, 26 Ch. D. 656). So, too, he may make an order on summons under 3 & 4 Will. 4, c. 42, s. 40, requiring the attendance of a witness before an arbitrator (*Clarbrough v. Toothill*, 17 Ch. D. 787).

Jurisdiction
not trans-
ferred to
High Court.

17. There shall not be transferred to or vested in the said High Court of Justice, by virtue of this Act,—

- (1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same Court sitting as a Court of Appeal in Bankruptcy :
- (2.) Any jurisdiction of the Court of Appeal in Chancery of the County Palatine of Lancaster :
- (3.) Any jurisdiction usually vested in the Lord Chancellor or in the Lords Justices of Appeal in Chancery, or either of them, in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind (*l*) :
- (4.) Any jurisdiction vested in the Lord Chancellor in relation to grants of Letters Patent, or the issue of commissions or other writings, to be passed under the Great Seal of the United Kingdom :
- (5.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of her Majesty as visitor of any College, or of any charitable or other foundation :
- (6.) Any jurisdiction of the Master of the Rolls in relation to records in London or elsewhere in England (*m*).

(*l*) See Judicature Act, 1875, s. 7; *post*, p. 279.

(*m*) The Master of the Rolls, it was held, could direct the amendment of a clerical error in a specification filed in the Patent Office (*Re Johnson's Patent*, 5 Ch. D. 503; *Re Gare*, 26 Ch. D. 105).

Jurisdiction
transferred
to Court of
Appeal.

18. The Court of Appeal established by this Act shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following; (that is to say,)

- (1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same Court as a Court of Appeal in Bankruptcy (*n*) :

- (2.) All jurisdiction and powers of the Court of Appeal in Chancery of the county palatine of Lancaster, and all jurisdiction and powers of the Chancellor of the duchy and county palatine of Lancaster when sitting alone or apart from the Lords Justices of Appeal in Chancery as a Judge of re-hearing or appeal from decrees or orders of the Court of Chancery of the county palatine of Lancaster (o) :
- (3.) All jurisdiction and powers of the Court of the Lord Warden of the Stannaries assisted by his assessors, including all jurisdiction and powers of the said Lord Warden when sitting in his capacity of Judge :
- (4.) All jurisdiction and powers of the Court of Exchequer Chamber :
- (5.) All jurisdiction vested in or capable of being exercised by her Majesty in Council, or the Judicial Committee of her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy.

36 & 37 Vict.
o. 66, s. 18.

(n) No judge of the High Court can now re-hear a case, whether decided by himself or any other judge, the power to re-hear being part of the appellate jurisdiction (*Re St. Nazaire Co.*, 12 Ch. D. 88); and see *Re Hooper*, 14 Ch. D. 1; *Flower v. Lloyd*, 6 Ch. D. 297, as to the power of the Appeal Court to re-hear an appeal.

Re-hearing.

The Court of Appeal cannot hear an original petition, its jurisdiction being purely appellate (*Re Dunraven Co.*, 24 W. R. 37; 33 L. T. 371).

(o) As to the Palatine Court, see *Re Longdenale Spinning Co.*, 8 Ch. D. 150; *Lee v. Nuttall*, 12 Ch. D. 61; *Townsend v. Townsend*, 23 Ch. D. 100.

Palatine Court.

19. The said Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned (p), of her Majesty's High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such Rules and Orders of Court for regulating the terms and conditions on which such appeals shall be allowed, as may be made pursuant to this Act.

Appeals from High Court.

For all the purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice (q).

(p) There is no appeal except by leave from an order made by consent, or only as to costs in the discretion of the Court; see sect. 49, *post*, p. 265; and there is no appeal direct to the Court of Appeal from an order made at Chambers, except by leave; see sect. 50, *post*, p. 266. By sect. 20 of the Appellate Jurisdiction Act, 1876, no appeal lies where it is provided that the decision of a Court or judge shall be final.

What orders not appealable.

(q) An appeal lies from a decision upon a question of fact; but where the evidence has been taken *vidé voce* and the judge below has consequently had an opportunity of observing the demeanour of the witnesses, the Court of Appeal will be very slow to differ from him (*Bigsby v. Dickinson*, 4 Ch. D. 24).

Appeal on question of fact.

[Sects. 20 and 21 are repealed by sect. 24 of the Appellate Jurisdiction Act, 1876.]

36 & 37 Vict.
c. 66, s. 22.

Transfer of
pending
business.

22. From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the said High Court of Justice and the said Court of Appeal respectively shall cease to be exercised, except by the said High Court of Justice and the said Court of Appeal respectively, as provided by this Act; and no further or other appointment of any judge to any Court whose jurisdiction is so transferred shall be made except as provided by this Act: Provided, that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same Court, and by the same judges and officers, and generally in the same manner, in all respects as if this Act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this Act; and every judgment, decree, rule, or order of any Court whose jurisdiction is hereby transferred to the said High Court of Justice or the said Court of Appeal, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged by the said High Court of Justice and the said Court of Appeal respectively, in the same manner as if it had been a judgment, decree, rule, or order of the said High Court or of the said Court of Appeal; and all causes, matters and proceedings whatsoever, whether civil or criminal, which shall be pending in any of the Courts whose jurisdiction is so transferred as aforesaid at the commencement of this Act, shall be continued and concluded, as follows (that is to say), in the case of proceedings in error or on appeal, or of proceedings before the Court of Appeal in Chancery, in and before her Majesty's Court of Appeal; and, as to all other proceedings, in and before her Majesty's High Court of Justice. The said Courts respectively shall have the same jurisdiction in relation to all such causes, matters and proceedings as if the same had been commenced in the said High Court of Justice, and continued therein (or in the said Court of Appeal, as the case may be) down to the point at which the transfer takes place; and, so far as relates to the form and manner of procedure, such causes, matters and proceedings, or any of them, may be continued and concluded, in and before the said Courts respectively, either in the same or the like manner as they would have been continued and concluded in the respective Courts from which they shall have been transferred as aforesaid, or according to the ordinary course of the said High Court of Justice and the said Court of Appeal respectively (so far as the same may be applicable thereto), as the said Courts respectively may think fit to direct.

Rules as to

23. The jurisdiction by this Act transferred to the said High Court

of Justice and the said Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such rules and orders of Court as may be made pursuant to this Act (*r*); and where no special provision is contained in this Act or in any such rules or orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which such jurisdiction shall have been transferred, or by any of such Courts.

36 & 37 Vict.
c. 66, s. 23.
exercise of
jurisdiction.

(*r*) For the rules of Court now in force, see *infra*.

24. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the rules following :

Law and
equity to be
concurrently
administered.

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of equity, the said Courts respectively, and every judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act (*s*).

(*s*) See as to this sub-section, *Eyre v. Hughes*, 2 Ch. D. 148; *Mostyn v. West Mostyn Co.*, 1 C. P. D. 145.

(3.) The said Courts respectively, and every judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading,

36 & 37 Vict.
c. 66, s. 24.

and as the said Courts respectively, or any judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of Court or any order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant (*t*).

(*t*) See Ord. XIX. r. 3, and note (*k*) thereto, *post*, p. 355.

(4.) The said Courts respectively, and every judge thereof, shall recognize and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally (*u*) in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

(*u*) See *Williams v. Snowden*, W. N. (1880), 124.

(5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and

the Court shall thereupon make such order as shall be just (v). 36 & 37 Vict.
c. 66, s. 24.

(v) An action pending in one division cannot now be stayed by another division (*Garbutt v. Favcus*, 1 Ch. D. 155); but a person can be restrained from instituting proceedings (*Besant v. Wood*, 12 Ch. D. 605; *Cercle Co. v. Lavery*, 18 Ch. D. 555, where a person claiming to be a creditor of a company was restrained from presenting a winding-up petition; *Hart v. Hart*, 18 Ch. D. 670). So where an action is brought against a company pending a winding-up petition, any application to stay proceedings in the action must be made to the Court in which the action is proceeding (*Re Artistic Colour Co.*, 14 Ch. D. 502); and see Buckley, 4th ed. p. 206. As to the practice when a winding-up order has been made, see Ord. XLIX. r. 5, and note thereto, *post*, p. 465.

A judge of the Chancery Division cannot restrain a sheriff from dealing with goods taken in execution under a judgment of the Queen's Bench Division (*Wright v. Redgrave*, 11 Ch. D. 24; and see *Powell v. Jewesbury*, 9 Ch. D. p. 39; *Crowle v. Russell*, 4 C. P. D. 186).

A County Court before which an administration suit is pending cannot stay proceedings in the High Court in respect of claims proveable in the administration suit (*Cobbold v. Pryke*, 4 Ex. D. 315).

As to staying proceedings to enforce a compromise, see *Eden v. Naish*, 7 Ch. D. 781; and as to staying proceedings on the ground that there is another action pending for the same matter, see *McHenry v. Lewis*, 22 Ch. D. 397; *Peruvian Co. v. Bockwoldt*, 23 Ch. D. 225; *Hyman v. Helm*, 24 Ch. D. 531.

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common law or by any custom, or created by any statute, in the same manner as the same would have been recognised and given effect to if this Act had not passed by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

(7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided (w).

(w) As to this sub-section, see *In the goods of Tharp*, 3 P. D. 76; *Hedley v. Bates*, 13 Ch. D. 498; *Dowdeswell v. Dowdeswell*, 9 Ch. D. 294; and (as to cross actions) *Thomson v. South Eastern Ry.*, 9 Q. B. D. 320. Under it the Court may enforce a compromise entered into pending an action on a summons in the action (*Eden v. Naish*, 7 Ch. D. 781); and see further as to enforcing a compromise, *Scully v. Lord Dundonald*, 8 Ch. D. 658; *Re Gaudet*, 12 Ch. D. 882; *Hart v. Hart*, 18 Ch. D. 670. So long as the final judgment in an action remains unsatisfied, the action is a "cause or matter pending" within this sub-section (*Salt v. Cooper*, 16 Ch. D. 544);

36 & 37 Vict. c. 66, s. 24. see, however, *Leggott v. Western*, 12 Q. B. D. 287. "A cause is said to be pending in a Court of justice when any proceeding can be taken in it" (*Re Clagett*, 20 Ch. D. p. 653).

Rules of law upon certain points.

25. And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in England as to the matters next hereinafter mentioned: Be it enacted as follows:—

[Sub-sect. 1, as to the administration of assets of insolvent estates, was repealed, and sect. 10 of the Judicature Act, 1875, substituted for it; see this section, *post*, p. 279.]

Statutes of Limitation inapplicable to express trusts.

(2.) No claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations (*x*).

(*x*) See 3 & 4 Will. 4, c. 27, s. 25; 37 & 38 Vict. c. 57, s. 10; Lewin, p. 733 *et seq.*, 7th ed.; this section of the Statute of Limitations is now, it seems, extended to personal estate (*Banner v. Berridge*, 18 Ch. D. p. 262).

Equitable waste.

(3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Merger.

(4.) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity (*y*).

(*y*) See *Chambers v. Kingham*, 10 Ch. D. 743; *Hyde v. Warden*, 3 Ex. D. 72.

Suits for possession of land by mortgagors.

(5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person (*z*).

(*z*) A mortgagor in receipt of the rents and profits may maintain an action for an injunction to restrain an injury to the mortgaged property without joining the mortgagee; see *Fairclough v. Marshall*, 4 Ex. D. 37.

Assignment of debts and choses in action.

(6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee,

or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees (a).

36 & 37 Vict.
c. 66, s. 25.

(a) This sub-section relates only to procedure, and does not make that an assignment which was not so before the Judicature Acts, e. g. a cheque (*Schröder v. Central Bank*, 24 W. R. 710). Assignment of choses in action.

As to the effect of the words "subject to all equities, &c.," see *Young v. Kitchin*, 3 Ex. D. 127; *Ex parte Theys*, 22 Ch. D. 122; affirmed, (C. A.) 25 Ch. D. 587.

The proviso at the end of the sub-section only applies to a case where there has been an absolute assignment in writing (*Re Sutton*, 12 Ch. D. 175). As to what is such an assignment, see *Southwell v. Scotter*, 49 L. J., Q. B. 356; *Brice v. Bannister*, 3 Q. B. D. 569; *Buck v. Robson*, *ibid.* 686; *Ex parte Hall*, 10 Ch. D. 615; *British Waggon Co. v. Lea*, 5 Q. B. D. 149. An assignment of a mortgage debt on a sub-mortgage is not, it seems, an "absolute assignment" within the rule (*National Provincial Bank v. Harle*, 6 Q. B. D. 626); *secus*, as to a deed by which debts are assigned to the plaintiff upon trust to receive the same, and thereout pay himself a sum due to him and hand the surplus to the assignor (*Burlinson v. Hall*, 12 Q. B. D. 347); and see *Walker v. Bradford Bank*, 12 Q. B. D. 511. As to payment into Court under the Trustee Relief Act, see *ante*, p. 50 *et seq.* Trustee Relief Act.

(7.) Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act (b) have been deemed to be or to have become of the essence of such contracts in a Court of equity, shall receive in all Courts the same construction and effect as they would have heretofore received in equity. Stipulations not of the essence of contracts.

(b) By Judicature Act, 1875, s. 10, the reference to the date of the passing of the Act of 1873 is to be deemed to refer to the date of the commencement of the Act; and by Judicature (Commencement) Act, 1874, s. 2, the date fixed for the commencement of the Act of 1873 was November 1st, 1875. As to time being of the essence of the contract, see *Noble v. Edwardes*, 5 Ch. D. 378.

(8.) A mandamus or an injunction may be granted, or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or Injunctions and receivers.

36 & 37 Vict.
c. 66, s. 25.

matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable (c).

(c) See Ord. L. r. 6, and notes thereto, *post*, p. 467.

Damages by
collisions at
sea.

(9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

Infants.

(10.) In questions relating to the custody and education of infants the rules of equity shall prevail (d).

(d) As to the custody and education of infants, see the Custody of Infants Act, 1873, and notes thereto, *ante*, p. 97; *Re Ethel Brown*, 13 Q. B. D. 614.

Cases of
conflict not
enumerated.

(11.) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail (e).

(e) An executor or administrator is now in the position of a gratuitous bailee, both at law and in equity, and cannot be charged with loss of the assets without wilful default (*Job v. Job*, 6 Ch. D. 564). So where an executor or administrator voluntarily pays one creditor in full before judgment, in an administration action, the equity rule prevails, and the executor will be allowed the payment in his accounts (*Re Radcliffe*, 7 Ch. D. 733). Again, a person occupying under an executory agreement for a lease no longer becomes a mere tenant from year to year by the payment of rent, but must be treated as holding on the terms of the agreement (*Walsh v. Lonsdale*, 21 Ch. D. 9; 31 W. R. 110). See also *Anderson v. Bank of British Columbia*, 2 Ch. D. pp. 654, 658 (discovery); *Kendall v. Hamilton*, 4 App. Cas. 504 (joint and several liability of partners on contracts); *Heath v. Pugh*, 6 Q. B. D. p. 362 (mortgagor); *Redgrave v. Hurd*, 20 Ch. D. p. 12 (rescission of contracts).

The sub-section applies only to matters of substantive law (*La Grange v. McAndrew*, 4 Q. B. D. 210); in matters of practice, where no rule is laid down by the orders, and the old practice in equity and at law differed, the more convenient rule will be followed (*Newbiggin Gas Co. v. Armstrong*, 13 Ch. D. 310; *Nurse v. Durnford*, *ibid.* 764).

PART III.

Sittings and Distribution of Business.

Abolition of
terms.

26. The division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any commissioners to whom any jurisdiction may be assigned under this Act; but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may

continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to rules of Court, the High Court of Justice and the Court of Appeal, and the judges thereof respectively, or any such commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such Courts respectively, or of such judges or commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term (*f*).

36 & 37 Vict.
c. 66, s. 26.

(*f*) As to sittings and vacations, see Ord. LXIII. and notes thereto, *post*, p. 534. Notwithstanding this section "terms" may still be referred to for some purposes (*College of Christ v. Martin*, 3 Q. B. D. 16).

[Sect. 27 gives power by Order in Council to regulate vacations; see Ord. LXIII. *post*, p. 534.]

28. Provision shall be made by rules of Court for the hearing, in London or Middlesex, during vacation by judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

Sittings in
vacation.

29. Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any judge or judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by her Majesty shall be of the same validity as if it were enacted in the body of this Act; and any commissioner or commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the said High Court of Justice; and, subject to any restrictions or conditions imposed by Rules of Court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the judge or judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a commissioner or commissioners as aforesaid, or at sittings to be held in Middlesex or London as hereinafter in this Act mentioned, and such question or issue shall be tried and determined accordingly.

Jurisdiction
of judges of
High Court
on circuit.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

30. Subject to Rules of Court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Middlesex and London, and such sittings shall, so far as is reasonably practicable, and subject

Sittings for
trial by jury
in London
and Middle-
sex.

36 & 37 Vict.
c. 66, s. 30.

to vacations, be held continuously throughout the year by as many judges as the business to be disposed of may render necessary. Any judge of the High Court of Justice sitting for the trial of causes and issues in Middlesex or London, at any place heretofore accustomed, or to be hereafter determined by Rules of Court, shall be deemed to constitute a Court of the said High Court of Justice.

Divisions of
the High
Court of
Justice.

31. For the more convenient despatch of business in the said High Court of Justice (but not so as to prevent any judge from sitting whenever required in any Divisional Court, or for any judge of a different division from his own,) there shall be in the said High Court five divisions consisting of such number of judges respectively as hereinafter mentioned. Such five divisions shall respectively include, immediately on the commencement of this Act, the several judges following; (that is to say,)

- (1.) One division shall consist of the following judges; (that is to say), The Lord Chancellor, who shall be president thereof, the Master of the Rolls, and the Vice-Chancellors of the Court of Chancery, or such of them as shall not be appointed ordinary judges of the Court of Appeal.

[The section provides similarly for the judges of the Queen's Bench, Common Pleas, Exchequer, and Probate, Divorce and Admiralty Divisions.]

Any judge of any of the said divisions may be transferred by her Majesty, under her royal sign manual, from one to another of the said divisions.

Upon any vacancy happening among the judges of the said High Court, the judge appointed to fill such vacancy shall, subject to the provisions of this Act, and to any Rules of Court which may be made pursuant thereto, become a member of the same division to which the judge whose place has become vacant belonged (*g*).

(*g*) By an Order in Council dated December 16th, 1880, the Queen's Bench, Common Pleas and Exchequer Divisions were consolidated into one division, called the Queen's Bench Division, under the presidency of the Lord Chief Justice of England, and the offices of Chief Justice of the Common Pleas and Chief Baron were abolished.

The section originally contained a provision as to supplying any deficiency in the number of judges, but this was repealed by the Statute Law Revision Act, 1883, sect. 1.

[Sect. 32 gives power to alter the divisions by Order in Council; see note to sect. 31.]

Rules of
Court to
provide for
distribution
of business.

33. All causes and matters which may be commenced in, or which shall be transferred by this Act to, the High Court of Justice, shall be distributed among the several divisions and judges of the said High Court, in such manner as may from time to time be determined by any Rules of Court, or Orders of Transfer, to be made under the authority of this Act; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said divisions respectively, in the manner hereinafter provided. Every document by which any cause or matter may be commenced in the said High Court shall be marked

with the name of the division, or with the name of the judge, to which or to whom the same is assigned.

36 & 37 Vict.
c. 66, s. 33.

34. There shall be assigned (subject as aforesaid) to the Chancery Division of the said Court :

Assignment of certain business to particular divisions of High Court, subject to rules.

- (1.) All causes and matters pending in the Court of Chancery at the commencement of this Act :
- (2.) All causes and matters to be commenced after the commencement of this Act, under any Act of Parliament by which exclusive jurisdiction, in respect to such causes or matters, has been given to the Court of Chancery, or to any judges or judge thereof respectively, except appeals from County Courts :
- (3.) All causes and matters for any of the following purposes :
 - The administration of the estates of deceased persons ;
 - The dissolution of partnerships or the taking of partnership or other accounts ;
 - The redemption or foreclosure of mortgages ;
 - The raising of portions, or other charges on land ;
 - The sale and distribution of the proceeds of property subject to any lien or charge ;
 - The execution of trusts, charitable or private ;
 - The rectification, or setting aside, or cancellation of deeds or other written instruments ;
 - The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases ;
 - The partition or sale of real estates ;
 - The wardship of infants and the care of infants' estates (*h*).

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said Court :

- (1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this Act :
- (2.) All causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court of Queen's Bench in the exercise of its original jurisdiction, if this Act had not passed.

[The remainder of the section similarly assigns to the Common Pleas, Exchequer, and Probate, Divorce and Admiralty Divisions (1), All matters pending in the Court of Common Pleas, &c., respectively ; and (2), causes and matters which would have been within the exclusive cognizance of the Court of Common Pleas, &c., respectively, if the Act had not passed. By the Order in Council of Dec. 16th, 1880, all causes, matters, and other proceedings assigned or belonging to the Queen's Bench, Common Pleas, and Exchequer Divisions respectively were assigned to the Queen's Bench Division.]

(*h*) This enumeration does not exhaust all the actions which were subject to the old equity jurisdiction (*Rogers v. Jones*, 7 Ch. D. 349). An action falling within one of the classes enumerated will not be sent for trial with a jury unless it involves a simple issue of fact, the determination of which will decide the action (*Cardinall v. Cardinall*, 25 Ch. D. 772). But see *Philips v. Beale*, 26 Ch. D. 621, cited in note (*z*) to Ord. XXXVI. r. 1.

Jurisdiction of the Chancery Division.

Where a partnership action, instituted in the Common Pleas Division, was considered by the Court better adapted for a reference than for a transfer to the Chancery Division, such transfer was refused (*Warner v. Dell*, W. N. (1875), 259) ;

36 & 37 Vict.
c. 66, s. 34.

but see *Hillman v. Mayhew*, 1 Ex. D. 132, where a counterclaim involving the right to specific performance was transferred to the Chancery Division by a judge of the Common Pleas Division, though the action was in the Exchequer Division. Where the defendant in an action in the Common Pleas Division relied on an equity to have a deed set aside or reformed as part of his defence, that Division held that it could give effect to the equity so far as was incidental to the purposes of the defence (*Mostyn v. The West Mostyn Coal and Iron Co.*, 1 C. P. D. 145).

A judge of the Chancery Division has now, it is said, jurisdiction (but see *Priestman v. Thomas*, 9 P. D. 210) to grant or recall probate of a will, but he would not be using a sound discretion if he were to exercise that jurisdiction (*Pinney v. Hunt*, 6 Ch. D. 98; *Bradford v. Young*, 26 Ch. D. 656).

Option to
choose
division.

[Sect. 35, giving a plaintiff option to choose in what division he will sue, is repealed by Judicature Act, 1875, and substantially re-enacted by sect. 11 of that Act.]

Power of
transfer.

36. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as rules of Court may direct, from one division or judge of the High Court of Justice to any other division or judge thereof, or may by the like authority be retained in the division in which the same was commenced, although such may not be the proper division to which the same cause or matter ought, in the first instance, to have been assigned (*i*).

(*i*) As to transfers, see Ord. XLIX. rr. 1—4, and notes thereto, *post*, pp. 463—465.

Sittings in
London and
Middlesex
and on
circuits.

37. Subject to any arrangements which may be from time to time made by mutual agreement between the judges of the said High Court, the sittings for trials by jury in London and Middlesex (*k*), and the sittings of judges of the said High Court under commissions of assize, oyer and terminer, and gaol delivery, shall be held by or before judges of the Queen's Bench, *Common Pleas*, or *Exchequer* Division of the said High Court; provided that it shall be lawful for her Majesty, if she shall think fit, to include in any such commission any ordinary judge of the Court of Appeal or any judge of the Chancery Division to be appointed after the commencement of this Act, or any serjeant-at-law, or any of her Majesty's counsel learned in the law, who, for the purposes of such commission, shall have all the power, authority, and jurisdiction of a judge of the said High Court (*l*).

(*k*) The judges of the Probate, Divorce and Admiralty Division are included (Judicature Act, 1875, s. 8).

(*l*) The words in italics are repealed (Statute Law Revision Act, 1883, s. 1).

[Sect. 38, relating to the rota of judges for election petitions, is repealed by Statute Law Revision Act, 1883, s. 1. See now Judicature Act, 1881, s. 15.]

Powers of
one or more
judges not
constituting
a divisional
Court.

39. Any judge of the said High Court of Justice may, subject to any rules of Court, exercise in Court or in chambers all or any part of the jurisdiction by this Act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in Court or in chambers respectively, by a single judge of any of the Courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorized to be so heard by any rules of Court to be here-

after made. In all such cases, any judge sitting in Court shall be deemed to constitute a Court (*m*).

36 & 37 Vict.
c. 66, s. 39.

(*m*) In the Chancery Division an application for a charging order under sect. 28 of the Solicitors Act, 1860, is properly made by petition in the action (*Brown v. Trotman*, 12 Ch. D. 880); though in the Queen's Bench Division the order may be made at chambers (*Clover v. Adams*, 6 Q. B. D. 622). As to the jurisdiction at chambers generally, see *Hillman v. Mayhew*, 1 Ex. D. 132; *Baker v. Oakes*, 2 Q. B. D. 171; *Hoch v. Boor*, 43 L. T. 425. An order for attachment will not in the Chancery Division be made on summons (*Re Knight, Knight v. Gardiner*, W. N. (1883), 162); *secus*, in the Queen's Bench Division (*Salm Kyrburg v. Posnanski*, 13 Q. B. D. 218).

[By sect. 40 such causes and matters as are not proper to be heard by a single judge were to be heard by Divisional Courts. Sect. 41 made provision for Divisional Courts, for the business of the Queen's Bench, Common Pleas, and Exchequer Divisions. By sect. 42, business arising out of any cause or matter assigned to the Chancery Division is to be transacted and disposed of in the first instance by one judge only, as heretofore accustomed, and every cause or matter commenced in the Chancery Division of the said High Court is to be assigned to one of the judges thereof, by marking the same with the name of such of the said judges as the plaintiff or petitioner (subject to the power of transfer) may in his option think fit. See now Ord. V. r. 9, *post*, p. 312. By sect. 43, Divisional Courts might be held for the transaction of business assigned to the said Chancery Division; and sect. 44 contains a provision similar to that in sect. 43, as to the Probate Division. All these five sections, so far as inconsistent with sect. 17 of the Appellate Jurisdiction Act, 1876, were repealed by that section; and the whole of sect. 43, and parts of sects. 40, 42 and 44, were repealed by the Statute Law Revision Act, 1883.]

[Sect. 45 provides that appeals from inferior Courts shall be determined by Divisional Courts. It is amended by Judicature Act, 1884, s. 8.]

46. Subject to any Rules of Court, any judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or may direct any case, or point in a case, to be argued before a Divisional Court; and any Divisional Court of the said High Court shall have power to hear and determine any such case or point so reserved or so directed to be argued (*n*).

Cases and points may be reserved for or directed to be argued before divisional Courts.

(*n*) See Judicature Act, 1875, s. 22, and Appellate Jurisdiction Act, 1876, s. 17.

[Sect. 47 relates to Crown cases reserved; part of it was repealed by the Statute Law Revision Act, 1883.]

[Sect. 48, relating to motions for new trials, was repealed by Judicature Act, 1875.]

49. No order made by the High Court of Justice or any judge thereof, by the consent of parties (*o*) or as to costs only, which by law are left to the discretion of the Court (*p*), shall be subject to any appeal, except by leave (*q*) of the Court or judge making such order.

What orders shall not be subject to appeal.

(*o*) As to orders by consent, see Dan. 687; *Att.-Gen. v. Tomline*, 7 Ch. D. 388; *Davis v. Davis*, 13 Ch. D. 861. A consent given by the authority of the client cannot be arbitrarily withdrawn; if it is given under a mistake it can be withdrawn, but only on application to the Court (*Harvey v. Croydon Sanitary Authority*, 26 Ch. D. 249).

Orders by consent.

Where a case has been settled without the interference of the Court, and the parties subsequently differ as to the terms, the Court will treat the matter as if no order had been made (*Practices*, W. N. (1884), 91).

(*p*) The rule against appealing for costs in the discretion of the Court is imperative; see *Harris v. Aaron*, 4 Ch. D. 749; 46 L. J. Ch. 488; 25 W. R. 353; 36 L. T. 43; *Harpham v. Shaeklock*, 19 Ch. D. 215; *Llanover v. Homfray, Phillipe v. Llanover*, *ibid.* p. 231; *Graham v. Campbell*, 7 Ch. D. 490; 47 L. J. Ch. 593; 26 W. R. 336; 38 L. T. 195. No appeal lies from a judge's order as to the plaintiff's

Appeals for costs.

36 & 37 Vict.
c. 66, s. 49.

Order merely directing a party guilty of contempt to pay the costs may be appealed from.

Secus, where the application to commit is refused.

Costs of trustees and mortgagees.

Where a question of principle is involved an appeal lies.

Leave to appeal.

As to discharging orders made in chambers.

costs in an interpleader issue (*Hartmont v. Foster*, 8 Q. B. D. 82), nor from an order giving costs out of an estate which in effect belongs to the defendant, the successful party (*Butcher v. Pooler*, 24 Ch. D. 278); nor from an order as to the costs of an inspection (*Mitchell v. Darley Co.*, 10 Q. B. D. 457); and see *Perkins v. Beresford*, 47 L. T. 515.

An order declaring that a defendant has committed a breach of an injunction, but giving no directions, except that he pay the costs of the application to commit, is not within the section, and may be appealed from (*Witt v. Corcoran*, 2 Ch. D. 69; 45 L. J. Ch. 603; 24 W. R. 501; 34 L. T. 550; *Re Clements*, 46 L. J. Ch. 375). Where the application is refused, however, there can be no appeal (*Ashworth v. Outram* (No. 2), 5 Ch. D. 953; *Hope v. Carnegie*, 4 Ch. 264; and see also *Krehl v. Burrell*, W. N. (1883), 177; but see *contra*, *Jarmain v. Chatterton*, 20 Ch. D. 493). In the same way, where at the trial the Court simply orders the defendant to pay the costs of the action, an appeal will lie; for no such order could have been made without admitting that the plaintiff was entitled to bring the action, and this is therefore the real question at issue in the appeal (*Dicks v. Yates*, 18 Ch. D. 76).

The right of a trustee or mortgagee to costs out of the estate is a matter of contract; such costs are not in the discretion of the Court, in the ordinary sense of the term, and if a trustee or mortgagee is deprived of costs or ordered to pay them he may appeal; for the real question involved in the appeal is whether he has been guilty of misconduct (*Re Sarah Knight*, 26 Ch. D. p. 90; *Cotterell v. Stratton*, 8 Ch. 295; *Turner v. Hancock*, 20 Ch. D. 303; *Re Chemmell*, 8 Ch. D. 492; 47 L. J. Ch. 583; 26 W. R. 595; 38 L. T. 494); *Re Hoskin*, 6 Ch. D. 281, and *Taylor v. Dowlen*, 4 Ch. 697, are overruled. So an official liquidator may appeal when refused costs out of the estate (*Re Silver Valley Mines*, 21 Ch. D. 381); and a solicitor ordered to pay costs personally may appeal (*Re Bradford*, W. N. (1883), 230; reversing *S. C.* below, 11 Q. B. D. 373; *Re Milton*, 32 W. R. 238).

Where in a suit between incumbrancers to ascertain priorities in a fund, the Court decided in favour of one of the defendants, and ordered the costs of the action to be paid out of the fund, an appeal by the successful defendant as to the costs was allowed (*Johnstone v. Cox*, 19 Ch. D. 17).

If a decision, although relating to costs, also involves a question of law and principle, it is clearly the subject of appeal (*Re Rio Grande Do Sul Steamship Co.*, 5 Ch. D. 282; 46 L. J. Ch. 277; 25 W. R. 328; 36 L. T. 603; see also *Ex parte Waddell*, 6 Ch. D. 331). And where an innocent vicar and churchwardens had been ordered to pay the costs of a suit to which they were parties merely in their representative character, it was said that an appeal by them for costs only would have been entertained (*Etherington v. Wilson*, 1 Ch. D. 160; 45 L. J. Ch. 153; 24 W. R. 303; 33 L. T. 652).

The section does not apply to a master or a district registrar, and therefore a judge can vary as to costs the order of a district registrar, dismissing an action without costs (*Foster v. Edwards*, 48 L. J. C. P. 767).

No appeal lies to the House of Lords for costs alone (*Inglis v. Mansfield*, 3 Cl. & F. 362; *Metropolitan Asylum District v. Hill*, 5 App. Cas. 582). But an appeal against an order which imposes as a condition of having a new trial the payment within a certain time of the costs of the first trial is not within the rule (*ibid.*).

(*g*) If a defendant to an action which is dismissed without costs wishes to appeal, he should apply when the action is dismissed; leave to appeal will not be given on an application by him after the plaintiff has given notice of, and set down, an appeal (*May v. Thompson* (2), W. N. (1882), 53).

50. Every order made by a judge of the said High Court in Chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any Divisional Court, or by the judge sitting in Court, according to the course and practice of the division of the High Court to which the particular cause or matter in which such order is made may be assigned (*r*); and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the judge by whom such order was made, or of the Court of Appeal (*s*).

(*r*) If the case has been heard in Chambers only and not adjourned into Court, the intending appellant should move to discharge the order, so as to give the judge an opportunity of stating his reasons (*Holloway v. Cheston*, 19 Ch. D. 616; but see

contra, Re Butler, 21 Ch. D. 131. The motion should be made within twenty-one days from the time the order was pronounced or the appellant first had notice of it, or from the refusal, if the order is refused (*Re Woodbridge*, W. N. (1884), 187; *Re Hardwidge*, *ibid.* 204; *Heatley v. Newton*, 19 Ch. D. 326).

36 & 37 Vict.
c. 66, s. 50.

(g) The Court of Appeal only requires to be satisfied that the judge has so fully heard the case that he does not desire to hear further argument. The judge's own certificate is the best means of proving this; but if no certificate has been obtained, application should be made to the Court of Appeal for leave to set down the appeal without any certificate, which will be granted as a matter of course (*Re Elsom*, 6 Ch. D. 346; *Dickson v. Harrison*, 9 Ch. D. 243; *Northampton Co. v. Midland Waggon Co.*, 7 Ch. D. 500).

51. Upon the request of the Lord Chancellor, it shall be lawful for any judge of the Court of Appeal, who may consent so to do, to sit and act as a judge of the said High Court or to perform any other official or ministerial acts for or on behalf of any judge absent from illness or any other cause, or in the place of any judge whose office has become vacant, or as an additional judge of any division; and while so sitting and acting any such judge of the Court of Appeal shall have all the power and authority of a judge of the said High Court (t).

Provision for
absence or
vacancy in
the office of
a judge.

(t) See *Chapman v. Real Property Trust*, 7 Ch. D. 732; *Johnstone v. Royal Courts Co.*, W. N. (1883), 5.

52. In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single judge of the Court of Appeal; and a single judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single judge may be discharged or varied by the Court of Appeal or a Divisional Court thereof.

Power of a
single judge
in Court of
Appeal.

[Sect. 53, relating to Divisional Courts of the Court of Appeal, is repealed; see Judicature Act, 1875, ss. 12, 33.]

[Sect. 54, as to judges sitting on appeal from their own judgments, is repealed. See sect. 4 of the Act of 1875.]

[Sect. 55, relating to arrangements for the business of the Court of Appeal, and for hearing appeals transferred from the Judicial Committee of the Privy Council, is repealed by Appellate Jurisdiction Act, 1876, s. 24.]

PART IV.

Trial and Procedure.

56. Subject to any rules of Court and to such right as may now exist to have particular cases submitted to the verdict of a jury, any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice or before the Court of Appeal, may be referred by the Court or by any Divisional Court or judge before whom such cause or matter may be pending, for inquiry and report to any official or special referee, and the report of any such referee may be adopted wholly or partially by the Court, and may (if so adopted) be enforced as a judgment by the Court. The High Court or the Court of Appeal may also, in any such cause or matter as aforesaid in which it may think it expedient so to do,

References
and assessors

36 & 37 Vict.
c. 66, s. 56.

call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such special referees or assessors shall be determined by the Court.

Power to
direct trials
before
referees.

57. In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court or a judge, conveniently be made before a jury, or conducted by the Court through its other ordinary officers, the Court or a judge may at any time, on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein to be tried either before an official referee, to be appointed as hereinafter provided, or before a special referee to be agreed on between the parties; and any such special referee so agreed on shall have the same powers and duties and proceed in the same manner as an official referee. All such trials before referees shall be conducted in such manner as may be prescribed by rules of Court, and subject thereto in such manner as the Court or judge ordering the same shall direct (u).

Reference to
official
referee.

(u) Under this section the Court had no power to order an action to be referred to an official referee (*Longman v. East*, 3 C. P. D. 142; *Braginton v. Yates*, W. N. (1880), 150); though all the issues in an action might be referred (*Ward v. Pilley*, 5 Q. B. D. 427); see now Judicature Act, 1884, s. 9, *infra*. A large construction is given to the word "account," so as to include questions requiring scientific investigation (*Rowcliffe v. Leigh*, 3 Ch. D. 292; 24 W. R. 782). But questions involving charges of fraud ought not to be referred (*Leigh v. Brooks*, 5 Ch. D. 592); nor mixed questions of fact and account (*Ward v. Hall*, W. N. (1880), 69). For instances where a reference was directed, see *Sazby v. Gloucester Wagon Co.*, W. N. (1880), 28 (issues of fact in a patent action); *Broder v. Saillard*, 2 Ch. D. 694 (nuisance); *Stafford v. Cowan*, W. N. (1877), 138 (damages in an action for specific performance); *Hoch v. Boor*, W. N. (1880), 93 (issues in an action to recover balance of salary). As to the meaning of "prolonged examination of documents," see *Ormerod v. Todmorden Co.*, 8 Q. B. D. 664. An appeal lies from an order under this section (*ibid.*). An application to set aside the findings of a referee is made by motion on notice (*Dyke v. Cannell*, 11 Q. B. D. 180; *Bedborough v. Army Co.*, 53 L. J. Ch. 658; 50 L. T. 173). As to proceedings before a referee, see Ord. XXXVI. Part VIII., *infra*. See also Judicature Act, 1884, sect. 11, *infra*.

Power of
referees and
effect of their
findings.

58. In all cases of any reference to or trial by referees under this Act the referees shall be deemed to be officers of the Court, and shall have such authority for the purpose of such reference or trial as shall be prescribed by rules of Court or (subject to such rules) by the Court or judge ordering such reference or trial; and the report of any referee upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the verdict of a jury (v).

(v) See note to s. 57; and see also *Sullivan v. Rivington*, 28 W. R. 372; *Walker v. Bunkell*, 22 Ch. D. 722.

Powers of
Court with
respect to
proceedings
before
referees.

59. With respect to all such proceedings before referees and their reports, the Court or such judge as aforesaid shall have, in addition to any other powers, the same or the like powers as are given to any Court whose jurisdiction is hereby transferred to the said High Court with respect to references to arbitration and proceedings before arbi-

trators and their awards respectively, by the Common Law Procedure Act, 1854 (*w*). 36 & 37 Vict.
o. 66, s. 59.

(*w*) See Ord. XXXVI. r. 10, and note thereto, *infra*.

60. And whereas it is expedient to facilitate the prosecution in country districts of such proceedings as may be more speedily, cheaply, and conveniently carried on therein, it shall be lawful for her Majesty, by Order in Council, from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and her Majesty may thereby appoint that any registrar of any County Court, or any registrar or prothonotary or district prothonotary of any local Court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a district registrar of the Court of Probate, or of the Admiralty Court, shall under this Act become and be a district registrar of the said High Court of Justice, or who shall hereafter be appointed such district registrar, shall and may be a district registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned. This section shall come into operation immediately upon the passing of this Act (*x*).

Her Majesty may establish district registries in the country for the Supreme Court.

(*x*) This section is amended by sect. 13 of the Judicature Act, 1875, which provides that there may be joint registrars, and also that "every district registrar shall be deemed to be an officer of the Supreme Court, and be subject accordingly to the jurisdiction of such Court, and of the divisions thereof." An Order of her Majesty in Council, dated 12th August, 1875, after reciting this section appointed certain officers to be district registrars in Liverpool, Manchester, Preston, and Durham, and provided that the registrar of the County Court should be the district registrar in the following places:—

Bangor.	East Stonehouse.	Norwich.
Barnsley.	Exeter.	Nottingham.
Barnstaple.	Gloucester.	Oxford.
Bedford.	Great Grimsby.	Pembroke Docks.
Birkenhead.	Great Yarmouth.	Peterborough.
Birmingham.	Halifax.	Poole.
Boston.	Hanley.	Portsmouth.
Bradford.	Hartlepool.	Ramsgate.
Bridgwater.	Hereford.	Rochester.
Brighton.	Huddersfield.	Sheffield.
Bristol.	Ipswich.	Shrewsbury.
Bury St. Edmunds.	Kingston-on-Hull.	Southampton.
Cambridge.	Kings Lynn.	Stockton-on-Tees.
Cardiff.	Leeds.	Sunderland.
Carlisle.	Leicester.	Swansea.
Carmarthen.	Lincoln.	Truro.
Cheltenham.	Lowestoft.	Totnes.
Chester.	Maidstone.	Wakefield.
Colchester.	Newcastle-upon-Tyne.	Walsall.
Derby.	Newport, Monmouth.	Whitehaven.
Dewsbury.	Newport, Isle of Wight.	Wolverhampton.
Dover.	Newtown.	Worcester.
Dorchester.	Northampton.	York.
Dudley.		

By an Order in Council, dated Aug. 11th, 1884, Aberystwith, Carnarvon, and Winchester, were added to this list (W. N. (1884), Part II., p. 425). See also Judicature Act, 1881, s. 22.

36 & 37 Vict.
c. 66, s. 61.

Seals of
district
registries.

61. In every such district registry such seal shall be used as the Lord Chancellor shall from time to time, either before or after the time fixed for the commencement of this Act, direct, which seal shall be impressed on every writ and other document issued out of or filed in such district registry, and all such writs and documents, and all exemplifications and copies thereof, purporting to be sealed with the seal of any such district registry, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

Powers of
district
registrars.

62. All such district registrars shall have power to administer oaths and perform such other duties in respect of any proceedings pending in the said High Court of Justice or in the said Court of Appeal as may be assigned to them from time to time by rules of Court, or by any special order of the Court.

[Sect. 63, as to fees in district registries, is repealed by the Act of 1876; and see sect. 26 of that Act.]

Proceedings
to be taken
in district
registries.

64. Subject to the Rules of Court in force for the time being, writs of summons for the commencement of actions in the High Court of Justice shall be issued by the district registrars when thereunto required; and unless any order to the contrary shall be made by the High Court of Justice, or by any judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to such action in the said High Court down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before the district registrar, and recorded in the district registry, in such manner as may be prescribed by Rules of Court; and all such other proceedings in any such action as may be prescribed by Rules of Court shall be taken and if necessary may be recorded in the same district registry.

Power for
Court to
remove pro-
ceedings from
district
registries.

65. Any party to an action in which a writ of summons shall have been issued from any such district registry shall be at liberty at any time to apply, in such manner as shall be prescribed by Rules of Court, to the said High Court, or to a judge in chambers of the division of the said High Court to which the action may be assigned, to remove the proceedings from such district registry into the proper office of the said High Court; and the Court or judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein shall upon receipt of such order be transmitted by the district registrar to the proper officer of the said High Court, and the said action shall thenceforth proceed in the said High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the proper office in London; or the Court or judge, if it be thought right, may

thereupon direct that the proceedings may continue to be taken in such district registry. 36 & 37 Vict. c. 66, s. 65.

66. It shall be lawful for the Court, or any judge of the division to which any cause or matter pending in the said High Court is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any such district registrar, as aforesaid; and in any such case the district registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any district registrar, the report in writing of such district registrar as to the result of such accounts or inquiries may be acted upon by the Court, as to the Court shall seem fit (y). Accounts and inquiries may be referred to district registrars.

(y) The report of the registrar ought to be in the form of a chief clerk's certificate (*Re Bowen*, 20 Ch. D. 538).

67. The provisions contained in the fifth, seventh, eighth, and tenth sections of the County Courts Acts,* 1867, shall apply to all actions commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a County Court (z). * Sic. 30 & 31 Vict. c. 142, ss. 5, 7, 8 and 10, to extend to actions in High Court. Where small sums are in dispute.

(z) These sections provide that in certain cases where small sums are in dispute the judge of a Superior Court may order a cause to be tried in a County Court, and proceedings in equity which might have been commenced in a County Court may be transferred to such Court.

Also, that if in any action commenced in a Superior Court the plaintiff shall recover a sum not exceeding 20*l.* if the action is founded in contract, or 10*l.* if founded in tort, he shall not be entitled to costs, unless the judge certifies that there was sufficient reason for proceeding in the Superior Court, or certifies for costs; *Brown v. Rye*, 17 Eq. 343, where it was held that these sections did not prevent a mortgagee recovering his usual costs in equity, will probably no longer apply.

For these sections and the cases decided on them, see *Wilson*, p. 68 *et seq.* And as to the effect of sect. 67, see *Garnett v. Bradley*, 3 App. Cas. 944; *Chatfield v. Sedgwick*, 4 C. P. D. 459; *Stooke v. Taylor*, 5 Q. B. D. 569. Where an order has been made for a transfer the High Court retains jurisdiction till the transfer has been finally completed (*David v. Howe*, 27 Ch. D. 533).

Cons. Ord. IX. r. 1, provided that every suit, the subject-matter of which was under the value of 10*l.*, should be dismissed, unless it were instituted to establish a general right, or unless there were some other special circumstance, which, in the opinion of the Court, made it reasonable that such suit should be retained. See *Cox v. Foley*, 1 Vern. 359, where a bill for establishing a right to ancient quit rents of very small value was allowed to be filed; and the small interest of a plaintiff suing on behalf of himself and other shareholders was held no objection (*Seaton v. Grant*, 2 Ch. 459). Where the suit is for the benefit of a charity it will be entertained though for a smaller amount than 10*l.* (*Parrot v. Pawlet*, Cary's Rep. 103). Where the sum recovered was only 9*l.*, it was held that the suit was sustainable, and the plaintiff was entitled to his costs, because the defendants had withheld information, and the plaintiff was justified in supposing that he might have recovered more (*Beckett v. Bilbrough*, 3 Hare, 188). The objection might be taken advantage of by demurrer, or at the hearing (*Brace v. Taylor*, 2 Atk. 253). Cons. Ord. IX. r. 1. Value of subject-matter must be 10*l.* Bill to establish rights. Other special circumstances.

[Sects. 68—74, providing for rules as to procedure under the Act, saving the rules as to evidence, were repealed by the Act of 1875, and sects. 16—21 of that Act are substituted.]

[By sect. 75, councils of the judges are to be held to consider procedure and administration of justice.]

76. All Acts of Parliament relating to the several Courts and judges, whose jurisdiction is hereby transferred to the said High Acts of Parliament relating to

36 & 37 Vict.
c. 66, s. 76.

former Courts
to be read as
applying to
Courts under
this Act.

Court of Justice and the said Court of Appeal respectively, or wherein any of such Courts or judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the said High Court of Justice or the said Court of Appeal, and the judges thereof, respectively, as the case may be, had been named therein instead of such Courts or judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such Act, the concurrence or the advice or consent of the judge or any judges, or of any number of the judges, of any one or more of the Courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of judges of the said High Court of Justice; and all general and other commissions, issued under the Acts relating to the Central Criminal Court or otherwise, by virtue whereof any judges of any of the Courts whose jurisdiction is so transferred may, at the commencement of this Act, be empowered to try, hear, or determine any causes or matters, criminal or civil, shall remain and be in full force and effect, unless and until they shall respectively be in due course of law revoked or altered (a).

(a) See *Commissioners of Sewers v. Gellatly*, 24 W. R. 1059; *Padley v. Camphausen*, 10 Ch. D. 550; *Marris v. Ingram*, 13 Ch. D. 338; *Ex parte Mayor of London*, 25 Ch. D. 384.

[Sect. 77 provides for the transfer of the existing staff of officers to the Supreme Court.]

[Sect. 78, relating to officers of the Courts of Pleas at Lancaster and Durham, and sect. 79, relating to the personal officers of the judges, were partly repealed by the Statute Law Revision Act, 1883.]

[Sect. 80, containing provisions as to officers paid out of fees, was repealed by the Statute Law Revision Act, 1883.]

[By sect. 81, doubts as to the status of officers shall be determined by rules of Court.]

Powers of
commissioners
to administer
oaths.

82. Every person who at the commencement of this Act shall be authorized to administer oaths in any of the Courts whose jurisdiction is hereby transferred to the High Court of Justice shall be a commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said High Court or in the Court of Appeal (b).

(b) See Ord. XXXVIII. and note thereto, *infra*.

Official
referees to be
appointed.

83. There shall be attached to the Supreme Court permanent officers to be called official referees, for the trial of such questions as shall under the provisions of this Act be directed to be tried by such referees. The number and the qualifications of the persons to be so appointed from time to time, and the tenure of their offices, shall be determined by the Lord Chancellor, with the concurrence of

the Presidents of the Divisions of the High Court of Justice, or a majority of them (of which majority the Lord Chief Justice of England shall be one), and with the sanction of the Treasury. Such official referees shall perform the duties entrusted to them in such places, whether in London or in the country, as may from time to time be directed or authorized by any order of the said High Court, or of the Court of Appeal; and all proper and reasonable travelling expenses incurred by them in the discharge of their duties shall be paid by the Treasury out of moneys to be provided by Parliament.

84. Subject to the provisions in this Act contained with respect to existing officers of the Courts whose jurisdiction is hereby transferred to the Supreme Court, there shall be attached to the Supreme Court such officers as the Lord Chancellor with the concurrence of the Presidents of the Divisions of the High Court of Justice, or the major part of them, of which majority the Lord Chief Justice of England shall be one, and with the sanction of the Treasury, may from time to time determine.

Duties, appointment, and removal of officers of Supreme Court.

Such of the said several officers respectively as may be thought necessary or proper for the performance of any special duties, with respect either to the Supreme Court generally, or with respect to the High Court of Justice or the Court of Appeal, or with respect to any one of the divisions of the said High Court, or with respect to any particular judge or judges of either of the said Courts, may by the same authority, and with the like sanction as aforesaid, be attached to the said respective Courts, divisions, and judges accordingly.

All officers assigned to perform duties with respect to the Supreme Court generally, or attached to the High Court of Justice or the Court of Appeal, and all commissioners to take oaths or affidavits in the Supreme Court, shall be appointed by the Lord Chancellor.

All officers attached to the Chancery Division of the said High Court, who have been heretofore appointed by the Master of the Rolls, shall continue, while so attached, to be appointed by the Master of the Rolls.

All other officers attached to any division of the said High Court shall be appointed by the President of that division.

All officers attached to any judge shall be appointed by the judge to whom they are attached.

Any officer of the Supreme Court (other than such officers attached to the person of a judge as are hereinbefore declared to be removable by him at his pleasure), may be removed by the person having the right of appointment to the office held by him, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

The authority of the Supreme Court over all or any of its officers may be exercised in and by the said High Court and the said Court of Appeal respectively, and also in the case of officers attached to any

36 & 37 Vict.
c. 66, s. 84. division of the High Court by the President of such division, with respect to any duties to be discharged by them respectively.

[Sect. 85, relating to salaries and pensions of officers, is repealed by Judicature (Officers) Act, 1879, s. 29.]

[Sect. 86 relates to rights of patronage and other powers of Courts or judges not otherwise provided for.]

Solicitors and
attorneys.

87. From and after the commencement of this Act all persons admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or the Court of Appeal, shall be called solicitors of the Supreme Court, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed; and all persons who from time to time, if this Act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of or been by law empowered to practise in any such Courts, shall be entitled to be admitted and to be called solicitors of the Supreme Court, and shall be admitted by the Master of the Rolls, and shall, as far as circumstances will permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this Act had not passed.

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be officers of the Supreme Court; and that Court, and the High Court of Justice, and the Court of Appeal respectively, or any division or judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of her Majesty's superior Courts of law or equity might previously to the passing of this Act have exercised in respect of any solicitor or attorney admitted to practise therein (c).

(c) See sect. 14 of the Act of 1875, and Judicature Act, 1881, s. 24. See also *Re Copp*, 32 W. R. 25. As to the duties of solicitors of the Court of Chancery, see Cons. Ord. III. r. 1; and see also rule 11 of the same Order, providing that an agreement by a solicitor as to his client's cause shall not be binding unless in writing, and signed by the party to be bound or his solicitor (*Clarke v. Lord Rivers*, 5 Eq. 91).

PART VI.

Jurisdiction of Inferior Courts.

Power by
Order in
Council to
confer juris-
diction on
inferior
Courts.

88. It shall be lawful for her Majesty from time to time by Order in Council to confer on any inferior Court of civil jurisdiction, the same jurisdiction in equity and in admiralty, respectively, as any County Court now has, or may hereafter have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this Act directed (d).

(d) See Statute Law Revision and Civil Procedure Act, 1883, s. 8.

Powers of
inferior
Courts having
equity and

89. Every inferior Court which now has or which may after the passing of this Act have jurisdiction in equity, or at law and in equity, and in admiralty respectively, shall as regards all causes of action

within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such Court, such relief, distress,* or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counterclaim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice (*e*).

36 & 37 Vict.
c. 66, s. 89.
admiralty
jurisdiction.
* Qy. "re-
dress."

(*e*) A County Court can under this section grant an injunction against a nuisance, and enforce obedience to it by committal (*Martin v. Bannister*, 4 Q. B. D. 212, 491; 28 W. R. 143; and see *Richards v. Cullerne*, 7 Q. B. D. 623).

90. Where in any proceeding before any such inferior Court any defence or counterclaim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counterclaim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counterclaim: Provided always, that in such case it shall be lawful for the High Court or any division or judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior Court to the High Court, or to any division thereof; and in such case the record in such proceeding shall be transmitted by the registrar, or other proper officer, of the inferior Court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein (*f*).

Counter-
claims in
inferior
Courts and
transfers
therefrom.

(*f*) See as to this section, *Davis v. Flagstaff Co.*, 3 C. P. D. 228; *Anon.*, W. N. (1876), 12; *Davies v. Williams*, 13 Ch. D. 550. Where a plaintiff commenced a suit in the County Court, which at the hearing was transferred to the High Court because the subject-matter was over 500*l.*, the plaintiff, though successful, paid the costs of the hearing before the County Court (*Ward v. Wylä*, 5 Ch. D. 779). See now as to the jurisdiction of inferior Courts in cases of counterclaim, Judicature Act, 1884, s. 18, *infra*.

91. The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognizable by such Courts (*g*).

Rules of law
to apply to
inferior
Courts.

(*g*) See *King v. Hawkesworth*, 4 Q. B. D. 371.

PART VII.

Miscellaneous Provisions.

[Sect. 92 provides for the transfer of books and papers to the Supreme Court.]

[Sect. 93 relates to savings as to circuits.]

94. This Act, except so far as herein is expressly directed, shall not affect the office or position of Lord Chancellor; and the officers of the

Saving as to
Lord Chan-
cellor.

36 & 37 Vict.
c. 66, s. 94.

Lord Chancellor shall continue attached to him in the same manner as if this Act had not passed; and all duties, which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsoever of the Lord Chancellor, may in like manner be required to be performed by such officer when transferred to the Supreme Court, and by his successors.

Saving as to
Chancellor of
Lancaster.

95. This Act, except so far as is herein expressly directed, shall not affect the offices, position, or functions of the Chancellor of the County Palatine of Lancaster.

[Sect. 96, saving as to the Chancellor of the Exchequer and sheriffs, is partly repealed by the Statute Law Revision Act, 1883; see Judicature Act, 1881, s. 16.]

[Sects. 97—99 contain saving as to Lord Treasurer and office of Receipt of Exchequer, and provisions as to the Great Seal being in commission, and as to commissions in Counties Palatine.]

Interpretation
of terms.

100. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following; (that is to say,)

“Lord Chancellor” shall include Lord Keeper of the Great Seal.

“The High Court of Chancery” shall include the Lord Chancellor.

“The Court of Appeal in Chancery” shall include the Lord Chancellor as a judge on rehearing or appeal.

“*London Court of Bankruptcy*” shall include the *Chief Judge in bankruptcy (h)*.

“The Treasury” shall mean the commissioners of her Majesty’s Treasury for the time being, or any two of them.

“Rules of Court” shall include forms.

“Cause” shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.

“Suit” shall include action.

“Action” shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of Court; and shall not include a criminal proceeding by the Crown.

“Plaintiff” shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.

“Petitioner” shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.

“Defendant” shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

“Party” shall include every person served with notice of, or attending any proceeding, although not named on the record.

- “Matter” shall include every proceeding in the Court not in a cause. 36 & 37 Vict.
c. 66, s. 100.
- “Pleading” shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant (i).
- “Judgment” shall include decree.
- “Order” shall include rule.
- “Oath” shall include solemn affirmation and statutory declaration.
- “Crown cases reserved” shall mean such questions of law reserved in criminal trials as are mentioned in the Act of the eleventh and twelfth years of her Majesty’s reign, chapter seventy-eight.
- “Pension” shall include retirement and superannuation allowance.
- “Existing” shall mean existing at the time appointed for the commencement of this Act.

(A) This paragraph is repealed by Statute Law Revision Act, 1883.
(i) See *Re Boulton*, 30 W. R. 596.

Court of
Bankruptcy.

JUDICATURE ACT, 1875.

38 & 39 Vict.
c. 77.

38 & 39 VICT. CAP. 77.

An Act to amend and extend the Supreme Court of Judicature Act, 1873. [11th August, 1875.]

WHEREAS it is expedient to amend and extend the Supreme Court of Judicature Act, 1873 :

Be it therefore enacted, &c., as follows :—

1. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Act, 1873 (in this Act referred to as the principal Act), and together with the principal Act may be cited as the Supreme Court of Judicature Acts, 1873 and 1875, and this Act may be cited separately as the Supreme Court of Judicature Act, 1875. Short title,
and construction with
36 & 37 Vict.
c. 66.

2. This Act, except any provision thereof which is declared to take effect before the commencement of this Act, shall commence and come into operation on the first day of November, 1875 (a). Commence-
ment of Act.

(a) The remainder of this section was repealed by the Appellate Jurisdiction Act, 1876, s. 24.

3. Sect. 3 repeals part of sect. 5 of the Act of 1873, as to the number of judges, and continues :

The Lord Chancellor shall not be deemed to be a permanent judge of that Court, and the provisions of the said section relating to

38 & 39 Vict. c. 77, s. 3. the appointment and style of the judges of the said High Court shall not apply to the Lord Chancellor (b).

(b) The Statute Law Revision Act, 1883, repeals the whole section, except the paragraph in the text, and repeals also the words "and style" in that paragraph.

Constitution of Court of Appeal.

4. Her Majesty's Court of Appeal, in this Act and in the principal Act referred to as the Court of Appeal, shall be constituted as follows: There shall be five ex-officio judges thereof, and also so many ordinary judges, *not exceeding three at any one time* (c) as her Majesty shall from time to time appoint.

The ex-officio judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer* (d).

The first ordinary judges of the said Court shall be the present Lords Justices of Appeal in Chancery, and such one other person as her Majesty may be pleased to appoint by letters patent. Such appointment may be made either before or after the commencement of this Act, but if made before shall take effect at the commencement of the Act.

The ordinary judges of the Court of Appeal shall be styled Justices of Appeal (d).

The Lord Chancellor may by writing addressed to the President of any one or more of the following divisions of the High Court of Justice, that is to say, the Queen's Bench Division, *the Common Pleas Division, the Exchequer Division* (d), and the Probate, Divorce, and Admiralty Division, request the attendance at any time, except during the times of the spring or summer circuits, of an additional judge from such division or divisions (not being ex-officio judge or judges of the Court of Appeal) at the sittings of the Court of Appeal, and a judge, to be selected by the division from which his attendance is requested, shall attend accordingly.

Every additional judge, during the time that he attends the sittings of her Majesty's Court of Appeal, shall have all the jurisdiction and powers of a judge of the said Court of Appeal, but he shall not otherwise be deemed to be a judge of the said Court, or to have ceased to be a judge of the division of the High Court of Justice to which he belongs.

Section fifty-four of the principal Act is hereby repealed, and instead thereof the following enactment shall take effect (d): No judge of the said Court of Appeal shall sit as a judge on the hearing of an appeal from any judgment or order made by himself, or made by any Divisional Court of the High Court of which he was and is a member (e).

Whenever the office of an ordinary judge of the Court of Appeal becomes vacant a new judge may be appointed thereto by her Majesty by letters patent.

(c) These words in italics are repealed by sect. 15 of the Appellate Jurisdiction Act, 1876.

(d) These words in italics are repealed by the Statute Law Revision Act, 1883. 38 & 39 Vict. o. 77, s. 4.
 The style of the ordinary judges of the Court of Appeal is "Lords Justices of Appeal" (Judicature Act, 1877, s. 4). See also as to the Court of Appeal, Judicature Act, 1881, s. 11, and the Appellate Jurisdiction Act, 1876.
 (e) See *Fisher v. Val Travers Asphaltic Co.*, 1 C. P. D. 259.

Style of judges.

[Sect. 5 provides for the tenure of office of judges, and oaths of office, and that the judges are not to sit in the House of Commons; and sect. 6 provides for the precedence of the judges.]

7. Any jurisdiction usually vested in the Lords Justices of Appeal in Chancery, or either of them, in relation to the persons and estates of idiots, lunatics, and persons of unsound mind, shall be exercised by such judge or judges of the High Court of Justice or Court of Appeal as may be intrusted by the sign manual of her Majesty or her successors with the care and commitment of the custody of such persons and estates; and all enactments referring to the Lords Justices as so intrusted shall be construed as if such judge or judges so intrusted had been named therein instead of such Lords Justices: Provided that each of the persons who may at the commencement of the principal Act be Lords Justices of Appeal in Chancery shall, during such time as he continues to be a judge of the Court of Appeal, and is intrusted as aforesaid, retain the jurisdiction vested in him in relation to such persons and estates as aforesaid (f).

Jurisdiction of Lords Justices in respect of lunatics.

(f) See Judicature Act, 1873, s. 17, *ante*, p. 252.

[Sect. 8 relates to the judge and registrar of the Court of Admiralty; it is partly repealed by the Statute Law Revision Act, 1883.]

[Sect. 9, relating to the London Bankruptcy Court, is repealed by sect. 169 of the Bankruptcy Act, 1883.]

10. Whereas, by section twenty-five of the principal Act, after reciting that it is expedient to amend and declare the law to be thereafter administered in England as to the matters next thereafter mentioned, certain enactments are made with respect to the law, and it is expedient to amend the said section: Be it therefore enacted as follows:—

Amendment of 36 & 37 Vict. c. 66, s. 25, as to rules of law upon certain points.

Sub-section one of clause twenty-five of the principal Act is hereby repealed, and instead thereof the following enactment shall take effect; (that is to say,) in the administration by the Court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding-up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the cost of winding-up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such

38 & 39 Vict.
c. 77, s. 10.

deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding-up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

In sub-section seven of the said section the reference to the date of the passing of the principal Act shall be deemed to refer to the date of the commencement of the principal Act (g).

Rights of secured creditor in administration and winding-up.

(g) Before this Act a creditor who had not realized his security could prove against the assets of his deceased debtor for the whole debt, and receive a dividend. He could then realize his security, and if he received in the whole more than 20s. in the pound, he paid over the excess (*Mason v. Bogg*, 2 My. & Cr. 443). The same rule prevailed in the winding-up of a company (*Kellock's Case*, 3 Ch. 769). In bankruptcy the rule was different. The creditor could only prove for the balance of his debt after deducting the value of his security. The principal object of this section is to make this rule in bankruptcy applicable to administration of the assets of deceased persons, and to winding-up (*Re Withernsea Brick Works*, 16 Ch. D. 337); it is not intended to enlarge the assets of an insolvent estate, but only to vary the rights of the persons entitled to them (*Re D'Epineuil*, 20 Ch. D. 217); and see also *Lee v. Nuttall*, 12 Ch. D. 61. And it affects only the rights of the class of secured creditors as against those of the class of unsecured creditors; it does not affect the rights *inter se* of the members of those classes (*Re Maggi, Winehouse v. Winchouse*, 20 Ch. D. 545; *Smith v. Morgan*, 5 C. P. D. 337). See also as to the object of the section, *Mersey Steel Co. v. Naylor*, 9 Q. B. D. 648; *Re Hopkins*, 18 Ch. D. 370; *Re Albion Steel Co.*, 7 Ch. D. 547. As to the meaning of "secured creditor," see *Re Stanhope Collieries Co.*, 11 Ch. D. 160; *Ex parte Joselyne*, 8 Ch. D. 327; *Ex parte Nelson*, 14 Ch. D. 41. An executor's right of retainer does not make him a secured creditor, nor is such right affected by the section (*Lee v. Nuttall*). The section is not retrospective (*Re Suche & Co.*, 1 Ch. D. 48; *Re Phoenix Steel Co.*, 24 W. R. 19; W. N. (1875), 187; *Sherwin v. Selkirk*, 12 Ch. D. 68).

"Secured creditor."

Bankruptcy Act 1869.

The provisions of sect. 6 of the Bankruptcy Act, 1869, were held not to be imported into winding-up proceedings by this section (*Moor v. Anglo-Italian Bank*, 10 Ch. D. 681); nor those of sect. 37 as to the sheriff holding for fourteen days the proceeds of goods taken in execution (*Re Withernsea Brick Works*, 16 Ch. D. 337, approving *Re Richards*, 11 Ch. D. 676, and overruling *Re Printing Co.*, 8 Ch. D. 535); nor those of sect. 34 as to the landlord's right of distress for one year's rent (*Thomas v. Patent Lionite Co.*, 17 Ch. D. 250); nor the rules as to reputed ownership (*Re Crumlin Co.*, 11 Ch. D. 755); and see also *Re Westbourne Grove Co.*, 5 Ch. D. 248. As to sect. 32 (priority of wages) see *Re Association of Land Financiers*, 16 Ch. D. 373, and cases there cited, (see now Companies Act, 1883); *Re Albion Steel Co.*, 7 Ch. D. 547. But the section enables a claim to be made in respect of a contingent liability which ripens into an actual debt during the winding-up (*Re Northern Insurance Co.*, 17 Ch. D. 337; *Re Bridges*, *ibid.* 342).

The mutual credit rules do not apply to the case of calls on shareholders (*Gill's Case*, 12 Ch. D. 755; *Re Whitehouse*, 9 Ch. D. 595; *Ex parte Branwhite*, 48 L. J. Ch. 463); and see *Green v. Smith*, 22 Ch. D. 586. The section has not altered the rule entitling a creditor, who is also a shareholder, to receive a dividend on his debt if he has paid all calls made on him (*Re West of England Bank*, 12 Ch. D. 823). A company in liquidation must be deemed to be insolvent until the contrary is shown (*Re Milan Co.*, 25 Ch. D. p. 591).

The provisions of the Bankruptcy Act, 1883, which take away the priority of the Crown in the distribution of assets in bankruptcy, have not been incorporated into the Companies Act, 1862, so as to bar the prerogative right of the Crown to issue process and obtain payment in full against a company in liquidation (*Re Oriental Bank* (2), W. N. (1884), 204).

Administration.

In administration, the rules as to valuation when a secured creditor seeks to prove for a balance now apply (*Re Hopkins*, 18 Ch. D. 370); but it was held that the section did not apply the rules in bankruptcy so as to make an unregistered bill of sale void as against the unsecured creditors of an insolvent estate (*Re D'Epineuil*, 20 Ch. D. 217; *Re Knott*, 7 Ch. D. 549, n.; see now 45 & 46 Vict. c. 43). A creditor of an insolvent estate whose debt bears interest is not entitled to interest up to the day of payment, but only to the date of the judgment for administration, which by this section is equivalent to an adjudication in bankruptcy (*Re Summers*, 13 Ch. D. 136).

The section does not make all debts payable *pari passu*; and if a creditor recovers

judgment against the executor before a judgment for administration he is still entitled to priority over other creditors of equal degree (*Re Maggi, Winehouse v. Winehouse*, 20 Ch. D. 545). 38 & 39 Vict. c. 77, s. 10.

In *Green v. Smith*, 22 Ch. D. 586, it was held that the mutual credit clause (s. 39) of the Bankruptcy Act, 1869, would not be applied in administration until it was shown that the estate was insolvent, but the Court might direct that a debt claimed on behalf of the estate from a creditor should be paid into Court to a separate account, with liberty to the creditor to apply in case the estate should prove to be insolvent.

As to the form of the judgment in a creditor's administration action when it is anticipated that the estate may prove insolvent, see *Re Hildick*, 29 W. R. 733; *contra, Re Murray*, 30 W. R. 283.

By section 125 of the Bankruptcy Act, 1883, any creditor of a deceased debtor, whose debt would have been sufficient to support a bankruptcy petition against the debtor if he had been alive, may present a petition praying for an order for the administration of the estate of the deceased debtor according to the law of bankruptcy. The order may be made unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of debts. But no order can be made for one month after the grant of probate or administration, except with the concurrence of the personal representative, or unless the petitioner proves that the debtor committed an act of bankruptcy within three months before his death; and no petition can be presented after proceedings have been commenced for administration of the estate in any Court of justice. The latter Court, however, may on proof that the estate is insufficient for payment of debts transfer the proceedings to the Bankruptcy Court, which may thereupon make an order for administration in bankruptcy. The estate will then vest in the official receiver, and he will deal with it in accordance with the provisions of the Bankruptcy Act; but the funeral and testamentary expenses will be paid in priority to other claims. See *Ex parte May*, 13 Q. B. D. 552.

Administration in bankruptcy under Bankruptcy Act, 1883.

11. Subject to any rules of Court and to the provisions of the principal Act and this Act and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign (*h*) such cause or matter to one of the divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such division, and giving notice thereof to the proper officer of the Court: Provided that—

Provision as to option for any plaintiff (subject to rules) to choose in what division he will sue,—in substitution for 36 & 37 Vict. c. 66, s. 35.

- (1.) All interlocutory and other steps and proceedings in or before the said High Court in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any rules of Court and to the power of transfer) in the division of the said High Court to which such cause or matter is for the time being attached; and,
- (2.) If any plaintiff or petitioner shall at any time assign his cause or matter to any division of the said High Court to which, according to the rules of Court or the provisions of the principal Act or this Act, the same ought not to be assigned, the Court, or any judge of such division, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner or by any other party in any such cause or matter, and

38 & 39 Vict.
c. 77, s. 11.

all orders made therein by the Court or any judge thereof before any such transfer shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper division of the said Court to which such cause or matter ought to have been assigned; and,

[Sub-sect. 3 relates to the Probate Division only.]

(h) As to choice of division, see Ord. V., rr. 5—9, *infra*.

Sittings of
Court of
Appeal.

12. Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three judges of the said Court sitting together, and shall when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two judges of the said Court sitting together.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal (i).

Subject to the provisions contained in this section the Court of Appeal may sit in two divisions at the same time.

(i) As to final and interlocutory decrees, &c., see Ord. LVIII. rr. 3, 15, *infra*.

[Sect. 13 amends sect. 60 of the Act of 1873, as to the appointment of district registrars; see note (x), *ante*, p. 269.]

Amendment
of 36 & 37
Vict. c. 66,
s. 87, as to
enactments
relating to
attorneys.

14. Whereas under section eighty-seven of the principal Act, solicitors and attorneys will after the commencement of that Act be called solicitors of the Supreme Court: Be it therefore enacted that—

The registrar of attorneys and solicitors in England shall be called the registrar of solicitors, *and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron, or any two of them, may, from time to time, by regulation adapt any enactments relating to attorneys, and any declaration, certificate, or form required under those enactments, to the solicitors of the Supreme Court under section eighty-seven of the principal Act (k).*

(k) The words in italics are repealed by the Statute Law Revision Act, 1883.

Appeal from
inferior
Court of
Record.

15. It shall be lawful for her Majesty from time to time, by Order in Council, to direct that the enactments relating to appeals from County Courts shall apply to any other inferior Court of Record; and those enactments, subject to any exceptions, conditions and limitations contained in the order, shall apply accordingly, as from the date mentioned in the order.

[Sect. 16, as to rules of Court, is repealed by the Statute Law Revision Act, 1883.]

Provision as
to making,
&c. of rules of

17. Her Majesty may at any time after the passing and before the commencement of this Act, by Order in Council, made upon the recom-

mendation of the Lord Chancellor, and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and the Lords Justices of Appeal in Chancery, or any five of them, and the other judges of the several Courts intended to be united and consolidated by the principal Act as amended by this Act, or of a majority of such other judges, make any further or additional rules of Court for carrying the principal Act and this Act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the rules in the first schedule to this Act; that is to say,

- (1.) For regulating the sittings of the High Court of Justice *and the Court of Appeal*, and of any divisional or other Courts thereof *respectively*, and of the judges of the said High Court sitting in chambers; and,
- (2.) For regulating the pleading, practice and procedure in the High Court of Justice and Court of Appeal; and,
- (3.) Generally, for regulating any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein.

From and after the commencement of this Act, the Supreme Court may at any time, with the concurrence of a majority of the judges thereof present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), alter and annul any rules of Court for the time being in force, and have and exercise the same power of making rules of Court as is by this section vested in her Majesty in Council on the recommendation of the said judges before the commencement of this Act.

In substitution for 36 & 37 Vict. c. 66, s. 74.

All rules of Court made in pursuance of this section shall be laid before each House of Parliament within such time and shall be subject to be annulled in such manner as is in this Act provided.

All rules of Court made in pursuance of this section, if made before the commencement of this Act, shall from and after the commencement of this Act, and if made after the commencement of this Act shall from and after they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this section.

The reference to certain judges in section twenty-seven of the principal Act shall be deemed to refer to the judges mentioned in this section as the judges on whose recommendation an Order in Council may be made (1).

(1) The words in italics are repealed by the Statute Law Revision Act, 1883.

As to the power to make rules, see Appellate Jurisdiction Act, 1876, s. 17; Judicature (Officers) Act, 1879, s. 22; Judicature Act, 1881, s. 19; Judicature Act, 1884, s. 23.

18. All rules and orders of Court in force at the time of the commencement of this Act in the Court of Probate, the Court for Provision as to rules of Probate,

38 & 39 Vict.
c. 77, s. 18.

Divorce and Admiralty Court, being rules of the High Court, —in substitution for 36 & 37 Vict. c. 66, s. 70.

Divorce and Matrimonial Causes, and the Admiralty Court, or in relation to appeals from the Chief Judge in Bankruptcy, or from the Court of Appeal in Chancery in bankruptcy matters, *except so far as they are expressly varied by the first schedule hereto or by rules of Court made by Order in Council before the commencement of this Act*, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively until they shall respectively be altered or annulled by any rules of Court made after the commencement of this Act (*m*).

[The rest of the section relates only to the Probate and Divorce Court.]

(*m*) The words in italics are repealed by Statute Law Revision Act, 1883.

[Sect. 19, relating to criminal procedure, was repealed in part by Statute Law Revision Act, 1883.]

Provision as to Act not affecting rules of evidence or juries, —in substitution for 36 & 37 Vict. c. 66, s. 72.

20. Nothing in this Act *or in the first schedule hereto*, or in any rules of Court to be made under this Act, save as far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries (*n*).

(*n*) The words in italics are repealed by Statute Law Revision Act, 1883.

Provision for saving of existing procedure of Courts when not inconsistent with this Act or rules of Court, —in substitution for 36 & 37 Vict. c. 66, s. 73.

21. Save as by the principal Act or this Act, or by any rules of Court, may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is by the principal Act or this Act transferred to the said High Court and to the said Court of Appeal respectively, under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with the principal Act or this Act or with any rules of Court, may continue to be used and practised, in the said High Court of Justice and the said Court of Appeal respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if the principal Act and this Act had not passed.

Nothing in principal Act to prejudice right to have issues submitted, &c.

22. Whereas by section forty-six of the principal Act it is enacted that "any judge of the said High Court sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court may reserve any case, or any point in a case, for the consideration of a Divisional Court, or may direct any case or point in a case to be argued before a Divisional Court:" Be it hereby enacted, that nothing in the said Act, nor in any rule or order made under the powers thereof or of this Act, shall take away or prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues :

Provided also, that the said right may be enforced either by motion in the High Court of Justice or by motion in the Court of Appeal, founded upon an exception entered upon or annexed to the record.

38 & 39 Vict.
c. 77, s. 22.

[Sect. 23 relates to alterations in the regulation of the circuits.]

24. Where any provisions in respect of the practice or procedure of any Courts the jurisdiction of which is transferred by the principal Act or this Act to the High Court of Justice or the Court of Appeal, are contained in any Act of Parliament, rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice and the Court of Appeal, without prejudice nevertheless to any power of the Lord Chancellor, with the concurrence of the Treasury, to make any rules with respect to the Paymaster-General, or otherwise.

Additional power as to regulation of practice and procedure by rules of Court.

Any provisions relating to the payment, transfer, or deposit into, or in, or out of any Court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

The Lord Chancellor, with the concurrence of the Treasury, may from time to time, by order, determine to what accounts and how intitled any such money or property as last aforesaid, whether paid, transferred, or deposited before or after the commencement of this Act, is to be carried, and modify all or any forms relating to such accounts; and the Governor and Company of the Bank of England, and all other companies, bodies corporate, and persons, shall make such entries and alterations in their books as may be directed by the Lord Chancellor, with the concurrence of the Treasury, for the purpose of carrying into effect any such order (c).

(c) See *Gloucestershire Banking Co. v. Phillipps*, 12 Q. B. D. 533.

25. Every Order in Council and rule of Court required by this Act to be laid before each House of Parliament shall be so laid within forty days next after it is made, if Parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session; and if an address is presented to her Majesty by either House of Parliament, within the next subsequent forty days on which the said House shall have sat, praying that any such rule or order may be annulled, her Majesty may thereupon by Order in Council annul the same; and the rule or order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Orders and rules to be laid before Parliament, and may be annulled on address from either House.

This section shall come into operation immediately on the passing of this Act.

[Sect. 26 relates to the fixing and collection of fees in the High Court and Court of Appeal; it was partly repealed by the Statute Law Revision Act, 1883. As to Court fees, see *infra*.]

[Sect. 27, relating to the Courts at Lancaster and Durham, was repealed by the Statute Law Revision Act, 1883.]

38 & 39 Vict. c. 77, ss. 28, 29. [By sects. 28 and 29 the Treasury is to account for fees and expenditure, and the law as to payments to the senior puisne judge of the Queen's Bench and Queen's coroner is amended; sect. 29 is partly repealed by Statute Law Revision Act, 1883.]

[Sect. 30 repeals sect. 16 of the Chancery Funds Act, 1872 (p. 203, *ante*), and provides that rules may be made under sect. 18 of the same Act (p. 208, *ante*), with respect to the investment of monies in Court in securities, and the conversion of securities in Court into money.]

[Sect. 31 abolished the office of Secretary to the Visitors of Lunatics; it was repealed by Statute Law Revision Act, 1883.]

[Sect. 32, amending the Bankruptcy and Insolvency Acts of 1869 as to payment of unclaimed bankruptcy dividends, was repealed, as from Jan. 1, 1884, by the Bankruptcy Act, 1883, s. 169.]

Repeal.

33. From and after the commencement of this Act there shall be repealed—

- (1.) *The Acts specified in the Second Schedule to this Act, to the extent in the third column of that schedule mentioned, without prejudice to anything done or suffered before the said commencement under the enactments hereby repealed; also,*
- (2.) Any other enactment inconsistent with this Act or the principal Act (*p*).

(*p*) The words in italics were repealed by Statute Law Revision Act, 1883.

[Sect. 34, amending part of sect. 77 of the Act of 1873, is repealed by Statute Law Revision Act, 1883.]

[Sect. 35 amends sect. 79 of the Act of 1873 as to chamber clerks.]

First Schedule.

[This schedule, containing the Rules of the Supreme Court, 1875, is repealed by Statute Law Revision Act, 1883.]

Second Schedule.

[This schedule, repealing certain sections of the Bankruptcy and other Acts, and of the Judicature Act, 1873, is repealed by Statute Law Revision Act, 1883.]

39 & 40 Vict.
c. 59.

APPELLATE JURISDICTION ACT, 1876.

39 & 40 VICT. CAP. 59.

An Act for amending the Law in respect of the Appellate Jurisdiction of the House of Lords; and for other purposes.

[11th August, 1876.]

BE IT ENACTED, &c. as follows:—

Preliminary.

Short title.

1. This Act may be cited for all purposes as "The Appellate Jurisdiction Act, 1876."

Commencement of Act.

2. This Act shall, except where it is otherwise expressly provided, come into operation on the first day of November, one thousand eight

hundred and seventy-six, which day is hereinafter referred to as the commencement of this Act. 39 & 40 Vict.
c. 59, s. 2.

Appeal.

[Sects. 3—13 relate to the House of Lords.]

Amendment of Acts.

[Sect. 14 amends the constitution of the Judicial Committee under 34 & 35 Vict. c. 91, and provides that on the death or resignation of the paid judges of the Judicial Committee of the Privy Council, her Majesty may appoint a third and fourth Lord of Appeal in Ordinary; and also provides for the appointment of assessors in the hearing of ecclesiastical cases.]

[Sect. 15 has been in part repealed by the Statute Law Revision Act, 1883, and now stands as follows:—“Whereas it is expedient to amend the constitution of her Majesty’s Court of Appeal in manner hereinafter mentioned. In addition to the number of ordinary judges of the Court of Appeal authorised to be appointed by “The Supreme Court of Judicature Act, 1875,” her Majesty may appoint three additional ordinary judges of that Court. The first three appointments of additional judges under this Act shall be made by such transfer to the Court of Appeal, as is in this section mentioned of three judges of the High Court of Justice, and the vacancies so created in the High Court of Justice shall not be filled up, except in the event and to the extent hereinafter mentioned. Every additional ordinary judge of the said Court of Appeal appointed in pursuance of this Act shall be subject to the provisions of sections twenty-nine and thirty-seven of “The Supreme Court of Judicature Act, 1873,” and shall be under an obligation to go circuits and to act as commissioner under commissions of assize or other commissions authorised to be issued in pursuance of the said Act, in the same manner in all respects as if he were a judge of the High Court of Justice. There shall be paid to every additional ordinary judge appointed in pursuance of this Act, in addition to the salary which he would otherwise receive as an ordinary judge of the Court of Appeal, such sum on account of his expenses on circuit or under such commission as aforesaid as may be approved by the Treasury upon the recommendation of the Lord Chancellor. Subject as aforesaid, the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, for the time being in force in relation to the appointment of ordinary judges of her Majesty’s Court of Appeal, and to their tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to such judges, and all other provisions relating to such ordinary judges, shall apply to the additional ordinary judges appointed in pursuance of this section in the same manner as they apply to the other ordinary judges of the said Court; and for the purpose of the pension of any person appointed under this Act, an additional ordinary judge of appeal, services in the High Court of Justice, or in any Court whose jurisdiction is transferred to the High Court of Justice or to the Court of Appeal, shall be deemed to have been service in the Court of Appeal.”]

16. Orders for constituting and holding Divisional Courts of the Court of Appeal, and for regulating the sittings of the Court of Appeal and of the Divisional Courts of Appeal, may be made, and when made, in like manner rescinded or altered, by the President of the Court of Appeal, with the concurrence of the ordinary judges of the Court of Appeal, or any three of them; *and so much of section seventeen of “The Supreme Court of Judicature Act, 1875,” as relates to the regulation of any matters subject to be regulated by orders under this section, and so much of any rules of Court as may be inconsistent with any order made under this section, shall be repealed, without prejudice nevertheless to any rules of Court made in pursuance of the section so repealed, so long as such rules of Court remain unaffected by orders made in pursuance of this section (a).*

Orders in relation to conduct of business in her Majesty’s Court of Appeal.

(a) The words in italics are repealed by Statute Law Revision Act, 1883.

39 & 40 Vict.
c. 59, a. 17.

Regulations
as to business
of High Court
of Justice and
Divisional
Courts of
High Court.

17. On and after the first day of December, one thousand eight hundred and seventy-six, every action and proceeding in the High Court of Justice, and all business arising out of the same, except as is hereinafter provided, shall, so far as is practicable and convenient, be heard, determined and disposed of before a single judge, and all proceedings in an action subsequent to the hearing or trial, and down to and including the final judgment or order, except as aforesaid, and always excepting any proceedings on appeal in the Court of Appeal, shall, so far as is practicable and convenient, be had and taken before the judge before whom the trial or hearing of the cause took place: Provided nevertheless, that Divisional Courts of the High Court of Justice may be held for the transaction of any business which may for the time being be ordered by rules of Court to be heard by a Divisional Court; and any such Divisional Court when held shall be constituted of two judges of the Court and no more, unless the President of the Division to which such Divisional Court belongs, with the concurrence of the other judges of such division, or a majority thereof, is of opinion that such Divisional Court should be constituted of a greater number of judges than two, in which case such Court may be constituted of such number of judges as the President, with such concurrence as aforesaid, may think expedient; nevertheless the decisions of a Divisional Court shall not be invalidated by reason of such Court being constituted of a greater number than two judges; and

Rules of Court for carrying into effect the enactments contained in this section shall be made on or before the first day of December, one thousand eight hundred and seventy-six, and may be afterwards altered; and all rules of Court to be made after the passing of this Act, whether made under "The Supreme Court of Judicature Act, 1875," or this Act, shall be made by *any three or more* of the following persons, *of whom the Lord Chancellor shall be one, namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and four other judges of the Supreme Court of Judicature, to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein*, and all such rules of Court shall be laid before each House of Parliament within such time and subject to be annulled in such manner as is provided by "The Supreme Court of Judicature Act, 1875."

There shall be repealed on and after the first day of December, one thousand eight hundred and seventy-six, so much of sections forty, forty-one, forty-two, forty-three, forty-four, and forty-six of "The Supreme Court of Judicature Act, 1873," as is inconsistent with the provisions of this section (b).

(b) The words in italics are repealed by Statute Law Revision Act, 1883; there appears to be some mistake with regard to the second paragraph. The first part of the section is amended as to the Queen's Bench Division by Judicature Act,

1884, sect. 4, in the marginal note to which "c. 39" appears to have been inserted instead of "c. 59." 39 & 40 Vict.
c. 59, s. 17.

[Sect. 18 gives power in certain events to fill vacancies occasioned in the High Court by removal of judges to the Court of Appeal.]

19. Where a judge of the High Court of Justice has been requested to attend as an additional judge at the sittings of the Court of Appeal under section four of "The Supreme Court of Judicature Act, 1875," such judge shall, although the period has expired during which his attendance was requested, attend the sittings of the Court of Appeal for the purpose of giving judgment or otherwise in relation to any case which may have been heard by the Court of Appeal during his attendance on the Court of Appeal.

Attendance of judges of High Court of Justice on Court of Appeal.

20. Where by Act of Parliament it is provided that the decision of any Court or judge the jurisdiction of which Court or judge is transferred to the High Court of Justice is to be final, an appeal shall not lie in any such case from the decision of the High Court of Justice, or of any judge thereof, to her Majesty's Court of Appeal.

Amendment of Judicature Acts as to appeals from High Court of Justice in certain cases.

[Sect. 21, as to vacancies in legal offices, is repealed by Statute Law Revision Act, 1883.]

22. A district registrar of the Supreme Court of Judicature may from time to time, but in each case with the approval of the Lord Chancellor and subject to such regulations as the Lord Chancellor may from time to time make, appoint a deputy, and all acts authorized or required to be done by, to, or before a district registrar may be done by, to, or before any deputy so appointed: Provided always, that in no case such appointment shall be made for a period exceeding three months. This section shall come into force at the time of the passing of this Act.

Appointment of deputy by district registrar.

[Sect. 23 appoints a vice-admiral, judge, and officers of the Vice-Admiralty Court.]

Repeal and Definitions.

[Sect. 24, repealing certain sections of the Church Discipline Act, the Judicature Act, 1873, and the Judicature Act, 1875, is repealed by the Statute Law Revision Act, 1883.]

25. In this Act, if not inconsistent with the context, the following expressions have the meaning hereinafter respectively assigned to them; that is to say,

Definitions:

"High judicial office" means any of the following offices; that is to say,

"High judicial offices;"

The office of Lord Chancellor of Great Britain or Ireland, or of paid judge of the Judicial Committee of the Privy Council, or of judge of one of her Majesty's superior Courts of Great Britain and Ireland:

"Superior Courts of Great Britain and Ireland" means and includes,—

As to England, her Majesty's High Court of Justice and her

"superior Courts;"

39 & 40 Vict.
c. 59, s. 25.

Majesty's Court of Appeal, and the superior Courts of law and equity in England as they existed before the constitution of her Majesty's High Court of Justice; and

As to Ireland, the superior Courts of law and equity at Dublin; and

As to Scotland, the Court of Session.

“error.”

“Error” includes a writ of error or any proceedings in or by way of error.

40 Vict. c. 9.

JUDICATURE ACT, 1877.

40 VICT. CAP. 9.

An Act for amending the Supreme Court of Judicature Acts, 1873 and 1875. [24th April, 1877.]

BE IT ENACTED, &c. as follows :

Construction
and short
title of Act.

1. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Acts, 1873 and 1875, and together with the said Acts may be cited as the Supreme Court of Judicature Acts, 1873, 1875, 1877, and this Act may be cited separately as “The Supreme Court of Judicature Act, 1877.”

[Sect. 2 gives power to appoint an additional judge of the High Court of Justice.]

[By sect. 3, the judge appointed is to be in the same position as if he had been appointed a puisne judge of the High Court in pursuance of the Judicature Acts, 1873 and 1875, and to be attached to the Chancery Division.]

[Sect. 4 provides that the ordinary judges of the Court of Appeal shall be styled Lords Justices of Appeal, and the judges of the High Court of Justice (other than the Presidents of Divisions) shall be styled Justices of the High Court. By sect. 8 of the Judicature Act, 1881, the exception of Presidents of Divisions is not to apply to any future judge of the Probate Division.]

[Sect. 5 defines „ puisne judge; it is partly repealed by Statute Law Revision Act, 1883.]

[Sect. 6, providing for the continuation until 1st January, 1879, of sect. 34 of the Judicature Act, 1875, is repealed by Statute Law Revision Act, 1883.]

JUDICATURE (OFFICERS) ACT, 1879.

42 & 43 Vict.
c. 78.

42 & 43 VICT. CAP. 78.

An Act to amend the Supreme Court of Judicature Acts.

[15th August, 1879.]

BE IT ENACTED, &c. as follows :

Preliminary.

1. This Act shall be construed as one with the Supreme Court of Judicature Acts, 1873, 1875, and 1877, and may be cited together with those Acts as the Supreme Court of Judicature Acts, 1873 to 1879, and separately as the Supreme Court of Judicature (Officers) Act, 1879. Construction and short title of Act.
36 & 37 Vict. c. 66.
38 & 39 Vict. c. 77.
40 & 41 Vict. c. 9.
2. This Act shall, except where it is otherwise expressed, come into operation on the twenty-eighth day of October, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act. Commencement of Act.
Definition of "existing."
3. In this Act "existing" means existing at the commencement of this Act.

Central Office.

4. There shall be established a central office of the Supreme Court of Judicature. Establishment of central office.
5. There shall be concentrated in and amalgamated with the central office the following offices; namely, Certain offices amalgamated with central office.
 - The record and writ clerks office;
 - The enrolment office;
 - The report office;
 - The offices of the masters of the Queen's Bench, Common Pleas, and Exchequer Divisions, including the bills of sale office;
 - The offices of the associates in the Queen's Bench, Common Pleas, and Exchequer Divisions;
 - The Crown office of the Queen's Bench Division;
 - The Queen's remembrancer's office;
 - The office of the registrar of certificates of acknowledgments of deeds by married women;
 - The office of the registrar of judgments; and

such other offices of the Supreme Court as may from time to time be amalgamated with the central office by rules of court.
6. There shall be transferred to the central office,— Transfer of certain officers to central office.
 - (a.) The existing record and writ clerks;
 - The existing clerk of enrolments;
 - The existing clerks in the report office;
 - The existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions;
 - The existing associates in the Queen's Bench, Common Pleas, and Exchequer Divisions;
 - The existing Queen's remembrancer;

42 & 43 Vict.
c. 78, s. 6.

The existing Queen's coroner and attorney, and the existing master of the Crown office other than the Queen's coroner and attorney;

The existing registrar of certificates of acknowledgment of deeds by married women; and

The existing registrar of judgments;

with their respective clerks and messengers, or the clerks and messengers employed in their respective offices:

(b.) Such of the existing officers employed under the registrars of the Probate, Divorce, and Admiralty Division as the judges of that division respectively select as necessary for the performance of the duties to be performed in the central office; and

(c.) Such other officers of and persons employed in the Supreme Court or the offices thereof as are from time to time transferred to the central office by rules of court.

Central office
to be under
control of
masters of
Supreme
Court.

7. The central office shall be under the control and superintendence of officers called masters of the Supreme Court of Judicature.

Provided that the existing clerk of enrolments shall as long as he continues to hold that office retain his control and superintendence over the business heretofore performed in his office and over the persons for the time being employed in the performance of that business.

First masters
of Supreme
Court.

8.—(1.) The first masters of the Supreme Court of Judicature shall be—

The existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions;

The existing Queen's coroner and attorney;

The existing master of the Crown office other than the Queen's coroner and attorney;

The existing record and writ clerks; and

The existing associates in the Queen's Bench, Common Pleas, and Exchequer Divisions.

[Sub-s. 2. Salaries of first masters.]

(3.) A vacancy in the office of any master of the Supreme Court other than a master being Queen's coroner and attorney or master of the Crown office, shall not be filled until the number of masters is reduced to eighteen.

[Sect. 9 makes provision for the appointment and removal of officers of central office.]

[Sect. 10 prescribes qualification of masters.]

[Sect. 11. Masters to hold office during good behaviour.]

Business of
central office.

12.—(1.) The business to be performed in the central office shall, subject to rules of Court, comprise all the business performed in the offices by or in pursuance of this Act amalgamated with the central office, and shall be distributed among the several officers of the central office in such manner as may be directed by rules of Court.

(2.) The several officers of the central office shall be interchangeable one with another, and shall be capable of performing and liable to perform the duties of each other in any department of the office, and generally shall perform such duties and have such powers in relation to the business of the Supreme Court as may be directed by rules of Court, subject to this qualification, that the duties required to be performed by any officer transferred to the central office by or in pursuance of this Act shall, except as far as they are modified with his consent, be the same as or analogous to those which he performed before being so transferred.

42 & 43 Vict.
c. 78, s. 12.

(3.) Subject as aforesaid, all officers of the central office shall continue to perform the duties heretofore performed by them in their respective offices, and to have and exercise the powers heretofore vested in them, in the same manner, as nearly as may be, as if this Act had not passed.

13. The clerks employed in the central office shall be classified as principal clerks, first-class clerks, second-class clerks, and copying clerks, or in such other manner as the Lord Chancellor, with the concurrence of the Treasury, from time to time directs.

Classification
of clerks of
central office.

14.—(1.) The offices specified in the first part of the first schedule to this Act are hereby abolished as from the commencement of this Act.

Abolition of
certain offices
and continu-
ance of others.

(2.) Each of the offices specified in the second part of the first schedule to this Act shall be abolished on the occurrence of the next vacancy therein.

(3.) On and after the occurrence of the next vacancy in any of the offices specified in the third part of the first schedule to this Act, the senior master for the time being of the Supreme Court shall hold and perform the duties of the office, with such additional salary in respect of the office of Queen's remembrancer as the Lord Chancellor, with the concurrence of the Treasury, may determine.

(4.) Provided as follows:—

(a.) For the purposes of this section the existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions shall collectively rank as senior to the other first masters of the Supreme Court;

(b.) Subject as aforesaid, each of the first masters of the Supreme Court shall, for the purposes of this section, rank in seniority according to the date of his first appointment to an office in the Supreme Court, or in any Court of which the jurisdiction has been transferred to the Supreme Court.

Salaries and Pensions.

[Sects. 15—21 contain provisions as to salaries, pensions, &c. of officers of Supreme Court.]

Rules of Court.

22.—(1.) Section seventeen of the Supreme Court of Judicature Act, 1875, as amended by section seventeen of the Appellate Jurisdiction

Making
rules of
Court.

42 & 43 Vict. Act, 1876, shall extend to authorize the making, in pursuance of those
 c. 78, s. 22. sections, of rules of Court under or for the purposes of this Act, and
 38 & 39 Vict. under or for the purposes of any Act passed after the passing of this
 c. 77. Act which expressly or by implication authorizes or directs the making
 39 & 40 Vict. of rules of Court, and also under or for the purposes of any Act passed
 c. 59. before the passing of this Act, which, so far as unrepealed, expressly
 or by implication authorizes or directs the making of any orders, rules,
 or regulations for any purpose for which rules of Court can be made
 under the above-mentioned sections, or for any similar purpose; provided
 that where the concurrence of the Treasury is required in making rules
 of Court, or any such orders, rules, or regulations, rules of Court
 under this section shall not be made without that concurrence.

(2.) Such rules of Court as are requisite for bringing this Act into operation shall be made as soon as may be after the passing of this Act, but no rules of Court made under this Act shall come into operation before the commencement of this Act.

Supplemental.

Saving rights
 of officers
 transferred.

23. Subject to the express provisions of this Act, the officers transferred by or in pursuance of this Act shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions as if this Act had not passed.

[Sect. 24 provides that doubts as to status, &c. of officers shall be determined by rules of Court.]

[Sect. 25 relates to compensation for prejudice to right or privilege.]

[Sect. 26 contains saving as to payment of fees.]

Construction
 of enact-
 ments, &c.
 referring to
 officers or
 offices affected
 by this Act.

27. Any enactment or document referring to an officer or office abolished by or under this Act, shall, as far as it continues applicable, be construed as referring to the officer or office substituted by or under this Act, and rules of Court may be made for determining what officer or office is so substituted.

Name of new
 law Courts.
 28 & 29 Vict.
 c. 48.

28. The buildings erected under the Courts of Justice Building Act, 1865, and the Courts of Justice Concentration (Site) Act, 1865, together with all additions thereto, shall be styled the Royal Courts of Justice.

28 & 29 Vict.
 c. 49.

Repeal of
 enactments
 in second
 schedule.

36 & 37 Vict.
 c. 66.

29. Whereas by reason of the provisions of the Supreme Court of Judicature Act, 1873, and the Acts amending the same, including this Act, divers enactments relating to officers and offices of the Supreme Court, and to the making of orders, rules, and regulations for purposes connected with the Supreme Court, have become unnecessary, and it is expedient that they be specifically repealed, therefore the Acts specified in the second schedule to this Act are hereby repealed to the extent specified in the third column of that schedule :

Provided that—

(1.) This repeal shall not affect—

- (a.) Anything done or suffered before the commencement of this Act under any enactment repealed by this Act; or 42 & 43 Vict.
c. 78, s. 29.
- (b.) Any right, duty, or liability acquired, imposed, or incurred by or under any enactment hereby repealed; or
- (c.) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or
- (d.) The institution or prosecution to its termination of any legal proceeding, or other remedy for ascertaining, enforcing, or recovering any such liability, penalty, forfeiture, or punishment as aforesaid; or
- (e.) The validity of any rule, order, or regulation made under any enactment hereby repealed; and
- (2.) In particular, but without prejudice to the generality of the foregoing provisions, the repeal effected by this section shall not deprive any person who at the commencement of this Act enjoys any compensation, pension, retiring annuity, superannuation allowance, or salary mentioned in any enactment repealed by this section, of his right to receive the same compensation, pension, retiring annuity, superannuation allowance, or salary, or of any right he may have to receive any progressive or prospective increase of salary, or to obtain any promotion, or succession, or any pension, retiring annuity, or superannuation allowance, or affect or diminish any such right, or affect any right of appointment vested in any existing judge, or alter the duties, conditions, or restrictions attached to any office held by any existing officer; and
- (3.) This repeal shall not revive any enactment, right, office, privilege, matter, or thing not in force or existing at the commencement of this Act.

SCHEDULES.

FIRST SCHEDULE.

Section 14.

FIRST PART.

Offices to be abolished as from commencement of Act.

The offices of—

Record and Writ Clerk :

Master in the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice :

Associate in the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice.

SECOND PART.

Offices to be abolished on next vacancy.

The offices of—

Clerk of Enrolments :

Clerk of Petty Bag.

42 & 43 Vict.
c. 78.

THIRD PART.

Offices to be filled on vacancy by the Senior Master of the Supreme Court.

The offices of—

- Queen's Remembrancer :
- Registrar of Certificates of Acknowledgments of Deeds by Married Women :
- Registrar of Judgments.

Section 29.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

[This schedule contains a long list of statutes which it is not thought necessary to produce. Amongst those partly repealed are Sir George Turner's Act, the Master in Chancery Abolition Act, the Chancery Procedure Act, 1852, Lord Cairns's Act, and the Common Law Procedure Acts, 1852, 1854, and 1860. See also the Statute Law Revision and Civil Procedure Act, 1883.]

44 & 45 Vict.
c. 68.

JUDICATURE ACT, 1881.

44 & 45 VICT. CAP. 68.

An Act to amend the Supreme Court of Judicature Acts ; and for other purposes. [27th August, 1881.]

WHEREAS it is expedient to amend the constitution of her Majesty's Court of Appeal, and to make further provision concerning the Supreme Court of Judicature and the officers thereof, and such other matters as are hereinafter mentioned :

Be it enacted, &c., as follows :

Short title.

1. This Act may be cited as the Supreme Court of Judicature Act, 1881.

Master of the
Rolls to be
Judge of
Appeal only.

2. From and after the passing of this Act the present and every future Master of the Rolls shall cease to be a judge of her Majesty's High Court of Justice, but shall continue by virtue of his office to be a judge of her Majesty's Court of Appeal, and shall retain the same rank, title, salary, right of pension, patronage, and powers of appointment or dismissal, and all other powers, privileges, and disqualifications now and heretofore belonging to the said office of Master of the Rolls and all other duties of the said office except that of a judge of her Majesty's High Court of Justice: provided that the present Master of the Rolls shall not by virtue of this Act be subject to any disqualification to which he is not by law now subject, nor shall be required to act under any commission of assize, nisi prius, oyer and terminer, or gaol delivery; and the existing personal officers of the Master of the Rolls shall continue to be attached to him and be under his authority, and to hold their respective offices upon the same tenure and in the same manner in all respects as if this Act had not passed; provided also, that any Master of the Rolls to be hereafter

appointed shall be under an obligation to go circuits and to act as a commissioner under commissions of assize, or other commissions authorized to be issued in pursuance of the Supreme Court of Judicature Act, 1873, in the same manner in all respects as he would have been under the last-mentioned Act, or any Acts or Act amending the same, if he had continued to be a judge of the Chancery Division of the High Court of Justice.

44 & 45 Vict.
c. 68, s. 2.

3. The vacancy now existing among the ordinary judges of the said Court of Appeal shall not be filled up, and the number of ordinary judges of that Court shall henceforth be five.

Existing
vacancy in
Court of
Appeal not
to be filled
up.

[By sect. 4, the President of the Probate, Divorce and Admiralty Division is to be an ex-officio judge of the Court of Appeal.]

5. It shall be lawful for her Majesty to supply the vacancy in the High Court of Justice, to be occasioned by the removal therefrom of the Master of the Rolls, by the appointment, immediately after the passing of this Act, and from time to time afterwards, of a judge, who shall be in the same position as if he had been appointed a puisne judge of the said High Court in pursuance of the Judicature Acts, 1873 and 1875; and all the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, for the time being in force in relation to the qualification and appointment of puisne judges of the said High Court, and to their duties and tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to the persons of such judges, and all other provisions relating to such puisne judges, or any of them, with the exception of such provisions as apply to existing judges only, shall apply to the judge appointed in pursuance of this section, in the same manner as they apply to the other puisne judges of the said High Court respectively. The judge so appointed shall be attached to the Chancery Division of the said High Court, subject to such power of transfer as is in the Supreme Court of Judicature Act, 1873, mentioned.

New judge
of High
Court instead
of Master of
the Rolls.

36 & 37 Vict.
c. 66.
38 & 39 Vict.
c. 77.

6. The power given to her Majesty by the Supreme Court of Judicature Act, 1877, to appoint a judge of the High Court of Justice in addition to the number of judges authorized to be appointed by the Supreme Court of Judicature Acts, 1873 and 1875, may be exercised by her Majesty from time to time, so as at all times to make due provision for the business of the Chancery Division of the High Court of Justice: provided that no such appointment shall be made unless or until the number of judges attached for the time being to the Chancery Division of the High Court, other than the Lord Chancellor, is, by death, resignation, or otherwise, reduced below five.

Judge under
40 & 41 Vict.
c. 9.

7. The Lord Chancellor shall have power by order under his hand to direct that the Court and chambers, heretofore used by the Master of the Rolls as a judge of the Chancery Division of the High Court of Justice, shall (so long as may be necessary or convenient) be used by such judge of the said Chancery Division of the said High Court as shall be in any such order in that behalf named; and the chief and

Rolls Court
chambers and
clerks, &c.

44 & 45 Vict.
c. 68, s. 7.

other clerks, and other officers, heretofore attached to the said Court and chambers respectively, shall (subject to any rules or orders of Court) be and continue attached to the judge to be named in any such order, and, after such Court and chambers shall have ceased to be so used, to the judge to whom the business previously transacted in such Court and chambers respectively shall be for the time being assigned.

[By sect. 8, any future President of the Probate, &c. Division is to be styled "Justice." See Judicature Act, 1877, s. 4.]

[Sect. 9 relates to appeals under the Divorce Act; and sect. 10 to appeals against decrees nisi for dissolution or nullity of marriage.]

Qualification
of judges to
sit on appeals.

11. A judge who was not present and acting as a member of a Divisional Court of the High Court of Justice, at the time when any decision which may be appealed from was made, or at the argument of the case decided, shall not, for the purposes of the fourth section of the Supreme Court of Judicature Act, 1875, be deemed to be, or to have been, a member of such Divisional Court.

In cases of
urgency, &c.
one judge
may officiate
for another.

12. In any case of urgency arising during the absence from illness or any other cause or during any vacancy in the office of any judge of the High Court of Justice to whom any cause or matter may have been according to the course of the said Court or of any division thereof specially assigned, it shall be lawful for any other judge of the said Court, who may consent so to do, to hear and dispose of any application for an injunction or other interlocutory order for or on behalf of the judge so absent, or in the place of the judge whose office may have so become vacant.

[Sect. 13 relates to selection of judges for trial of election petitions.]

[Sect. 14 relates to the jurisdiction of the High Court in registration and election cases.]

[Sect. 15 relates to criminal appeals; sect. 16 to proceedings with regard to nomination of sheriffs; sect. 17 to the presentation and swearing of the Lord Mayor; and sect. 18 to the Central Criminal Court].

Power to
make rules
under 39 &
40 Vict. c. 59.

19. The power of making rules of Court, conferred by section seventeen of the Appellate Jurisdiction Act, 1876, upon the several judges therein mentioned, shall henceforth be vested in and exercised by any five or more of the following persons, of whom the Lord Chancellor shall be one; namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Division of the High Court of Justice, and four other judges of the Supreme Court of Judicature to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein.

[Sect. 20 extends the provisions of the Courts of Justice (Salaries and Funds) Act, 1869, s. 14.]

[Sect. 21. Notice of vacancies in offices of Supreme Court.]

22. And whereas by the Judicature Acts, 1873, 1875 and 1877, and the Supreme Court of Judicature (Officers) Act, 1879, no provision is made for the appointment of district registrars of the High Court of Justice other than persons holding or having held the offices in section sixty of the Supreme Court of Judicature Act, 1873, and section thirteen of the Supreme Court of Judicature Act, 1875, respectively mentioned: Be it enacted, that if on any vacancy in the office of district registrar under the said Acts, or upon the appointment by any Order in Council to be hereafter made of any new district within which there shall be a district registrar (unless by such Order in Council it shall be otherwise directed), it shall appear to the Lord Chancellor, with the concurrence of the Treasury, that from the nature and amount of the business to be transacted by such district registrar it is expedient that such office should be conferred upon a person not so qualified as aforesaid, it shall be lawful for the Lord Chancellor, with the concurrence of the Treasury, to appoint to such office any solicitor of the Supreme Court of Judicature of not less than five years' standing.

44 & 45 Vict.
c. 68, s. 22.

Appointment
of district
registrars,
42 & 43 Vict.
c. 78.

A district registrar shall not, either by himself or his partner, be directly or indirectly engaged as solicitor or agent for a party to any proceeding whatsoever in the district registry of which he is registrar.

[Sect. 23. Appointment of persons to keep order, &c., in Royal Courts of Justice.]

24. The powers which by an Act passed in the session of the sixth and seventh years of her present Majesty, intituled "An Act for consolidating and amending several of the Laws relating to Attornies and Solicitors practising in England and Wales," and by sect. 14 of the Supreme Court of Judicature Act, 1875, and by the Solicitors Act, 1860, and by the Solicitors Act, 1877, and by any Act amending the said Acts respectively, are vested in the Master of the Rolls jointly with the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or with any of them, or jointly with the Presidents of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court, or with any of them, shall henceforth be vested in the Master of the Rolls, with the concurrence of the Lord Chancellor and the Lord Chief Justice of England, or (in case of difference) of one of them, and anything required by the said Acts to be done to or before the said Lord Chief Justices and Lord Chief Baron, or the said Presidents jointly with the Master of the Rolls, may be done to or before the Master of the Rolls, the Lord Chancellor, and the Lord Chief Justice of England.

Powers as to
solicitors.
6 & 7 Vict.
c. 73.

23 & 24 Vict.
c. 127.
40 & 41 Vict.
c. 62.

Provision may be made by the Master of the Rolls, with the concurrence of the Lord Chancellor and the Lord Chief Justice of England, or (in case of difference) of one of them, for the care and custody of the roll of solicitors after the abolition of the office of Clerk of the Petty Bag (a).

(a) As to solicitors, see Judicature Act, 1873, s. 87; Judicature Act, 1875, s. 14.

44 & 45 Vict. [By sect. 25, the Lord Chief Justice of England is to have the powers of the Chief
c. 68, s. 25. Justice of the Common Pleas and the Chief Baron of the Exchequer.]

Com-
missioners for
acknowledg-
ments by
married
women.

26. And whereas under the Act of the third and fourth years of King William the Fourth, chapter seventy-four, the Lord Chief Justice of the Court of Common Pleas was empowered to appoint such proper persons as he should think fit to be perpetual commissioners for taking the acknowledgments by married women of deeds to be executed by them as in the same Act provided, and such commissioners were made removable by and at the pleasure of the said Lord Chief Justice; and by divers subsequent Acts provision was made for further and other duties to be performed by such commissioners: And whereas the present Lord Chief Justice of England was before and down to the time of his appointment to that office Lord Chief Justice of the Common Pleas, and after his appointment to be Lord Chief Justice of England no other person was appointed to be Lord Chief Justice of the Common Pleas, and that office has since been abolished: Be it enacted and declared, that every appointment of any person to be a commissioner for taking such acknowledgments and performing such other duties as aforesaid, and every order for the removal of any person from such office of commissioner, which shall have been made by the present Lord Chief Justice of England at any time since his appointment to that office, or shall be hereafter made by the Lord Chief Justice of England for the time being, shall be and be deemed to have been valid and effectual in the law, to all intents and purposes whatsoever, in the same manner as if it had been made by a Lord Chief Justice of the Common Pleas before the abolition of that office.

[Sect. 27. Powers to make rules for practice of County Courts.]

JUDICATURE ACT, 1884.

47 & 48 Vict.
c. 61.

47 & 48 VICT. CAP. 61.

An Act to amend the Supreme Court of Judicature Acts ; and for other purposes. [14th August, 1884.]

WHEREAS it is expedient to make further provision concerning the Supreme Court of Judicature, and the officers thereof, and such other matters as are hereinafter mentioned :

Be it enacted, &c. as follows :

1. This Act may be cited as the Supreme Court of Judicature Act, 1884; and this Act, together with the Supreme Court of Judicature Acts, 1873 to 1879, and the Supreme Court of Judicature Act, 1881, may be cited as the Supreme Court of Judicature Acts, 1873 to 1884. Short title.

2. This Act shall come into operation on the twenty-fourth day of October, one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act. Commence-
ment of Act.

[Sect. 3. Precedence of President of Probate, &c. Division.]

[Sect. 4 relates to the Queen's Bench Division.]

5. Upon the request of the Lord Chancellor, it shall be lawful for any judge of any division of the High Court, who may consent so to do, to sit and act for or on behalf of any other judge of the High Court absent from illness or any other cause, or in the place of any judge whose office has become vacant, or as an additional judge of any division for the purpose of hearing any causes or matters which may be assigned to him by the Lord Chancellor, or any applications therein; and while so sitting and acting any such judge shall have all the power and authority which such other judge would have had, or which ordinarily belong to a judge of such division, as the case may be. Provided that no such additional judge shall sit and act in any division, except with the concurrence of the respective Presidents of the division to which such judge belongs, and of the division in which he may have been requested to sit and act as additional judge; and the assignment to such judge of any causes or matters, depending in the division in which he shall so sit and act, shall likewise not be made except with the concurrence of the President of such last-mentioned division. Absence,
vacancies, and
insufficiency
in number of
judges.

6. Any proceeding in any cause or matter assigned to any judge of the High Court of Justice, may at any time, upon the request and on behalf of such judge, be heard and disposed of by any other judge of the same division, who may be willing to hear and dispose of the same, without any transfer: Provided that, if any party to such proceeding shall object to the same being so heard and disposed of, the same shall not be so heard and disposed of without the concurrence Power of one
judge to sit
for another.

47 & 48 Vict. of the Lord Chancellor, to be signified by an order in writing under
 o. 61, s. 6. his hand.

[By sect. 7, judges of County Courts are to have every qualification conferred on Queen's counsel by 13 & 14 Vict. c. 25.]

[Sect. 8 relates to appeals from referees, Queen's Bench Division.]

Judge may order trial by an official referee in certain cases.

9. In any cause or matter (other than a criminal proceeding by the Crown) now pending or hereafter commenced before the High Court of Justice or Court of Appeal, in which all parties who are under no disability consent thereto, the Court or a judge may at any time, on such terms as may be thought proper, order the whole cause or matter to be tried before an official referee, who shall have power to direct in what manner the judgment of the Court shall be entered, and to exercise the same discretion as to costs as the Court or judge could have exercised.

Causes which may be referred to arbitrator may be referred to official referee.

10. In all cases in which the Court or a judge may, under sections three, six, or twelve of the Common Law Procedure Act, 1854, direct any matter to be ascertained by a master or referred to an arbitrator, or to an officer of the Court, or appoint an arbitrator, such Court or judge may direct such matter to be ascertained by or referred to an official referee, who shall in that case perform all such duties and exercise all such powers as would have been performed or could have been exercised by such master, arbitrator, or officer.

Parties under agreement of reference may refer to official referee.

11. Whenever the parties to any deed or instrument in writing, made or executed after the commencement of this Act, or any of them, shall agree that any existing or future difference between them, or any of them, shall be referred to an official referee, it shall be the duty of any one of the official referees to whom application shall be made for the purpose, subject to any order which may be made by the Court or a judge for the transfer of the matter to any other official referee, or otherwise, to hear and determine any difference so agreed to be referred, and every such agreement shall be deemed to be an agreement to refer to arbitration within the meaning of sections eleven and seventeen of the Common Law Procedure Act, 1854.

Saving as to district registrars.

12. Nothing in this Act shall interfere with any existing provisions as to any proceedings before district registrars.

Summary applications under statutes. 18 & 19 Vict. c. 134, s. 16.

13. The provisions of section sixteen of the Act eighteen and nineteen Victoria, chapter one hundred and thirty-four, shall extend to all applications under any Act of Parliament heretofore passed, or hereafter to be passed, under or by virtue of which the High Court of Justice, or any judge thereof, is empowered to make orders in respect of trust funds, or any other matters, upon petition presented, or motion made, in a summary way (a).

Business which Court is not empowered to dispose of in

(a) Sect. 16 of the Act here referred to (Despatch of Business (Court of Chancery) Act, 1855) is as follows:—"And whereas by divers Acts of Parliament the Court of Chancery is empowered to make orders in respect of the disposition of trust funds, and other matters under its jurisdiction, upon petition presented or motion made in a summary way, without bill, but such orders cannot be made in respect

of the same matters upon application at chambers: Be it therefore enacted, that the business to be disposed of by the Master of the Rolls and the Vice-Chancellors, respectively, while sitting at Chambers, shall comprise such of the matters in respect of which the Court of Chancery is so as aforesaid empowered to make orders in a summary way, as the Lord Chancellor, with the advice and assistance of the Master of the Rolls and the Vice-Chancellors, or any two of them, may by any general order direct." The section has not been repealed either expressly or by implication; see *Ex parte Mayor of London*, 25 Ch. D. 384.

47 & 48 Vict.
c. 61, s. 13.

a summary way, may be disposed of at chambers.

14. Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract, or other document, or to indorse any negotiable instrument, the Court may, on such terms and conditions (if any) as may be just, order that such conveyance, contract, or other document shall be executed, or that such negotiable instrument shall be indorsed by such person as the Court may nominate for that purpose; and in such case the conveyance, contract, document, or instrument so executed or indorsed shall operate and be for all purposes available as if it had been executed or indorsed by the person originally directed to execute or indorse it.

Execution of instruments by order of the Court.

[Sect. 15. Proceedings in quo warranto to be deemed civil proceedings.]

16. Section one of the Act seventeen and eighteen Victoria, chapter thirty-four, entitled, "An Act to enable Courts of law in England, Ireland, and Scotland to issue process to compel the attendance of witnesses out of their jurisdiction, and to give effect to the service of such process in any part of the United Kingdom," is hereby amended so as to authorise and empower a judge of the High Court to make orders as therein mentioned as well when the Court is sitting as at any other time.

Amendment of 17 & 18 Vict. c. 34, s. 1.

17. If it shall appear to the Court or a judge that any proceeding now pending or hereafter commenced in the High Court of Justice by way of interpleader, in which the amount or value of the matter in dispute does not exceed the sum of five hundred pounds (being the limit of the equitable jurisdiction given to County Courts by the County Courts Act, 1865) may be more conveniently tried and determined in a County Court, the Court or judge may at any time order the transfer thereof to any County Court, in which an action or proceeding might have been brought by any one or more of the parties to such interpleader against the others or other of them, if there had been a trust to be executed concerning the matter in question; and every such order shall have the same effect as if it had been for the transfer of a suit or proceeding under section eight of the County Courts Act, 1867; and the County Court shall have jurisdiction and authority to proceed therein, as may be prescribed by any County Court rules for the time being in force.

Power to transfer interpleader proceedings to County Court.

28 & 29 Vict. c. 99.

30 & 31 Vict. c. 142.

18. The jurisdiction of an inferior Court in cases of counterclaim under sections eighty-nine and ninety of the Supreme Court of Judicature Act, 1873, shall not be excluded by reason (1) that any such

Jurisdiction of inferior Courts in counter-claims.

47 & 48 Vict. counterclaim involves matter not within the local jurisdiction of such
 c. 61, s. 18. inferior Court, but within the jurisdiction of any other inferior Court
 36 & 37 Vict. in England; or (2) that, where the counterclaim involves more than
 c. 66. one cause of action, as to each of which the defendant might have
 maintained a separate action, each such cause of action being within
 the jurisdiction of the Court, the aggregate amount of the counter-
 claim exceeds the jurisdiction of the Court; or (3) that the counter-
 claim is for an amount of money exceeding the jurisdiction of the
 Court, provided that the plaintiff does not object in writing, within
 such time as may be prescribed by any rules, to the Court giving relief
 exceeding that which the Court would have had jurisdiction to
 administer prior to the commencement of this Act. In any case where
 the counterclaim involves matter beyond the jurisdiction of the Court,
 notwithstanding the provisions of this section, the Court may, on such
 terms (if any) as the Court may think just, either adjourn the hearing
 of the case, or stay execution on the judgment, for such time as may
 be necessary to enable any party to apply to remove the proceedings
 into the High Court of Justice, or to enable the defendant to prosecute
 in a Court of competent jurisdiction an action for the purpose of
 establishing his counterclaim; and in default of any such application
 being made, or action brought, the Court shall, after the expiration of
 the time limited, have jurisdiction to hear and determine the whole
 matter in controversy, to the same extent as if all parties had consented
 thereto.

[Sect. 19 relates to patronage under 42 & 43 Vict. c. 78.]

[Sect. 20 relates to salaries and pensions.]

[Sect. 21 relates to the appointment of circuit officers.]

[Sect. 22 abolishes the offices of the sworn clerks formerly attached to the office of the Chancery examiners.]

[By sect. 23, the power to make rules conferred by sect. 17 of the Judicature Act, 1875, and enactments amending the same is to include the power to make rules for regulating the procedure on appeals from inferior Courts to the High Court.]

[Sect. 24 relates to rules for inferior Courts.]

RULES OF THE SUPREME COURT, 1883.

THE following orders and rules may be cited as "The Rules of the Supreme Court, 1883," they shall come into operation on the twenty-fourth day of October, 1883, and shall also apply, so far as may be practicable (unless otherwise expressly provided), to all proceedings taken on or after that day in all causes and matters then pending.

The orders and rules mentioned in Appendix O. hereto are hereby annulled, and the following orders and rules shall stand in lieu thereof.

For Appendix O., see *infra*. See also the Statute Law Revision and Civil Procedure Act, 1883, and the schedule thereto, which repeals several important statutes. As to the authority under which these rules are made, see Judicature Act, 1875, s. 17; Appellate Jurisdiction Act, 1876, s. 17; Judicature (Officers) Act, 1879, s. 22; Judicature Act, 1881, s. 19; *Ex parte Mayor of London*, 25 Ch. D. 384.

For interpretation of terms, see Ord. LXXI., *post*. As to the application of the orders and rules to proceedings pending on October 24th, 1883, see *Bell v. Earl of Kilmorey*, W. N. (1883), 207; *E. v. F. ib.* 207.

The Rules as issued have no marginal notes.

ORDER I.

FORM AND COMMENCEMENT OF ACTION.

1. All actions which, previously to the commencement of the principal Act (a), were commenced by writ in the superior Courts of common law at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Pleas at Durham, and all suits (b) which, previously to the commencement of the principal Act (a), were commenced by bill or information (c) in the High Court of Chancery, or by a cause *in rem* or *in personam* in the High Court of Admiralty, or by citation or otherwise in the Court of Probate, shall be instituted in the High Court of Justice by a proceeding to be called an action (d).

Institution of action.

(a) The "principal Act" means the Judicature Act, 1873; see Ord. LXXI. r. 1, *post*. "Principal Act."

(b) As to suits involving less than 20l., see Judicature Act, 1873, s. 67, and note thereto, *ante*. p. 271. If the plaintiff in an action founded on contract does not recover more than 50l. he will (in the absence of special order) only get County Court costs (Ord. LXV. r. 12, and cases there cited, *post*). Suits for trifling amounts.

(c) The title "information" ought not now to be used, and was struck out of a statement of claim by Jessel, M. R. (*Attorney-General v. Shrewsbury Bridge Co.*, W. N. (1880), 23; 42 L. T. 79). Where there is no relator the Attorney-General's signature on the writ is not required; but where there is a relator (whether a person or a body corporate) the *original writ* (not the copy filed) must be signed by the Attorney-General; and if any amendment be made it must be authorized by his signature on the original writ or draft (Central Office Practice Rules, Ord. LXI. r. 33, *infra*). See also *Caldwell v. Paghham Harbour Co.*, 2 Ch. D. 221, where an action was turned into an information and action. Information.

Before the name of any person can be used as relator his written authority for that purpose must be filed in the central office or district registry (Ord. XVI. r. 20). In a pressing case the authority may be allowed to be filed after the institution of the suit (*A.-G. v. Murray*, 13 W. R. 65; *A.-G. v. Wiltshire*, 45 L. J. Ch. 53). Written authority to be filed.

(d) "Action" means a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of Court (Judicature Act, 1873, s. 100, *ante*, p. 276). As to cases in which notice of action is required, see Addison on Torts, p. 712. Where the action is for an injunction to restrain a nuisance, notice is not necessary; see *Flower v. Local Board of Low Leyton*, 5 Ch. D. 347; 25 W. R. 423; Notice of action.

Ord. I.

A.-G. v. Hackney Local Board, 20 Eq. 626; *Baker v. Corporation of Wisbeach*, W. N. (1877), 56; and see also *Foat v. Mayor of Margate*, 11 Q. B. D. 299.

Saving of former practice.

2. All other proceedings in and applications to the High Court may, subject to these rules, be taken and made in the same manner as they would have been taken and made in any Court in which any proceeding or application of the like kind could have been taken or made if the Acts (e) had not been passed (f).

(e) "The Acts" mean the Judicature Acts, 1873—1879, the Appellate Jurisdiction Act, 1876, and the Judicature Act, 1881 (Ord. LXXI. r. 1).

(f) See Judicature Act, 1875, s. 21, *ante*, p. 284, and Ord. LXXII. r. 2, *infra*, which continue the existing practice where not inconsistent with the Act or rules. Where there is a difference between the old chancery and common law practice, and the new rules contain no provision on the point, that practice is to prevail which the Court considers the more convenient; see *Fowler v. Barstow*, 20 Ch. D. 240; *Newbiggin Gas Co. v. Armstrong* (C. A.), 13 Ch. D. 310; *Nurse v. Durnford*, *ibid.*, 764.

ORDER II.

WRIT OF SUMMONS AND PROCEDURE, &C.

Commencement by writ of summons.

1. Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed (g) with a statement of the nature of the claim made, or of the relief or remedy required in the action (h), and which shall specify the division of the High Court to which it is intended that the action should be assigned (i).

Indorsement.

(g) As to the indorsement, see Ord. III., *infra*.

(h) If the plaintiff seeks for an injunction, a receiver, or any special order or relief, it is usual and proper to indorse the writ with a specific claim for this purpose; but it is not absolutely necessary (Judicature Act, 1873, s. 25 (8), *ante*, p. 259; Ord. L. r. 6, *infra*; *Colebourne v. Colebourne*, 1 Ch. D. 690; *Norton v. Gover*, W. N. (1877), 206; Ord. III. r. 2, *post*, p. 307); and a defective indorsement may be amended (Ord. XXVIII. r. 1, *infra*).

Marking writ with name of a judge.

(i) The writ of summons in an action in the Chancery Division must also be marked by the officer issuing it with the name of one of the judges of the Chancery Division to whom for the time being chambers are attached (Ord. V. r. 9, *post*, p. 312).

District registry.

As to the requisite statements on the face of the writ where it is issued out of a district registry, see Ord. V. rr. 3, 4, *post*, p. 312.

Costs of prolixity.

2. Any costs occasioned by the use of any forms (j) of writs, and of indorsements thereon, other or more prolix than the forms hereinafter prescribed, shall be borne by the party using the same, unless the Court or a judge shall otherwise direct (k).

(j) For forms of writs and indorsements, see Appendix A., *infra*.

(k) See also Ord. LXV. r. 27 (20), *post*, as to costs of unnecessary matter.

Form of writ.

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in one of the Forms Nos. 1, 2, 3 and 4, in Appendix A., Part I., with such variations as circumstances may require (l).

Title of writ in administration action.

(l) For these forms, see *post*. Variations may be allowed in a proper case (*Bacon v. Turner*, 3 Ch. D. 275; *Keate v. Phillips*, W. N. (1878), 186). In the case of an administration action the writ must be intituled "In the matter of the estate of A. B. deceased. Between &c."; see *Eyre v. Cox*, 24 W. R. 317. The object of this is to enable the action to be indexed under the name of the estate to be administered.

4. No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of the Court or a judge (*m*). Ord. II.
Writ for service out of jurisdiction.

(*m*) As to service out of the jurisdiction generally, see Ord. XI., *post*. Applications for leave to issue a writ for service out of the jurisdiction, and for leave to serve out of the jurisdiction the writ when issued, are made at Chambers, and either simultaneously or separately. When they are made separately, a copy of the writ is brought to the chief clerk, and a verbal statement made to him of the nature of the action, whereupon, unless the case is one which requires to be brought under the personal consideration of the judge, a course which is adopted in all but very plain cases, the chief clerk indorses on the copy of the writ the leave to issue it, and the subsequent order for leave to serve is made upon affidavit intitled in the action. If the applications are made simultaneously, the application for leave to serve must be supported by an affidavit intitled in the matter of the intended action (*Stigand v. Stigand*, 19 Ch. D. 460, not following *Young v. Brassey*, 1 Ch. D. 277). Applications for leave to issue and leave to serve in the Chancery Division.

When the defendant is neither a British subject nor in British dominions, notice of the writ, and not the writ itself, is served upon him (Ord. XI. r. 6, *post*). Notice in lieu of writ.

An order for leave to issue need not be drawn up (Ord. LIII. r. 14, *post*). The Court will not allow service on an ambassador of a writ against a foreign sovereign (*Stewart v. Bank of England*, W. N. (1876), 263).

5. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in one of the Forms Nos. 5, 6, 7 and 8 in Appendix A., Part I., with such variations as circumstances may require. Such notice shall be in one of the Forms Nos. 9 and 10 in the same part, with such variations as circumstances may require (*n*). Form of writ for service out of jurisdiction.

(*n*) For the forms here referred to, see *post*.

6. No writ shall hereafter be issued under the Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67) (*o*). Bills of Exchange Act, 1855.

(*o*) This Act is repealed by the Statute Law Revision and Civil Procedure Act, 1883, 46 & 47 Vict. c. 49, s. 4.

[Rule 7 relates to the writ in Admiralty actions.]

8. Every writ of summons, and also (unless by any statute or by these rules it is otherwise provided) every other writ, shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or, if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England (*p*). Date and teste of writ of summons.

(*p*) As to vacancies in these offices, see Ord. LXXII., *post*. A mistake in the teste is unimportant (*Wesson v. Stalker*, 47 L. T. 444).

A writ is issued by being sealed by the proper officer, see Ord. V. r. 11.

ORDER III.

INDORSEMENTS OF CLAIM.

1. The indorsement of claim shall be made on every writ of summons before it is issued. Indorsement of claim.

2. In the indorsement required by Order II., Rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled (*q*). Precise ground of complaint need not be stated.

(*q*) See note (*h*), *ante*, p. 306. Whenever a statement of claim is delivered, the plaintiff may alter his claim without amending the indorsement on the writ (Ord.

- Ord. III. XX. r. 4, *post*, p. 362). As to amendments generally, see Ord. XXVIII. r. 1, *post*, p. 362; and the Central Office Practice Rules, given in note to Ord. LXI. r. 33, *infra*.
- Account. Where the plaintiff seeks for an account, the writ must be indorsed with a claim for this purpose, see rule 8, *post*, p. 309.
- Form of indorsement. 3. The indorsement of claim shall be to the effect of such of the Forms in Appendix A., Part III., as shall be applicable to the case, or, if none be found applicable, then such other similarly concise form as the nature of the case may require (*r*).
- (*r*) For these forms, see *infra*.
- Where plaintiff or defendant sues or is sued in a representative capacity. 4. If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement shall show, in manner appearing by such of the Forms in Appendix A., Part III., sect. 7, as shall be applicable to the case, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued (*s*).
- (*s*) For these forms, see *infra*. Where a creditor seeks to have the real and personal estate of a deceased debtor administered by the Court, he must sue on behalf of himself and other the creditors, and the writ must be indorsed accordingly (*Worraker v. Pryer*, 2 Ch. D. 109; *Re Royle*, 5 Ch. D. 540; *Re Vincent*, 26 W. R. 94; W. N. (1877), 249; *Adcock v. Peters*, W. N. (1876), 139; *Richardson v. Leake*, W. N. (1879), 181); *secus*, where administration of the personal estate only is sought (*Re Blount*, 27 W. R. 865; *Re Greaves*, 18 Ch. D. p. 554); see also Ord. XVI. r. 9, *post*, p. 335. If either party wish to deny the representative character of the other, he must do so specifically; see Ord. XXI. r. 5, *post*, p. 363.
- [Rule 5 relates to Probate actions.]
- Special indorsement in case of liquidated demand. 6. In all actions where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising (A.) upon a contract, express or implied, (as, for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt); or (B.) on a bond or contract under seal for payment of a liquidated amount of money; or (C.) on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or (D.) on a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only; or (E.) on a trust; or (F.) in actions for the recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or against persons claiming under such tenant; the writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim, or of the remedy or relief to which he claims to be entitled (*t*). Such special indorsement shall be to the effect of such of the Forms in Appendix C., sect. 4, as shall be applicable to the case (*u*).
- Advantage of special indorsement. (*t*) Supposing the plaintiff to have specially indorsed his writ, then—
- (1) If the defendant does not appear, the plaintiff may enter final judgment (Ord. XIII. rr. 3, 4, *post*, p. 327); though, indeed, this applies in every case in which the writ is indorsed for a liquidated demand, *whether specially or otherwise (ibid.)*.
- (2) Notwithstanding appearance, the plaintiff may sign final judgment unless the defendant can satisfy the judge that he ought to be allowed to defend (Ord. XIV. r. 1, *post*, p. 330).

(3) No statement of claim is necessary, or indeed allowable (Ord. XX. r. 1, *post*, p. 361). Ord. III.

Under the old rule the indorsement had to give particulars of the amount claimed after giving credit for any payment or set-off. As to what was a sufficient indorsement under this rule, see *Smith v. Wilson*, 5 C. P. D. 25; *Walker v. Hicks*, 3 Q. B. D. 8; *Parpaite v. Dickenson*, 26 W. R. 479; W. N. (1878), 51; *Aston v. Harwitz*, W. N. (1879), 194; 41 L. T. 521; *Yeatman v. Snow*, 28 W. R. 574; *Godden v. Corsten*, 5 C. P. D. 17. An action on a foreign judgment is within this rule (*Grant v. Easton*, W. N. (1883), 218).

This rule applies in the case of an action by mortgagee against mortgagor who has attorned tenant to him (*Daubuz v. Lavington*, 13 Q. B. D. 347); but see *Hobson v. Monk*, W. N. (1884), 17. It does not apply to an action by landlord against tenant under a forfeiture clause (*Burns v. Walford*, W. N. (1884), 31; *Mansergh v. Rimell*, W. N. (1884), 34). Recovery of land.

(u) As to these forms, see *infra*. The use of them when applicable is obligatory (Ord. XIX. r. 5, *post*, p. 356).

7. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state, that upon payment thereof within four days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed (v). Such statement shall be in the Form in Appendix A., Pt. III., sect. 3(x). The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation (y). Amount of debt and costs to be indorsed.

(v) The use of this indorsement is obligatory. As to the effect of such an indorsement, see *Jacquot v. Boura*, 5 Mee. & W. p. 156.

(x) For form, see *infra*.

(y) Cf. the Solicitors' Act, 1843, s. 37, *ante*, p. 2. If the plaintiff accept payment after the four days the defendant is entitled to have the costs taxed under this rule (*Hoole v. Earnshaw*, 39 L. T. 410; W. N. (1878), 227).

8. In all cases in which the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken (z). Claim for an account.

(z) When the writ is thus indorsed an order for the account can be made at chambers; see Ord. XV. r. 1, *post*, p. 332, and cases there cited.

In the old rules the words were "ordinary account," and it was held that this did not include an account on the footing of wilful neglect (*Re Bowen*, 20 Ch. D. 538).

ORDER IV.

INDORSEMENT OF ADDRESS.

1. In all cases where a writ of summons is issued out of the Central Office, the solicitor of a plaintiff suing by a solicitor shall indorse upon the writ and notice in lieu of service of a writ the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from the principal entrance of the central hall at the Royal Courts of Justice, another proper place, to be called his address for service, which shall not be more than three miles from the principal entrance of the central hall Indorsement of address.

Ord. IV.

at the Royal Courts of Justice, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor (a).

(a) As to service of orders, &c., generally, see Ord. LXVII., *infra*.

This rule does not enable a defendant where one plaintiff sues on behalf of others to call for the address of their solicitors (*Leathley v. McAndrew*, W. N. (1875), 259; but as to partners, see Ord. VII. r. 2, *post*, p. 314.

Indorsement
of address
where
plaintiff sues
in person.

2. In all cases where a writ of summons is issued out of the central office, a plaintiff suing in person shall indorse upon the writ and notice in lieu of service of a writ his place of residence and occupation, and also, if his place of residence shall be more than three miles from the principal entrance of the central hall at the Royal Courts of Justice, another proper place, to be called his address for service, which shall not be more than three miles from the principal entrance of the central hall at the Royal Courts of Justice, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him (b).

(b) If the plaintiff's address is not stated, or not correctly stated, he may be ordered to amend the writ by inserting his correct address, and in default of his so doing the action may be stayed; if he resides abroad, security for costs may be required (*Kenny v. Hollings*, Seton, 1644). As to security for costs generally, see Ord. LXV. r. 6, and notes thereto, *infra*.

Where writ
issued out of
district
registry.

3. In all cases where a writ of summons is issued out of a district registry the solicitor of a plaintiff suing by a solicitor shall indorse upon the writ, and notice in lieu of service of a writ, the address of the plaintiff, and his own name or firm and place of business, which shall, if his place of business be within the district of the registry, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and, where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from the principal entrance of the central hall at the Royal Courts of Justice; and where the solicitor issuing the writ is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Where the plaintiff sues in person, he shall indorse upon the writ, and notice in lieu of service of a writ, his place of residence and occupation, which shall, if his place of residence be within the district, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and, where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from the principal entrance of the central hall at the Royal Courts of Justice (c).

(c) Where a writ is issued out of a district registry and served outside the

district, notice of appearance must be sent to the address for service within the district; notice of appearance given at the address for service in London is insufficient (*Smith v. Dobbin*, 3 Ex. D. 338).

Ord. IV.

4. In all cases where proceedings are commenced otherwise than by writ of summons, the preceding rules of this order shall apply to the document by which such proceedings shall be originated as if it were a writ of summons.

Where proceedings commenced otherwise than by writ.

ORDER V.

ISSUE OF WRITS OF SUMMONS.

I. *Place of Issue.*

1. In any action other than a probate action, the plaintiff (*d*) wherever resident may issue (*e*) a writ of summons out of any district registry.

Issue of writ out of district registry.

(*d*) No one can issue a writ but a solicitor or the plaintiff in person; if anyone else issues a writ, the writ and all subsequent proceedings will be set aside (*Wood v. Swan*, 25 Sol. J. 134). An action commenced by a solicitor without authority will be dismissed with costs to be paid by him. (*Newbiggin-by-the-Sea Gas Co. v. Armstrong*, 13 Ch. D. 310; *Nurse v. Durnford*, *ibid.*, 764).

Who may issue writ.

(*e*) The Court may inquire at what period of the day a writ was issued (*Clarke v. Bradlaugh*, 8 Q. B. D. 63).

Issuing a writ is not a judicial act. Issue of writ out of central office.

2. Every writ of summons not issued out of a district registry shall be issued out of the central office (*f*).

(*f*) All writs issued in London are issued out of the Writ Appearance and Judgment Department of the Central Office; see Ord. LXI. r. 1, *post*.

3. In all cases where a defendant neither resides nor carries on business (*g*) within the district out of the registry whereof a writ of summons is issued, there shall be a statement on the face of the writ of summons that such defendant may cause an appearance to be entered at his option either at the district registry or at the central office, or a statement to the like effect.

Place of defendant's appearance.

(*g*) As to the meaning of "resides or carries on business," see Daniell, p. 319, and cases there cited.

See forms, Appendix A., Part I., Nos. 3, 4, *infra*.

4. In all cases where a defendant resides or carries on business within the district, and a writ of summons is issued out of the district registry, there shall be a statement on the face of the writ of summons that the defendant do cause an appearance to be entered at the district registry, or a statement to the like effect (*h*).

Appearance at district registry.

(*h*) See forms, Appendix A., Part I., Nos. 3, 4, *infra*.

II. *Assignment of Causes, &c.*

5. Subject to the power of transfer, every person by whom any cause or matter may be commenced in the High Court of Justice, which would have been within the non-exclusive cognizance of the High Court of Admiralty if the principal Act had not passed, shall assign such cause or matter to any one of the divisions of the said High Court, including the Probate, Divorce and Admiralty Division,

Assignment of cause to a division of High Court.

Ord. V.

as he may think fit, by marking the document by which the same is commenced with the name of the division, and giving notice thereof to the proper officer of the Court (i).

(i) As to the causes and matters specially assigned (subject to rules of Court) to the Chancery Division, see Judicature Act, 1873, s. 34, *ante*, p. 263; and as to the power of the plaintiff to choose in what division he will bring his action, see Judicature Act, 1875, s. 11, *ante*, p. 281.

As to transfers, see Ord. XLIX., *post*, and notes thereto.

[Rules 6, 7 and 8 apply only to actions in the Queen's Bench Division.]

Causes and matters commenced in the Chancery Division to be assigned to and marked with the name of a judge.

9. Subject to the power of transfer, and to the special provision contained in sub-section (e.) of this rule, and subject also to the power of the Lord Chancellor by order from time to time otherwise to direct, every cause or matter which shall hereafter be commenced in the Chancery Division shall be assigned to and marked with the name of one of the judges thereof in manner hereinafter mentioned, and shall no longer be marked with the name of such judge as the plaintiff or petitioner may in his option think fit:—

(a.) Where the commencement is by writ, it shall be the duty of the officer issuing such writ to mark the same with the name of one of the judges of the Chancery Division to whom for the time being chambers are attached (to be ascertained in the manner now used in the distribution of business amongst the conveyancing counsel of the Court) (j);

(j) As to the conveyancing counsel and the mode in which business is distributed among them, see Ord. LI., Part II.

(b.) Where the commencement is by originating summons, such summons shall be taken out in the writ department of the central office, and it shall be the duty of the officer issuing such summons to mark the same with the name of one of the said judges, to be ascertained in manner aforesaid;

(c.) Where the commencement is by notice of motion, such notice of motion shall be brought to the writ department of the central office, and it shall be the duty of the officer by whom originating summonses are issued to mark the same with the name of one of the said judges, to be ascertained in manner aforesaid;

(d.) Where the commencement is by petition, such petition shall be brought to the office of the registrars of the Chancery Division, and shall be marked by an officer to be charged by the registrars with that duty with the name of one of the said judges, to be ascertained in manner aforesaid;

(e.) Where a cause or matter has been assigned to one of the said judges as above mentioned, every subsequent writ, summons, or petition, relating to the administration of the same trust, or the winding-up of the same company, or so connected therewith as to be conveniently dealt with by the same judge, shall whenever practicable be marked by the proper officer

with the name of such judge; and the party or solicitor presenting such writ, summons, or petition shall, if there be to his knowledge such relation or connexion, so certify; such certificate shall be in the Form No. 19, in Appendix A., Part I., with such variations as circumstances may require (*k*).

(*k*) For this form see *infra*.

III. Generally.

10. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as by these rules directed in the case of proceedings directed to be printed (*l*). Preparation of writ.

(*l*) The Central Office Practice Rules (Ord. LXI. r. 33, and note thereto, *infra*) contain the following general provisions as to writs of summons:— Central office practice rules.

Writs of summons issued before the Judicature Acts came into force may be renewed without an order.

A female plaintiff must be described as "spinster," "married woman," or "widow," and if an infant, as an infant.

Where an infant is plaintiff, the authority of the next friend (duly attested) must be filed before the writ of summons can be issued.

11. Every writ of summons shall be sealed by the proper officer, and shall thereupon be deemed to be issued (*m*). Writ to be sealed.

(*m*) The Court may inquire at what time of the day a writ was issued (*Clarke v. Bradlaugh*, 8 Q. B. D., 63.)

As to the issue of writs, see Ord. LXI., *post*, providing for the distribution of business in the central office.

12. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, on paper of the description aforesaid, of such writ and all the indorsements thereon, and such copy shall be signed (*n*) by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person. Writ to be left at central office.

(*n*) Copies of writs of summons should be signed with the name of the solicitor, or solicitor's clerk suing them out, thus, "C. D. & Co.;" or, "A. B. for C. D. & Co." The stamp is to be on the copy writ filed (Central Office Practice Rules; Ord. LXI. r. 33, and note thereto, *infra*).

13. The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the Cause Book (*o*), which is to be kept in the manner in which cause books are now kept, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such cause books; and when such action shall be commenced in a district registry it shall be further distinguished by the name of such registry. Copy of writ to be filed.

(*o*) As to the cause book, see Central Office Practice Rules, Ord. LXI. r. 33.

14. Notice to the proper officer (*p*) of the assignment of an action Notice of

- Ord. V. assignment of action. "Proper officer."
- to any division of the Court shall be sufficiently given by leaving with him the copy of the writ of summons.
- (p) As to the meaning of "proper officer," see Ord. LXXI. r. 1, *infra*.
- [Rule 15 relates to Probate actions.]
- [Rules 16 and 17 relate to Admiralty actions.]

ORDER VI.

CONCURRENT WRITS.

- Issue of concurrent writs.
1. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs; each concurrent writ to bear *teste* of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the proper officer: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force (q).
- (q) As to the cases in which concurrent writs are required, see Daniell, p. 325.

- Writs for service within and without jurisdiction may be concurrent.
2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

ORDER VII.

I. DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

- Solicitor on demand to declare whether writ issued by his authority.
1. Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a judge.
- Partners suing in name of their firm to give, on demand, names, &c. of partners.
2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs or their solicitors shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a judge may direct. And

when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all proceedings shall, nevertheless, continue in the name of the firm (*s*).

Ord. VII.

(*r*) By Ord. XVI. r. 14, any party to an action by or against partners in the name of their firm, may apply by summons to a judge for the names of the partners, to be furnished and verified in such manner as the judge may direct. As to proceedings by and against partners in the name of their firm generally, see Ord. IX., Pt. III., rr. 6, 7, *post*, p. 318.

II. CHANGE OF SOLICITORS.

3. A party suing or defending by a solicitor shall be at liberty to change his solicitor (*s*) in any cause or matter, without an order for that purpose, upon notice of such change being filed in the central office, or in the district registry, if the cause or matter is proceeding therein ; but until such notice is filed and a copy thereof served, and (in causes or matters pending in the Chancery Division) left in the chambers of the judge to whom the cause or matter is assigned, the former solicitor shall be considered the solicitor of the party.

Change of solicitor.

(*s*) Where there was a special contract respecting the employment of a solicitor, and an order of course to change solicitors was obtained, the special contract being suppressed, such order was discharged with costs (*Richards v. Scarborough Market Co.*, 17 Beav. 83 ; *Jenkins v. Bryant*, 3 Drew. 70 ; and see *Topping v. Searson*, 2 H. & M. 205).

Special contract as to employment of a solicitor.

ORDER VIII.

RENEWAL OF WRIT.

1. No original writ of summons shall be in force for more than twelve months (*t*) from the day of the date thereof, including the day of such date ; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to the Court or a judge for leave to renew the writ ; and the Court or judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal ; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 18 in Appendix A., Part I., with such variations as circumstances may require ; and a writ of summons so renewed shall remain in force, and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

Renewal of writ of summons.

(*t*) The twelve months run from the date of issue (*Re Jones, Eyre v. Cox*, 25

- Ord. VIII. W. R. 303; 46 L. J. Ch. 316; W. N. (1877), 38, where there had been an amendment). In that case the Court allowed the writ to be renewed under R. S. C. 1875, Ord. LVII. r. 6, (now Ord. LXIV. r. 7, *post*); but where the Statute of Limitations had run in the meantime, renewal was refused (*Doyle v. Kaufman*, 3 Q. B. D. 7, 340).
- Production of renewed writ. 2. The production of a writ of summons purporting to be marked with the seal of the Court, showing the same to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.
- Lost writ. 3. Where a writ, of which the production is necessary, has been lost (*u*), the Court or a judge, upon being satisfied of the loss, and of the correctness of a copy thereof, may order that such copy shall be sealed and served in lieu of the original writ.
- Filed copy of lost writ. (*u*) The filed copy of a writ that has been lost may be treated as a duplicate, but only by leave of a practice master, and on the party giving an undertaking to produce the original at the central office when found (C. O. Pr. Rules; Ord. LXI. r. 33, *infra*).

ORDER IX.

SERVICE OF WRIT OF SUMMONS.

I. *Mode of Service.*

- Undertaking to accept service. 1. No service of writ shall be required when the defendant, by his solicitor, undertakes in writing (*w*) to accept service and enters an appearance.
- Ord. XII. r. 18. (*w*) A solicitor not entering an appearance in pursuance of his written undertaking so to do is liable to an attachment (Ord. XII. r. 18, *post*, p. 324).
- Service of writ personal or substituted. 2. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made (*x*), but if it be made to appear to the Court or a judge that the plaintiff is from any cause unable to effect prompt personal service (*y*), the Court or judge may make such order for substituted or other service (*z*), or for the substitution for service of notice (*a*), by advertisement or otherwise, as may be just.
- Personal service. See Ord. LXVII. r. 6, *post*.
 (*x*) Personal service is generally effected by delivering a copy of the writ to the defendant personally, and at the same time showing him the original if demanded; see *Poole v. Gould*, 1 H. & N. 99; *Hawthorn v. Harris*, 23 W. R. 214; see also Ord. LXVII. rr. 1, 6, *post*. If the defendant refuses to receive the copy of the writ, and he be then informed of the nature of the process, and the copy be thrown down in his presence, it is sufficient personal service (*Bell v. Vincent*, 7 D. & R. 233).
- When service may be effected. Service on Sunday is wholly void (*Maekreth v. Nicholson*, 19 Ves. 367; *Taylor v. Phillips*, 3 East, 155). On other days, except Saturday, service must be effected before six; on Saturday it must be before two (Ord. LXIV. r. 11).
- Service of amended writ. An amended writ must be served in the same way as an original writ (*The Cassiopcia*, 4 P. D. 188).
- "Prompt personal service." (*y*) Under this rule if the plaintiff cannot effect "prompt personal service," he may obtain leave either (i) to *serve a substitute* in lieu of the defendant himself, or (ii), instead of serving the defendant, to *give notice*, by advertisement or otherwise as the Court may direct. Such leave may be obtained when the defendant absconds or keeps out of the way (*Cook v. Dey*, 2 Ch. D. 218; *Harrison v. Stewardson*, 2 Ha. 530; *Hele v. Ogle*, *ibid.* 623; *Zulueta v. Vincent*, 15 Beav. 272; *Cope v. Russell*, 2 Ph. 404); and substituted service has been allowed where the defendant was not

absconding, but residing permanently abroad (*Griffiths v. Cowper*, 2 De G. F. & J. 208; and see *Deanes v. Kitchen*, 13 Eq. 461). Ord. IX.

(z) As to the general principle on which substituted service is allowed, see *Hope v. Hope*, 19 Beav. 237; 4 De G. M. & G. 328; *Wolverhampton, &c. Co. v. Bond*, 29 W. R. 599; W. N. (1881), 6. The principle seems to be that the substitute must be either (a) an authorized agent to receive service, or (β) a person who will be morally certain to communicate the fact of service to the party sought to be served (*Re Slade*, 30 W. R. 28; *Furber v. King* (No. 1), 29 W. R. 535). See also *Heald v. Hay*, 9 W. R. 369; *Dicker v. Clarke*, 11 W. R. 635. Thus substituted service has been ordered on the agents (*Jones v. Cargill*, 11 L. T. 566; *Jackson v. Shanks*, 13 W. R. 287; *Hobhouse v. Courtney*, 12 Sim. 140); solicitors (*Hornby v. Holmes*, 4 Ha. 306; *Hope v. Carnegie*, 1 Eq. 126; *Rees v. Brailley*, 22 L. T. 470; *Dicker v. Clarke*, 11 W. R. 635; 9 Jur. N. S. 636; *Howkins v. Bennett*, 1 Giff. 215; *Ridsdale Allantee v. G. W. Ry. Co.*, W. N. (1869), 269; or attorney (*Weymouth v. Lambert*, 3 Beav. 333) of the party; but the Court has refused to order it where the agent or solicitor was not acting in the matter of the suit, and refused to accept the agency (*Hurst v. Hurst*, 1 De G. & S. 694; *Webb v. Salmon*, 2 Ha. 251; and see *Furber v. King* (No. 1), 29 W. R. 535; *Asiatic Banking Co. v. Anderson*, 13 L. T. 272); and see further as to service on solicitors, *Dymond v. Croft*, 3 Ch. D. 512; *Armitage v. Fitzwilliam*, W. N. (1875), 238; *Waters v. Waters*, 24 W. R. 190. Substituted service has been allowed on a general agent (*Jones v. Cargill*); on a solicitor with general power of attorney (*Forster v. Menzies*, 16 Beav. 568, and see *Barker v. Piele*, 11 W. R. 658); on the master of a vessel for the owners (*Hart v. Herwig*, 8 Ch. 860; 21 W. R. 663); and on a solicitor in spite of his objecting to accept it (*Governors of Gray Coat Hospital v. Westminster Commissioners*, 1 De G. & J. 254).

Substituted or other service.

Substituted service may be ordered when the defendant is sued in the name of a firm, and no person having control or management can be found at the place of business (*Skillito v. Child & Co.*, W. N. (1883), 208). Where defendant sued in name of firm.

Substituted service has all the effect of personal service (*Watt v. Barnett*, 3 Q. B. D. p. 186). But it can only be had where personal service (if there were not difficulties in the way) would be possible (*Sloman v. Governor of New Zealand*, 1 C. P. D. 567, where the defendant was a colonial government, and could not, therefore, in any case be effectually served with a writ). Substituted service, effect of.

Service may be ordered to be effected by leaving a copy of the writ at the plaintiff's house, or with his wife, and by advertising; see *Cook v. Dey*, 2 Ch. D. 218; *Bank of Whitehaven v. Thompson*, W. N. (1877), 45; *Capes v. Brewer*, W. N. (1875), 193; 24 W. R. 40; and see also *Mullows v. Bannister*, W. N. (1882), 183. Service at defendant's house.

(a) Service may be effected by sending notice through the post, either with or without an advertisement in addition; see Ord. LXVII. r. 6, *post*; *Rafael v. Ongley*, 34 L. T. 124; *Capes v. Brewer*; *Hamilton v. Davies*, W. N. (1880), 82; or notice may be ordered to be given by advertisement alone, without any service (*Whitley v. Honeywell*, 24 W. R. 351; *Hartley v. Dilke*, 35 L. T. 706; *Hyde v. Large*, 19 Eq. 48); and as to errors in the advertisements, see *Jones v. Brandon*, 3 Jur. N. S. 1146; *Shepherd v. Stone*, W. N. (1868), 170. Substitution of notice for service.

See further, as to substituted service, *Crane v. Jullion*, 2 Ch. D. 220; *Meek v. Michaelson*, W. N. (1876), 111; *Hunt v. Austin*, 9 Q. B. D. 598.

In a suit against a foreign state substituted service on its minister in England may be ordered (*Smith v. Weguelin*, W. N. (1867), 273). Where defendant is a foreign state.

Where an order has been made and judgment obtained the defendant may still be allowed to come in and defend if a proper case can be shown (*Watt v. Barnett*, 3 Q. B. D. 183, 366).

An order for substituted service is obtained *ex parte* either on motion or summons; and the application must be supported by a proper affidavit. See Ord. X., *post*, p. 320. The order must be served with the writ; and it must be stated in the order that it is to be served; and the service must be effected in accordance with the terms of the order (*Daniell*, p. 339). Leave to defend. Order for substituted service, how obtained.

Where the order limits no time for appearance, an appearance must be entered within eight days from service or from the appearance of the advertisements, if any, whichever is the later (*Cook v. Dey*, 2 Ch. D. 218; *Crane v. Jullion*, 2 Ch. D. 220). Where the defendant is out of the jurisdiction the order names the time (Ord. XI. r. 5, *post*, p. 322). Time for appearance.

II. On particular Defendants.

3. When husband and wife are both defendants to the action, they shall both be served unless the Court or a judge shall otherwise order (*b*). Service on husband and wife.

(*b*) As to actions by or against married women, see Ord. XVI. r. 16, *post*, p. 338, and notes thereto.

Ord. IX.

Service on
infant.

4. When an infant is a defendant to the action, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is (c), shall, unless the Court or a judge otherwise orders, be deemed good service on the infant; provided that the Court or judge may order that service made or to be made on the infant shall be deemed good service.

(c) In *Christie v. Cameron*, 4 W. R. 589, service on the rector of a college of which the infant was an undergraduate was held sufficient, the plaintiff being unable to discover where the defendant's father lived. See also *Smith v. Marshall*, 2 Atk. 70; *Thompson v. Jones*, 8 Ves. 141; Ord. XIII. r. 1, and note thereto, *post*, p. 326.

As to proceedings by or against infants generally, see Ord. XVI. r. 16, and notes thereto, *post*, p. 338.

Service on
lunatic or
person of
unsound
mind.

5. When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides or under whose care he is (d), shall, unless the Court or a judge otherwise orders, be deemed good service on such defendant.

(d) In *Than v. Smith*, 27 W. R. 617; S. C. *nom. Thorn v. Smith*, W. N. (1879), 81, service was ordered on the keeper of an asylum, in which a person of unsound mind so found but who had no committee, was residing. The keeper of an asylum is bound to allow a writ to be served, and if he hinders the service he will be liable to attachment (*Denison v. Hardings*, W. N. (1867), 17). Service upon the manager of the lunatic's business is bad (*Fore Street Co. v. Durrant*, 10 Q. B. D. 471; 31 W. R. 768). See also *Re Pepper*, 50 L. T. 580; 32 W. R. 765; W. N. (1884), 141; *De Montbrun v. Hirsch*, 27 Sol. J. 199; Ord. XVI. r. 17, *post*, p. 338.

III. On Partners and other Bodies.

Service on
partners.

6. Where persons are sued as partners in the name of their firm, the writ shall be served either upon any one or more of the partners, or at the principal place within the jurisdiction of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and, subject to these rules, such service shall be deemed good service upon the firm.

Service on
person
carrying on
business in
name of a
firm.

7. Where one person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the firm name, the writ may be served at the principal place within the jurisdiction of the business so carried on upon any person having at the time of service the control or management of the business there (e); and such service, if sufficient in other respects, shall be deemed good service on the person so sued.

(e) See *Shillito v. Child & Co.*, W. N. (1883), 208, cited *ante*, p. 317.

Where a person residing abroad carries on business in this country, the writ may be served at his place of business under this rule (*O'Neil v. Clason*, 46 L. J. Q. B. 191). As to the case of a lunatic, see *Fore Street Co. v. Durrant*, 10 Q. B. D. 471; 31 W. R. 768, cited in note (d) above.

Service on
corporation
aggregate,
&c.

8. In the absence of any statutory provision regulating service of process, every writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation (f); and every

writ of summons issued against the inhabitants of a hundred or other like district may be served on the high constables thereof, or any one of them, or, where there is no high constable, on any other acting chief officer of police of the county in which such hundred or district is situate; and every writ of summons issued against the inhabitants of any county of any city or town, or the inhabitants of any franchise, liberty, city, town, or place, not being a part of a hundred or other like district, on some peace officer thereof: and where by any statute (*g*) provision is made for service of any writ of summons, bill, petition, summons, or other process upon any corporation, or upon any society or fellowship, or any body or number of persons, whether corporate or unincorporate, every writ of summons may be served in the manner so provided.

(*f*) A foreign corporation carrying on business in England may be served by serving the head officer of the English branch (*Newby v. Van Oppen*, L. R. 7 Q. B. 293; and see *Palmer v. Gould's Co.*, W. N. (1884), 63). But service on a booking clerk of a Scotch railway company at a station on an English line, over which the company had running powers, was held insufficient (*Machereth v. Glasgow Ry. Co.*, L. R. 8 Ex. 149). Neither a colonial (*Sloman v. Governor of New Zealand*, 1 C. P. D. 563), nor a foreign (*Strousberg v. Republic of Costa Rica*, 29 W. R. 125) government is a corporation capable of being served with a writ under the above rule.

Corporations,
how served.

(*g*) As to statutory provisions, see the Companies Act, 1862, 25 & 26 Vict. c. 89, s. 62, which provides that any summons, notice, order or other document may be served upon the company by leaving the same, or sending it by post in a prepaid letter addressed to the company at their registered office. A similar provision is contained in the Companies Clauses Act (8 & 9 Vict. c. 16, s. 135), the Lands Clauses Act (8 & 9 Vict. c. 18, s. 134), and the Railways Clauses Act (8 & 9 Vict. c. 20, s. 138).

Statutory
provisions.

. Where the business of a company had virtually ceased, but the company had never been dissolved, service was ordered on the late chairman and secretary (*Gaskell v. Chambers*, 26 Beav. 252; 5 Jur. N. S. 52).

Where the secretary himself sued the company, and served one director, it was held (under the Companies Clauses Act, s. 135) that the service was bad (*Lawrenson v. Dublin Ry. Co.*, W. N. (1877), 149).

IV. In particular Actions.

9. Service of a writ of summons in an action to recover land (*h*) may, in case of vacant possession (*i*), when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property.

Service of
writ in action
to recover
land.

(*h*) As to what is an action to recover land, see Ord. XVIII. r. 2, and notes thereto, *post*, p. 353.

(*i*) As to vacant possession, see *Isaacs v. Diamond*, W. N. (1880), 75.

Vacant
possession.

[Rules 10—14 relate to Admiralty actions.]

V. Generally.

15. The person serving a writ of summons shall, within three days at most after such service (*k*), indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ shall mention the day on which such indorsement was made. This rule shall apply to substituted as well as other service.

Indorsement
of date of
service.

(*k*) Where the indorsement was inadvertently omitted to be made within the

Ord. IX.

three days the Court extended the time, but a new affidavit of service was required (*Hastings v. Hurley*, 16 Ch. D. 734; 29 W. R. 440; and see *Sproat v. Peckett*, W. N. (1883), 76, for form of order).

ORDER X.

SUBSTITUTED SERVICE.

Substituted
service.

Every application to the Court or a judge for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made (*l*).

(*l*) As to substituted service generally, see Ord. IX. r. 2, and notes thereto, *ante*, p. 316, and Ord. LXVII. r. 6, *post*.

Unless the order shall otherwise direct, a copy of the order, and of the writ, shall be deemed to have been served on the day following the day on which a prepaid letter containing such copy shall have been posted (C. O. Pr. R., Ord. LXI. r. 33, *infra*.)

ORDER XI.

SERVICE OUT OF THE JURISDICTION.

Service out of
the juris-
diction.

1. Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a judge whenever—

- (a.) The whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits); or
- (b.) Any act, deed, will, contract, obligation, or liability affecting (*m*) land or hereditaments situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action; or

(*m*) See *Casey v. Arnott*, 2 C. P. D. 24; *Agnew v. Usher*, W. N. (1884), 220; 231.

- (c.) Any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or
- (d.) The action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property, situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of England; or
- (e.) The action is founded on any breach or alleged breach within the jurisdiction of any contract wherever made, which, according to the terms thereof ought to be performed within the jurisdiction, unless the defendant is domiciled or ordinarily resident in Scotland or Ireland (*n*); or

(*n*) See *Harris v. Fleming*, 13 Ch. D. 208; *Cresswell v. Parker*, 11 Ch. D. 601, decided under the repealed rules. If the defendant is domiciled in Scotland or Ireland the Court has no power to allow service out of the jurisdiction (*Lenders v. Anderson*, 12 Q. B. D. 50); and see *Agnew v. Usher*, where defendants in Scotland were sued for rent of premises in Liverpool.

(f) Any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof (o); or Ord. XI.

(o) See *Ex parte McPhail*, 12 Ch. D. 632, decided under the repealed rule.

Where the defendants carried on business at Aberdeen but sold goods (alleged to be an infringement of the plaintiff's patent) at Liverpool, the Court allowed the writ in an action for an injunction, and damages to be served in Scotland (*Speckhart v. Campbell*, W. N. (1884), 24). *Sed quare*. Injunction.

(g) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction (p).

(p) See *Lightowler v. Lightowler*, W. N. (1884), 8; *Yorkshire Tramway Co. v. Eglington Co.*, W. N. (1884), 200. This sub-section does not apply to service out of the jurisdiction of a third party notice on a third party domiciled, or ordinarily resident in Scotland (*Speller v. Bristol Navigation Co.*, 13 Q. B. D. 96; 32 W. R. 670).

No leave will be given to serve a defendant out of the jurisdiction except in the cases above specified (*Eager v. Johnstone*, 22 Ch. D. 86).

"Within the jurisdiction" means the territorial jurisdiction, which does not extend below low water mark; see *Re Smith*, 1 F. D. 300; *The Vivar*, 2 P. D. 29; *Harris v. Owners of the Franconia*, 2 C. P. D. 173; *R. v. Keyn*, 2 Ex. D. 63.

The objection that the cause of action is not such that a writ ought to be issued out of the jurisdiction cannot be raised by statement of defence (*Preston v. Lamont*, 1 Ex. D. 361). A foreign corporation may be served abroad; see *Scott v. Royal Wax Candle Co.*, 1 Q. B. D. 404; *Westman v. Aktiebolaget, &c.*, 1 Ex. D. 237. As to petitions and summonses in liquidations, see *Re Bonelli*, 18 Eq. 655; *Shurmer v. Hodge*, W. N. (1866), 304; *Re British Imperial Corporation*, 5 Ch. 749. If the defendant is in England he can be served whoever he is, and wherever the cause of action arose: *per Field, J., Palmer v. Gould's Co.* W. N. (1884), 63.

Service not allowed except in cases specified in the rules.

Within the jurisdiction.

2. Where leave is asked from the Court or a judge to serve a writ, under the last preceding rule, in Scotland or in Ireland, if it shall appear to the Court or judge that there may be a concurrent remedy in Scotland or Ireland (as the case may be) the Court or judge shall have regard to the comparative cost and convenience of proceeding in England, or in the place of residence of the defendant, or person sought to be served, and particularly in cases of small demands to the powers and jurisdiction, under the statutes establishing or regulating them, of the Sheriffs' Courts, or Small Debts Courts in Scotland, and of the Civil Bill Courts in Ireland, respectively (q).

Service in Scotland or Ireland.

(q) This rule is taken from Ord. XI. r. 1 a, 1876, as to which see *Fowler v. Barstow*, 20 Ch. D. 240; *Ex parte McPhail*, 12 Ch. D. 632.

[Rule 3 applies only to Probate actions.]

4. Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit (r), or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not (s), and the grounds upon which the application is made; and no such leave shall be granted unless it shall be Evidence on application for leave to serve out of the jurisdiction.

- Ord. XI. made sufficiently to appear to the Court or judge that the case is a proper one for service out of the jurisdiction under this order.
- Affidavit. (v) As to the affidavit see *Great Australian Co. v. Martin*, 5 Ch. D. 1; *Shearman v. Findlay*, 32 W. R. 122. Affidavits are admissible on behalf of the defendant to show the cause of action did not arise within the jurisdiction (*Fowler v. Barstow*, 20 Ch. D. 240). To obtain leave to serve a defendant in Scotland or Ireland, the affidavit should show in what respect it would be cheaper and more convenient to lay the case in England; see *Woods v. McInnes*, 4 C. P. D. 87; *Tottenham v. Barry*, 12 Ch. D. 797.
- (s) If the defendant resides in Scotland or Ireland, the omission of the statement that he is a British subject is not material (*Fowler v. Barstow*, 20 Ch. D. 240).
- Limiting time for appearance. 5. Any order giving leave to effect such service or give such notice shall limit a time (t) after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which (u) the writ is to be served or the notice given.
- Time for appearance. (t) As to the time for appearance in case of a liquidation summons, see *Re British Imperial Corporation*, 5 Ch. D. 749.
- (u) The service need not be limited to any particular spot; thus leave was given to serve the defendant "in Scotland" (*Blenkinsopp v. Blenkinsopp*, 2 Ph. 1); "in the Grand Duchy of Baden" (*Preston v. Dickinson*, 9 Jur. 919); "in the City of New York or elsewhere in the United States" (*Kinnaird v. Kinnaird*, 18 L. T. 52); but not "in Scotland or elsewhere out of the jurisdiction" (*Phospho-Guano Co. v. Guild*, 17 Eq. 432).
- The order for service out of the jurisdiction may provide for service of interrogatories and the issuing of an injunction (*Young v. Brassey*, 1 Ch. D. 277).
- Notice in lieu of service. 6. When the defendant is neither a British subject, nor in British dominions, notice of the writ, and not the writ itself, is to be served upon him.
- Notice, how to be given. 7. Notice (v) in lieu of service shall be given in the manner in which writs of summons are served (w).
- (v) See form of notices, App. A., Part I., No. 9, *post*. As to proof of service of notice, see *Bustros v. Bustros*, 14 Ch. D. 849.
- (w) See Ord. IX. r. 2, *ante*, p. 316.

ORDER XII.

APPEARANCE.

- Appearance in London. 1. Except in the cases otherwise provided for by these rules a defendant shall enter his appearance in London.
- Entry. 2. Appearances entered in London shall be entered in the central office.
- [Rule 3 applies only to Probate and Admiralty actions.]
- Appearance in district registry. 4. If any defendant to a writ issued in a district registry resides or carries on business within the district, he shall appear in the district registry (x).
- (x) See Ord. V. r. 4, *ante*, p. 311.
- Appearance in district 5. If any defendant neither resides nor carries on business in the

district, he may appear either in the district registry or at the central office (y). Ord. XII.
registry or
central office.

(y) See Ord. V. r. 3, *ante*, p. 311.

6. If a sole defendant appears, or all the defendants appear in the district registry, or if all the defendants who appear appear in the district registry and the others make default in appearance, then, subject to the power of removal in Order XXXV., Rules 13 to 16 provided, the action shall proceed in the district registry. When action
to proceed in
district
registry.

7. If the defendant appears, or any of the defendants appear, in London the action shall proceed in London; provided that if the Court or a judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or judge may order that the action may proceed in the district registry, notwithstanding such appearance in London. When action
to proceed in
London.

8. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer (z) a memorandum in writing (a) dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. He shall at the same time deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return it to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal. Entry of
appearance.

(z) For the meaning of "proper officer," see Ord. LXXI. r. 1, *infra*.

(a) For form of memorandum see Appendix A., Part II., No. 1, *post*.

"Proper officer."

9. A defendant shall, on the day on which he enters an appearance to a writ of summons, give notice of his appearance (Form No. 2 in Appendix A., Part II.) to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing served in the ordinary way at the address for service (which, in the case of a writ issued out of a district registry, must be the address for service within the district), or by prepaid letter directed to that address and posted on the day of entering appearance in due course of post, and shall in either case be accompanied by the sealed duplicate memorandum (b). Notice of
appearance.

(b) For this form see *infra*.

10. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, and, if the appearance is entered in the central office, a place, to be called his address for service, which shall not be more than three miles from the principal entrance of the central hall at the Royal Courts of Justice, and if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district, and where any Defendant's
solicitor's
address for
service.

Ord. XII. such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

Address for service of defendant appearing in person. 11. A defendant appearing in person shall state in such memorandum his address (*c*) and, if the appearance is entered in the central office, a place, to be called his address for service, which shall not be more than three miles from the principal entrance of the central hall at the Royal Courts of Justice, and if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district.

(*c*) See note to rule 12.

Memorandum of appearance without address not to be received. 12. If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious (*d*) the appearance may be set aside by the Court or a judge, on the application of the plaintiff.

Illusory address. (*d*) When a defendant gives an address for service at which he cannot be found and where there is no person authorized to take in documents such address is illusory, and the appearance will be set aside (*A. v. B.*, W. N. (1883), 174; — v. —, W. N. (1884), 241.)

Memorandum of appearance. 13. The memorandum of appearance shall be in the Form No. 1 in Appendix A., Part II. (*e*), with such variations as circumstances may require.

(*e*) For this form, see *post*.

Entry in cause book. 14. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the cause book.

Partners, how to appear. 15. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm (*f*).

Judgment. (*f*) The judgment must be against the firm, and cannot be entered against one member of it who has failed to appear (*Jackson v. Litchfield*, 8 Q. B. D. 474). See further as to actions against partners in the name of their firm, *Davis v. Morris*, 10 Q. B. D. 436; *Munster v. Railton*, 11 Q. B. D. 435; reversing S. C. below, 10 Q. B. D. 475.

Appearance of person carrying on business in name of a firm. 16. Where any person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

Where several defendants appear by one solicitor. 17. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum.

Where solicitor fails to appear. 18. A solicitor not entering an appearance or putting in bail, or paying money into Court in lieu of bail in an Admiralty action *in rem*, in pursuance of his written undertaking so to do shall be liable to an attachment.

[Rules 19—21 apply only to Admiralty actions.]

Ord. XII.

22. A defendant may appear at any time before judgment. If he appear at any time after the time limited by the writ for appearance, he shall not, unless the Court or a judge shall otherwise order, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ.

Time for appearance.

[Rule 23 applies only to Probate actions.]

[Rule 24 applies only to Admiralty actions *in rem*.]

25. Any person not named as a defendant in a writ of summons for the recovery of land (*g*) may by leave of the Court or a judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant.

Appearance by person in possession of land.

(*g*) As to what is an action for the recovery of land, see *Gledhill v. Hunter*, 14 Ch. D. 492, and other cases cited in note (*d*) to Ord. XVIII. r. 2, *post*, p. 353.

26. Any person appearing to defend an action for the recovery of land (*h*) as landlord, in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

Appearance and defence by landlord.

(*h*) See note to rule 25.

27. Where a person not named as defendant in any writ of summons for the recovery of land (*i*) has obtained leave of the Court or a judge to appear and defend, he shall enter an appearance, according to the foregoing rules of this order, intituled in the action against the party named in the writ as defendant, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

Appearance by person who has obtained leave to defend.

(*i*) See note to rule 25.

28. Any person appearing to a writ of summons for the recovery of land (*k*) shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance, or in a notice intituled in the action and signed by him or his solicitor. Such notice shall be served within four days after appearance; and an appearance, where the defence is not limited as above mentioned, shall be deemed an appearance to defend for the whole.

Notice to defend for part of land.

(*k*) See note to rule 25.

29. The notice mentioned in the last preceding rule shall be in the Form No. 3 in Appendix A., Part II., with such variations as circumstances may require (*l*).

Form of notice.

(*l*) For this form, see *post*.

Ord. XII.

Defendant may move to set aside service without appearing.

30. A defendant before appearing shall be at liberty, without obtaining an order to enter or entering a conditional appearance, to serve notice of motion to set aside the service upon him of the writ or of notice of the writ, or to discharge the order authorising such service.

ORDER XIII.

DEFAULT OF APPEARANCE.

Default of appearance by infant or person of unsound mind, appointment of guardian *ad litem*.

1. Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition the plaintiff shall, before further proceeding with the action against the defendant, apply to the Court or a judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or judge at the time of hearing such application shall dispense with such last-mentioned service (*m*).

(*m*) This rule is substantially identical with Cons. Ord. VII. r. 3, except that it is obligatory whereas that was permissive; see *Taylor v. Pede*, 29 W. R. 627; 44 L. T. 514; W. N. (1881), 74; see further Ord. XVI. rr. 16-21 as to persons under disability.

Who will be appointed guardian of infant.

As to the appointment of a guardian for an infant to answer in a special case, see note to Ord. XXXIV. r. 1. If no relation will act (see *Moore v. Platel*, 7 Beav. 583; *Moore v. Cantley*, 10 Hare, App. xxiv.), the Court will name a solicitor guardian *ad litem* (*Thomas v. Thomas*, 7 Beav. 47; *Biddulph v. Camoys*, 9 Beav. 548); but attend to the recommendation of the defendant's family (*Charlton v. West*, 3 De G. F. & J. 156).

A person under disability will not be appointed guardian *ad litem*, nor the plaintiff in the suit. But there is no objection to appointing a defendant who has not a conflicting interest (*Anon.*, 18 Jur. 770); for example, a lunatic's brother who was a co-defendant, and had no adverse interest was appointed his guardian *ad litem* in *Bonfield v. Grant*, 10 W. R. 275. See *Sandford v. Sandford*, 11 W. R. 336; *Gee v. Gee*, 12 W. R. 187; *Biddulph v. Dayrell*, 15 L. J. Ch. 320, where the wife's solicitor was appointed guardian *ad litem* of her husband, a lunatic defendant, on proof that the husband had no adverse interest; and *Leese v. Knight*, 10 W. R. 711, where a mother, who had made a claim to dower adverse to her children, was required to make a special application to be appointed their guardian *ad litem* (though she had already been appointed by a common order). See, too, *Anon.*, 9 Hare, App. xxvii., where it was said the Court would prefer some adult and competent relative, having no adverse interest, to a solicitor or other stranger.

When the guardian dies, a special application to appoint a new one is necessary (*Needham v. Smith*, 6 Beav. 130).

Person in weak health.

A guardian *ad litem* will not be appointed to a person merely because he is in weak health (*Williams v. Hodge*, 1 M. & G. 516). In an old case where the defendant's competency was disputed, an inquiry was directed (*Lee v. Ryder*, 6 Madd. 294).

A person of great age and incapable of giving a continuous attention to business may be ordered to defend by guardian *ad litem* (*Newman v. Selfe*, 11 W. R. 764; *Steel v. Cobb*, *ibid.* 298). Ord. XIII.
Of great age.

A lunatic defendant may move to discharge the guardian on his recovery, and should do so, or he will continue liable for the costs of the solicitor appointed by his guardian (*Frampton v. Webb*, 11 W. R. 1018; *Blyth v. Green*, W. N. (1876), 214). Order dis-
charged on
lunatic's
recovery.

Where a defendant was of unsound mind, and confined in an asylum, the Court, on proof that she was made aware of the general nature of the claim against her, appointed a guardian under Cons. Ord. VII. r. 3 (*Elliston v. Sheldrake*, 2 L. T. 48); and see *Re Pepper*, W. N. (1884), 141; 50 L. T. 580; 32 W. R. 765. Lunatic in
asylum.

In the case of a lunatic found so by inquisition, the committee will be appointed guardian as of course. If the committee have an adverse interest another guardian will be appointed (*Worth v. Mackenzie*, 3 M. & G. 363). Lunatic so
found.

It is quite irregular for a plaintiff to instruct a solicitor to take steps on behalf of a defendant of unsound mind, though in the same interest, without applying to the Court (*Camps v. Marshall*, 8 Ch. 462).

Where the notice was served at the house of the mother of the infants and her second husband, the father being proved to be dead, such service was held to be sufficient (*Hitch v. Wells*, 8 Beav. 576; see, too, *Baker v. Holmes*, Dick. 18; *Thompson v. Jones*, 8 Ves. 141; *Lane v. Hardwicke*, 5 Beav. 222). So where the infant defendants were concealed in their mother's house to avoid service, it was held that putting a copy of the subpoenas under the door of the mother's dwelling-house was good service (*Clark v. Waters*, Smith's Ch. Pr., p. 253). In another case service on the rector of the college of which the infant was an undergraduate member, was held sufficient, the plaintiff being unable to discover where the father lived (*Christie v. Cameron*, 4 W. R. 589). But service on the uncle of an infant, not being his guardian, is improper (*Blackmore v. Howett*, 30 L. T. (O. S.) 101); and where the infant was articulated to, and resident with, a surgeon, and it appeared from the affidavit that the notice was served upon him while so residing, but it did not state that the notice was served either personally upon or at the dwelling-house of the surgeon, the service was held insufficient (*Taylor v. Ansley*, 9 Jur. 1055). Service of
notice on
person under
whose care
the infant
resides.

Though the rule applies to infants residing abroad (*O'Brien v. Maitland*, 10 W. R. 375; *Anderson v. Stather*, 10 Jur. 383), yet where an infant defendant, having no substantial interest in the suit, was abroad, the Court dispensed with service of notice of the application (*Lambert v. Turner*, 10 W. R. 335; *Turner v. Snowdon*, 2 Dr. & S. 265; see *Chaffers v. Baker*, 5 De G. M. & G. 482; *Lingren v. Lingren*, 7 Beav. 66); and where service could not be effected the Court ordered amendment by striking out the name of the infant, saving just exceptions (*Blackmore v. Howett*). Service dis-
pensd with.

The rule applies to the case of proceedings commenced by originating summons (*Re Pepper*, W. N. (1884), 141; 50 L. T. 580; 32 W. R. 765). Originating
summons.

Sunday was reckoned as one of the six days (*Brewster v. Thorp*, 11 Jur. 6). "Six clear
days."

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following rules of this order, or under Ord. XV. r. 1, he shall, before taking such proceeding upon default, file an affidavit of service (*n*), or of notice in lieu of service, as the case may be. Affidavit of
service.

(*n*) As to filing affidavits, see Ord. XXXVIII. r. 10, *post*. Affidavits of service must state when, where, how, and by whom service was effected (Ord. LXVII. r. 9, *post*). Affidavit of
service.

For form of affidavit, see App. B., No. 23, *post*. In *Bustros v. Bustros*, 14 Ch. D. 849, it was held that an affidavit that the defendant had been personally served with a "notice in writing, a true copy of which is hereunto annexed," was sufficient.

3. Where the writ of summons is indorsed for a liquidated demand, whether specially (*o*) or otherwise, and the defendant fails, or all the defendants, if more than one, fail, to appear thereto, the plaintiff may enter final judgment (*p*) for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified (if any), or (if Final judg-
ment upon
writ indorsed
for liquidated
demand.

- Ord. XIII. no rate be specified) at the rate of five per cent. per annum, to the date of the judgment, and costs.
- Special indorsement. (o) As to specially indorsing a writ, see Ord. III. r. 6, *ante*, p. 308, and note thereto.
- Entering judgment. (p) For the mode of entering judgment in the Chancery Division on default of appearance, see Seton, p. 12.
- Final judgment against defendants who do not appear. 4. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may enter final judgment, as in the preceding rule, against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with the action against such as have appeared.
- Interlocutory judgment where claim is for detention of goods. 5. Where the writ is indorsed with a claim for detention of goods (q) and pecuniary damages, or either of them, and the defendant fails, or all the defendants if more than one fail, to appear, the plaintiff may enter interlocutory judgment and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the Court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or judge may direct (r).
- Action to recover chattels. (q) See *Cobbett v. Lewin*, W. N. (1884), 62; *Ivory v. Cruikshank*, W. N. (1875), 249. (r) See *Macedonald v. Antelme*, W. N. (1884), 72, where an inquiry as to damages was ordered before a master.
- Interlocutory judgment against defendants who do not appear. 6. Where the writ is indorsed as in the last preceding rule mentioned, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may sign interlocutory judgment against the defendant or defendants so failing to appear, and the value of the goods and the damages, or either of them, as the case may be, may be assessed, as against the defendant or defendants suffering judgment by default, at the same time as the trial of the action or issue therein against the other defendant or defendants, unless the Court or a judge shall otherwise direct. Provided that the Court or a judge may order that instead of a writ of inquiry or trial, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or judge may direct.
- Where claim is for detention of goods and a liquidated demand. 7. Where the writ is indorsed with a claim for detention of goods and pecuniary damages, or either of them, and is further indorsed for a liquidated demand, whether specially or otherwise, and any defendant fails to appear to the writ, the plaintiff may enter final judgment for the debt or liquidated demand interest and costs against the defendant or defendants failing to appear, and interlocutory judgment for the value of the goods and the damages, or the damages only, as

the case may be, and proceed as mentioned in such of the preceding rules of this order as may be applicable. Ord. XIII.

8. In case no appearance shall be entered in an action for the recovery of land (s), within the time limited by the writ for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply. Where claim is for recovery of land.

(s) As to what is an action for the recovery of land, see Ord. XVIII. r. 2, *post*.

9. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land (t) he may enter judgment as in the last preceding rule mentioned for the land; and may proceed as in the other preceding rules of this order mentioned as to such other claim so indorsed. Joining claim for mesne profits, &c.

(t) No other claim than those mentioned in this rule can, except by leave, be joined with a claim for the recovery of land (Ord. XVIII. r. 2, *post*).

10. Where judgment is entered pursuant to any of the preceding rules of this order, it shall be lawful for the Court or a judge to set aside or vary such judgment upon such terms as may be just (u). Setting aside judgment.

(u) Where no irreparable wrong will be done to the plaintiff, mere lapse of time is not a bar to an application to set aside a judgment (*Atwood v. Chichester*, 3 Q. B. D. 722). See also *Watt v. Barnett*, 3 Q. B. D. 183, 363.

11. Where a defendant fails to appear to a writ of summons issued out of a district registry, and the defendant had the option of entering an appearance either in the district registry or in the central office, judgment for want of appearance shall not be entered by the plaintiff until after such time as a letter posted in London on the previous evening, in due time for delivery to him on the following morning, ought, in due course of post, to have reached him. Judgment for want of appearance in district registry.

12. In all actions not by the rules of this order otherwise specially provided for (v), in case the party served with the writ, or in Admiralty actions *in rem* the defendant, does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and, if the writ is not specially indorsed under Ord. III. r. 6, of a statement of claim, the action may proceed as if such party had appeared, subject, as to actions where an account is claimed, to the provisions of Ord. XV. Procedure in default of appearance in actions not specially provided for.

(v) As to moving for judgment on admissions in a partition action where one defendant does not appear and all the other defendants appear and defend, see *Parsons v. Harris*, 6 Ch. D. 694. Partition.

Where a defendant did not appear and the statement of claim was filed against him, an order for immediate foreclosure absolute was directed, but before it was drawn up the usual foreclosure judgment was substituted (*Patey v. Flint*, W. N. (1879), 86, 100; 48 L. J. Ch. 691; 27 W. R. 529, 595). Foreclosure.

[Rule 13 applies only to Admiralty actions *in rem*.]

Ord. XIII.

Claim on a
bond within
8 & 9 Will.
III. c. 11.

14. Where the writ is indorsed with a claim on a bond within 8 & 9 Will. III. c. 11 (*w*), and the defendant fails to appear thereto, no statement of claim shall be delivered, and the plaintiff may at once suggest breaches by delivering a suggestion thereof to the defendant or his solicitor, and proceed as mentioned in the said statute and in 3 & 4 Will. IV. c. 42, s. 16.

(*w*) As to this Act, see *Preston v. Dania*, L. R. 8 Ex. 19.

ORDER XIV.

LEAVE TO SIGN JUDGMENT AND DEFEND WHERE WRIT SPECIALLY INDORSED.

Application to
sign judg-
ment where
writ specially
indorsed.

1. Where the defendant appears to a writ of summons specially indorsed under Ord. III. r. 6, the plaintiff may, on affidavit made by himself, or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any), and stating that in his belief there is no defence to the action, apply to a judge for liberty to enter final judgment for the amount so indorsed, together with interest, if any, or for recovery of the land (with or without rent or mesne profits), as the case may be, and costs. The judge may thereupon, unless the defendant by affidavit or otherwise shall satisfy him that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to enter judgment accordingly (*x*).

Foreign -
judgments.
Corporation.
Defendant
must be per-
sonally liable.

(*x*) The provisions of this order extend to actions on foreign judgments (*Grant v. Easton*, 13 Q. B. D. 302); and to cases where the defendant is a corporation (*Shelford v. Louth Ry.*, 4 Ex. D. 317). But the plaintiff's case must be clear (*Ray v. Barker*, 4 Ex. D. 279); and no order can be made unless the defendant is personally liable (*Durrant v. Ricketts*, 8 Q. B. D. 177; *Ortner v. Fitzgibbon*, 50 L. J. Ch. 17, where the defendant was a married woman). Under the present law, however, the procedure may be adopted against a married woman (*Bursill v. Tanner*, 13 Q. B. D. 691, *qu. vid.* for the proper form of the order giving leave to enter final judgment).

The time for delivering a statement of defence does not run between the time of the taking out and the hearing of a summons under this order; see *Hobson v. Monks*, W. N. (1884), 8.

Recovery of
land.

A writ may be specially indorsed in an action by mortgagee against mortgagor to recover possession of the mortgaged premises under an attornment clause (*Daubuz v. Lavington*, 13 Q. B. D. 347; but see *Hobson v. Monk*, W. N. (1884), 17); but not, it seems, in an action by landlord against tenant to recover possession under a forfeiture clause (*Burns v. Walford*, W. N. (1884), 31). See also *Mansergh v. Rimell*, W. N. (1884), 34.

Dismissal of
summons.

The dismissal of a summons under this order is no bar to a fresh application on fresh materials (*Wagstaff v. Jacobowitz*, W. N. (1884), 17).

Affidavit.

The plaintiff's affidavit need not be made before his summons is issued (*Begg v. Cooper*, 27 W. R. 224; 40 L. T. 29).

Costs.

As to costs, where less than 50*l.* is recovered, see *Bye v. Kirby*, W. N. (1883), 195; *Davies v. Stevens*, W. N. (1884), 9. See also W. N. (1884), Pt. II. p. 90; *post*, p. 631.

The fact that the defendant has gone into liquidation since action brought will not prevent judgment being given against him if the Court of Bankruptcy has refused to stay the action (*Clifford v. Budds*, W. N. (1884), 40).

Appeal.

An appeal from an order for judgment under this rule must be brought within 21 days (*Standard Co. v. La Grange*, 3 C. P. D. 67; *Phillips v. Homfray*, W. N. (1883), 40).

An order giving leave to sign judgment, unless a sum is paid before a day named, need not be served upon the defendant before judgment is signed under it (*Hopton v. Robertson*, W. N. (1884), 77).

2. The application by the plaintiff for leave to enter final judgment under the last preceding rule shall be made by summons returnable not less than four clear days after service, accompanied by a copy of the affidavit and exhibits referred to therein. Ord. XIV.
Application to be by summons.

3. The defendant may show cause against such application by affidavit, or (except in actions for the recovery of land) by offering to bring into Court the sum indorsed on the writ (*y*). Such affidavit shall state whether the defence alleged goes to the whole or to part only, and (if so) to what part, of the plaintiff's claim. And the judge may, if he think fit, order the defendant, or, in the case of a corporation, any officer thereof, to attend and be examined upon oath (*z*): or to produce any leases, deeds, books, or documents, or copies of or extracts therefrom. Defendant may show cause against application by affidavit or payment into Court.

(*y*) As to the general principles of giving leave to defend, see *Wallingford v. Mutual Society*, 5 App. Cas. p. 704. The order only applies to cases that are really undefended (*Thompson v. Marshall*, 28 W. R. 220). If the defendant can show a *prima facie* defence (*Harrison v. Bottenheim*, 26 W. R. 362), or (without disputing the claim) has a substantial counter-claim (*Anglo-Italian Bank v. Davies*, W. N. (1877), 263; W. N. (1878), 10; 38 L. T. 197); or a set-off (*Groome v. Rathbone*, 41 L. T. 591), or is a surety who has not acknowledged that he is indebted, and there is nothing to show that the defence is merely for delay (*Lloyd's Banking Co. v. Ogle*, 1 Ex. D. 262), he will be allowed to defend; and see further, *Runnacles v. Mesquita*, 1 Q. B. D. 416; *Beckingham v. Owen*, W. N. (1878), 215; *Thorne v. Seel*, *ibid.*; *Golding v. Wharton Saltworks Co.*, 1 Q. B. D. 374; *Fuller v. Alexander*, 47 L. T. 443; *Davis v. Spence*, 1 C. P. D. 721. Leave to defend.

Where the nature of the claim involves taking an account Ord. XIV. is not applicable (*Wallingford v. Mutual Society*). Account.

Hearsay evidence is admissible for the purpose of resisting the plaintiff's application (*Harrison v. Bottenheim*, 26 W. R. 362). Hearsay evidence.

A defendant is not necessarily entitled to defend merely because he brings the sum claimed into Court (*Crump v. Cavendish*, 5 Ex. D. 211). Bringing money into Court.

As to conditional leave to defend, see *Ray v. Barker*, 4 Ex. D. 279; and rule 6, *post*, p. 332. Where leave to defend has been given an appeal will not readily be entertained (*Papayanni v. Coutpas*, W. N. (1880), 109). The judge may allow the plaintiff to file affidavits in reply to the defendant's affidavit (*Girvin v. Grepe*, 13 Ch. D. 174; 28 W. R. 123; *Rotherham v. Priest*, 49 L. J. C. P. 105; *Davis v. Spence*, 1 C. P. D. 719). Conditional leave to defend.
Appeal.

(*z*) The power of examining parties given by this rule is only to be exercised in exceptional cases (*Millard v. Baddeley*, W. N. (1884), 96). Plaintiff may file affidavits in reply.

4. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution, or the payment of the amount levied or any part thereof into Court by the sheriff, the taxation of costs, or otherwise, as the judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim (*a*). Examination of parties.
Judgment may be given for part of amount claimed.

(*a*) As to this rule see *Dennis v. Seymour*, 4 Ex. D. 80; *Hanmer v. Flight*, 24 W. R. 346; 36 L. T. 279.

5. If it appears to the judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue exe- Judgment may be given against some of the defendants only.

Ord. XIV.

caution upon such judgment without prejudice to his right to proceed with his action against the former.

Leave to defend.

6. Leave to defend may be given unconditionally or subject to such terms as to giving security, or time and mode of trial (in cases which, under these rules, may be tried without a jury) or otherwise, as the judge may think fit (*b*).

Conditional leave to defend.

(*b*) As to conditional leave to defend, see *Ray v. Barker*, 4 Ex. D. 279. Where the defendant has brought money into Court as a condition of being allowed to defend and gets judgment in his favour, he is entitled to a return of the money, although the plaintiff has given notice of appeal (*Yorkshire Banking Co. v. Beatson*, (2), 4 C. P. D. 213).

ORDER XV.

APPLICATION FOR AN ACCOUNT.

Order for accounts with usual directions.

1. Where a writ of summons has been indorsed for an account, under Ord. III. r. 8 (*c*), or where the indorsement on a writ of summons involves taking an account, if the defendant either fails to appear, or does not after appearance, by affidavit or otherwise, satisfy the Court or a judge that there is some preliminary question to be tried, an order for the proper accounts, with all necessary inquiries and directions now usual in the Chancery Division in similar cases (*d*) shall be forthwith made.

Order for accounts.

(*c*) For Ord. III. r. 8, see *ante*, p. 309. Under the corresponding repealed rule (which, however, was limited to cases of "ordinary account") it was held that an account against an executor on the footing of wilful default (as to which see *post*, p. 397), could not be ordered (*Re Bowen*, 20 Ch. D. 538). The present rule contains no such restriction, and extends to all cases in which the plaintiff in the first instance desires to have an account taken. The words "or where the indorsement on a writ of summons involves taking an account," were not in the repealed rule.

Form of order.

(*d*) For form of order, see Seton, p. 8; but the words added at the end of that form "and the judge not requiring any trial of this action other than this application" are not to be used indiscriminately so as to prejudice any issues that may be raised by the subsequent pleadings (*Gatti v. Webster*, 12 Ch. D. 771).

Administration.

The usual decree for administration of the real and personal estate of a deceased person may, it is said, be made under this order (Seton, pp. 801, 803, 848; *sed qu.*); but not, it seems, an order for foreclosure in default of payment by the mortgagor of what may be found due from him (*Lloyd v. Lloyd*, 26 W. R. 572); and in a recent case, Bacon, V.-C. refused to make a redemption decree on a summons under the order, saying it was a mistake to imagine that the order was meant to enable the Court to do what would be equivalent to making a decree; and his lordship limited the order to one for accounts only (*Clover v. Wilts Building Society*, 50 L. T. 382; 32 W. R. 895; W. N. (1884), 110; and see *Borthwick v. Ransford*, W. N. (1884), 199). But see *contra*, *Davies v. Smith*, W. N. (1884), 242.

Foreclosure.

An order for an account may be made, and the account taken, in the Queen's Bench Division (*York v. Stowers*, W. N. (1883), 174); but see *Leslie v. Clifford*, 50 L. T. 591.

Order may be made in Queen's Bench Division.

Application to be by summons.

2. An application for such order as mentioned in the last preceding rule shall be made by summons, and be supported by an affidavit when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired (*e*).

(*e*) See further as to the power of the Court to order accounts, Ord. XXXIII. rr. 2—9, *post*, p. 397, *seq.*

ORDER XVI.

PARTIES.

I. Generally.

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative (*f*). And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the Court or a judge in disposing of the costs shall otherwise direct (*g*).

Joinder of plaintiffs claiming jointly, severally, or in the alternative.

(*f*) See *Booth v. Briscoe*, 2 Q. B. D. 496, where it was held that eight persons (not jointly interested) might join in bringing an action of libel, but that the damages ought to be separately assessed. See, however, *Appleton v. Chapel Town Paper Co.*, 45 L. J. Ch. 276.

Joinder of plaintiffs.

(*g*) The rule makes no alteration in the practice as regards security for costs (*D' Hornusgee v. Grey*, 10 Q. B. D. 13).

Security for costs.

A joinder which is embarrassing will be struck out (*Smith v. Richardson*, 4 C. P. D. 112).

2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a judge may, if satisfied that it has been so commenced through a *bonâ fide* mistake (*h*), and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just (*i*).

Substitution or addition of plaintiff.

(*h*) A mistake in law is within the rule (*Duckett v. Gover*, 6 Ch. D. 82). But there must have been a *bonâ fide* mistake (*Cloves v. Hilliard*, 4 Ch. D. 413).

Mistake in law.

(*i*) As to the time and mode of application, see r. 12, *post*, p. 337, and note thereto.

Substituting or adding plaintiffs.

As to the conditions on which the assignor of a debt will be added as plaintiff when an action has been commenced by the assignee, see *Turquand v. Fearon*, 4 Q. B. D. 280; and as to substituting infant *cestuis que trust* as plaintiffs instead of their trustee, see *Tildesley v. Harper*, 3 Ch. D. 277.

Where an action was brought by a tenant for life for specific performance of an agreement to accept a lease and the plaintiff died, and it was then discovered she had no power of leasing, the Court added her executor and the remaindermen as co-plaintiffs (*Long v. Crossley*, 13 Ch. D. 388). Where a paving company paved a road and contracted with the vestry to keep it in repair, and the road was damaged by a tramway company, the vestry was substituted as plaintiff in lieu of the paving company in an action against the tramway company (*Val de Travers Co. v. London Tramways Co.*, 48 L. J. C. P. 312; W. N. (1879), 46). Where a shareholder brought on behalf of himself and the other shareholders an action which ought to have been brought in the name of the company, the company was added as a co-plaintiff (*Duckett v. Gover*, 6 Ch. D. 82); and so where the plaintiffs had assigned to a company all their rights under an agreement, which they sought to set aside (*Ruston v. Tobin*, W. N. (1880), 19). And see r. 11, *post*, p. 336, and notes thereto.

Cases.

3. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counterclaim or set-off, he may obtain the benefit thereof by establishing his set-off or counterclaim as against the parties other than the co-plaintiff

Improper joinder of plaintiff where there is a counterclaim or set-off.

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so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

Joinder of defendants liable jointly, severally, or in the alternative.

4. All persons may be joined as defendants against whom the right to any relief (*k*) is alleged to exist, whether jointly, severally, or in the alternative (*l*). And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

Who may be made parties for payment of costs only.

(*k*) It has been held that a solicitor, an agent, or an arbitrator might be made a party simply for the purpose of praying costs against him (*Mathias v. Yetts*, 46 L. T. 497; *A.-G. v. Vestry of Bermondsey*, 23 Ch. D. 60; and see *Heatley v. Newton*, 19 Ch. D. 326); but no other person could be made a party merely for this purpose (*Weise v. Wardle*, 19 Eq. 172; see *Attwood v. Small*, 6 Cl. & F. 232; *A.-G. v. Vestry of Bermondsey*, where it was held that it did not extend to corporators or vestrymen). Having regard, however, to the decision of the Court of Appeal in the recent case of *Burstell v. Boyfus*, 26 Ch. D. 35, it may be doubted whether this rule is still in existence, and it would certainly not be safe to make a solicitor a party merely in order to ask costs against him, except in a very strong case; see also *Barnes v. Ady*, 9 Ch. 244.

Inconsistent alternatives.

(*l*) As to the alternatives being inconsistent, see *Honduras Ry. Co. v. Tucker*, 2 Ex. D. 301; *Evans v. Buck*, 4 Ch. D. 432; *Child v. Stenning*, 5 Ch. D. 695; *Bagot v. Easton*, 7 Ch. D. 1; *Howell v. West*, W. N. (1879), 90.

Defendant not interested as to all the relief claimed.

5. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Court or a judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest (*m*).

(*m*) See *Cox v. Barker*, 3 Ch. D. 359.

Parties jointly and severally liable.

6. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally liable on any one contract, including parties to bills of exchange and promissory notes (*n*).

Cons. Ord. VII. r. 2.

(*n*) This rule is similar to Cons. Ord. VII. r. 2 (now repealed), by which it was provided as follows:—

Where 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.

As to suing trustees, &c. separately from co-trustees.

The following cases were decided under the repealed rule as to suing partners or trustees separately from their co-partners or co-trustees; *Coppard v. Allen*, 2 De G. J. & S. 173, 180; *M'Gachen v. Dew*, 15 Beav. 84; *Devaynes v. Robinson*, 24 Beav. 99; *Atkinson v. Mackreth*, 2 Eq. 570; *Gray v. Lewis*, 8 Eq. 526; 8 Ch. 1062; *St. Aubyn v. Smart*, 3 Ch. 646; *Plumer v. Gregory*, 18 Eq. 621, 627; from which it would seem that where a general account and general administration was sought, or might be involved in the suit, all the partners or trustees should be parties; but where such persons were sought to be made liable for an ascertained amount, the consolidated order applied.

Where the suit will lead to a general administration.

The personal representative of an executor or trustee who has never acted or received assets was not, even before this rule, a necessary party to a suit for administration of the estate: see *Pitt v. Brewster*, Dick. 37; and comp. *Masters v. Barnes*, 2 Y. & C. C. 616, with *Hall v. Austin*, 2 Coll. 570, and *Holland v. Prior*, 1 M. & K. 237, where the executor had both acted and received assets.

Where co-trustee never acted.

In *Wilson v. Rhodes*, 8 Ch. D. 777, Fry, J., held, following *Perry v. Knott*, 5 Beav. 293, that where a breach of trust had been committed, the executors of a trustee by whom a fund had been appropriated might be sued without making the other trustees parties. See also *Lloyd v. Dimmack*, 7 Ch. D. 398, where two out of three defendants jointly and severally liable to the plaintiff became bankrupt.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties (o).

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Where it is doubtful which defendant is liable.

(o) See note to rule 4.

8. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the Court or a judge may, at any stage of the proceedings, order any of such persons to be made parties either in addition to or in lieu of the previously existing parties (p).

Trustees, executors, and administrators represent beneficiaries.

(p) This rule is an extension of 15 & 16 Vict. c. 86, s. 42 (9), which it was held did not apply where the trustees had disclaimed (*Young v. Ward*, 10 Ha. App. lviii); and see *Stansfield v. Hobson*, 16 Beav. 189. The above rule as to representation is one of general application. Thus, it has been held that trustees represent their *cestuis que trust* in creditors suits (*Smith v. Andrews*, 4 W. R. 353); administration suits (*Densem v. Elworthy*, 9 Ha. App. xlii); actions for foreclosure (*Stansfield v. Hobson*), and redemption (*Mills v. Jennings*, 13 Ch. D. 649; 6 App. Cas. 698); actions for partition (*Goodrich v. Marsh*, W. N. (1878), 186; *Simpson v. Donny*, 10 Ch. D. 28; *Stace v. Gage*, 8 Ch. D. 451; 26 W. R. 606); and actions to obtain a declaration of forfeiture (*White v. Chitty*, 14 W. R. 366); and that executors with a power of sale, and devisees in trust subject to payment of debts, are within the rule (*Shaw v. Hardingham*, 2 W. R. 657; *Smith v. Andrews*). But an executor with only an implied power of sale has been held not to be within the rule (*Bolton v. Stannard*, 4 Jur. N. S. 576; see, however, 22 & 23 Vict. c. 35, ss. 14, 16).

Where trustees, &c. represent their *cestuis que trust*.

A friendly society which had no treasurer or board to represent it, and had become insolvent, and long since ceased to exist, was held to be sufficiently represented on the record by the trustees (*Pare v. Clegg*, 29 Beav. 589). See, too, *Bromley v. Williams*, 1 N. R. 413.

Trustees of friendly society.

On the other hand, trustees were held not to represent their *cestuis que trust* on a bill to set aside a settlement (*Reed v. Prest*, 1 K. & J. 183); and in a suit to restore trust property instituted by the representatives of a trustee against his co-trustee, both of whom had committed breaches of trust, in which some of the *cestuis que trust* had concurred, such *cestuis que trust* were held necessary parties (*Jesse v. Bennett*, 6 De G. M. & G. 609; see, too, *Devaynes v. Robinson*, 24 Beav. 86, 99, and *Payne v. Parker*, 1 Ch. 327).

Not in suit to set aside a settlement.

Trustees cannot represent some of the *cestuis que trust* in any contention *inter se*, but only where the contention is between all the *cestuis que trust* on the one hand and a stranger on the other (*Diamond v. Walker*, 3 Jur. N. S. 686; *Payne v. Parker*); and when trustees do not agree as to realizing a security and an action is brought by one trustee for that purpose, the *cestuis que trust* should be parties (*Butler v. Butler*, 7 Ch. D. 116).

Trustees brought an action to set aside mortgages, making their beneficiaries defendants; the Court of Appeal held that the beneficiaries were improperly joined, and an order that the mortgagees (against whom relief was obtained) should pay their costs was discharged (*Cooper v. Vesey*, 20 Ch. D. 611).

Costs where beneficiaries improperly joined.

9. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorised by the Court or a judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested (q).

Where there are numerous parties having same interest.

(q) As to the practice of one person suing on behalf of himself and others, see *Daniell*, p. 229 *seq.*, and cases there collected. It has been applied in many cases, e.g. suits by creditors, next of kin, legatees, testamentary appointees of a class on

Suits by one member of a class on

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 behalf of
 himself and
 the others.

married woman, proprietors of a trading concern, shareholders of an unregistered company, foreign bondholders, tenants of a manor, inhabitants of a parish, and others. As a general rule, it must appear that the relief sought by the plaintiff is beneficial to those he undertakes to represent. Where one person sues on behalf of others, their names and addresses cannot be obtained under Ord. VII. r. 2 (*Leathley v. McAndrew*, W. N. (1875), 259). For recent cases on representative suits see *Watson v. Cave*, 17 Ch. D. 19; *Fraser v. Cooper*, 21 Ch. D. 718 (bondholder's actions, where one of the parties represented dissented from the plaintiff's proceedings, and see *Wilson v. Church*, 9 Ch. D. 552); *Commissioners of Sewers v. Gellatly*, 3 Ch. D. 610; *De Hart v. Stevenson*, 1 Q. B. D. 313.

[Rule 10 applies only to Probate actions.]

Misjoinder of
 parties not to
 defeat actions.

11. No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against such party, shall be deemed to have begun only on the service of such writ or notice (*r*).

Parties may
 be struck out
 or added.

Cases under
 15 & 16 Vict.
 c. 86, s. 49, as
 to misjoinder.

(*r*) This rule is an extension of 15 & 16 Vict. c. 86, s. 49 (now repealed), by which suits were not to be dismissed for misjoinder of plaintiffs, but the Court was to modify its decree according to special circumstances. See *Mendes v. Guedalla*, 10 W. R. 485; *Betts v. Thompson*, 6 Ch. 735; *Umfreville v. Johnson*, 10 Ch. 580, where two owners of distinct properties joined in a suit to restrain a nuisance; and see for a similar case, *Appleton v. Chapel Town Paper Co.*, 45 L. J. Ch. 278.

Costs where
 plaintiff's
 action is
 defective as
 to parties.
 Striking out
 and adding
 parties.

The defendant is entitled to the costs occasioned where a plaintiff's action is defective as to parties, and so is struck out of the paper. See *Price v. Berrington*, 2 Beav. 285; *Mitchell v. Bailey*, 3 Madd. 61; *Mason v. Franklin*, 1 Y. & C. Ch. 242, decided under Cons. Ord. XL. r. 21.

Defendants were struck out on their own application, though they had put in a statement of defence (*Wallace v. Birmingham Investment Corporation*, 2 Ch. D. 369). See *Aberaman Iron Works v. Wickens*, 4 Ch. 101.

The Court refused to add parties, on behalf of whom an action was instituted under r. 9, as plaintiffs, in order to make them liable for costs (*De Hart v. Stevenson*, 1 Q. B. D. 313). Any one who might have been fairly joined as a defendant under r. 4 may be added (*Edwards v. Lowther*, 24 W. R. 434, where a proprietor of a newspaper was added as a co-defendant with the publisher after issue joined; and see *Honduras Ry. Co. v. Tucker*, 2 Ex. D. 301). In an action for specific performance by a mortgagee selling under his power of sale, residuary legatees for whom the mortgagee had been a trustee claimed an interest in the property; but a motion to add them as defendants was refused with costs, as their presence was not necessary to enable the Court effectually and completely to adjudicate on and settle the questions of title involved in the action (*Harry v. Davey*, 2 Ch. D. 721; 24 W. R. 576). When a company having a right of action against a former director for breach of trust, assigned its property, &c. (but not the right of action), to a new

company, it was held that the new company could not join the directors of the old company as plaintiffs, and so sue for the breach of trust (*New Westminster Brewery v. Hannah*, W. N. (1876), 215; W. N. (1877), 35).

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The Attorney-General was added as informant by amendment (*Duke of Sutherland v. Tunstall Board*, 21 W. R. 244).

Adding Attorney-General. Cases.

Plaintiffs were added or substituted under the repealed rule (which was substantially the same as the present one), in the following cases:—*Long v. Crossley*, 13 Ch. D. 388; *Walter v. Smith*, 46 L. T. 473. Defendants were added in *Day v. Radcliffe*, 24 W. R. 844; *Kino v. Rudkin*, 6 Ch. D. 160; *Ashley v. Taylor*, 10 Ch. D. 768. Applications to add parties were refused in *Norris v. Beazley*, 2 C. P. D. 80; *Mills v. Griffiths*, 45 L. J. Q. B. 771; *Eyre v. Moring*, W. N. (1884), 58.

Fresh parties cannot be added after final judgment (*A.-G. v. Corporation of Birmingham*, 15 Ch. D. 423; *Heard v. Borgwardt*, W. N. (1883), 173). But subsequent incumbrancers were added in a foreclosure suit after judgment had been pronounced, but before it was passed and entered (*Keith v. Butcher*, 25 Ch. D. 750). And if the proposed new party consents he may be added after judgment and issue of the chief clerk's certificate (*Re Mason*, W. N. (1883), 134, 147).

In *Sear v. Lawson*, 16 Ch. D. 121, a trustee in bankruptcy commenced an action, and then assigned his interest *pendente lite*. The assignee was ordered to amend the title of the action, and to introduce such averments into the statement of claim as would disclose his title.

Under an order to strike out the name of one defendant, and giving general liberty to amend, the plaintiff may not strike out the name of another defendant (*Wymer v. Dodds*, 11 Ch. D. 436).

Where, in an action against a corporation, one of its officers was made a party merely for purposes of discovery, his name was struck out (*Wilson v. Church*, 9 Ch. D. 552).

The practice has been that if plaintiffs are struck out after any of the defendants have appeared, the continuing plaintiff must give security for costs (*Fellowes v. Deere*, 3 Beav. 353; *Drake v. Symes*, 3 De G. F. & J. 491). An infant plaintiff, on coming of age, being desirous of retiring from the suit, was made a defendant instead (*Bicknell v. Bicknell*, 32 Beav. 381).

12. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a judge at any time before trial by motion or summons, or at the trial of the action in a summary manner (s).

Application to amend parties.

(s) The application is usually made by summons at chambers (*Wilson v. Church*, 9 Ch. D. 552); it should not be made *ex parte* (*Tildesley v. Harper*, 3 Ch. D. 277; but see Ord. XVII. r. 4, *post*, p. 351, and cases there cited).

13. Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the Court or a judge, file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served (t).

Service of writ on new defendant.

(t) As to consolidated actions, see *Re Wortley*, 4 Ch. D. 180, which, however, is not quite correctly reported. See also *Austen v. Bird*, W. N. (1881), 129.

Consolidated actions.

II. Partners.

14. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply by summons to a judge for a statement of the names of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the judge may direct. Provided that, in the case of a

Suits by or against partners in name of firm.

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(*u*) This is a modification of the repealed rule 10 (1875), as to which see *Ex parte Young*, 19 Ch. D. 124; *Ex parte Blain*, 12 Ch. D. 522; *Davis v. Morris*, 10 Q. B. D. 436.

Disclosure of names of partners.

As to disclosure of the names of the partners, see *Pike v. Keene*, 24 W. R. 322; W. N. (1876), 36.

Suit against individual in name of firm.

15. Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm (*v*).

(*v*) See Ord. IX. r. 7, *ante*, p. 318, and note thereto.

A firm cannot enter an appearance; see *Taylor v. Collier*, W. N. (1882), 83.

III. Persons under Disability.

Suits by and against infants;

16. Infants may sue as plaintiffs by their next friends (*w*), in the manner heretofore practised in the Chancery Division, and may, in like manner, defend by their guardians appointed for that purpose (*x*).

and married women.

Married women may sue and be sued as provided by the Married Women's Property Act, 1882 (*y*).

Next friend of infant.

(*w*) Any person may commence an action as next friend of an infant, but he thereby renders himself liable for the costs of the suit. As between himself and the infant, however, the next friend will be entitled to his costs of a suit *reasonably and properly instituted*, even though it fail; and in general, as between solicitor and client. See *Bligh v. Tredgett*, 5 De G. & Sm. 74; *Clayton v. Clarke*, 9 W. R. 718, reversing S. C. 2 Giff. 575; *Brown v. Weatherhead*, 4 Ha. 122; *Palmer v. Jones*, 22 W. R. 909; *Morgan & Wurtzburg on Costs*, p. 351, *seq.*

A defendant or other person having any *adverse interest to the infant* should not be next friend (*Lewis v. Nobbs*, 8 Ch. D. 591; *Gee v. Gee*, 12 W. R. 187); and may be removed on this ground alone (*Re Burgess*, 25 Ch. D. 243). In general, the next friend should be some relative or friend, and not a mere volunteer (*Foster v. Cantley*, 10 Ha. App. xxiv.); a guardian may sue as next friend.

Removal of next friend.

If the next friend fail to do his duty, *v. g.* will not proceed with the suit (*Ward v. Ward*, 3 Mer. 706), or appeal when desired to do so (*Dupuy v. Welsford*, 28 W. R. 762; W. N. (1880), 121), he may be removed (Dan. p. 111); but he will first be heard in his own defence (*Re Corsellis*, W. N. (1884), 126).

Death of next friend.

On the death of the next friend the nearest paternal relations of the infant are entitled to nominate the new next friend, and the order appointing him need not be supported by any affidavit as to his fitness (*Talbot v. Talbot*, 17 Eq. 347).

Security for costs from next friend of infant.

Security for costs cannot be required from the next friends of infants (either original or substituted) on the ground of poverty, as the Court is always anxious that questions in which infants are concerned should be brought under its notice, and it has a jurisdiction over suits by infants to stay them if improper (*Fellows v. Barratt*, 1 Keen, 119; *Murrell v. Clapham*, 8 Sim. 74; *Nalder v. Hawkins*, 2 My. & K. 243). It was otherwise in the case of married women.

Next friend bankrupt.

As to the effect of a next friend becoming bankrupt, see *Wilton v. Hill*, 2 De G. M. & G. 807; *Macann v. Borrodale*, 16 W. R. 175; *Ex parte Claxton*, 7 Ch. 532.

Guardian *ad litem*.

(*z*) Guardians *ad litem* for an infant defendant are appointed on the plaintiff's application, if the infant has not appeared, under Ord. XIII. r. 1, *ante*, p. 326. As to the person who will be appointed, see note (*m*), p. 326, *ante*; when the guardian dies a special application for a new one must be made (*Needham v. Smith*, 6 Beav. 130).

Consents as to procedure may be given by guardians *ad litem*, see rule 21, *post*.

As to costs of a solicitor appointed guardian *ad litem*, see Ord. LXV. r. 13, *post*.

Married women.

(*y*) As to actions by and against married women, see the Married Women's Property Act, 1882, *ante*, p. 192, and notes thereto.

Suits by and against lunatics and

17. Where lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the principal Act

have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend according to the practice of the Chancery Division, and may in like manner defend any action by their committees or guardians appointed for that purpose (z).

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persons of unsound mind.

(z) In the Chancery Division a lunatic sues by the committee of his estate, if any; or if none, or none who can sue, by his next friend; but the committee must obtain the sanction of the Lord Chancellor or Lords Justices before suing (Dan. pp. 117, 118). A lunatic made defendant defends by the committee of his estate, who, as well as the lunatic, is a necessary party. If he has no committee, or the committee is a plaintiff or other person having an adverse interest, he defends by a guardian *ad litem*. The committee must obtain the sanction of the Lord Chancellor or the Lords Justices before defending (Dan. pp. 181, 182).

Lunatic plaintiff.

Defendant.

Persons of unsound mind not so found, and persons incapacitated by age or infirmity, sue by a next friend and defend by a guardian *ad litem* (Dan. pp. 118, 182). For recent cases on proceedings by and on behalf of lunatics and persons of unsound mind, see *Beall v. Smith*, 9 Ch. 93 (a very important case); *Palmer v. Walesby*, 3 Ch. 732 (where the supposed lunatic turned out to be sane); *Re Edwards*, 10 Ch. D. 605 (infant ward of Court of unsound mind); *Wilder v. Pigott*, 31 W. R. 377 (election); *Re Marman*, 8 Ch. D. 256. The Chancery Division has power, in the administration of the trusts of the property of a person of unsound mind not so found, to give directions for his maintenance, but has no jurisdiction to appoint a guardian of his person (*Re Bligh*, 12 Ch. D. 364; *Re Brandon*, 13 Ch. D. 773, correcting *Vane v. Vane*, 2 Ch. D. 124). See also *Re T.*, 15 Ch. D. 78.

Persons of unsound mind or otherwise incapable. Cases.

18. An infant shall not enter an appearance except by his guardian *ad litem*. No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such appearance, shall make and file an affidavit in the Form No. 8 in Appendix A., Part II. (a), with such variations as circumstances may require.

Infant to appear by guardian *ad litem*.

(a) See this form, *post*, 576.

19. Every infant served with a petition or notice of motion, or summons in a matter, shall appear on the hearing thereof by a guardian *ad litem*, in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last rule mentioned.

Appearance of infant on petition, &c.

20. Before the name of any person shall be used in any action as next friend of any infant, or other party, or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the central office, or in the district registry, if the cause or matter is proceeding therein (b).

Written authority of next friend or relator.

(b) In a pressing case the authority may be allowed to be filed after the institution of the suit (*A.-G. v. Murray*, 13 W. R. 65; *A.-G. v. Wiltshire*, 45 L. J. Ch. 53).

21. In all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure shall, if given with the consent of the Court or a judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no dis-

Consents as to procedure in case of persons under disability.

Ord. XVI. ability and had given such consent. Provided that no such consent by any committee of a lunatic shall be valid as between him and the lunatic unless given with the sanction of the Lord Chancellor or Lords Justices sitting in Lunacy (*c*).

(*c*) This rule is taken from the General Order, 5th February, 1861, r. 24. See *Knatchbull v. Fowle*, 1 Ch. D. 604; *Fryer v. Wiseman*, W. N. (1876), 3; 33 L. T. 779; *Leeming v. Murray*, 28 W. R. 339.

IV. Proceedings by or against Paupers.

Suits by or against paupers.

22. Any person may be admitted in the manner heretofore accustomed to sue or defend as a pauper on proof that he is not worth 25*l.*, his wearing apparel and the subject-matter of the cause or matter only excepted (*d*).

(*d*) See note (*f*) to rule 31.

Case to be laid before counsel.

23. A person desirous of suing as a pauper shall lay a case before counsel for his opinion whether or not he has reasonable grounds for proceeding.

Case to be produced to the Court.

24. No person shall be permitted to sue as a pauper unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party, or his solicitor, that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, shall be produced before the Court or judge or proper officer to whom the application is made, and no fee shall be payable by a pauper to his counsel or solicitor.

Court fees.

25. A person admitted to sue or defend as a pauper shall not be liable to any Court fee (*e*).

(*e*) See *Thomas v. Ellis*, 8 Ch. D. 518.

Assignment of counsel or solicitor.

26. Where a person is admitted to sue or defend as a pauper, the Court or a judge may, if necessary, assign a counsel or solicitor, or both, to assist him, and a counsel or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the Court or judge that he has some good reason for refusing.

Pauper not to give any remuneration.

27. Whilst a person sues or defends as a pauper no person shall take, or agree to take, or seek to obtain from him any fee, profit, or reward, for the conduct of his business in the Court, and any person who takes, or agrees to take, or seeks to obtain any such fee, profit, or reward shall be guilty of a contempt of Court.

Dispaupering.

28. If any person admitted to sue or defend as a pauper gives, or agrees to give, any such fee, profit or reward, he shall be forthwith dispaupered, and shall not be afterwards admitted again in the same cause to sue or defend as a pauper.

Notices, &c. to be signed by solicitor.

29. No notice of motion shall be served or summons issued, and no petition shall be presented, on behalf of any person admitted to sue or defend as a pauper, except for the discharge of his solicitor, unless it is signed by his solicitor.

30. It shall be the duty of the solicitor assigned to a person admitted to sue or defend as a pauper to take care that no notice is served, or summons issued, or petition presented, without good cause. Ord. XVI.
No step to be taken without good cause.

31. Costs ordered to be paid to a person admitted to sue or defend as a pauper shall, unless the Court or a judge shall otherwise direct, be taxed as in other cases (f). Costs.

(f) These rules as to pauper suits are taken from Cons. Ord. VII. rr. 8—11, but 25l. is substituted for 5l. As to pauper suits generally, see *Allen v. McPherson*, 5 Beav. 469; *Davies v. Nixon*, 11 W. R. 62; *Bird v. Bird*, 17 W. R. 155.

It was held that the 5l. meant 5l. available for the suit (*Dresser v. Morton*, 2 Ph. 286). Where a person's property was not worth 5l. independently of the property the subject of the suit, but he was in present possession of that property, he was dispaupered (*Spencer v. Bryant*, 11 Ves. 49; *Ridgway v. Edwards*, 9 Ch. 143; *Taprell v. Taylor*, 9 Beav. 493; *Buller v. Gardener*, 12 Beav. 525; and see *Burry Port Company v. Bowser*, 26 L. J. Ch. 319); so was an officer, though his half-pay was liable to be taken through his having passed through the Insolvent Court (*Boddington v. Woodley*, 5 Beav. 555); and a person who offered to redeem a mortgage (*Fowler v. Davies*, 16 Sim. 182); and it was held not enough that he should swear that he had only 5l. "after payment of his just debts" (*Perry v. Walker*, 1 Coll. 229).

An executor, though without assets, cannot sue or defend in *formâ pauperis* (*Oldfield v. Cobbett*, 1 Ph. 613); *secus*, where he is also interested as legatee (*Bayly v. Bayly*, 11 Beav. 256; *Everson v. Matthews*, 3 W. R. 159; *Flattery v. Anderson*, 11 Ir. Eq. Rep. 586; *Parkinson v. Chambers*, 3 W. R. 343; *Martin v. Whitmore*, 17 W. R. 809; *Rogers v. Hooper*, 1 W. R. 474); and in general the same rule applies to all persons filling representative characters (*St. Victor v. Devereux*, 6 Beav. 584; *Paradise v. Sheppard*, 1 Dick. 136).

Infants may under special circumstances, it seems, sue by their next friends in *formâ pauperis* (*Lindsay v. Tyrrell*, 24 Beav. 124; 2 De G. & J. 7). A peccress was admitted to sue in *formâ pauperis* (*Wellesley v. Wellesley*, 16 Sim. 1).

The application to sue in *formâ pauperis* should, it seems, be made by *ex parte* motion (*Re Lewin*, W. N. (1884), 224; and see *Lindsay v. Tyrrell*).

Counsel and solicitor will not be assigned to a defendant under r. 26, upon the application of the plaintiff (*Garrod v. Holden*, 4 Beav. 245; see *Watkins v. Parker*, 3 M. & C. 370); after they have been assigned the pauper cannot be heard in person (*Parkinson v. Hanbury*, 4 De G. M. & G. 508).

A person may appeal in *formâ pauperis* (*Bland v. Lamb*, 2 J. & W. 402; *Crouch v. Waller*, 4 De G. & J. 43; *Pitton v. Macclesfield*, 1 Vern. 263; *Bradberrry v. Brooke*, 4 W. R. 699; *Grimwood v. Shave*, 5 W. R. 482; *Phillips v. Phillips*, 8 Jur. N. S. 145; but see *Re Johnson*, 3 N. R. 655). When an order to sue in *formâ pauperis* had been made in the Court below, it was held unnecessary to obtain a fresh order to appeal in *formâ pauperis* (*Drennan v. Andrew*, 1 Ch. 300).

So a person may be examined *pro interesse suo in formâ pauperis* (*James v. Dore*, 2 Dick. 728), or present a petition (*Re Money*, 13 Beav. 109; *Ex parte Hakewell*, 3 De G. M. & G. 116); or sue as a creditor of a joint-stock company which is being wound up (*Ex parte Fry*, 1 Dr. & Sm. 318).

A party suing in *formâ pauperis*, though unsuccessful, cannot be ordered to pay costs, unless he has been unsuccessful by his own default in proceeding. See *Wilkinson v. Belcher*, 2 Bro. C. C. 272; and see also *Parkinson v. Hanbury*, 4 De G. M. & G. 508.

A person who during the pendency of a suit obtains an order to sue or defend in *formâ pauperis* may be ordered to pay costs up to the date of the order (*Prince Albert v. Strange*, 13 Jur. 507; *Smith v. Pawson*, 2 De G. & Sm. 490).

A party who has obtained the order to sue in *formâ pauperis* must serve notice thereof on the other side, and if he omits such service, *malâ fide, i. e.*, with the intention of getting *dives* costs if he succeeds, but paying pauper costs if he fails, he will have to pay *dives* costs in respect of a step taken in the suit before such service (*Ballard v. Calling*, 2 Keen, 606; *Smith v. Pawson*, 2 De G. & Sm. 490).

If the order was obtained irregularly, and on suppression of a material circumstance (*Novell v. Whittaker*, 6 Beav. 407); or if at any time pending the suit the party suing or defending in *formâ pauperis* becomes of ability to sue, or to defend himself, the Court will dispauper him (*Perry v. Walker*, 1 Coll. 229; and see cases in the reporter's note); but under certain circumstances he may be re-admitted to sue or defend in *formâ pauperis*. The mere possession of property, however, is not sufficient if it is wrongful (*Perry v. Walker*, 1 Y. & Coll. C. C. 676); nor will the cir-

Suing in *formâ pauperis*.
Affidavit.
Officer on half-pay.

Executor, &c.

Infants.
Peccress.

Application *ex parte*.

Assigning solicitor and counsel.

Appeals and other proceedings in *formâ pauperis*.

When pauper pays costs.

Costs where order not served.

A party may be dispaupered on becoming of ability to sue or defend himself.

Ord. XVI.

cumstance of the pauper having sued another person at law not *in formâ pauperis* (*ibid.*), or the pauper being in regular employment (*ibid.*), be sufficient. If it is made to appear to the Court that the party was not in fact "a pauper" when he made his affidavit, the order will be discharged with costs (*Romilly v. Grint*, 2 Beav. 186; and see *Goldsmith v. Goldsmith*, 5 Hare, 123; *Mather v. Skelmerdine*, 7 Beav. 267); and a person may be dispaupered, though indebted and embarrassed (*Perry v. Walker*, 1 Coll. 229; *Romilly v. Grint*).

The circumstance of a subscription having been made to help the plaintiff in the suit, however objectionable on the ground of maintenance, is no ground for dispaupering (*Corbett v. Corbett*, 16 Ves. 409).

It was held to be too late three years after the order, and after the defendants had answered, and the plaintiff had filed replication, to move to discharge for irregularity an order for the plaintiff to sue *in formâ pauperis* (*Parkinson v. Hanbury*, 4 De G. M. & G. 508; *St. Victor v. Devereux*, 6 Beav. 586).

or if he
behaves
vexatiously.

So, if a pauper behaves vexatiously in the conduct of the suit, he may be dispaupered (*Wagner v. Mears*, 3 Sim. 127; *Daintrée v. Haynes*, 12 Jur. 594; *Perry v. Walker*, 1 Coll. 229); but vexatious conduct in a former suit, is no ground for dispaupering (*Corbett v. Corbett*).

The application to dispauper is made by special motion on notice, Dan. p. 91.

A pauper solicitor may be ordered to pay personally the costs of irregular proceedings (*Brown v. Dawson*, 2 Hog. 76).

V. Administration and Execution of Trusts.

Appointment
of person to
represent
heir, next of
kin or class.

32. In any case in which the right of an heir-at-law or the next of kin or a class shall depend upon the construction which the Court or a judge may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such heir-at-law or next of kin or class, and the Court or judge shall consider that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such heir-at-law, next of kin or class shall have been ascertained by means of inquiry or otherwise, the Court or judge may appoint some one or more persons to represent such heir-at-law, next of kin or class, and the judgment of the Court or judge in the presence of such persons shall be binding upon the heir-at-law, next of kin or class so represented (*g*).

(*g*) See *Re Peppitt*, 4 Ch. D. 230; *Seton*, 1532, for form of order. See also *Beale v. Euston*, W. N. (1878), 179.

Service
dispensed
with:—
Residuary
legatees or
next of kin:
Legatee
interested in
real estate:

33. Any residuary legatee or next of kin entitled to a judgment or order for the administration of the personal estate of a deceased person, may have the same without serving the remaining residuary legatees or next of kin.

34. Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, and who may be entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate.

Residuary
devisee or
heir:

35. Any residuary devisee or heir entitled to the like judgment or order, may have the same without serving any co-residuary devisee or co-heir.

Cestui que
trust.

36. Any one of several cestuis que trust under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument, may have the same without serving any other cestui que trust.

37. In all cases of actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest.

Ord. XVI.

Action by one person for protection of property. Administration at suit of one executor, administrator or trustee.

38. Any executor, administrator, or trustee entitled thereto may have a judgment or order against any one legatee, next of kin, or cestui que trust for the administration of the estate or the execution of the trusts (*h*).

All executors must be parties to suit for general administration.

(*h*) The general administration of an estate cannot be carried on without all the executors or accounting trustees being parties (*Latch v. Latch*, 10 Ch. 464); and if the legal personal representative of a testator is not made a party to a suit for the administration of his real and personal estate, no decree can be made, although the trustees of the realty and an executor *de son tort* are before the Court (*Rowell v. Morris*, 17 Eq. 20, *Jessel, M. R.*, where the cases are discussed). So, in the case of an intestate, a general administrator, and not a mere administrator *ad litem*, is a necessary party (*Dowdeswell v. Dowdeswell*, 9 Ch. D. 294). See also *Seton*, p. 812. As to a suit by a creditor against a residuary legatee (who had received assets) without making the surviving executor a party, see *Hunter v. Young*, 4 Ex. D. 256; 27 W. R. 637; and see also *Clegg v. Rowland*, 3 Eq. 368.

39. The Court or a judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question (*i*).

Conduct of action.

(*i*) This rule is taken from the Chancery Procedure Act, 1852, sect. 42, r. 7. Where two actions are brought for the administration of the same estate, the general rule is that the plaintiff in the first action has the conduct of the proceedings, although the judgment is first obtained in the second action (*Mellor v. Swire (C. A.)*, 21 Ch. D. 647; *Townsend v. Townsend*, 23 Ch. D. 100); and see *Seton*, p. 325; *Daniell*, p. 1953, where the cases are collected.

If, however, the first suit is not properly constituted the rule will not apply; see *Re McRae*, 25 Ch. D. 16, where the creditor of a partnership firm brought an action for administration against the executor of a deceased partner, and then a separate creditor brought a similar action against the executor.

Where there is only one action the plaintiff has the conduct of it unless the Court in its discretion gives the conduct to some other party; see *e. g.*, *Allen v. Norris*, W. N. (1884), 118, where the conduct of the action was taken away from the plaintiffs, on the ground that they were the accounting parties.

40. Wherever, in any action for the administration of the estate of a deceased person or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or an order has been pronounced or made—

Service of judgment or order on persons interested.

(a.) Under Order XV.;

(b.) Under Order XXXIII.;

(c.) Affecting the rights or interests of persons not parties to the action;

the Court or a judge may direct that any persons interested in the estate or under the trust or in the hereditaments, shall be served with notice of the judgment or order; and after such notice such persons shall be bound by the proceedings, in the same manner as if they had originally been made parties, and shall be at liberty to attend the proceedings under the judgment or order. Any person so served may,

Ord. XVI. within one month after such service, apply to the Court or judge to discharge, vary, or add to the judgment or order (*k*).

(*k*) This rule is taken from 15 & 16 Vict. c. 86, s. 42, r. 8, and Cons. Ord. XXIII. r. 18, both now repealed.

Effect of serving notice of judgment.

The effect of service of the judgment or order is to bind the interest of the persons served in the subject-matter of the suit, see *Doody v. Higgins*, 9 Ha., App. xxxii.; but they cannot be made to account without some independent proceeding to enforce the liability (*Walker v. Seligmann*, 12 Eq. 152; but see *Re Rees*, 15 Ch. D. 490); nor, on the other hand, can direct relief, *e. g.*, based on wilful default of trustees, be given on their behalf as if they were plaintiffs (*Whitney v. Smith*, 4 Ch. 513).

Service out of jurisdiction.

Notice of the judgment or order may, by leave, be served out of the jurisdiction (*Strong v. Moore*, 22 L. J. Ch. 917; *Chalmers v. Laurie*, 10 Hare, App. xxvii.; *Maybery v. Brooking*, 7 De G. M. & G. 673); and see *Lee v. Sturrock*, W. N. (1876), 226.

Parties who acquire interest in suit.

Where a person served with the decree afterwards married, the proper way to bring the trustees of the marriage settlement before the Court was held to be by service of the decree (*White v. Stewart*, 35 Beav. 304); but when trustees appointed after decree obtained an order of course to attend the proceedings, it was discharged as irregular (*Colyer v. Colyer*, 11 W. R. 355).

When persons served with notice of a judgment or order do not attend proceedings at chambers, it is not necessary before signing the certificate to serve them with a summons to proceed (*Green v. Measures*, W. N. (1866), 122).

Persons served may attend without an order on entering an appearance.

41. It shall not be necessary for any person served with notice of any judgment or order, to obtain an order for liberty to attend the proceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the central office in the same manner, and subject to the same provisions, as a defendant entering an appearance (*l*).

(*l*) Notwithstanding this rule anyone attending unnecessarily would probably be made to pay all the costs occasioned by such attendance; see *Sharp v. Lush*, 10 Ch. D. 468.

Entry of memorandum of service.

42. A memorandum of the service upon any person of notice of the judgment or order in any action under rule 40 shall be entered in the central office upon due proof by affidavit of such service.

Form of notice of judgment.

43. Notice of a judgment or order served pursuant to rule 40 shall be entitled in the action and there shall be endorsed thereon a memorandum in the Form No. 28 in Appendix G. (*m*).

(*m*) For this form, see *post*.

Service on infant or person of unsound mind.

44. Notice of a judgment or order on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ of summons in an action.

Action to execute trusts of will.

45. In any cause or matter to execute the trusts of a will it shall not be necessary to make the heir-at-law a party, but the plaintiff shall be at liberty to make the heir-at-law a party where he desires to have the will established against him.

Court may proceed without representative of deceased person or may appoint one.

46. If in any cause, matter, or other proceeding it shall appear to the Court or a judge that any deceased person who was interested in the matter in question has no legal personal representative, the Court or judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent

his estate for all the purposes of the cause, matter, or other proceeding on such notice to such persons, if any, as the Court or judge shall think fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly-constituted legal personal representative of the deceased had been a party to the cause, matter, or proceeding (n).

(n) This rule is substantially identical with 15 & 16 Vict. c. 86, s. 44, now repealed. It may be presumed, therefore, that the decisions on that section will still be followed by the Courts.

15 & 16 Vict. c. 86, s. 44, and decisions thereon.

An action for administration is defective when there is no legal personal representative before the Court (*Rowse v. Morris*, 17 Eq. 20) except by consent (*Jones v. Foulkes*, 10 W. R. 55).

See as to administrators *ad litem* appointed by the Probate Division, *Groves v. Levi*, 9 Ha. App. xlvii. n.; *Williams v. Allen*, 10 W. R. 512, reversing *S. C.*, 32 Beav. 656; and 20 & 21 Vict. c. 77 (the Probate Act).

The Court will not appoint a person to represent an estate where there is personal responsibility (*Fyfe's Case*, 17 W. R. 870); and see *Devaynes v. Robinson*, 24 Beav. 86; and *Williams v. Allen*; nor would the Court order money to be paid out to an administrator *ad litem* (*ibid.*); and it is enacted by the Probate Act, 20 & 21 Vict. c. 77, s. 70, "that the administrator so appointed shall have all the rights and powers of a general administrator *other than the right of distributing the residue of such personal estate.*" The administrator may also be appointed receiver of the rents of real estate (s. 71). By the 73rd section of the same Act, the Court of Probate may, "whenever it shall appear necessary or convenient by reason of the insolvency of the deceased or other special circumstances," appoint a nominee of its own to be administrator of the personal estate of a deceased person, and "every such administration may be limited as the Court shall see fit." See *Re John Jones*, 6 W. R. 276.

A person may be appointed to represent an heir, or next of kin, or a class, for the purpose of construing an instrument on which their right may depend; see Ord. XVI. r. 32, *ante*, p. 342.

Appointing persons to represent estate.

It was held that the section was not intended to apply to cases (1) Where there is no difficulty in obtaining representation: see *Long v. Storie*, Kay, App. xii. (in which case V.-C. Wood refused to act behind the back of a person who was on the point of administering to the estate); *Woodhouse v. Woodhouse*, 8 Eq. 514. (2) Where the interest of the party sought to be bound is not otherwise represented in the suit (*Cox v. Stephens*, 11 W. R. 929); see *Gibson v. Wills*, 21 Beav. 620; *Headen v. Emmott*, 22 L. T. O. S. 166, the *dicta* in which case, however, must be taken with some qualification (see the observations of the Master of the Rolls in *Dean of Ely v. Gayford*, 16 Beav. 561). So a general representative is required when a decree is sought against the very party to be represented, as where a sub-mortgagee sought a decree for foreclosure, without making the personal representatives of the first mortgagee parties (*Rowlands v. Evans*, 33 Beav. 202; *Bruiton v. Birch*, 22 L. J. Ch. 911); the objection will not apply, however, when the heir-at-law and executors named in the will of a deceased person, whose estate may be charged by the suit, are parties, though the executors have not proved (*Goddard v. Haslam*, 3 W. R. 357); comp. *Ex parte Cramer*, 9 Ha. App. xlvii.; *Williams v. Rowlands*, 3 N. R. 233. Nor does the section apply (3) where the object of the suit is not only to bind but to administer the estate of the intestate (*Silver v. Stein*, 1 Drew. 295; but see *Jones v. Foulkes*, 10 W. R. 55); see also 20 & 21 Vict. c. 77, s. 70, *supra*. In *James v. Aston*, 2 Jur. N. S. 224; *Maclean v. Dawson*, 27 Beav. 21, the bill was filed to set aside transactions on the ground of fraud of the intestate, but as the result of such setting aside would have been an administration decree, it was held that the section did not apply. (4) Nor where a personal representative of the intestate would have active duties to perform in the execution of a decree (*Fowler v. Bayldon*, 9 Ha. App. lxxviii.). So the Court will not, under this section, appoint a person to receive a sum of money in Court, payable to a deceased person, though the amount be small (*Rawlins v. McMahon*, 1 Drew. 225); and even where a representative has been appointed in the suit, it will not direct the money to be paid to him, but will order it to be carried over to a separate account (*Byam v. Sutton*, 19 Beav. 646). Where one of two trustees died after the chief clerk's certificate, the cause was allowed to proceed in the absence of his representative (*Moore v. Morris*, 13 Eq. 139). In the last case Lord Romilly, M. R., said the section did not apply (1) Where the estate of the deceased person is that which is being administered in the suit; (2) Where the interest of the deceased person is adverse to

Rule does not apply—
 (1) Where no difficulty in obtaining representation;
 (2) Where interest of party to be bound is not represented;
 (3) Where general administration is sought;
 (4) Or the administrator *ad litem* would have to be active.

- Ord. XVI. that of the plaintiff; (3) Where the representative of the deceased person has active duties to perform.
- Where the Court will act under rule. Where a necessary party to a suit had disappeared many years before in Australia, and it was not certain that he was dead, so that his legal personal representative could not be made a party, a representative *ad litem* to protect his interest was appointed (*Mortimer v. Mortimer*, 11 W. R. 740).
- Where intestate was insolvent. Where there is any difficulty in obtaining representation to the intestate's estate, and it is not important that his interest should be represented, the Court will act under the rule. Thus, where an action was brought by an equitable mortgagee of a policy of insurance against the insurance company, the insured having died intestate and insolvent, and the mortgage debt exceeding the amount due on the policy, the Court dispensed with a personal representative (*Curtius v. Caledonian Insurance Co.*, 19 Ch. D. 534; but see *Webster v. British Assurance Co.*, 15 Ch. D. 169). See also *Chaffers v. Hadlam*, 9 Ha. App. xlv.; *Cox v. Stephens*, 11 W. R. 929. So where there were two executors, co-defendants, and one of them who was also a residuary legatee, but who had not proved the will, or acted in the trusts thereof, died insolvent and without a representative, after the usual order for taking the accounts had been made, it was held that the suit might proceed, as if his legal personal representative had been served and had appeared; see *Rogers v. Jones*, 1 Sm. & G. 17; *Davies v. Boulcott*, 1 Dr. & Sm. 23; *Ashmall v. Wood*, 4 W. R. 60, 110; cf. *Bessant v. Noble*, 26 L. J. Ch. 236; *Band v. Randle*, 2 W. R. 331, where a representative was dispensed with; *Twynam v. Porter*, W. N. (1869), 228; *Hayward v. Pyle*, 7 Ch. 634. And, as a general rule, the Court, it seems, will incline to act under the rule, when the next of kin expressly refuses to administer (*Haw v. Vickers*, 1 W. R. 242; *Tarrett v. Lloyd*, 2 Jur. N. S. 371); or pays no attention to a notice calling upon him to administer (*Whiteaves v. Mcville*, 5 W. R. 676; *Davies v. Boulcott*; see *Joint Stock Discount Company v. Brown*, 8 Eq. 376); or dies without doing so (*Swallow v. Binns*, 9 Ha. App. xviii.; but see 20 & 21 Viet. c. 77, s. 73, *ante*, under which the Court of Probate may grant limited administration to its own nominee).
- Refusal of next of kin to administer. In a suit for an account of a trading association in India, and contribution, the Court appointed the Indian executor of a deceased associate his representative under the section (*Sutherland v. De Vienne*, 2 Jur. N. S. 301). And where a defendant, interested in an estate which was being administered by the Court, died abroad, and his executors proved the will abroad but refused to prove it in this country, the Master of the Rolls (following *Hewitson v. Todhunter*, 22 L. J. Ch. 76) appointed a representative of the deceased defendant in order that the suit might be revived against him (*Bliss v. Putnam*, 29 Beav. 20). The action, too, was held to apply where the claim of the deceased defendant was consequent upon a remote possibility; see *Hobbs v. Reid*, W. N. (1876), 95. So a claim for the appointment of new trustees was allowed to proceed in the absence of a personal representative of a deceased person, when such deceased person had an interest in the trust funds, in the event of the death of his child (the infant plaintiff), but had died indebted, and without any other property (*Magnay v. Davidson*, 9 Ha. App. lxxxii.); and *à fortiori*, when the interests of the deceased defendant are identical with those of the plaintiff, or with those of other parties represented; see *Hewitson v. Todhunter*; *Cox v. Taylor*, 22 L. J. Ch. 910; and *Long v. Storie*, Kay, App. xii., where a subsequent mortgagee (one of eight persons standing in a precisely similar situation, and in respect of whose mortgages only one right of redemption was given), having died after a decree for foreclosure, the Court, there being difficulty in obtaining representation to his estate, held that the suit might proceed without any person representing it, see the marginal note; and comp. *Abrey v. Newman*, 10 Ha. App. lviii., n., where a declaration that children took *per capita*, and not *per stirpes*, was made in the absence of the personal representatives of the deceased children; and see also *Tarrett v. Lloyd*, 2 Jur. N. S. 371, where on a bill filed for the specific performance of an agreement for a lease entered into by four defendants in joint tenancy, one of whom died after the lease was instituted, intestate and insolvent, the Court, on the next of kin appearing in Court, and declining to take out administration (see *Davies v. Boulcott*, 1 Dr. & Sm. 23), ordered a person to be appointed to represent the estate of the deceased person, and *Williams v. Allen*, 10 W. R. 512, reversing S. C. 29 Beav. 292, where the suit was instituted against a trustee to make him personally liable for trust funds come into the hands of tenants for life, and the Lords Justices held that the estates of such tenants for life were sufficiently represented by an administrator *ad litem*. See also *Williams on Executors*.
- Will proved abroad. Where a decree had been made in ignorance of the death of a defendant before decree, a statement was inserted that the Court proceeded in the absence of his personal representative (*Rucker v. Scholfield*, 1 N. R. 180).
- Claim remote, or identical with that of parties represented. Where a cause was ordered to stand over for want of parties, with liberty to the plaintiff to amend, by adding them or their representatives, a motion that the suit might proceed in the absence of a representative of one of such parties who had died

without leaving one, was refused with costs (*Williams v. Page*, 27 Beav. 373). In *Wingrove v. Thompson*, 11 Ch. D. 419, a sole plaintiff died intestate and insolvent: the Court appointed a person to represent his estate so that the defendant might be able to move to dismiss for want of prosecution.

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The proper person to be appointed under this rule is the person who would be appointed administrator *ad litem* (*Dean of Ely v. Gayford*, 16 Beav. 361). Where a defendant in a suit died and his will was not proved in consequence of a contest as to one of his testamentary papers, the Court appointed the executor named in his will to represent him (*Hele v. Lord Beazley*, 15 Beav. 340. Cf. *Ashmall v. Wood*, 4 W. R. 60). So the executor of a testator who had proved the will in India, but had refused to take out letters of administration in England, was appointed to represent his estate (*Sutherland v. De Virens*, 2 Jur. N. S. 301; see, too, *Hewetson v. Todhunter*, 22 L. J. Ch. 76). But where a will appointing a person executrix, and giving the testator's estate to her, was being contested in the Probate Court, the Court refused to appoint such person to represent the testator's estate in a suit to take the partnership accounts of a firm of which the testator was a member (*Rowlands v. Evans*, 33 Beav. 292).

Who will and will not be appointed.

Executor who proved abroad.

In *Swallow v. Binns*, 9 Ha. App. xlvii., the executors of a father (who had survived and become the next sole of kin of his deceased children) were appointed to represent the estates of his deceased children. In *The Dean of Ely v. Gayford*, 16 Beav. 561, a widow was appointed to represent the estate of her husband, who was a tenant for life of tithes, and had died without a personal representative.

Executors of next of kin.

Widow.

No order can be made without the consent of the person sought to be appointed (*Hill v. Bonner*, 26 Beav. 372; *The Prince of Wales, &c. Company v. Palmer*, 25 Beav. 605). In a suit instituted to establish a settlement, the Court refused to appoint a person disputing the settlement, and already appointed receiver of the deceased settlor's estate, to represent the settlor (*Vacy v. Vacy*, 1 L. T. 267).

Consent must be given.

As to the form of the order, see *Hele v. Lord Beazley*, 15 Beav. 340; *Whittington v. Gooding*, 10 Ha. App. xxix.; *Seton on Decrees*, p. 1531. Before the order is drawn up notice should be given to the persons entitled to administer (*Davies v. Boulcott*, 1 Drew. & Sm. 23); but it seems that the order may be made at the hearing (*Hewetson v. Todhunter*, 22 L. J. Ch. 76; *Mendes v. Guedalla*, 10 W. R. 485). This course was pursued in *Lloyd v. Attwood*, L. J. Nov. 3, 1858. In *Chaffers v. Headlam*, 9 Ha. App. xlvi., it was made on motion on notice to all parties.

Form, &c. of order.

Where duties were payable and a representative *ad litem* had been appointed under the section, the Court dispensed with production of letters of administration on evidence that the Commissioners of Inland Revenue would be willing to accept a sum equal to administration duty without the production of an actual grant of letters of administration (*Re Ranking*, 6 Eq. 601).

Duties payable.

The Court cannot appoint a person to represent the possible estate of unborn children under legal limitations (*Miles v. Jarvis*, W. N. (1883), 203).

47. In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the Court or a judge, be entitled to appear either in Court or in chambers on the claim of any person not a party to the cause or matter against the estate of the deceased person in respect of any debt or liability (o). The Court or a judge may direct or give liberty to any other party to the cause or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as they or he shall think fit.

Appearance on claims against estate in administration actions.

(o) Persons who appear unnecessarily may have to pay all the costs occasioned by their appearance (*Sharp v. Lush*, 10 Ch. D. 473; 27 W. R. 528; and see *Bowyer v. Marshall*, W. N. (1879), 12; *Day v. Batty*, 21 Ch. D. 830).

Generally speaking, when a claim is brought against the estate in an administration suit the executor or administrator alone should attend (*Smith v. Watts*, 22 Ch. D. 12).

VI. Third Party Procedure.

48. Where a defendant claims to be entitled to contribution, or indemnity over against any person not a party to the action, he may, by leave of the Court or a judge, issue a notice (hereinafter called the

Where defendant claims contribution or

- Ord. XVI. third-party notice) to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer, and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or a judge, be served within the time limited for delivering his defence. Such notice may be in the form or to the effect of the Form No. 1 in Appendix B., with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action (*p*).
- Contribution or indemnity. (*p*) Under the present rules a third party can be brought in only where the defendant claims *contribution or indemnity*; and this rule prescribes the defendant's course when his claim is against a third person not a party to the action. As to his course when his claim is against a co-defendant, see rule 55, *post*, p. 350, and the cases there cited.
- Cases. Where a lessor sues his lessee for breach of covenant to repair, the latter cannot bring in a sub-lessee as third party, although the covenant to repair in the under-lease is identical in its terms with that in the lease (*Pontifex v. Foord*, 12 Q. B. D. 152). See also *Catton v. Bennett*, 26 Ch. D. 161.
- Where an action was brought to compel the defendants to register the plaintiff as the owner of certain shares, and the defendants had received notice from a person abroad not to register the plaintiff, as the shares in question had been transferred to him, the Court refused to give leave to serve a third-party notice, doubting if it were a claim for indemnity within the rule (*Hutchison v. Colorado Co.*, W. N. (1884), 40). In *Coles v. Civil Service Association*, 26 Ch. D. 529, it was held by Kay, J., that the proper order when an indemnity is claimed is this:—If the third party admits his liability to indemnify the defendant, the Court should give him liberty to defend the action. If he does not admit his liability, then the Court should give him liberty to appear at the trial and take such part therein as the judge shall think proper to allow, and should direct the question as to his liability to indemnify the defendant to be determined immediately after the trial of the action. The third party cannot counter-claim against the original plaintiff (*Eden v. Weardale Co.*, W. N. (1884), 232).
- Indemnity. See, for a case of indemnity, *Finlay v. Scott*, W. N. (1884), 8, where the contracts under which the plaintiffs claimed against the defendants, and the defendants against the third parties, were identical; and see also *Jacobs v. Brown*, W. N. (1884), 23.
- To entitle a defendant to indemnity under the rule there must be a *contract to indemnify* (*Speller v. Bristol Navigation Co.*, 13 Q. B. D. 96).
- Married woman. A married woman without separate estate cannot be brought in as third party by her husband (*Jones v. Elderton*, W. N. (1884), 39). But a married woman may be brought in as third party by a stranger, and an order made against her separate estate. See *Gloucestershire Banking Co. v. Phillippis*, 12 Q. B. D. 533.
- Leave. Leave will be refused if the plaintiff would be prejudiced in his action by its being granted (*Associated Home Co. v. Whichcord*, 8 Ch. D. 457; *Wye Valley Ry. v. Hawes*, 16 Ch. D. 489). Notice of the application should be given to the plaintiff (*ibid.*).
- Fourth parties. As to the power of a third party to bring in subsequent parties, see *Yorkshire Waggon Co. v. Newport Coal Co.*, 5 Q. B. D. 269; *Fowler v. Knoop*, 36 L. T. 219; W. N. (1877), 68; *Walker v. Balfour*, 25 W. R. 511; *Witham v. Vane*, 28 W. R. 276.
- Where third party disputes plaintiff's claim. 49. If a person not a party to the action, who is served as mentioned in rule 48 (hereinafter called the third party), desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party must enter an appearance in the action within eight days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent

claimed in the third-party notice. Provided always, that a person so served and failing to appear within the said period of eight days, may apply to the Court or a judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or judge shall think fit.

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50. Where a third party makes default in entering an appearance in the action, in case the defendant giving the notice suffer judgment by default, he shall be entitled at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the Court or a judge, to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third-party notice: provided that it shall be lawful for the Court or a judge to set aside or vary such judgment upon such terms as may seem just (q).

Where third party fails to enter appearance and defendant suffers judgment by default.

(q) See *Jablochhoff Co. v. McMurdo*, W. N. (1884), 94.

51. Where a third party makes default in entering an appearance in the action, in case the action is tried and results in favour of the plaintiff, the judge who tries the action may, at or after the trial, enter such judgment as the nature of the case may require, for the defendant giving the notice against the third party: provided that execution thereof be not issued without leave of the judge until after satisfaction by such defendant of the verdict or judgment against him. And if the action is finally decided in the plaintiff's favour, otherwise than by trial, the Court or a judge may, on application by motion or summons, as the case may be, order such judgment, as the nature of the case may require to be entered for the defendant, giving the notice against the third party at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him.

Where third party fails to appear and plaintiff succeeds.

52. If a third party appears pursuant to the third-party notice, the defendant giving the notice may apply to the Court or a judge for directions, and the Court or judge, upon the hearing of such application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the action, as the Court or judge may direct; and, if not so satisfied, may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party (r).

Application by defendant for directions.

(r) Under this rule, judgment against a third party who has appeared pursuant to a third-party notice, but on an application by the defendant for directions declines to state any defence, may be ordered, if the judge is not satisfied that there is any question proper to be tried as to the liability of the third party (*Gloucestershire Banking Co. v. Philipps*, 12 Q. B. D. 533). See also *Bell v. Daddelsen*, W. N. (1883), 208; *Caister v. Chapman*, W. N. (1884), 31; *Borough v. James*, W. N. (1884), 32; and the cases cited in notes to r. 48, ante, p. 348.

53. The Court or a judge upon the hearing of the application mentioned in rule 52, may, if it shall appear desirable to do so, give the

Third party may have leave to defend.

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third party liberty to defend the action, upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, documents to be delivered, or amendments to be made, and give such directions as to the Court or judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action (s).

(s) See *MacAllister v. Bishop of Rochester*, 5 C. P. D. 194; *Witham v. Vane*, 49 L. J. Ch. 242; *Schneider v. Batt*, 8 Q. B. D. 701; *The Bianca*, 8 P. D. 91; *Coles v. Civil Service Association*, 26 Ch. D. 529, cited in note (p) to r. 48, ante, p. 348.

Costs.

54. The Court or a judge may decide all questions of costs, as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other, or others, or give such direction as to costs as the justice of the case may require (t).

(t) See *Jablochhoff Co. v. McMurdo*, W. N. (1884), 94; *Bates v. Burchell*, W. N. (1884), 108.

Where defendant claims contribution or indemnity against co-defendant.

55. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action (u), a notice may be issued and the same procedure shall be adopted, for the determination of such questions between the defendants as would be issued and taken against such other defendant, if such last-mentioned defendant were a third party; but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action.

Claim against co-defendant.

(u) Where the claim is against a co-defendant no leave is required before issuing the notice; but of course the defendant may move to discharge the service (*Towse v. Loveridge*, 25 Ch. D. 76). See also *Butler v. Butler*, 14 Ch. D. 329; *Sawyer v. Sawyer*, W. N. (1883), 181, 212; *Floucer v. Todd*, W. N. (1884), 47.

In *Cotton v. Bennett*, 26 Ch. D. 161, a vendor sued for specific performance, making the auctioneer who held the deposit a co-defendant. The defence was, that the purchaser had been misled by the auctioneer's advertisement, to which the plaintiff replied, denying the auctioneer's authority to issue the advertisement. Held, that the purchaser could not claim indemnity against his co-defendant, the auctioneer.

ORDER XVII.

CHANGE OF PARTIES BY DEATH, &C.

Proceedings not to abate by marriage, death or bankruptcy, or become defective by devolution of estate.

1. A cause or matter shall not become abated by reason of the marriage, death or bankruptcy of any of the parties, if the cause of action survive or continue (v); and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*; and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered, notwithstanding the death.

This order does not alter the law as to what actions do and what do not survive, see *Kirk v. Todd*, 21 Ch. D. 484. As to the survival of actions, see *Phillips v. Homfray*, 24 Ch. D. 439; *Kirk v. Todd*.

(v) The rule applies only where the cause of action "survives or continues" in some person who is before the Court; accordingly, where a sole plaintiff becomes bankrupt, the action is at an end (*Eldridge v. Burgess*, 7 Ch. D. 411; *Jackson v. N. E. Ry. Co.*, 5 Ch. D. 844; see also *Lloyd v. Dimmack*, 7 Ch. D. 398; *Warder v. Saunders*, 10 Q. B. D. 114; *Twycross v. Grant*, 4 C. P. D. 40).

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Abatement of cause or matter.

2. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to a cause or matter, the Court or a judge may, if it be deemed necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party, or be served with notice in such manner and form as hereinafter prescribed, and on such terms as the Court or judge shall think just, and shall make such order for the disposal of the cause or matter as may be just (w).

Husband, &c. may be made a party or served with notice.

(w) On the bankruptcy of a sole plaintiff he cannot continue the action; if his trustee declines to proceed with it, the action may be stayed by a judge at Chambers; if there are two trustees, and one refuses to go on, the other may have an order to continue, making his co-trustees a defendant: see *Jackson v. N. E. Ry. Co.*, 5 Ch. D. 844; *Warder v. Saunders*, 10 Q. B. D. 114; *Re Hopkins*, 30 W. R. 601. Where the defendant in an action on a bill of exchange became bankrupt, the Court refused to allow the action to proceed against the trustee (*Barter v. Duboux*, 7 Q. B. D. 413).

Bankruptcy.

As to the plaintiff's course when the sole defendant in a creditor's administration suit dies, pending an application for the appointment of a receiver, see *Cash v. Parker*, 12 Ch. D. 293.

3. In case of an assignment (x), creation, or devolution of any estate or title *pendente lite*, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved.

Continuation of proceedings.

(x) See *Sear v. Lawson*, 16 Ch. D. 121. If a party to a foreclosure suit has assigned his interest after decree, the assignee may be made a party even after the order for foreclosure absolute (*Campbell v. Holyland*, 7 Ch. D. 166).

Assignment *pendente lite*.

4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability (y), or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained *ex parte* on application to the Court or a judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence (z).

Order to continue.

(y) See *Re Gould*, W. N. (1884), 185.

(z) The order is obtained in Chambers, or by petition of course, or by motion of course (*Roffey v. Miller*, 24 W. R. 109; W. N. (1876), 225; *Darcy v. Whittaker*, 33 L. T. 178; W. N. (1876), 17; *Walker v. Blackmore*, W. N. (1876), 112; cf. *Crane v. Loftus*, 24 W. R. 93; *Seton*, 1530).

Order to continue, how obtained.

An executor who obtains an order to continue, renders himself personally liable for the costs of the action (*Boynnton v. Boynnton*, 4 App. Cas. 733); and see *Borne-man v. Wilson*, 28 Ch. D. 53; *Watson v. Holliday*, 20 Ch. D. 780; 31 W. R. 536, where trustees in bankruptcy of a defendant had to pay the costs.

Costs.

As to the course on the appointment of a new trustee in a bankruptcy, see *Pooley's Trustee v. Whetham*, 28 Ch. D. 38.

Trustee in bankruptcy.

- Ord. XVII. On the death of an appellant his executor may carry on the appeal under the common order of revivor (*Ranson v. Patton*, 17 Ch. D. 767).
- Death of appellant. An order of revivor of the original action obtained by the plaintiff against the representatives of a deceased defendant who had delivered a counterclaim does not authorize them to continue the counterclaim against the plaintiff; a separate order is necessary (*Andrew v. Aitken*, 21 Ch. D. 175).
- Counter-claim. After a great lapse of time the right to revive is not absolute, and the Court will exercise a discretion as to allowing it; see *Curtis v. Sheffield*, 20 Ch. D. 398; *Fussell v. Dowding*, 27 Ch. D. 237.
- Birth of an infant *pendente lite*. Where proceedings have been taken in an action after it has become defective by the birth of an infant who is a necessary party, the infant should be made a party by the common order to carry on proceedings between the continuing parties and the infant; and the order should go on to direct an inquiry whether any proceedings affecting the interest of the infant have been taken in the action since its birth, and, if so, whether it will be fit and proper and for the benefit of the infant that he should be bound thereby; and if so certified the infant to be bound accordingly. If the inquiry be answered in the negative, the plaintiff or person having the conduct can still proceed by supplemental action (*Peter v. Thomas-Peter*, 26 Ch. D. 181; and see *Seton*, 1527, Form 3).
- "Cause or matter." A petition may of course be ordered to be carried on by an executor; see, e. g., *Re Atkins*, 1 Ch. D. 82; *Re Dynevor Co.*, W. N. (1878), 199, decided under the rules of 1875.
- Title of action. As to altering the title of the action where an order of revivor is obtained, see *Miller v. Huddleston*, W. N. (1881), 171; *Seear v. Lawson*, 16 Ch. D. 121.
- Person attending proceedings. A person attending the proceedings under an administration judgment may obtain an order to revive (*Burstall v. Fearon*, 24 Ch. D. 126).
- Service of order to continue.
5. An order obtained as in the last preceding rule mentioned shall, unless the Court or judge shall otherwise direct, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.
- Application to discharge order.
6. Where any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the cause or matter shall be served with such order as in rule 4 mentioned, such person may apply to the Court or a judge to discharge or vary such order at any time within twelve days from the service thereof.
- Person under disability.
7. Where any person being under any disability other than coverture, and not having a guardian *ad litem* in the cause or matter, is served with any order as in rule 4 mentioned, such person may apply to the Court or a judge to discharge or vary such order at any time within twelve days from the appointment of a guardian *ad litem* for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person.
- Order to proceed.
8. When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply by summons to compel the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and in default of such proceeding, judgment may be entered for the defendant, or, as the case may be, for the person

against whom the cause or matter might have been continued; and in such case, if the plaintiff has died, execution may issue as in the case provided for by Ord. XLII. r. 23.

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9. Where any cause or matter becomes abated or in the case of any such change of interest as is by this order provided for, the solicitor for the plaintiff or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the proper officer, who shall cause an entry thereof to be made in the cause-book opposite to the name of such cause or matter (a).

Entry of abatement in cause-book.

(a) This rule is taken from Cons. Ord. XXI. r. 7.

10. Where any cause or matter shall have been standing for one year in the cause-book marked as "abated," or standing over generally, such cause or matter at the expiration of the year shall be struck out of the cause-book (b).

Abated causes to be struck out of cause-book.

(b) This rule is almost identical with Cons. Ord. XXI. r. 8. Under special circumstances a cause has (by consent) been retained (*Brooke v. Todd*, 6 Jur. N. S. 664).

ORDER XVIII.

JOINDER OF CAUSES OF ACTION.

1. Subject to the following rules of this order, the plaintiff may unite in the same action several causes of action, but if it appear to the Court or a judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof (c).

Joinder of causes of action.

(c) Cf. the provisions of Ord. XVI., *ante*, p. 333. As to alternative claims, see *Bagot v. Easton*, 7 Ch. D. 1; *Child v. Stenning*, 7 Ch. D. 413; 11 Ch. D. 82; *Smith v. Richardson*, 4 C. P. D. 112. Where the cause of action against one defendant is totally disconnected with that against the other defendants except so far as it arises out of an incident in the same transaction there is a misjoinder (*Burston v. Beyfus*, 26 Ch. D. 35).

Alternative claims.

2. No cause of action shall unless by leave of the Court or a judge be joined with an action for the recovery of land except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held or for any wrong or injury to the premises claimed (d).

What causes of action may be joined with action to recover land.

(d) Leave to join causes of action under this rule must be obtained before the writ is issued (*Pilcher v. Hinds*, 11 Ch. D. 905; see, however, *Musgrave v. Stevens*, W. N. (1881), 163); and the rule applies to a counter-claim (*Compton v. Preston*, 21 Ch. D. 138).

Leave to be obtained before writ issued.

A foreclosure action is an action for the recovery of land within the meaning of this rule (*Hoar v. Lee*, W. N. (1884), 241, not following *Tarwell v. Slate Co.*, 3 Ch. D. 629; and see *Harlock v. Ashberry*, 19 Ch. D. 539; *Heath v. Pugh*, 7 App. Cas. 235; 6 Q. B. D. 345; *Wood v. Wheeler*, 22 Ch. D. 281); but an action "to establish title to land," not claiming possession, is not (*Gledhill v. Hunter*, 14 Ch. D. 492, not following *Whetstone v. Dewis*, 1 Ch. D. 99).

What is an action for the recovery of land.

Ord. XVIII.

Causes of
action joined
with action to
recover land.

Leave has been given to join with an action for recovery of land a claim for a receiver (*Allen v. Kennett*, 24 W. R. 845); for administration of personal estates (*Kitching v. Kitching*, 24 W. R. 901; W. N. (1876), 225; *Whetstone v. Dewis*, 1 Ch. D. 99); for delivery up and cancellation of a deed and further relief (*Cook v. Enchmarsh*, 2 Ch. D. 111); for the conveyance of property vested in the defendant as trustee (*Manisty v. Kenealy*, 24 W. R. 918); for damages for trespass and assault (*Dennis v. Crompton*, W. N. (1882), 121).

Claims for declaration of title, declaration that a lease was granted under a mistake, recovery of rents and profits, a receiver, and possession may be combined without leave; see *Gledhill v. Hunter*. See also *Kendrick v. Roberts*, 30 W. R. 365.

Claims by
trustees in
bankruptcy.

3. Claims by a trustee in bankruptcy as such shall not, unless by leave of the Court or a judge, be joined with any claim by him in any other capacity.

By or against
husband and
wife.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

By or against
executor or
adminis-
trator.

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator (e).

(e) See *Padwick v. Scott*, 2 Ch. D. 736. The rule does not apply to counter-claims (*Macdonald v. Carington*, 4 C. P. D. 28).

Joint and
several claims.

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

Proviso as
to rr. 4, 5, 6.

7. The last three preceding rules shall be subject to Rules 1, 8 and 9 of this order.

Order to con-
fine the
action.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together, may at any time apply to the Court or a judge for an order confining the action to such of the causes of action as may be conveniently disposed of together.

Exclusion of
causes of
action.

9. If, on the hearing of such application as in the last preceding rule mentioned, it shall appear to the Court or a judge that the causes of action are such as cannot all be conveniently disposed of together, the Court or judge may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just (f).

(f) See *Smith v. Richardson*, 4 C. P. D. 112.

ORDER XIX.

PLEADING GENERALLY.

Rules of
pleading.

1. The following rules of pleading shall be used in the High Court of Justice (g).

Pleading.

(g) As to the definition of a "pleading," see Judicature Act, 1873, s. 100, ante, p. 277.

Statement of
claim, state-
ment of

2. The plaintiff shall, subject to the provisions of Ord. XX., and at such time and in such manner as therein prescribed, deliver to the

defendant a statement of his claim, and of the relief or remedy to which he claims to be entitled. The defendant shall, subject to the provisions of Ord. XXI., and at such time and in such manner as therein prescribed, deliver to the plaintiff his defence, set-off, or counterclaim (if any), and the plaintiff shall, subject to the provisions of Ord. XXIII., and at such time and in such manner as therein prescribed, deliver his reply (if any) to such defence, set-off, or counterclaim (*h*). Such statements shall be as brief as the nature of the case will admit, and the taxing officer in adjusting the costs of the action shall at the instance of any party, or may without any request, inquire into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same (*i*).

Ord. XIX.
defence and
reply.

(*h*) A plaintiff may reply by traverse or by confession and avoidance, or by both combined (*Hall v. Eve*, 4 Ch. D. 341).

Reply.

(*i*) See *Davy v. Garrett*, 7 Ch. D. 473; and see Ord. LXV. r. 27 (20), *post*.

Prolixity.

3. A defendant in an action may set off or set up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and such set-off or counterclaim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a judge may, on the application of the plaintiff before trial, if in the opinion of the Court or judge such set-off or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof (*k*).

Set-off and
counterclaim
by defendant.

(*k*) This rule is sufficiently wide to allow a counterclaim to include any case raised by way of defence, whether it is or is not connected with, or of the same character as, the plaintiff's claim, and whether it sound in damages or not; see *Gray v. Webb*, 21 Ch. D. 802; *Beddall v. Maitland*, 17 Ch. D. 174; see, however, *Pellas v. Neptune Insurance Company*, 5 C. P. D. 34; 28 W. R. 406; *Macdonald v. Carington*, 4 C. P. D. 28. Thus the defendant to an action for an account may counterclaim for damages for arrest under a writ of *ne exeat* (*Lees v. Patterson*, 7 Ch. D. 866); a claim to enforce a separation deed may be met by a counterclaim for a judicial separation (*Besant v. Wood*, 12 Ch. D. 605); an action for rent by a set-off for the price of goods supplied to the plaintiff, and a counterclaim for damages and specific performance of an agreement for a lease (*Atwood v. Miller*, W. N. (1876), 11); and see *Hodson v. Mochi*, 8 Ch. D. 569; *Huggons v. Tweed*, 10 Ch. D. 359). Nor is it essential to a counterclaim that it should show a claim to an amount equalling the plaintiff's claim (*Mostyn v. West Mostyn Co.*, 1 C. P. D. 145); and where a defendant is sued by two plaintiffs jointly, he may counterclaim against them separately (*Manchester, Sheffield and Lincolnshire Ry. v. Brooks*, 2 Ex. D. 243). As to a set-off and counterclaim for damages against the assignee of a chose in action for breach of contract by the assignor, see *Young v. Kitchen*, 3 Ex. D. 127; *Pellas v. Neptune Insurance Co.*, 5 C. P. D. 34.

Set-off and
counterclaim.

But a set-off or counterclaim can only be for matters for which an action would lie: see *Rawley v. Rawley*, 1 Q. B. D. 460; *Newell v. National Provincial Bank*, 1 C. P. D. 496; *Birmingham Estates Co. v. Smith*, 13 Ch. D. 506; *Gathercole v. Smith*, 17 Ch. D. 4. And though by Judicature Act, 1873, s. 24 (3), the defendant may have relief not only against the plaintiff but also against any other person *whether a party to the action or not*, still in this case the relief sought must (by the words of the section) "relate to or be connected with the original subject of the cause or matter" (*Barber v. Blaisberg*, 19 Ch. D. 475; *Padwick v. Scott*, 2 Ch. D. 736); and further, no counterclaim can be set up which does not seek relief against the plaintiff, either separately or jointly with some other person (*Furness v. Booth*, 4 Ch. D. 586; *Harris v. Gamble*, 6 Ch. D. 748; *Warner v. Twining*, 24 W. R. 536; *Treleven v. Bray*, 45 L. J. Ch. 113; 1 Ch. D. 176).

Must be for
matters for
which an
action would
lie.

Ord. XIX.

Accordingly, if the defendant claims indemnity or contribution against a third party in which the plaintiff is not interested, and wishes to bring such third party into the action, he must adopt the course pointed out by Ord. XVI. rr. 48 *et seq.*, ante, p. 347; but he cannot proceed by way of counterclaim.

It is no objection, however, that the third party added by the counterclaim could not have been a party to the plaintiff's original claim; see *Turner v. Hednesford Gas Co.*, 3 Ex. D. 145. A defendant cannot counterclaim either against the plaintiff or a third party in the alternative (*Central African Co. v. Grove*, 48 L. J. Ex. 510); nor can a third party, brought in by a counterclaim, counterclaim against the defendant who brought him in (*Street v. Gover*, 2 Q. B. D. 498). Nor can a third party brought in under Ord. XVI. r. 48, counterclaim against the plaintiff (*Eden v. Weardale Co.*, W. N. (1884), 232). But a plaintiff, in reply to a defendant's counterclaim, may counterclaim in respect of a cause of action arising at the same time and out of the same transaction as the defendant's counterclaim (*Toke v. Andrews*, 8 Q. B. D. 428).

Counter-claim is in effect a cross-action.

A counterclaim is, in effect, a cross action, and therefore a plaintiff by discontinuing his action after a counterclaim has been delivered, cannot put an end to it so as to prevent the defendant from enforcing against him the causes of action contained in the counterclaim. See Ord. XXI. r. 16, *post*, p. 364; and see *McGowan v. Middleton*, 11 Q. B. D. 464; overruling *Vavasour v. Krupp*, 15 Ch. D. 474, both decided under the Rules of 1875.

Disallowance of set-off or counter-claim.

The Court in its discretion may disallow a set-off or counterclaim; see, for instances, Ord. XXI. r. 15, *post*, p. 364, and note thereto. In such case, the Court of Appeal will not interfere except under very special circumstances (*Huggons v. Tweed*, 10 Ch. D. 359).

Revivor.

An order to revive the original action against the representatives of a deceased defendant does not authorize them to prosecute a counterclaim (*Andrew v. Aitken*, 21 Ch. D. 175).

As to the difference between set-off and counterclaim, see *Gathercole v. Smith*, 7 Q. B. D. 626; *Stooke v. Taylor*, 5 Q. B. D. 569.

Where there is an agreement to refer the subject-matter of a counterclaim, the counterclaim will be stayed on the application of the plaintiff (*Spartali v. Van Hoorn*, W. N. (1884), 32).

Facts, not evidence, to be pleaded.

4. Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary; but where pleadings have been settled by counsel or a special pleader they shall be signed by him; and if not so settled they shall be signed by the solicitor, or by the party if he sues or defends in person (*l*).

Pleadings to be signed.

(*l*) In an action to recover land, the statement of claim must show how the plaintiff's title is made out (*Phillipps v. Phillipps*, 4 Q. B. D. 127); and so in an action on the covenants in a lease, the plaintiff claiming as assign of the reversion must show how the reversion became vested in him (*Davis v. James*, 26 Ch. D. 778). In an action to restrain the obstruction of a right of way, the plaintiff must show whether he claims by prescription or grant, and with reasonable certainty the *termini* of the way, and its course (*Harris v. Jenkins*, 22 Ch. D. 481).

The rule that evidence is not to be pleaded applies to admissions as well as to other evidence (*Davy v. Garrett*, 7 Ch. D. 473).

Forms of pleadings.

5. The forms in Appendices C., D. and E., when applicable, and where they are not applicable forms of the like character, as near as may be, shall be used for all pleadings, and where such forms are applicable and sufficient any longer forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be (*m*).

(*m*) For these forms, see *infra*; and see as to their use, *The Isis*, 8 P. D. 227; 32 W. R. 171.

6. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading (n); provided that, if the particulars be of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading. Ord. XIX.
Particulars of misrepresentation, &c., to be stated.

(n) See *Seligmann v. Young*, W. N. (1884), 93. The plaintiffs sued their agents for an account, alleging fraud in general terms. The defendants denied the charges, and pleaded a settled account. The plaintiffs applied for production of documents. Cotton, L. J., held, affirming Bacon, V.-C., that the plaintiffs were not bound to give particulars of fraud under this rule before obtaining discovery. Fry, L. J., held, that the allegations of fraud not being sufficient to open a settled account, the allegations ought to be made sufficient before discovery was allowed (*Whyte v. Ahrens*, 26 Ch. D. 717).

7. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just (o). Further and better statement.

(o) See *Seligmann v. Young*, W. N. (1884), 93; *Blackie v. Osmaston*, *ibid.* 222.

8. The party at whose instance particulars have been delivered under a judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the summons. Save as in this rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time. Time for pleading after particulars.

9. Every pleading which shall contain less than ten folios (p) (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, shall be printed. Pleadings when to be printed.

(p) A folio is seventy-two words (Ord. LXV. r. 27 (14), *infra*).

10. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer (q). Pleadings and documents how to be delivered.

(q) See as to this rule generally, *Dymond v. Croft*, 3 Ch. D. 512; a notice of motion may be filed (*Dymond v. Croft*; *Morton v. Miller*, 3 Ch. D. 516). Delivery by filing.

Filing is unnecessary when personal service has been effected (*Whitaker v. Thurston*, W. N. (1876), 232; *Renshaw v. Renshaw*, W. N. (1880), 7).

In the Chancery Division judgments, orders, notices of motion for attachment, and other documents requiring personal service, cannot be filed in default of appearance without an order or leave of a master, and no pleadings or documents can be filed under this rule unless an affidavit of service or an office copy thereof be first produced to the officer (C. O. Pr. Rules, *post*, p. 527).

Ord. XIX.

Where a defendant becomes bankrupt after notice of trial, and an order of revivor is made and served on the trustee, it is not necessary to file the pleadings if the trustee does not appear (*Charlton v. Dickie*, 13 Ch. D. 160).

As to the meaning of "proper officer," see Ord. LXXI. r. 1, *infra*.

"Proper officer."

Pleadings to be delivered and marked.

11. Every pleading shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, the reference to the letter and number of the action, the division to which the judge (if any) to whom the action is assigned belongs, the title of the action, and the description of the pleading, and shall be indorsed with the name and place of business of the solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor.

Plea of not guilty.

12. Nothing in these rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead, he shall not plead any other defence to the same cause of action without the leave of the Court or a judge.

Allegations of fact must be specifically denied.

13. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition (*r*).

(*r*) A defendant who by his statement of defence simply "puts the plaintiffs to proof of the several allegations in their statement of claim," thereby admits the facts alleged in the statement of claim (*Harris v. Gamble*, 7 Ch. D. 877). See generally as to allegations, admissions, and denials in pleadings, *Green v. Sevin*, 13 Ch. D. 589; *Collette v. Goode*, 7 Ch. D. 842; *Tildesley v. Harper*, 10 Ch. D. 393; *Thorp v. Holdsworth*, 3 Ch. D. 637.

As to the course when one of several defendants is an infant, see *National and Provincial Bank v. Evans*, 30 W. R. 177, and Ord. XVI. r. 21, *ante*, p. 339.

Conditions precedent.

14. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant (as the case may be); and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading (*s*).

(*s*) See *Whiting v. East London Waterworks Co.*, W. N. (1884), 10.

Matters to be pleaded.

15. The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as for instance, fraud, Statute of Limitations, release, payment, performance, facts showing illegality either by statute or common law, or Statute of Frauds.

16. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same. Ord. XIX.
Pleading new and inconsistent claims.

17. It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth, except damages (*t*). Denials to be specific.

(*t*) See *Thorp v. Holdsworth*, 3 Ch. D. 637; *Byrd v. Nunn*, 5 Ch. D. 781; 7 Ch. D. 284; *Harris v. Gamble*, 7 Ch. D. 877; *Tildesley v. Harper*, 10 Ch. D. 393. Unless the allegations in the statement of claim are specifically denied the plaintiff may move for judgment as upon an admission of fact in the pleadings (*Rutter v. Tregent*, 12 Ch. D. 758). Denial of allegations.

This rule does not, it seems, apply to a reply to an ordinary defence unaccompanied by a counterclaim (*Williamson v. L. & N. W. Ry.*, 12 Ch. D. 787); but where there is a defence and counterclaim the plaintiff in his reply must deny specifically all the allegations he does not wish to admit (*Green v. Sevin*, 13 Ch. D. 589; *Benbow v. Lov*, 13 Ch. D. 553).

18. Subject to the last preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading (if any) subsequent to reply may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of facts in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted (*u*). Joinder of issue.

(*u*) See note to r. 17. See also as to reply, *Hall v. Eve*, 4 Ch. D. 341.

19. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances (*v*). Evasive pleadings.

(*v*) This rule is founded on Cons. Ord. XV. r. 2. For cases see *Thorp v. Holdsworth*, 3 Ch. D. 637; *Byrd v. Nunn*, 5 Ch. D. 711; 7 Ch. D. 284; *Tildesley v. Harper*, 10 Ch. D. 393.

20. When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the Statute of Frauds or otherwise (*w*). Pleading illegality or insufficiency of contract.

(*w*) For form of defence setting up the Statute of Frauds, see App. D., sect. 4, *infra*. See *Clark v. Callow*, W. N. (1876), 262; 46 L. J. Q. B. 53; *Byrd v. Nunn*, 7 Ch. D. 284.

- Ord. XIX. 21. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.
- Pleading effect of documents. 22. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred (x).
- Pleading malice, &c. Fraud. (x) As to alleging fraud see *Davy v. Garrett*, 7 Ch. D. p. 489; *Wallingford v. Mutual Society*, 5 App. Cas. 685.
- Pleading notice. 23. Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, be material.
- Pleading letters, conversations, &c. 24. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.
- Presumptions of law. 25. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied: (*e.g.*, consideration for a bill of exchange, where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.)
- Want of form. 26. No technical objection shall be raised to any pleading on the ground of any alleged want of form.
- Striking out unnecessary or scandalous matter. 27. The Court or a judge may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass, or delay the fair trial of the action (y); and may in any such case, if they or he shall think fit, order the costs of the application to be paid as between solicitor and client (z).
- Striking out unnecessary or improper matter. (y) This rule is substantially the same as Ord. XXVII. r. 1, R. S. C. 1875. The power thus given to the Court has been freely exercised; see for instances *Cashin v. Cradock*, 3 Ch. D. 376; *Blake v. Albion Assurance Society*, 45 L. J. C. P. 663; *Coyle v. Cumming*, 27 W. R. 529 (scandal and irrelevancy); *Williamson v. L. & N. W. Ry. Co.*, 12 Ch. D. 787; *Heugh v. Chamberlain*, 25 W. R. 742; *Davy v. Garrett*, 7 Ch. D. 473; *Smith v. British Marine Insurance Association*, W. N. (1883), 232 (embarrassing pleadings). The striking out of pleadings is in the discretion of the judge, and the Court of Appeal will only interfere in extreme cases (*Davy v. Garrett*; *Golding v. Wharton Salt Works*, 1 Q. B. D. 374; *Watson v. Rodwell*, 3 Ch. D. 380).
- Nothing relevant is scandalous. Nothing relevant to the issue (however objectionable in itself) can be scandalous (*Christie v. Christie*, 8 Ch. 499; 21 W. R. 493; *Rubery v. Grant*, 13 Eq. 443; 26 L. T. 538; *Fisher v. Owen*, 8 Ch. D. 645).
- Affidavits. Improper pleadings should be struck out, rather than be left to be dealt with as a question of costs (*Watson v. Rodwell*).
- As to scandalous matter in affidavits, see Ord. XXXVIII. r. 11, *post*.

Applications to strike out should be made by summons (*Marriott v. Marriott*, 26 W. R. 416; W. N. (1878), 57). Ord. XIX.

(2) A party who introduces scandalous matter will generally be ordered to pay the whole costs thereby occasioned as between solicitor and client, including the costs of an appeal (*Christie v. Christie*; *Forester v. Read*, 6 Ch. 40; 19 W. R. 114; *Rubery v. Grant*); and see *Morgan & Wurtzburg on Costs*, p. 36, *seq.* Application to strike out.
Costs.

[Rule 28 applies only to actions for damage by collision between vessels, and provides for the filing of a document to be called a Preliminary Act.]

ORDER XX.

STATEMENT OF CLAIM.

1. The delivery of statements of claim shall be regulated as follows:— Statement of claim.

(a.) Where the writ is specially indorsed under Ord. III. r. 6, no further statement of claim shall be delivered, but the indorsement on the writ shall be deemed to be the statement of claim (a):

(a) As to a further and better statement, see Ord. XIX. r. 7, *ante*, p. 357.

(b.) Subject to the provisions of Ord. XIII. r. 12, as to filing a statement of claim when there is no appearance, no statement of claim need be delivered unless the defendant at the time of entering appearance, or within eight days thereafter, gives notice in writing to the plaintiff or his solicitor that he requires a statement of claim to be delivered (b).

(b) In no case where the writ is specially indorsed can the defendant require a statement of claim (*G. v. H.*, W. N. (1883), 233).

(c.) If no statement of claim has been delivered and the defendant gives notice requiring the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a judge, deliver it within five weeks from the time of the plaintiff receiving such notice:

(d.) The plaintiff may (except as in (a.) mentioned) deliver a statement of claim, either with the writ of summons or notice in lieu of writ of summons, or at any time afterwards either before or after appearance, notwithstanding that the defendant may have appeared and not required the delivery of a statement of claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than six weeks after the appearance has been entered unless otherwise ordered by the Court or a judge:

(e.) Where the plaintiff delivers a statement of claim without being required to do so, or the defendant unnecessarily requires such statement, the Court or a judge may make such order as to the costs occasioned thereby as shall be just, if it appears that the delivery of a statement of claim was unnecessary or improper.

- Ord. XX. [Rule 2 applies only to Probate actions.]
 [Rule 3 applies only to Admiralty actions *in rem*.]
- Alteration of indorsement on writ. 4. Whenever a statement of claim is delivered the plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement of the writ.
- Places of trial. 5. The statement of claim must in all cases in which it is proposed that the trial should be elsewhere than in Middlesex, show the proposed place of trial.
- Relief to be specifically claimed. 6. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the Court or a judge may think just, to the same extent as if it had been asked for (*e*). And the same rule shall apply to any counterclaim made, or relief claimed by the defendant, in his defence.
- Prayer for general relief. (*c*) As to what may be asked for under a prayer for general relief, see *Cargill v. Bower*, 10 Ch. D. 508; *Jervis v. Berridge*, 8 Ch. 357.
- Distinct causes of complaint. 7. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counterclaim founded upon separate and distinct facts.
- Stated or settled account. 8. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars, but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings.
- [Rule 9 applies only to Probate actions.]

ORDER XXI.

DEFENCE AND COUNTERCLAIM.

- Actions for debt or liquidated demand. 1. In actions for a debt or liquidated demand in money comprised in Ord. III. r. 6, a mere denial of the debt shall be inadmissible (*d*).
 (*d*) See *Copley v. Jackson*, W. N. (1884), 39.
- Bills of exchange, &c. 2. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact: *e. g.*, the drawing, making, endorsing, accepting, presenting, or notice of dishonour of the bill or note.
- Denial of matters of fact. 3. In actions comprised in Ord. III. r. 6, classes (A.) and (B.), a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed; *e. g.*, in actions for goods bargained and sold or sold and delivered, the defence

must deny the order or contract, the delivery, or the amount claimed; in an action for money had and received, it must deny the receipt of the money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff. Ord. XXI.

4. No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted. Damages.

5. If either party wishes to deny the right of any other party to claim as executor, or as trustee whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically. Denial of representative character, &c.

6. Where a statement of claim is delivered to a defendant he shall deliver his defence within ten days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a judge. Delivery of defence where statement of claim:

7. A defendant who has appeared in an action, and who has neither received nor required the delivery of a statement of claim, must deliver his defence (if any) at any time within ten days after his appearance, unless such time is extended by the Court or a judge (*e*). Where no statement of claim:

(*e*) See note (*g*) to next rule.

8. Where leave has been given to a defendant to defend under Ord. XIV., he shall deliver his defence (if any) within such time as shall be limited by the order giving him leave to defend, or if no time is thereby limited then within eight days (*f*) after the order (*g*). Under Ord. XIV.

(*f*) See *Egerton v. Anderson*, W. N. (1884), 95.

(*g*) The time for delivering a statement of defence does not run between the time of the taking out and the hearing of a summons under Ord. XIV. (*Hobson v. Monks*, W. N. (1884), 8).

9. Where the Court or a judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court or judge may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted (*h*). Costs occasioned by improper denial of facts.

(*h*) As to notice to admit facts, see Ord. XXXII. r. 4, *post*, p. 395. See also Ord. XIX. r. 13, *ante*, p. 358.

10. Where any defendant seeks to rely upon any grounds as supporting a right of counterclaim, he shall, in his statement of defence, state specifically that he does so by way of counterclaim (*i*). Counterclaim.

(*i*) The defendant must state specifically in his counterclaim the facts upon which he relies for relief (*Crowe v. Barnicot*, 6 Ch. D. 756; *Holloway v. York*, 25 W. R. 627; and see *Hillman v. Mayhew*, 24 W. R. 485). But a counterclaim may refer to statements of fact in the pleadings on which the defendant relies without setting them out *in extenso* (*Birmingham Estates Co. v. Smith*, 13 Ch. D. 506). Counterclaim must state facts.

11. Where a defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further Further title of defence and counterclaim.

Ord. XXI. title similar to the title in a statement of claim setting forth the names of all the persons who, if such counterclaim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff (*k*).

(*k*) See Ord. XIX. r. 3, and note thereto, *ante*, p. 355.

Service on third party.

12. Where any such person as in the last preceding rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 2 in Appendix B. or to the like effect (*l*).

(*l*) Until such service no person has a right to be treated as a defendant or to enter an appearance (*Fraser v. Cooper Hall & Co.*, 23 Ch. D. 685).

As to service of writs of summons, see Ord. IX., *ante*, p. 316.

For this form, see *infra*.

Appearance.

13. Any person not a defendant (*m*) to the action, who is served with a defence and counterclaim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action.

(*m*) Query, should this be "party?"

Reply to counterclaim.

14. Any person named in a defence as a party to a counterclaim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim (*n*).

(*n*) The time is ten days; see rule 6, *ante*, p. 363.

Exclusion of counterclaim.

15. Where a defendant sets up a counterclaim, if the plaintiff or any other person named in manner aforesaid as party to such counterclaim contends that the claim thereby raised ought not to be disposed of by way of counterclaim, but in an independent action, he may at any time before reply apply to the Court or a judge for an order that such counterclaim may be excluded, and the Court or a judge may, on the hearing of such application, make such order as shall be just (*o*).

(*o*) For instances of counterclaims being excluded, see *Naylor v. Farrer*, W. N. (1878), 187; 26 W. R. 809; *Padwick v. Scott*, 2 Ch. D. 736; *Young v. Kitchen*, 3 Ex. D. 127; *Harris v. Gamble*, 6 Ch. D. 748. In *Huggons v. Tweed*, 10 Ch. D. 359; *Hodson v. Mochi*, 8 Ch. D. 569; and *Dear v. Sworder*, 4 Ch. D. 476, the application to exclude failed.

The application is usually made by motion, but may be made by summons: see *Naylor v. Farrer*; *Huggons v. Tweed*.

Counterclaim not stayed by dismissal, &c., of action. Defendant may have

16. If, in any case in which the defendant sets up a counterclaim, the action of the plaintiff is stayed, discontinued, or dismissed, the counterclaim may nevertheless be proceeded with.

17. Where in any action a set-off or counterclaim is established as a defence against the plaintiff's claim, the Court or a judge may, if the

balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case (*p*). Ord. XXI.
judgment for
balance found
due to him.

(*p*) The "balance" referred to in this rule is the balance which results upon the hearing of the action (*Rolfe v. MacLaren*, 3 Ch. D. 106). As to the costs, where claim and counterclaim are both successful, see *Ward v. Morse*, 23 Ch. D. 377.

[Rule 18 applies only to Probate actions.]

19. In every case in which a party shall plead the general issue, intending to give the special matter in evidence by virtue of an Act of Parliament, he shall insert in the margin of his pleading the words "by statute," together with the year of the reign in which the Act of Parliament on which he relies was passed, and also the chapter and section of such Act, and shall specify whether such Act is public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any Act of Parliament. Pleading the
general issue.

20. No plea or defence shall be pleaded in abatement. Pleas in
abatement.

21. No defendant in an action for the recovery of land (*q*) who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, and it shall be taken to be implied in such statement that he denies, or does not admit, the allegations of fact contained in the plaintiff's statement of claim. He may nevertheless rely upon any ground of defence which he can prove except as hereinbefore mentioned. Action to
recover land.

(*q*) As to what is an action for the recovery of land, see Ord. XVIII. r. 2, and notes thereto, *ante*, p. 353. This rule adopts the decision in *Danford v. McAnulty*, 8 App. Cas. 456, decided under R. S. C. 1875.

Where the defendant relies on an equitable title, he must set out the material facts on which he relies (*Sutcliffe v. James*, 27 W. R. 750).

ORDER XXII.

PAYMENT INTO AND OUT OF COURT AND TENDER.

1. Where any action is brought to recover a debt or damages (*r*), any defendant may, before or at the time of delivering his defence, or at any later time by leave of the Court or a judge, pay into Court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect of which the payment is made; or he may, with a defence denying liability (except in actions or counter-claims for libel or slander) pay money into Court which shall be subject to the provisions of rule 6: provided that in an action on a bond under the statute 8 & 9 Will. III. c. 11 (*s*), payment into Court shall be admissible to particular breaches only, and not to the whole action (*ss*). Payment into
Court in
action for
debt or
damages.

(*r*) The rule only applies to actions for debt or damages strictly so called; it does not apply to an action for an account (*Nichols v. Evans*, 22 Ch. D. 611). "Debt or
damages."

Ord. XXII. (s) As to this statute, see *Preston v. Dania*, L. R. 8 Ex. 19; and see also Ord. XIII. r. 14, *ante*, p. 330.
 8 & 9 Will. 3, c. 11. (ss) As to payment into Court without admitting liability, see *Wheeler v. United Telephone Co.*, 13 Q. B. D. 597.

Payment in to be signified in defence. 2. Payment into Court shall be signified in the defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein.

Tender. 3. With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into Court.

Payment into Court before defence. 4. If the defendant pays money into Court before delivering his defence, he shall serve upon the plaintiff a notice specifying both the fact that he has paid in such money, and also the claim or cause of action in respect of which such payment has been made. Such notice shall be in the Form No. 3 in Appendix B., with such variations as circumstances may require (t).

(t) For this form, see *infra*.

Payment out of money paid in. 5. In the following cases of payment into Court under this order, viz. :—

- (a.) When payment into Court is made before delivery of defence :
- (b.) When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court is made, is not denied in the defence :
- (c.) When payment into Court is made with a defence setting up a tender of the sum paid :

the money paid into Court shall be paid out to the plaintiff on his request, or to his solicitor on the plaintiff's written authority, unless the Court or a judge shall otherwise order.

Payment into Court with denial of liability. 6. When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court has been made, is denied in the defence (u), the following rules shall apply :—

- (a.) The plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him as hereinafter provided, notwithstanding the defendant's denial of liability, whereupon all further proceedings, in respect of such claim or cause of action, except as to costs shall be stayed; or the plaintiff may refuse to accept the money in satisfaction and reply accordingly, in which case the money shall remain in Court subject to the provisions hereinafter mentioned :
- (b.) If the plaintiff accepts the money so paid in, he shall, after service of such notice in the Form No. 4 in Appendix B. as is in rule 7 mentioned, or after delivery of a reply accepting the money, be entitled to have the money paid out to himself on request, or to his solicitor on the plaintiff's written authority, unless the Court or a judge shall otherwise order :

(c.) If the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, or any part thereof, the money shall remain in Court and be subject to the order of the Court or a judge, and shall not be paid out of Court except in pursuance of an order. If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into Court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall, under such order, be repaid to the defendant. If the defendant succeeds in respect of such claim or cause of action, the whole amount shall, under such order, be repaid to him.

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(u) See *Crosland v. Routledge*, W. N. (1883), 228, cited in note to next rule.

7. The plaintiff, when payment into Court is made before delivery of defence, may within four days after the receipt of notice of such payment, or when such payment is first signified in a defence, may before reply, accept in satisfaction of the claim or cause of action in respect of which such payment has been made the sum so paid in, in which case he shall give notice to the defendant in the Form No. 4 in Appendix B., and shall be at liberty, in case the entire claim or cause of action is thereby satisfied, to tax his costs after the expiration of four days from the service of such notice, unless the Court or a judge shall otherwise order, and in case of non-payment of the costs within forty-eight hours after such taxation, to sign judgment for his costs so taxed (v).

Acceptance by plaintiff in satisfaction.

Costs.

(v) This rule is substantially identical with Ord. XXX. r. 4, R. S. C. 1875, under which it was decided that if the plaintiff did not accept the sum paid in, but went on with his action and failed to recover more than that amount, he was entitled to the costs up to the time of payment in, and the defendant was entitled to the subsequent costs; see *Buckton v. Higgs*, 4 Ex. D. 174; 27 W. R. 803; *Gretton v. Mees*, 7 Ch. D. 839; 26 W. R. 607; see, however, *Langridge v. Campbell*, 2 Ex. D. 281; 25 W. R. 351. See also, as to costs under this rule, *Greaves v. Fleming*, 4 Q. B. D. 226; 27 W. R. 458; *Broadhurst v. Willey*, W. N. (1876), 21. In *Nichols v. Evens*, 22 Ch. D. 611, it was held that the rule did not apply to an action for an account, and that even if the plaintiff accepted, in satisfaction of his whole cause of action, the sum paid in, the Court still had a discretion as to the costs.

Costs.

Where money is paid into Court with a denial of liability, and the plaintiff accepts the sum paid in in satisfaction of his claim, he cannot proceed after four days to tax his costs under rule 7 (*Crosland v. Routledge*, W. N. (1883), 228). But see *M'Ilwraith v. Green*, 13 Q. B. D. 897.

For this form, see *infra*.

8. Where money is paid into Court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt with under this order in the same manner as in the action tried (w).

Consolidated actions.

(w) As to consolidation of actions, see Ord. XLIX. r. 8.

9. A plaintiff may, in answer to a counterclaim, pay money into Court in

Payment into Court in

Ord. XXII. Court, in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant.

answer to counter-claim.

[Rule 10 applies only to the Queen's Bench Division.]

Payment into Court under an order.

11. Money paid into Court under an order of the Court or a judge or certificate of a master or associate shall not be paid out of Court except in pursuance of an order of the Court or a judge: Provided that, where before the delivery of defence money has been paid into Court by the defendant pursuant to an order under the provisions of Ord. XIV., he may (unless the Court or a judge shall otherwise order) by his pleading appropriate the whole or any part of such money, and any additional payment if necessary, to the whole or any specified portion of the plaintiff's claim; and the money so appropriated shall thereupon be deemed to be money paid into Court pursuant to the preceding rules of this order relating to money paid into Court, and shall be subject in all respects thereto.

Chancery Division.

12. In the Chancery Division, the manner of payment into and out of Court, and the manner in which money in Court shall be dealt with, shall be subject to the rules for the time being in force under the Court of Chancery Funds Act, 1872 (*x*).

(*x*) For the present mode of dealing with funds in Court, which differs in many important respects from that formerly in use, see the Supreme Court Funds Rules, 1884, *ante*, p. 215 *et seq.*

Rules relating to funds in Court.

13. [The first part of this rule relates only to the Queen's Bench Division.]

Provided that if any Act shall be passed relating to funds in Court in any division of the Supreme Court, all money so paid into Court shall be subject to such rules as may be made under that Act, so far as applicable thereto.

[Rules 14, 15 and 16 apply only to the Queen's Bench Division.]

Investment of funds in Court.

17. Cash under the control of or subject to the order of the Court may be invested in Bank Stock, East India Stock, Exchequer Bills, and 2*l.* 10*s.* per cent. annuities, and upon mortgage of freehold and copyhold estates respectively in England and Wales, as well as in Consolidated, Reduced, and New 3*l.* per cent. annuities (*y*).

(*y*) See note to next rule.

Application to vary investment.

18. Every application for the purpose of the conversion of any stocks, funds, or securities into any other stocks, funds, or securities authorized by the last preceding rule, shall be served upon the trustees thereof, if any, and upon such other persons, if any, as the Court or judge shall think fit (*z*).

(*z*) This and the preceding rule are adapted with certain alterations from rules 1 and 2 of the General Order of February 1st, 1861, issued under the provisions of 23 & 24 Vict. c. 38, s. 10; see this section *ante*, p. 104.

Cash under the control or subject to the

In the old rule the words were, "Cash under the control of the Court" (omitting the words "or subject to the order"); it was held that this meant cash standing in Court in any cause or matter, and included money paid in under the Lands

Ord. XXII.
order of the Court.

Clauses Consolidation Act (*Ex parte St. John's College*, 22 Ch. D. 93), or under a private Act (*Jackson v. Tyas*, W. N. (1883), 91; 50 L. J. Ch. 830; *Re Birmingham School*, 1 Eq. 632; *Re Wilkinson*, 9 Eq. 343; *Re Cook*, 12 Eq. 12; *Re Thorold*, 14 Eq. 81), even though the Act under which the money was paid in specified the securities in which it was to be invested.

“East India Stock” includes New £3½ per cent. East India Stock (*Ex parte St. John's College*). “East India Stock.”

Change of investment when allowed.

Cash under the control of the Court is usually invested in consols (*Darwin v. Darwin*, 17 Jur. 781). The Court will refuse an application for conversion from bank annuities into some other of the securities mentioned in the rule if either the tenant for life or remaindermen would suffer unduly by the change (*Cockburn v. Peel*, 3 De G. F. & J. 170; 7 Jur. N. S. 810). And it seems that when there are no special circumstances in the case, such as exigencies in the family which make it desirable for the children entitled in remainder that their parents' income should be increased, the application will be refused; see *Re Langford*, 2 J. & H. 458; *Re Boyce*, 15 W. R. 827. Where there are such special circumstances the Court exercises a liberal discretion (*Peilow v. Brookings*, 4 L. T. 731, where the tenant for life had a wife and five children and an income not exceeding 700*l.*); and see *Equitable Reversionary Interest Society v. Fuller*, 1 J. & H. 379; *Re Price*, W. N. (1872), 159; *Bishop v. Bishop*, 9 W. R. 549; and compare *Cohen v. Waley*, 9 W. R. 137. In *Mortimer v. Picton*, 10 Jur. N. S. 83; 12 W. R. 292, it was held that where the primary object of the trusts on which funds are held (in that case the payment of 500*l.*, in lieu of jointure, to the plaintiff) would otherwise be defeated, the Court will authorize a change of investments; and see *Fluid v. Fluid*, 7 L. T. 590.

Where a married woman had a life interest in the fund, and was also entitled absolutely in the event of her having no children, there being little probability of her having children, V.-C. Kindersley allowed an investment in East India Stock (*Vidler v. Parrott*, 12 W. R. 976; *Montefiore v. Guedalla*, W. N. (1868), 87). And where an applicant was very poor, the usual provision against receiving three dividends in the year by reason of the change was omitted (*Re Ingram*, 11 W. R. 980).

Liberty to apply in chambers.

In *Ungless v. Tuff*, 9 W. R. 729, the Court made no special declaration in the decree, but sanctioned generally investment in real securities, and gave liberty to apply in chambers. A direction as to investments may be inserted in the decree itself (*Lucas v. Rudd*, 16 W. R. 325; W. N. (1868), 24).

Costs of application.

The costs of an application to vary an investment are generally payable out of income (*Equitable Reversionary Interest Society v. Fuller*, 1 J. & H. 379); *secus*, where a petition would in any case have been necessary (*Re Langford*, 2 J. & H. 458).

Application for investment of cash under the control of the Court may be made by the tenant for life without service on the trustees (*Re Adams*, W. N. (1868), 58; 17 L. T. 641). for investment.

[Rules 19, 20 and 21 apply only to Admiralty actions.]

ORDER XXIII.

REPLY AND SUBSEQUENT PLEADINGS.

1. A plaintiff shall deliver his reply, if any, in Admiralty actions within six days, and in other actions within twenty-one days, after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a judge (a). Time for delivery of reply.

(a) Where the plaintiff is out of time the Court will generally give him time to take the next step on payment of costs (*Eaton v. Storer*, 22 Ch. D. 91, where the time to reply had already been extended twice).

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a judge, and then shall be pleaded only upon such terms as the Court or judge shall think fit (b). Pleadings subsequent to reply.

(b) The pleadings subsequent to reply would appear to be rejoinder, surrejoinder, rebutter, and surrebutter (*Dan.* 374, n. (b)).

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Time for
delivery of
subsequent
pleadings.

Reply to
counter-
claim.

3. Subject to the last preceding rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a judge.

4. Where a counterclaim is pleaded, a reply thereto shall be subject to the rules applicable to statements of defence (c).

(c) For the rules relating to statements of defence, see Ord. XXI., *ante*, p. 362. And see Ord. XXVII. r. 13, and note thereto, *post*, p. 376.

Close of
pleadings.

5. As soon as any party has joined issue upon the preceding pleading of the opposite party simply without adding any further or other pleading thereto, or has made default as mentioned in Ord. XXVII. r. 13, the pleadings as between such parties shall be deemed to be closed.

New assign-
ment.

6. No new assignment shall be necessary or used. But everything which was formerly alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim, or by way of reply.

ORDER XXIV.

MATTERS ARISING PENDING THE ACTION.

Ground of
defence
arising after
action
brought.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with other grounds of defence (d). And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counterclaim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply (e).

(d) A plaintiff in his reply to a counterclaim may himself counterclaim in respect of a cause of action accrued after the issue of the writ, but arising at the same time and out of the same transaction as the defendant's counterclaim (*Toke v. Andrews*, 8 Q. B. D. 428).

(e) Relief can be given on a counterclaim in respect of a cause of action accrued to the defendant subsequently to the issue of the writ in the original action (*Beddall v. Maitland*, 17 Ch. D. 174; but see *Original Hartlepool Collieries Co. v. Gibb*, 5 Ch. D. 713). See also *Wood v. Goodwin*, W. N. (1884), 17.

Ground of
defence
arising after
delivery of
defence.

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counterclaim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, or at any subsequent time by leave of the Court or a judge, deliver a further defence or further reply as the case may be, setting forth the same.

Confession of
defence arisen
after action
brought.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned, alleges any ground of defence which has arisen after the commencement of the

action, the plaintiff may deliver a confession of such defence (which confession may be in the Form No. 5 in Appendix B., with such variations as circumstances may require), and may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the Court or a judge shall, either before or after the delivery of such confession, otherwise order (*f*).

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Costs.

(*f*) The plea of an adjudication in bankruptcy four months after service of the writ is a "ground of defence which has arisen after the commencement of the action" (*Champion v. Formby*, 7 Ch. D. 373). See further as to this rule, *Foster v. Gamgee*, 1 Q. B. D. 666; *Callander v. Hawkins*, 2 C. P. D. 592. For this form, see *infra*.

ORDER XXV.

PROCEEDINGS IN LIEU OF DEMURRER.

1. No demurrer shall be allowed (*g*).

Demurrers abolished.

(*g*) As to this order, see *Burstall v. Beyfus*, 26 Ch. D. 35.

2. Any party shall be entitled to raise by his pleading any point of law (*h*), and any point so raised shall be disposed of by the judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial (*i*).

Points of law to be raised by pleading.

(*h*) See note to rule 4.

(*i*) Where the determination of the point of law will decide the whole action, the action goes into the general list; but if the point is only a preliminary one, the decision of which will not dispose of the action, an application should be made to the Court as to setting it down (*Re Thorniley*, W. N. (1884), 83; 32 W. R. 539).

Question of law. Setting down.

3. If, in the opinion of the Court or a judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counterclaim, or reply therein, the Court or judge may thereupon dismiss the action or make such other order therein as may be just (*j*).

Decision of point of law.

(*j*) See *O'Brien v. Tyssen*, W. N. (1885), 2.

4. The Court or a judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just (*k*).

Frivolous action or defence.

(*k*) Applications under this rule are not intended to take the place of demurrers where there is any question of law to be argued, but are only intended to get rid of frivolous actions; if there is a point of law, the defendant should raise it by his pleading under r. 2 (*Parsons v. Burton*, W. N. (1883), 215; see also *Batthyany v. Walford*, 32 W. R. 379; W. N. (1884), 37). Where solicitors were improperly made defendants the action was dismissed as against them under this rule (*Burstall v. Beyfus*, 26 Ch. D. 35; 32 W. R. 418); and see *J— v. J—*, W. N. (1884), 193; 32 W. R. 1016. An action brought by executors before probate was stayed (*Tarn v. Commercial Banking Co.*, 12 Q. B. D. 294; 32 W. R. 492). A

Ord. XXV. return to a writ of mandamus is not a pleading, and, therefore, cannot be struck out under this rule (*Reg. v. Cheshunt Local Board*, W. N. (1884), 78).

Declaratory judgment.

5. No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed, or not (*l*).

Chancery Procedure Act, 1852, 15 & 16 Vict. c. 86, s. 50.

(2) This rule is taken from the Chancery Procedure Act, 1852, 15 & 16 Vict. c. 86, s. 50 (now repealed), which provided as follows:—"No suit in the said Court shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief." The tendency of the decisions on this section was considerably to restrict its operation; the power to make declaratory judgments given by the new rule, however, is more extensive; for (1) The rule applies to any "action or proceeding," and (2) It enables the Court to make a declaratory judgment *even though no consequential relief could be claimed*. It is believed that the following cases decided on the repealed sections may still be of use, and they are accordingly retained in the present edition.

No power to declare future rights.

It was held by Turner, L. J., that the section gave the Court no power to declare *future rights* (*Lady Langdale v. Briggs*, 8 De G. M. & G. 391); see *Garlick v. Lawson*, 10 Hare, App. xv., where the Court, on a special case, refused to make a binding declaration as to the interests of parties entitled in reversion; *Bright v. Tyndal*, 4 Ch. D. 189, where the Court (also on a special case) refused to decide whether persons not *in esse* would be entitled, under circumstances which might never arise, to a share in property; *Hampton v. Holman*, 5 Ch. D. 183. See, also, *Gosling v. Gosling*, 1 Jo. 265; *Fyfe v. Arbuthnot*, 1 De G. & J. 406; *Bell v. Cade*, 10 W. R. 38; *Dowling v. Dowling*, 1 Ch. 612; *Davis v. Earl of Dysart*, 20 Beav. 413; *Pennell v. Earl of Dysart*, 27 Beav. 542, where the suits were nominally for production of title deeds, but really sought to obtain declarations of future rights.

Or to bind infants.

When some of the parties were infants, and therefore unable to bind themselves, it was held that the Court had no power, even by consent, to decide a purely legal question, so as to bind the infants (*Webb v. Byng*, 8 De G. M. & G. 633); and see *De Windt v. De Windt*, 1 H. L. 87, 92.

Court would not make order guarding against claim which might not arise.

Nor did the section entitle a party to a prospective declaration guarding against a claim which might never be made. Thus, where a lease was granted to two partners, the covenants being only joint at law, and the representative of one partner deceased filed a bill against the lessor, alleging that he claimed a right under the covenants if a breach should arise, and praying a declaration that he had no such right, notwithstanding the section, a demurrer was allowed (*Jackson v. Turnley*, 1 Drew. 617). Nor, it seems, could the Court, under this section, make a decree declaratory of a merely legal right (*Trustees of the Birkenhead Docks v. Laird*, 4 De G. M. & G. 732, 738); see, too, *Bristow v. Whitmore*, 4 K. & J. 743; *Norman v. Johnson*, 8 W. R. 300; and the remarks of Sir James Colville in L. R. 2 Ind. App. 184-186.

Nor declaration of legal right.

When Court makes declaration to save expense, &c.

In *Byam v. Byam* (19 Beav. 58), the Court, to save expense, made a declaration respecting the construction of certain marriage articles, instead of directing a settlement. *Comp. Wright v. King*, 18 Beav. 461, where a similar course was adopted in the case of a ward of Court whose fortune was small. In *Hope v. Hope*, 4 De G. M. & G. 328, a declaration upon a point of English law was made for the information of a foreign court.

Fictitious suit.

For cases where a small settlement has been made for the purpose of raising a question as to legitimacy and getting a declaratory decree, see *Gurney v. Gurney*, 1 H. & M. 413; *Anon.*, 2 H. & M. 124; *Andrews v. Salt*, 8 Ch. 622.

Special cases.

Compare note to Ord. XXXIV. r. 1, *post*, as to questions which will be decided on special cases.

Lands Clauses Act.

A decree declaratory of a future right was made in *Bogg v. Midland Ry. Co.*, 4 Eq. 310, where the amount of the purchase-money to which a lessee was entitled under the Lands Clauses Act, depended on the question whether he was entitled to a prospective right of renewal; see note to s. 79 of the Lands Clauses Act, *ante*, p. 37.

Consequential relief.

Where a declaration is asked, and also an injunction, such injunction is consequential relief (*Marsh v. Keith*, 1 Dr. & Sm. 342).

Appeal.

As to allowing an appeal after a great number of years from a decree declaring future rights, see *Curtis v. Sheffield*, 21 Ch. D. 1.

ORDER XXVI.

DISCONTINUANCE.

1. The plaintiff may, at any time before receipt of the defendant's defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing (*m*), wholly discontinue his action against all or any of the defendants or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's costs of the action, or, if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn (*n*). Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court or a judge, but the Court or a judge may before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise, as may be just, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out (*o*). The Court or a judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counterclaim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave (*p*).

Discontinuance by plaintiff without leave.

Discontinuance not to be pleaded in bar.

Discontinuance by leave of the Court.

Withdrawal of defence or counterclaim.

(*m*) A written notice by plaintiff's solicitors, "We are instructed to proceed no further with the action" is a sufficient notice of discontinuance (*The Pommerania*, 4 P. D. 195). Notice of discontinuance puts an end to a pending appeal by the party giving the notice (*Conybeare v. Lewis*, 13 Ch. D. 469; 28 W. R. 330).

"Notice in writing."

Where the plaintiff has given an undertaking as to damages, the Court will direct a reference as to damages, notwithstanding the action has been discontinued (*Newcomen v. Coulson*, 7 Ch. D. 764; and see *Newby v. Harrison*, 3 De G. F. & J. 287).

(*n*) As to the provisions of this rule with regard to costs, see *The St. Olaf*, 2 P. D. 114.

Costs.

(*o*) The discretion to allow the plaintiff to discontinue will not be exercised so as to deprive the defendant of any advantage to which he is fairly entitled; see *Stahlschmidt v. Walford*, 4 Q. B. D. 217; 27 W. R. 412. See also *Matthews v. Antrobus*, 49 L. J. Ch. 80.

Discontinuance by leave of Court.

Discontinuance will not prevent a defendant from proceeding with a counterclaim (Ord. XXI. r. 16, *ante*, p. 364).

As to the discontinuance of a test action, see *Robinson v. Chadwick*, 7 Ch. D. 878.

Test action.

As to taxation of costs on a discontinuance, see *Harrison v. Leutner*, 16 Ch. D. 559; 29 W. R. 393; 44 L. T. 331; and see also *Thomas v. Palin*, 21 Ch. D. 360.

Taxation of costs on discontinuance.

(*p*) In *Real and Personal Advance Co. v. McCarthy*, 14 Ch. D. 188; 28 W. R. 418, one of several defendants was allowed to withdraw his defence upon the terms of (1) giving the plaintiffs all the relief to which they could be entitled at the trial, and (2) paying the costs of the defence and of a summons for leave to withdraw. As to what costs are included under "costs of defence," see *S. C.*, 18 Ch. D. 362; 44 L. T. 514. For form of order giving leave to withdraw a defence, see *Swindell v. Birmingham Syndicate*, W. N. (1884), 98.

Withdrawal of defence.

2. When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties.

Withdrawal of cause by consent.

Ord. XXVI.

Costs on discontinuance.

3. Any defendant may enter judgment for the costs of the action, if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued, in case such respective costs are not paid within four days after taxation (*q*).

(*q*) See *Harrison v. Leutner*, 16 Ch. D. 559, as to taxation of costs on a discontinuance. See also *Real and Personal Advance Co. v. McCarthy*, 18 Ch. D. 362.

Subsequent action for the same cause may be stayed till payment of costs of discontinued action.

Staying second suit till costs of former one are paid.

4. If any subsequent action shall be brought before payment of the costs of a discontinued action, for the same, or substantially the same, cause of action, the Court or a judge may, if they or he think fit, order a stay of such subsequent action, until such costs shall have been paid (*r*).

(*r*) For the practice in Chancery as to costs when the plaintiff dismissed his own suit, see *Morgan & Wurtzburg on Costs*, p. 75. The present rule adopts the same practice in regard to discontinued actions as has always prevailed in the Court of Chancery and the Chancery Division with respect to actions dismissed with costs, viz., that proceedings in a second suit for substantially the same matter will be stayed till the costs of the first suit are paid; see *Martin v. Earl Beauchamp*, 25 Ch. D. 12; *Pickett v. Logon*, 5 Ves. 702; *Holbrooke v. Cracraft*, *ibid.* 706, n.; *Budge v. Budge*, 12 Beav. 385; *Foley v. Smith*, *ibid.* 154; and see *Morgan & Wurtzburg on Costs*, p. 536, *seq.* where the cases are collected.

ORDER XXVII.

DEFAULT OF PLEADING.

Dismissal for want of prosecution.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose (*s*), the defendant may, at the expiration of that time, apply to the Court or a judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or judge may, if no statement of claim shall have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as the Court or judge shall think just (*t*).

Time for delivering statement of claim.

Application to dismiss, how made.

(*s*) As to the time allowed for delivery of a statement of claim, see Ord. XX. r. 1, *ante*, p. 361.

(*t*) The application to dismiss should generally be made by summons rather than by motion in Court (*Irean v. Loe*, 26 W. R. 138), but may be made either way (*Evelyn v. Evelyn*, 13 Ch. D. 138). If the usual notice is given, and the plaintiff does not at once submit to speed the cause and tender the costs of the notice, the defendant, if the usual order is made, will have his costs of making the motion in Court (*Evelyn v. Evelyn*).

A defendant may move to dismiss for want of prosecution without abandoning an order for security of costs (*La Grange v. McAndrew*, 4 Q. B. D. 210).

It is almost of course to give the plaintiff time to take the next step upon payment of costs (*Eaton v. Storer*, 22 Ch. D. 91; *Higginbottom v. Aynsley*, 3 Ch. D. 288).

Where the plaintiff had become bankrupt, notice of motion to dismiss was ordered to be served on his trustee in bankruptcy (*Wright v. Swindon Ry. Co.*, 4 Ch. D. 164).

Where plaintiff makes default.

Where an order is made dismissing an action unless the plaintiff does some act within a specified time, and the plaintiff fails to comply with the order, the action is at an end, and no further time can be given (*Whistler v. Hancock*, 3 Q. B. D. 83; *Wallis v. Hepburn*, 3 Q. B. D. 84, n.; *King v. Davenport*, 4 Q. B. D. 402); see, however, *Burke v. Rooney*, 4 C. P. D. 226; *Carter v. Stubbs*, 6 Q. B. D. 116.

The dismissal of an action against a company for non-prosecution, does not prevent the plaintiff from bringing forward a claim in the same matter in the winding-up (*Re Orrell Colliery Co.*, 12 Ch. D. 681).

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs (*u*). Ord. XXVII.
Signing
judgment in
default of
defence.

(*u*) See *Diz v. Groom*, 5 Ex. D. 91.

3. When in any such action as in the last preceding rule mentioned there are several defendants, if one of them make default as mentioned in the last preceding rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants. Against one
of several
defendants.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant or all the defendants, if more than one, make default as mentioned in rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants, and a writ of inquiry shall issue to assess the value of the goods, and the damages, or the damages only, as the case may be. But the Court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or judge may direct. Default of
defence to
claim for
detention of
goods or
damages.

5. When in any such action as in rule 4 mentioned there are several defendants, if one or more of them make default as mentioned in rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants so making default, and proceed with his action against the others. And in such case the value and amount of damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a judge shall otherwise direct. Against
defaulting
defendants.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and any defendant make default as mentioned in rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in rules 4 and 5. Default of
defence to
claim for debt
and detention
of goods.

7. In an action for the recovery of land (*v*) if the defendant makes default as mentioned in rule 2, the plaintiff make enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs. Default of
defence in
action to
recover land.

(*v*) As to what is an action for the recovery of land, see Ord. XVIII. r. 2, and note thereto, *ante*, p. 353. Action to
recover land.

8. Where the plaintiff has endorsed a claim for mesne profits, arrears of rent, or double value in respect of the premises claimed or any part of them, or damages for breach of contract upon a writ for the recovery of land, if the defendant makes default as mentioned in Claim for
mesne profits,
arrears of
rent, double
value, or
damages for

Ord. XXVII. rule 2, or if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants and proceed as mentioned in rules 4 and 5 (w).

breach of contract.

(w) See *Gosset v. Campbell*, W. N. (1877), 134.

Claim for liquidated demand, detention of goods and damages, or recovery of land.

9. If the plaintiff's claim be for a debt or liquidated demand, the detention of goods and pecuniary damages, or for any of such matters, or for the recovery of land, and the defendant delivers a defence, which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may by leave of the Court or a judge enter judgment, final, or interlocutory, as the case may be, for the part unanswered; provided that the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand: provided also that, where there is a counterclaim, execution on any such judgment as above mentioned in respect of the plaintiff's claim shall not issue without leave of the Court or a judge.

[Rule 10 applies only to Probate actions.]

Motion for judgment in default of defence.

11. In all other actions than those in the preceding rules of this order mentioned, if the defendant makes default in delivering a defence, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the Court or a judge shall consider the plaintiff to be entitled to (x).

Form of judgment.

(x) For forms of judgment in the Chancery Division see Seton, p. 38.

As to motions for judgment, see Ord. XL. r. 1, *post*, p. 442.

Motion for judgment.

If there are no pleadings, the action can, if the defendant does not oppose, be heard on motion for judgment; otherwise it seems an application should be made for directions as to the mode of trial, when the action will be directed to be tried either upon affidavit evidence, or upon issues; see *Wilmott v. Young*, 29 W. R. 413; *Wallis v. Jackson*, 31 W. R. 519; 23 Ch. D. 204; *Daniell*, 663.

No pleadings.

Infant defendant.

As to the course where there is an infant defendant, see *National Provincial Bank v. Evans*, W. N. (1881), 171; 30 W. R. 177; *Re Fitzwater*, W. N. (1882), 176.

If, after notice of motion for judgment in default of defence but before the motion is heard, the defendant puts in a defence, it cannot be treated as a nullity; but where the statement of defence showed no real ground of defence the Court of Appeal amended the notice of motion under Ord. LVIII. r. 4, so as to ask for judgment on the admissions in the defence (*Gill v. Woodfin*, 25 Ch. D. 707; see also *Gibbins v. Strong*, 26 Ch. D. 66).

Form of judgment in foreclosure suit.

On the question whether, in a foreclosure suit by first mortgagee against mortgagor and subsequent incumbrancers, there should be one period fixed for redemption or successive periods, see *Platt v. Mendel*, 27 Ch. D. 246 (*Chitty, J.*), and cases there cited. As to inserting a personal order against the mortgagor for payment of the mortgage money, see *Hunter v. Myatt*, W. N. (1884), 236.

Against one of several defendants.

12. Where, in any such action as mentioned in the last preceding rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either (if the cause of action is severable) set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

Close of pleadings.

13. If the plaintiff does not deliver a reply, or any party does not

deliver any subsequent pleading within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue (y). Ord. XXVII.

(y) By Ord. XXIX. r. 12 (1875), from which this rule is taken, the statements of fact in the pleading last delivered were deemed to be admitted.

It would seem that if a counterclaim is not pleaded to, the statements in it will be taken to be admitted, and that this rule does not apply in that case; see Ord. XIX. rr. 3, 13, 17, and Ord. XXIII. r. 4. Counter-claim.

Where a defendant to a counterclaim has made default in pleading to it the plaintiff in the counterclaim may move for judgment against him (*Street v. Crump*, 25 Ch. D. 68).

14. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court or judge may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties. Default by party to an issue not between plaintiff and defendant.

15. Any judgment by default, whether under this order or under any other of these rules, may be set aside by the Court or a judge, upon such terms as to costs or otherwise as such Court or judge may think fit (z). Setting aside judgment by default.

(z) Unless irreparable wrong will be done to a plaintiff who has obtained judgment by default, lapse of time is not a bar to an application to set it aside (*Atwood v. Chichester*, 3 Q. B. D. 722); and see, generally, as to setting aside judgments, *Burgoine v. Taylor*, 9 Ch. D. 1; *Watt v. Barnett*, 3 Q. B. D. 363; *Davies v. Ballenden*, W. N. (1882), 92; *Williams v. Brisco*, 29 W. R. 713.

If a person not a party to the record seeks to set aside a judgment, which the defendant has allowed to go by default, he ought by summons, taken out in the name of the defendant, or if not entitled to use the defendant's name, then taken out in his own name but in that case served on both the plaintiff and the defendant, to apply for leave to have the judgment set aside, and to be allowed either to defend the action on such terms of indemnifying the defendant as the judge may consider right, or to intervene in the action in the manner pointed out by the Judicature Act, 1873, s. 24, sub-a. 5. Rule 15 is designed to enable judgments by default to be set aside by those who have or who can acquire a *locus standi*, and does not give a *locus standi* to those who have none (*Jacques v. Harrison* (C. A.), 12 Q. B. D. 165).

ORDER XXVIII.

AMENDMENT.

1. The Court or a judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement or pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties (a). Amendment of writ or pleadings.

(a) As a general rule leave to amend ought not to be refused unless the Court is satisfied that the party applying is acting *malâ fide*, or that his blunder has done some injury to the other side which cannot be compensated by payment of costs or otherwise (*Tildesley v. Harper*, 10 Ch. D. 393). A party will be allowed to amend his pleadings at any time before, or even at, the trial; see *Roe v. Davies*, 2 Ch. D. 729; *Budding v. Murdoch*, 1 Ch. D. 42; *King v. Corke*, 1 Ch. D. 57. See also for cases where amendments were allowed, *Long v. Crossley*, 13 Ch. D. 388 (adding Leave to amend.

O. XXVIII. plaintiffs); *Green v. Sevin*, 13 Ch. D. 589 (amendment of reply); *Nobel's Explosives Co. v. Jones*, 17 Ch. D. 721 (adding allegations to statement of claim at the trial); *Betts v. Doughty*, 5 P. D. 26 (adding allegations to statement of defence and setting up a fresh case). But in *Newby v. Sharpe*, 8 Ch. D. 39, it was intimated that an amendment altering the whole nature of an action ought not to be allowed; and see *Cargill v. Bower*, 10 Ch. D. 502; *Croove v. Barnicot*, 6 Ch. D. 753; *Collette v. Goode*, 7 Ch. D. 842, where leave to amend was refused; see, however, *Laird v. Briggs*, 19 Ch. D. 22. See also *Bourne v. Coulter*, W. N. (1884), 111; 50 L. T. 321, cited *post*, p. 379, as to the defendant's course where the plaintiff amends by setting up a fresh case.

When at the trial an application for leave to amend the pleadings is refused, the refusal forms part of the judgment and it is not necessary to appeal from it separately; but on an appeal from the judgment the Court of Appeal may give leave to amend. The judgment as drawn up should not contain any mention of the refusal of leave to amend (*Laird v. Briggs*, 16 Ch. D. 663).

An application for leave to amend need not be supported by evidence of the materiality of the proposed amendment (*Cargill v. Bower*, 4 Ch. D. 78; *Chesterfield Co. v. Black*, W. N. (1877), 65; 25 W. R. 409).

Giving or refusing leave to amend being discretionary with the judge below, the Court of Appeal will not generally interfere (*Byrd v. Nunn*, 7 Ch. D. 284).

A statement of claim cannot be amended after final judgment (*Att.-Gen. v. Corporation of Birmingham*, 15 Ch. D. 423); but see *Keith v. Butcher*, 25 Ch. D. 750, cited *ante*, p. 337.

An action may be turned by amendment into an information at the suit of the Attorney-General (*Caldwell v. Pagham Harbour Co.*, 2 Ch. D. 221).

An amended writ must in general be served in the same way as an original writ (*The Cassiopeia*, 4 P. D. 188).

An order under this rule need not be drawn up; see Ord. LIII. r. 14, *post*.

Effect of
order on
injunctions
and notices
of motion.

An order to amend is without prejudice to an injunction previously obtained (*Kennedy v. Lewis*, 14 Jur. 166; and see *Att.-Gen. v. Marsh*, 10 Sim. 572; *Clarke v. Clarke*, 13 W. R. 133; *Harding v. Tingey*, 10 Jur. N. S. 872; 12 W. R. 793), or to a writ of *ne exeat* (*Grant v. Grant*, 5 Russ. 189); but where a plaintiff amended after giving notice of motion it was held that the notice was gone (*Martin v. Frost*, 8 Sim. 199; *Money Penny v. ———*, 1 W. R. 99), whether the motion was for an injunction or a receiver (*Smith v. Dixon*, 12 W. R. 934), unless the order to amend was made without prejudice (*Child v. Douglas, Kay*, 560); and the order should therefore be made in that form (*Caldwell v. Pagham Harbour Co.*, 2 Ch. D. 221). So by amendment the plaintiff may purge a defendant's contempt; see *Weightman v. Powell*, 2 De G. & Sm. 570.

Amendment
of statement
of claim.

2. The plaintiff may, without any leave, amend his statement of claim, whether indorsed on the writ or not, once at any time before the expiration of the time limited for reply (*b*) and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared.

(*b*) As to time for reply, see Ord. XXIII. r. 1, *ante*, p. 369.

Amendment
of counter-
claim or
set-off.

3. A defendant who has set up any counterclaim or set-off may, without any leave, amend such counterclaim or set-off at any time before the expiration of the time allowed him for answering the reply (*c*) and before such answer, or in case there be no reply then at any time before the expiration of twenty-eight days from defence.

(*c*) As to the time allowed to plead to a reply, see Ord. XXIII. r. 3, *ante*, p. 370.

Disallowance
of amend-
ment.

4. Where any party has amended his pleading under either of the last two preceding rules, the opposite party may, within eight days after the delivery to him of the amended pleading apply to the Court or a judge to disallow the amendment, or any part thereof, and the Court or judge may, if satisfied that the justice of the case requires

it, disallow the same, or allow it subject to such terms as to costs or otherwise as may be just (*d*). O. XXVIII.

(*d*) See as to directions to the taxing-master to tax the costs of unnecessary amendments, *Burchell v. Giles*, 11 Beav. 34; *Watts v. Manning*, 1 S. & S. 421; *Pledge v. Buss*, Johns. 663. Where important allegations contained in the original bill were struck out by amendment the plaintiff had to pay the additional costs occasioned (*Strickland v. Strickland*, 3 Beav. 242); and see *Bower v. Cooper*, 2 Ha. 408; *Mavor v. Dry*, 2 S. & S. 113; *Mounsey v. Burnham*, 1 Ha. 22. As to costs of unnecessary matter generally, see Ord. LXV. r. 27 (20), *post*.

Costs of unnecessary amendments.

Where the plaintiff amends by (in effect) setting up a fresh case, the defendant's course is to move (within the eight days) that the amended pleading may be disallowed, or allowed only on proper terms as to costs (*Bourne v. Coulter*, W. N. (1884), 111; 50 L. T. 321). See also note (*a*), p. 377, *ante*.

Amendment setting up a fresh case.

5. Where any party has amended his pleading under rules 2 or 3, the opposite party shall plead to the amended pleading, or amend his pleading, within the time he then has to plead or within eight days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment (*e*).

Pleading to amended pleading.

(*e*) See *Boddy v. Wall*, 7 Ch. D. 164; *Powell v. Jewesbury*, 9 Ch. D. 34.

6. In all cases not provided for by the preceding rules of this order, application for leave to amend may be made by either party to the Court or a judge or to the judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just.

Amendment by leave of Court.

7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the Court or a judge (*f*).

Time allowed for amending after order for leave to amend.

(*f*) This rule is substantially the same as Cons. Ord. IX. r. 24.

8. An indorsement or pleading may be amended by written alterations in the copy which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the document difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the document as amended.

Amendment by written alteration or reprint.

9. Whenever any indorsement or pleading is amended, the same, when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.: "Amended day of pursuant to order of dated the of ."

Amended writ or pleading to be marked.

O. XXVIII.

Delivery to opposite party.
Clerical errors in judgments or orders.

10. Whenever any indorsement or pleading is amended, such amended document shall be delivered to the opposite party within the time allowed for amending the same.

11. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a judge on motion or summons without an appeal (g).

(g) This rule is substantially identical with Cons. Ord. XXIII. r. 21, now repealed.

Alterations in judgments.

A registrar in drawing up orders, &c. may by consent introduce such alterations as he thinks the judge would sanction; see *Davenport v. Stafford*, 8 Beav. 503, 511; *Phillips v. Gibbons*, 1 V. & B. 84, 6; *Taylor v. Miner*, 10 Ves. 444.

What corrections not within rule.

The rule does not extend to the omission of any term which could only have been introduced under the express judgment of the Court (*Bird v. Heath*, 6 Hare, 236; and see *Fyler v. Fyler*, 1 Coll. 93; *Dodson v. Sammell*, 8 W. R. 252), or to any alteration which is equivalent to a new direction (*Colman v. Savell*, 2 Cox, 206; *Willis v. Parkinson*, 3 Swanst. 233; *Brookfield v. Bradley*, 2 S. & S. 64; *Champernowne v. Brooke*, 9 Bli. N. S. 199).

What corrections are within the rule.

But an accidental slip (*Turner v. Hodgson*, 9 Beav. 265), *ex. gr.*, the omission of the usual direction to settle the conveyance, may be supplied under it (*Trevelyan v. Charter*, *id.* 140); and see *Hughes v. Jones*, 26 Beav. 24, where a decree for specific performance having been made against the defendant (who made default) without a reference as to title, the Court, on the motion of the defendant, ordered a reference as to title to be inserted in the decree, the defendant paying the costs of the application (*Re Clough*, 32 L. T. 194; *Eckersley v. Eckersley*, W. N. (1884), 133).

In *Jefferys v. Smith*, 11 W. R. 479, the words "survivors or survivor" were added to a decree for payment to four executors; and the words "executor or administrator" in *Ex parte Straight*, 16 W. R. 661; and see *Re Glanville*, W. N. (1878), 21; *Andrews v. Bohannon*, W. N. (1869), 80. In *Re Tiel*, 3 De G. J. & S. 426; 11 W. R. 351, a decree, though passed and entered, was altered on motion, the plaintiff, who was directed by the decree to pay costs, having been dead when the decree was pronounced; and see *Pennell v. Millar*, 23 Beav. 172; *Moore v. Walter*, 11 W. R. 713; *Viney v. Chaplin*, 3 De G. & J. 282; *Fritz v. Hobson*, 14 Ch. D. 542. In *Askew v. Peddle*, 14 Sim. 301, a mistake in a decree was corrected, although it had been pronounced seven years, and the case had been heard on further directions.

Where a person to whom money was ordered to be paid was described as "widow," she being in fact married again, the error was rectified under this rule (*Re Robinson*, W. N. (1873), 28).

Applying on minutes.

Where a party has liberty given him to apply to the Court on the minutes of a decree, he must do so within a fortnight; after that time, notice of motion, specifying the variations sought to be introduced, must be regularly given (*Hood v. Cooper*, 26 Beav. 373; and see *General Share Co. v. Wetley Co.*, 20 Ch. D. 130). See, too, *Prince v. Howard*, 14 Beav. 203; *Tennant v. Trenchard*, 4 Ch. 537. On motion to vary the minutes, the only question that can properly be argued is, What was the order made? The only exceptions are when the parties consent to something being added to the minutes, or where it cannot be ascertained what order was made, and then the case may be put in the paper and argued again (*Mem. per M. R.*, W. N. (1876), 296). See also *British Dynamite Co. v. Krebs*, W. N. (1877), 193; 25 W. R. 846. The party moving should be prepared with a copy of the registrar's notes of what took place when the order was made (*Robinson v. Local Board for Barton*, 21 Ch. D. 621).

"Liberty to apply."

Every order of the Court, not of a final character, carries with it liberty to apply, though not expressly reserved; see *Fritz v. Hobson*, 14 Ch. D. 542; *Penrice v. Williams*, 23 Ch. D. 353; and see also *Viney v. Chaplin*, 3 De G. & J. 282.

Court of Appeal.

A party dissatisfied with the drawing up of an order of the Court of Appeal must give notice of motion to vary the minutes (*General Share Co. v. Wetley Co.*, 20 Ch. D. 130).

General power for Court to amend.

12. The Court or a judge may at any time, and on such terms as to costs or otherwise as the Court or judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

13. The costs of and occasioned by any amendment made pursuant to rules 2 and 3 of this order shall be borne by the party making the same, unless the Court or a judge shall otherwise order.

O. XXVIII.
Costs of amendment under rules 2 and 3.

[Ord. XXIX. applies only to Admiralty actions.]

ORDER XXX.

SUMMONS FOR DIRECTIONS.

1. In every cause or matter one general summons for directions may be taken out at any time by any party with respect to the following matters and proceedings: particulars of claim, defence, or reply, statement of special case, discovery (including interrogatories), commissions and examinations of witnesses, mode of trial (including proceedings in lieu of demurrer, trial on motion for judgment, and reference), place of trial, and any other matter or proceeding in the cause or matter previous to trial.

General summons for directions.

2. Such summons for directions shall be a summons returnable in not less than four days, in the Form No. 3 in Appendix K., with such variations as circumstances may require, and shall be addressed to and served upon all such parties to the cause or matter as may be affected thereby. The applicant shall, so far as practicable, include in the summons all or as many of the above-mentioned matters and proceedings as, having regard to the nature of the cause or matter, can conveniently be dealt with by the order and directions of the Court or judge. Upon the hearing of the summons, any party to whom the summons is addressed shall be at liberty to apply for any order or directions as to any of the above-mentioned matters or proceedings which he may desire, and thereupon, after giving notice to such parties (if any) as the Court or judge may direct, any order may be made and all necessary directions given, as to all or any of such matters and proceedings as may be just, whether applied for or not: such order shall be in the Form No. 4 in Appendix K., with such variations as circumstances may require (*h*).

Form of summons.

(*h*) For these forms, see *infra*.

3. If, upon any other application as to any of the above-mentioned matters or proceedings, it shall appear to the Court or judge that the application is one that could and ought to have been included in or made upon the general summons for directions, such application shall be granted only at the costs of the party making the same.

Costs of other applications that could have been included in the summons.

ORDER XXXI.

DISCOVERY AND INSPECTION.

1. In any action where relief by way of damages or otherwise is sought on the ground of fraud or breach of trust, the plaintiff may at

Interrogatories for examination

Ord. XXXI. any time after delivering his statement of claim (*i*), and a defendant may at or after the time of delivering his defence, without any order for that purpose, and in every other cause or matter the plaintiff or defendant may by leave of the Court or a judge, deliver (*k*) interrogatories in writing for the examination of the opposite parties (*l*), or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose (*m*): Provided also that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness (*n*).

Time for delivering interrogatories. Delivery.

"Opposite parties."

(*i*) In actions in the Chancery Division the plaintiff may deliver interrogatories before the statement of defence (*Harbord v. Monk*, 9 Ch. D. 616).

(*k*) In *Bowen v. Price*, 2 De G. M. & G. 899, overruling *S. C.*, 1 Drew. 307, it was held that a copy of the interrogatories left at the office of the defendant's solicitor was "delivered."

(*l*) As to who are "opposite parties" within this rule, see *Molloy v. Kilby*, 15 Ch. D. 162; *Ingram v. Little*, 11 Q. B. D. 251, where it was held that a guardian *ad litem* is not "a party" who can be interrogated; and *MacAllister v. Bishop of Rochester*, 5 C. P. D. 194.

(*m*) See *Newall v. Telegraph Co.*, 2 Eq. 756; *Warden v. Paddington*, 32 Beav. 639.

(*n*) The right to discovery is now regulated (subject to the Rules of Court) by the practice of the Court of Chancery (*Anderson v. Bank of British Columbia* (C. A.), 2 Ch. D. 644; *Att.-Gen. v. Gaskill*, 20 Ch. D. 519; and see *Bustros v. White*, 1 Q. B. D. 423; *Lyell v. Kennedy*, 8 App. Cas. 217. See, however, *Parker v. Wells*, 18 Ch. D. 477; *Bolekov v. Fisher*, 10 Q. B. D. 161). Where no discovery could have been obtained before the Judicature Acts, either at law or in equity, none can be obtained now (*Hunings v. Williamson*, 10 Q. B. D. 459).

Privilege.

Under certain circumstances a party may refuse to give discovery, whether it is sought by interrogatories or under an order for production of documents. The general rules as to privilege (which are applicable to either kind of discovery, see *Clegg v. Edmondson*, 22 Beav. 125; *Rajah of Coorg v. East India Co.*, 2 Jur. N. S. 407; but see *Southwark Water Co. v. Quick*, 3 Q. B. D. 321), are as follows:—

A person is not compelled to make discovery of—

(1) Communications with professional advisers.

(1) Communications that have passed between himself and his solicitor relating to the matters in dispute, although no litigation had actually arisen, or was even in contemplation, at the time; and all documents prepared in relation to an intended action, whether prepared at the request of the solicitor or not, and whether ultimately laid before him or not, are privileged if prepared with a *bonâ fide* intention of being laid before him for the purpose of taking his advice. See *Anderson v. Bank of British Columbia*, 2 Ch. D. 644; *Southwark Water Co. v. Quick*, 3 Q. B. D. 315; *Minet v. Morgan*, 8 Ch. 361; *Lyell v. Kennedy*, 27 Ch. D. 1 (photographs of tombstone and copies of entries in public records); *Nordon v. Defries*, 8 Q. B. D. 508; *The Palermo*, 9 P. D. 6; *Bustros v. White*, 1 Q. B. D. 423; *English v. Tottie*, 1 Q. B. D. 141; *McCorquodale v. Bell*, 1 C. P. D. 473; *Pearse v. Pearse*, 1 De G. & S. 12; and see also *Paddon v. Winch*, 9 Eq. 666; *Ford v. De Pontes*, 7 W. R. 299; *Lawrence v. Campbell*, 4 Drew. 485; *Simpson v. Brown*, 33 Beav. 482; *Turton v. Barber*, 17 Eq. 329; *Smith v. Daniell*, 18 Eq. 649; *Skinner v. Great Northern Ry.*, 43 L. J., Ex. 150; *Macfarlan v. Rolt*, 14 Eq. 580; *Wilson v. Northampton Ry.*, 14 Eq. 477. As to communications with a former solicitor, see *Marriott v. Anchor, & Co.*, 3 Giff. 304. Counsel's drafts and briefs, and cases laid before them are protected (*Nicoll v. Jones*, 2 H. & M. 588; *Mayor of Bristol v. Cox*, 26 Ch. D. 678), except so far as the indorsements, &c. thereon were matters *publiè juris* (*Walsham v. Stainton*, 2 H. & M. 1; *Plumley v. Horrell*, W. N. (1868), 240); as to arbitrations, see *Ponsford v. Swayne*, 1 J. & H. 433; and as to compromises of former suits, see *Hutchinson v. Glover*, 1 Q. B. D. 138.

Communications with a solicitor out of the jurisdiction (*Lawrence v. Campbell*, 4 Drew. 485), or with the solicitor's clerk, or an accountant or skilled person employed by the solicitor are within the principle (*Steele v. Stewart*, 1 Ph.

471; *Churton v. Frewin*, 2 Dr. & Sm. 390; *Hooper v. Gumm*, 2 J. & H. 602; 10 W. R. 644). So, too, an application addressed by defendants to their agents abroad, by direction of the solicitor, for the purpose of procuring evidence in support of their case (*Lafone v. Falkland Islands Co.*, (No. 1), 4 K. & J. 34); but a letter from an agent to his principal, sent before suit in answer to inquiries, but not at the instance of the solicitor, is not privileged (*Anderson v. Bank of British Columbia*, 2 Ch. D. 644); and see further, as to agents, *Ross v. Gibbs*, 8 Eq. 522; *Hooper v. Gumm*, 2 J. & H. 602; 10 W. R. 644; *Jenkyns v. Bushby*, 2 Eq. 547. The privilege does not extend to communications made to the solicitor but not in his character of solicitor (*Thomas v. Rawlings*, 27 Beav. 140; and see *Hampson v. Hampson*, 26 L. J. Ch. 612); nor to letters passing between the defendant and third parties or their agents (*English v. Tottie*, 1 Q. B. D. 141); nor to letters passing between co-defendants (*Beets v. Menzies*, 1 Q. B. D. 528; but see *Hamilton v. Nott*, 16 Eq. 112); nor to information which the solicitor has derived from collateral sources, not directly from the client (*Marsh v. Keith*, 1 Dr. & Sm. 342; *Ford v. Tennant*, 32 Beav. 162; *Re Land Credit Society*, 15 W. R. 703; *Page v. Ward*, W. N. (1869), 51; *Wheeler v. Le Marchant*, 17 Ch. D. 675).

The privilege is the privilege of the client, and the solicitor cannot object to produce if his client does not or cannot claim privilege (*Re Cameron's Coalbrook Co.*, 25 Beav. 1; *Wilson v. Rastall*, 31 W. R. 320); thus, where a ward of Court was keeping out of the way the solicitor had to give all information he could to aid in finding her (*Ramsbotham v. Senior*, 8 Eq. 575). As to the cases between trustees and *cestui que trust*, see *Bacon v. Bacon*, 34 L. J. Ch. 349.

Professional opinions given partly for the benefit of the party requiring production are not privileged (*Reynolds v. Godlee*, 4 K. & J. 88; *Talbot v. Marshfield*, 2 Dr. & Sm. 549; 13 W. R. 885; *Wynne v. Humberston*, 27 Beav. 421; on appeal, 32 L. T. O. S. 306). In an action by *cestuis que trust* against trustees to make good a breach of trust, the trustees must produce correspondence between themselves and their solicitors relating to the matters in question in the action *ante litem motam* (*Re Mason*, 22 Ch. D. 609).

Where fraud is charged no privilege can be claimed for documents relating to the alleged fraud (*Phillips v. Holmer*, 15 W. R. 578; *Feaver v. Williams*, 11 Jur. N. S. 902; but see *Mornington v. Mornington*, 2 J. & H. 697; *Churton v. Coombes*, 4 Giff. 372).

A document once privileged is always privileged, *e. g.*, in future litigation (*Bullock v. Corry*, 3 Q. B. D. 356; and see *Branford v. Branford*, 4 P. D. 72).

(2) Matters tending to criminate; see *Walters v. Earl of Shaftesbury*, 14 W. R. 259; *Houes v. McKernan*, 30 Beav. 547; *U. S. of America v. McRae*, 4 Eq. 337; *Villeboisnet v. Tobin*, L. R., 4 C. P. 184; *Hill v. Campbell*, L. R., 10 C. P. 222; and the cases cited *post*, p. 385; but it is not the practice to allow either of the Statutes of Elizabeth to be an excuse for resisting discovery (*Bunn v. Bunn*, 12 W. R. 561).

(2) Tending to criminate.

(3) Documents, &c., which manifestly have no bearing on the issue to be tried, or which relate exclusively to the defendant's own title, or to the evidence by which his case is to be established (*Daw v. Eley*, 2 H. & M. 725; *Ingilby v. Shafto*, 33 Beav. 31; *Commissioners of Sewers v. Glasse*, 15 Eq. 302); and see *Owen v. Wynn*, 9 Ch. D. 29.

(3) Irrelevant.

For cases where the right to discovery depends on the main question at issue in the action, so that if the plaintiff succeeds he will have the discovery as part of the relief, see r. 20, *post*, and cases there cited, note (h), p. 392, *post*.

Where right depends on the issue of the action.

The party refusing production must show that the documents in question relate to his title and do not relate to the plaintiff's title (*Clegg v. Edmondson*, 3 Jur. N. S. 299; *Lind v. Isle of Wight Ferry Company*, 8 W. R. 540; *Bishop of Winchester v. Bowker*, 29 Beav. 479; *Felkin v. Lord Herbert*, 9 W. R. 756; *Bolton v. Corporation of Liverpool*, 1 M. & K. 88; *Jenkyns v. Bushby*, 14 W. R. 531). Thus a purchaser without notice of a fee simple estate need not produce his title-deeds to the mortgages of a term (*Hunt v. Elmes*, 27 Beav. 62). But a defendant cannot refuse production merely on the ground that if the plaintiff's claim is unfounded, he has no interest in them (*Gresly v. Mousley*, 2 K. & J. 288; and see *Rumbold v. Forteach*, 3 K. & J. 44; *Ferrier v. Atwool*, 14 W. R. 597; *Bugden v. South*, 26 L. J. Ch. 425; *Bates v. Master of Christ's College, Cambridge*, *ibid.* 449; *Quin v. Ratcliff*, 9 W. R. 65; but see *Robson v. Flight*, 33 Beav. 268). Production of the Court rolls of a manor was ordered in a suit to establish a custom (*Warrick v. Queen's College*, 3 Eq. 683); but see *Owen v. Wynn*.

Documents relating only to defendant's title.

Where a party claims privilege on the ground that the documents support his own title, and do not relate to that of his opponent, his affidavit is con-

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Mortgagee's
title deeds.

clusive, unless the Court can see from the nature of the case, or of the documents, that the party has misunderstood the effect of the documents (*Roberts v. Oppenheim*, 26 Ch. D. 724, distinguishing *A.-G. v. Emerson*, 10 Q. B. D. 191). See also *Lyell v. Kennedy*, 27 Ch. D. 1.

A mortgagee need not produce the mortgage deed until he is paid what is due (*Chichester v. Donegall*, 5 Ch. 497); see, however, *Patch v. Ward*, 1 Eq. 436, and observations of Lindley, J., W. N. (1876), 27; *Jones v. Jones*, Kay, App. vi.; *Bridgewater v. De Winton*, 12 W. R. 40; *Howard v. Robinson*, 4 Drew. 526; *Weeks v. Stourton*, 13 W. R. 489; *Freeman v. Builer*, 33 Beav. 289; *Smith v. Barnes*, 1 Eq. 65; and as to mortgages made after 31st December, 1881, see the Conveyancing Act, 1881, s. 16.

(4) Documents relating to party's mode of conducting his case.

4) Documents relating only to the party's mode of conducting his case (*Ingilby v. Shafiq*, 33 Beav. 31; *Gandee v. Stansfield*, 4 De G. & J. 1; *Peile v. Stoddart*, 1 M. & G. 192; *Turner v. Burleighshaw*, 11 W. R. 861).

See also note to rules 14, *post*, p. 388.

Leave to administer interrogatories.

It is not necessary before the hearing of a summons for leave to administer interrogatories to serve the opposite party with a copy of the proposed interrogatories (*Hall v. Liardet*, W. N. (1883), 165); nor on an application for leave to interrogate will the judge decide as to the relevancy of particular interrogatories (*Hall v. Liardet* (No. 2), W. N. (1883), 175, 194). For cases where leave has been given to interrogate, see *Jones v. London Road Car Co.*, W. N. (1883), 196; *Hellier v. Ellis*, W. N. (1884), 9. Where the action related to land in Ireland, and an action had been commenced there, though subsequently to the English action, Pearson, J., refused leave to interrogate, but the Court of Appeal reversed this decision (*Hounston v. Marquis of Sligo*, W. N. (1884), 29). Leave will be refused where the desired information can be obtained by particulars (*O'Meara v. Stone*, W. N. (1884), 72). A petitioner for the revocation of a patent was allowed to interrogate the claimant (*Re Haddan*, W. N. (1884), 192).

Offer to deliver particulars, &c. to be taken into account.

2. In deciding upon any application for leave to exhibit interrogatories, the Court or judge shall take into account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions, or to produce documents relating to the matter in question, or any of them.

Costs of improper interrogatories.

3. In adjusting the costs of the cause or matter inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court or judge, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault (o).

(o) As to the costs of improper matter generally, see Ord. LXV. r. 27 (20), *post*.

Form of interrogatories.

4. Interrogatories shall be in the Form No. 6 in Appendix B., with such variations as circumstances may require (p).

(p) For this form, see *post*.

Interrogating officer, &c. of corporation.

5. If any party to a cause or matter be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any

member or officer of such corporation, company or body, and an order may be made accordingly (g). Ord. XXXI.

(g) It is irregular to make an officer of a company a party for the purpose of discovery, and if this is done the name of the officer will be struck out (*Wilson v. Church*, 9 Ch. D. 552). A member of a company should not be interrogated if there is an officer who can give the required information (*Berkeley v. Standard Discount Co.*, 13 Ch. D. 97). When a corporation answers by an officer who is also its solicitor in the action, he cannot refuse to answer on the ground of privilege (*Mayor of Swansea v. Quirk*, 5 C. P. D. 106). As to the duty of a corporation with respect to discovery, see *Att.-Gen. v. Burgesses of East Retford*, 2 My. & K. 40; *Southwark Water Co. v. Quick*, 3 Q. B. D. p. 321.

A corporation sole may be interrogated as if he were a private individual, see *Daniell*, vol. ii. p. 1812. Corporation sole.

A foreign state or power suing as plaintiff is bound to name a person to give discovery at the instance of an opposite party; see *Republic of Costa Rica v. Erlanger*, 1 Ch. D. 171; *United States of America v. Wagner*, 2 Ch. 582; *Republic of Peru v. Weguelin*, 20 Eq. 140; *Prioleau v. United States*, 2 Eq. 659; *Republic of Liberia v. Roye*, 1 App. Cas. 139. Foreign state.

As to getting discovery from the official liquidator in a winding-up, see *Re Contract Corporation, Gooch's Case*, 7 Ch. 207; *Barned's Banking Co.*, 2 Ch. 350. Official liquidator.

As to inquiries from agents, see *Bolkow v. Fisher*, 10 Q. B. D. 161; *Rasbotham v. Shropshire Union Co.*, 24 Ch. D. 110. Agents.

6. Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not *bonâ fide* for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer (r). Objection to answering to be taken in affidavit in answer.

(r) As to scandal, see Ord. XIX. r. 27, and note thereto, *ante*, p. 360. Scandal.

The following cases may be consulted as to the propriety or impropriety of particular interrogatories: *Eade v. Jacobs*, 3 Ex. D. 335 (conversations with deceased person); *Johns v. James*, 13 Ch. D. 370 (inquiry as to the truth of allegations in statement of claim); *Saunders v. Jones*, 7 Ch. D. 435 (inquiry as to specific acts of misconduct in action for wrongful dismissal); *Benbow v. Low*, 16 Ch. D. 93 (an attempt to learn the details of the evidence of the other side); *Lyon v. Twaddell*, 13 Ch. D. 375; *Roucliff v. Leigh*, 6 Ch. D. 256; *Mansfield v. Childerhouse*, 4 Ch. D. 82 (inquiry as to irrelevant breach of trust); *Parker v. Wells*, 13 Ch. D. 477; *Att.-Gen. v. Gaskill*, 20 Ch. D. 519; *Sheward v. Lord Lonsdale*, 5 C. P. D. 47. Improper interrogatories.

A party may object to answer questions tending to criminate him (*Fisher v. Owen*, 8 Ch. D. 645; *Webb v. East*, 5 Ex. D. 108; *Lamb v. Munster*, 10 Q. B. D. 110; *Allhusen v. Labouchere*, 3 Q. B. D. 654). Questions tending to criminate.

Where a party by his answer claims privilege, the Court will not go behind his answer unless it appears clearly either from the answer itself or some incorporated document that the claim is bad (*Lyell v. Kennedy*, 27 Ch. D. 1).

In an action to recover land the plaintiff is entitled to discovery as to all matters relevant to his own and not to the defendant's case (*Lyell v. Kennedy*, 8 App. Cas. 217; *Horton v. Bott*, 2 H. & N. 249; 26 L. J. Ex. 267). Action to recover land.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously (s), or struck out on the ground that they are prolix, oppressive, unnecessary, or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories (t). Setting aside or striking out interrogatories.

(s) As to these words, see *Gay v. Labouchere*, 4 Q. B. D. p. 207.

(t) This rule only applies to cases where interrogatories should not have been exhibited at all, and then only where no leave has been obtained to exhibit them; the objection that any particular interrogatory is improper must be taken in the affidavit in answer, under r. 6; see *McIlroy v. Duncan*, W. N. (1884), 48. "Unreasonably or vexatiously."

Ord. XXXI. 8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as a judge may allow (*u*).

Time for answering.

Costs of answer.

Extension of time.

Form of answer.

Folio.

Sufficiency of answer to be determined on motion or summons.

Order for further answer.

Application for further answer.

Costs where answer insufficient.

Order for discovery of documents.

(*v*) A member of a company who has been interrogated cannot refuse to file his answer until he has been paid his costs, nor will the Court make an order for payment of his costs separately from those of the company (*Berkeley v. Standard Discount Co.* 13 Ch. D. 97).

For form of order to extend the time, see *Weston v. Cohen*, W. N. (1869), 74. The application must be supported by affidavit (*Brown v. Lee*, 11 Beav. 162). In *Byng v. Clark*, 13 Beav. 92, the time for answering was extended on five successive occasions.

9. An affidavit in answer to interrogatories shall, unless otherwise ordered by a judge, if exceeding ten folios (*v*), be printed and shall be in the Form No. 7 in Appendix B. with such variations as circumstances may require.

(*v*) A folio is seventy-two words (Ord. LXV. r. 27 (14)). As to the discretion of the Court to dispense with the printing of a schedule to the affidavit, see *Webb v. Bornford*, 46 L. J. Ch. 288; W. N. (1877), 5. For the form here referred to, see *post*.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court or a judge on motion or summons (*vv*).

(*vv*) The duty of the Court under rules 10 and 11 is limited to considering the sufficiency or insufficiency of the answer, *i. e.*, whether the party interrogated has answered that which he has no excuse for not answering; and only in case of insufficiency can it require a further answer (*Lyell v. Kennedy*, 27 Ch. D. 1).

11. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *vivd voce* examination, as the judge may direct (*w*).

(*w*) The application should be by summons at chambers (*Chesterfield v. Black*, 24 W. R. 783; 13 Ch. D. 138, n.), which, in the case of a summons for a further answer, should specify the interrogatories or parts of interrogatories to which a further answer is required (*Anstey v. North Woolwich Co.*, 11 Ch. D. 439). See also *Church v. Perry*, 36 L. T. 513; *Ashby v. Taylor*, 38 L. T. 44.

An answer may be "insufficient" by reason of its containing, in addition to the information required, impertinent or otherwise objectionable matter (*Peyton v. Harting*, L. R. 9 C. P. 9; *Lyell v. Kennedy*, 27 Ch. D. 28; and see *Furber v. King*, 29 W. R. 436).

As to the costs occasioned by an insufficient answer, see *Litchfield v. Jones*, W. N. (1884), 218. Under the old practice whether exceptions were allowed (*Newton v. Dimes*, 3 Jur. N. S. 583), or overruled (*Stent v. Wickens*, 5 De G. & Sm. 384), the costs followed the result (comp. *Willis v. Childs*, 13 Beav. 454); and such costs were payable immediately (*Thomas v. Rawlings*, 27 Beav. 375). But it was said that they should be asked for by the successful party (*Earp v. Lloyd*, 4 K. & J. 58; *Crossley v. Stewart*, 2 N. R. 57). But where an interrogatory included several questions which ought to have been distinct, and exceptions as to such interrogatory were only partly allowed, the defendant had not to pay costs (*Langton v. Waite*, 15 W. R. 53).

Where some exceptions were allowed and others overruled, the costs of those allowed were set off against those overruled (*Willis v. Childs*; *Dally v. Worhan*, 32 Beav. 69).

12. Any party may, without filing any affidavit, apply to the Court or a judge for an order directing any other party to any cause or matter

to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court or judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents, as may, in their or his discretion, be thought fit (x).

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(x) An order for discovery of documents may be made against a next friend (*Higginson v. Hall*, 10 Ch. D. 235; but see *Re Corsellis*, W. N. (1883), 60; 31 W. R. 414); in a petition of right against the suppliant (*Tomline v. The Queen*, 4 Ex. D. 252), but not against the Crown (*Thomas v. The Queen*, L. R. 10 Q. B. 44); and against a third party who has appeared (*MacAlister v. Bishop of Rochester*, 5 C. P. D. 194). See also *Re M'Veagh*, 1 De G. J. & S. 399; *Newland v. Steer*, 11 Jur. N. S. 596.

Against whom order will be made.

An official liquidator will not be ordered to make an affidavit as to documents except under special circumstances (*Re Mutual Society*, 22 Ch. D. 714).

Official liquidator.

A party who has not obtained an order for discovery of documents cannot get such discovery by means of interrogatories which he has obtained leave to administer (*Jacobs v. Great Western Ry. Co.*, W. N. (1884), 33).

A plaintiff will in general be entitled to discovery of documents after, but not before, delivery of a statement of claim; see *Cashin v. Craddock*, 2 Ch. D. 140; *Davies v. Williams*, 13 Ch. D. 550; *Union Bank v. Manby*, *ibid.* 239; *Hancock v. Guerin*, 4 Ex. D. 3; *Republic of Costa Rica v. Strousberg*, 11 Ch. D. 323; *Phillips v. Phillips*, 40 L. T. 815.

Time.

Where administration to an intestate's estate had been granted to the solicitor to the Treasury, and subsequently an alleged next of kin instituted a suit and asked discovery as to documents, it was held that the affidavit as to documents need not be made until a *prima facie* case had been made by the plaintiff (*Lane v. Gray*, 16 Eq. 552).

The defendant must make the affidavit, though he insists that he cannot be compelled to produce any documents, for the question of liability to production is distinct from the question of sufficiency of affidavit (*New British Co. v. Peed*, 3 C. P. D. 196; *Rumbold v. Forteath*, 3 K. & J. 44; *Lazarus v. Mozley*, 5 Jur. N. S. 1119; *Nicoll v. Jones*, 13 W. R. 451; and comp. *Taylor v. Rundell*, Cr. & Ph. 104, 111; *Fortescue v. Fortescue*, 24 W. R. 945); see, too, as to the necessity of making the affidavit, *Manby v. Bewicke*, 27 L. T., O. S. 55; *Quin v. Ratcliff*, 9 W. R. 65; *Hanslip v. Kitton*, 1 De G. J. & S. 440; *Evans v. Louis*, L. R. 1 C. P. 656.

An affidavit of documents is conclusive against the party seeking discovery unless it can be shown from the affidavit itself, or from the documents referred to in it, or from admissions in the pleadings, that it is insufficient, in which case an order will be made for a further affidavit, or leave may be obtained to administer interrogatories; but it cannot be shown by a contentious affidavit that the affidavit of documents is insufficient; see *Robinson v. Budgett*, W. N. (1884), 94; *Jones v. Monte Video Gas Co.* (C. A.), 5 Q. B. D. 556; *A.-G. v. Emerson*, 10 Q. B. D. 191; *Ponsonby v. Hartley*, W. N. (1883), 13, 44; *Compagnie Financière v. Peruvian Guano Co.*, 11 Q. B. D. 55. Nor can there be any cross-examination on the affidavit as to documents (*Manby v. Bewicke* (No. 2), 8 De G. M. & G. 470; *Newall v. Telegraph Co.*, 2 Eq. 756; *Alcock v. Gill*, W. N. (1869), 270). See also, as to insufficiency of the affidavit, *Wright v. Pitt*, 3 Ch. 809; *A.-G. v. Castleford Local Board*, 21 W. R. 117; *Saull v. Browne*, 17 Eq. 402; *Noel v. Noel*, 1 De G. J. & S. 468; *Westminster Co. v. Clayton*, 12 W. R. 123; *Bowes v. Fernie*, 3 My. & C. 632; *Minet v. Morgan*, 8 Ch. 361.

Affidavit, how far conclusive.

Documents are material to the matters in question in the action if it is not reasonable to suppose that they may contain information enabling the party seeking discovery either to advance his own case or to damage that of his opponent (*Compagnie Financière v. Peruvian Guano Co.*, 11 Q. B. D. 55, where a further affidavit was ordered).

What documents material.

Even though a defendant is in contempt for non-compliance with orders of the Court, he is entitled to take any steps required for the purposes of his defence; and where a defendant being in contempt for not having made an affidavit as to documents, applied for an order that the plaintiff should make an affidavit of documents, James, V.-C., held he was entitled to the order, but the affidavit and production by the plaintiff were to be after an affidavit and production by the defendant (*Haldane v. Eekford*, 7 Eq. 425).

Where defendant in contempt.

Ord. XXXI. 13. The affidavit, to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it shall be in the Form No. 8 in Appendix B., with such variations as circumstances may require (y).

Objections to production. (y) For the form of the affidavit, see *post*; it should be adhered to as far as possible (*Anon. W. N.* (1876), 39; and see *Woodhatch v. Freeland*, 11 W. R. 398; *Mansell v. Feeney*, 2 J. & H. 320. The grounds of objection to production must be clearly stated in the affidavit (*Gardner v. Irvin*, 4 Ex. D. 49; *Webb v. East*, 5 Ex. D. 108).

As to what is a sufficient description of documents in the affidavit, see *Taylor v. Batten*, 4 Q. B. D. 85; *Inman v. Whitley*, 4 Beav. 548; *Phelps v. Olive*, 4 Beav. 599, n.; *Fortescue v. Fortescue*, 24 W. R. 945; 34 L. T. 847; *Taylor v. Oliver, W. N.* (1876), 241; 34 L. T. 902; *Bewicke v. Graham*, 7 Q. B. D. 400. An affidavit of improper length will be ordered to be taken off the file, with costs (*Walker v. Pool*, 21 Ch. D. 835, and cases there cited).

As to costs of perusing the affidavit, see *Betts v. Cleaver*, 7 Ch. 513.

Insufficiency of affidavit. If the affidavit is considered to be informal or insufficient, a summons should be taken out to consider its sufficiency (*Daniell*, vol. ii. p. 1838; *Robinson v. Webster*, W. N. (1869), 81).

Court may order production of documents. 14. It shall be lawful for the Court or a judge, at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such cause or matter, as the Court or judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just (z).

Production of documents. (z) Production is a matter of right and not a matter in the discretion of the judge, provided, of course, that the documents are not privileged; see *Bustros v. White*, 1 Q. B. D. 423; *Anderson v. Bank of British Columbia*, 2 Ch. D. 644. For the principal grounds of objection to discovery or production, see note (z) to rule 1, *ante*, p. 382; and *Daniell*, vol. ii. p. 1852.

An order may be made to produce documents for the purpose of an appeal (*Re National Funds Assurance Co.*, W. N. (1876), 192).

Production for purpose of appeal. A party must produce relevant documents in the possession of his solicitor or agent, and cannot refuse because the solicitor says they are irrelevant, unless he himself has inspected them (*M'Intosh v. Great Western Ry. Co.*, 4 De G. M. & G. 544; *Manby v. Bewicke* (3), 8 De G. M. & G. 476); nor can the solicitor refuse, because he claims his ordinary lien (*Lockett v. Carey*, 10 Jur. N. S. 144; *Hope v. Liddell*, 7 De G. M. & G. 331; *Re Cameron's Coalbrook Company*, 25 Beav. 1); see *Re Gregson*, 26 Beav. 87; *North v. Huber*, 29 Beav. 437; *Vale v. Oppert*, 10 Ch. 340; *Belaney v. French*, 8 Ch. 918; and cases, *infra*, on documents in pawn. If they are the agent's private property, they need not be produced (*Colyer v. Colyer*, 9 W. R. 452; but see *Bishop of Winchester v. Bowker*, *ibid.* 404).

Documents abroad. Where the documents ordered to be produced are in a foreign country, the party required to produce them must show not only that it would be difficult to obtain them, but that he has tried and failed (*Mertens v. Haigh*, 11 W. R. 792); and as to documents abroad, see *Freeman v. Fairlie*, 3 Mer. 44.

Where stranger to the suit has possession, Documents in the possession of a stranger to the suit previously to its institution cannot be ordered to be produced in his absence (*Burbridge v. Robinson*, 2 M. & G. 244; see *Bovill v. Cowan*, 18 W. R. 533); and if such person has covenanted to produce the documents for the maintenance and justification of the title of a party to the suit, he cannot be ordered to produce them in a suit hostile to such party (*Bethell v. Casson*, 1 H. & M. 806); but full information must be given as to the nature of such documents.

or joint interest. Similarly, where a person, not a party to the suit, has a joint interest in the documents (*Edmonds v. Foley*, 30 Beav. 282; *Bayley v. Cass*, 10 W. R. 370; *Ford v. Dolphin*, 1 Dr. 222; *Lord Eglinton v. Lamb*, 14 W. R. 170), the documents will be protected (*Murray v. Walter*, Cr. & Ph. 114; *Kearsley v. Philips*, 10 Q. B. D. 465); but full information must be given in the affidavit (*Bovill v. Cowan*, 39 L. J. Ch. 768, and see observations of Lord Cottenham in *Taylor v. Rundell*, Cr. & Ph. 104,

111). Thus, directors of a company could not be ordered to produce documents in which other directors had a joint interest (*Penney v. Goode*, 1 Dr. 474; *Reid v. Langlois*, 1 M. & G. 627; *Lazarus v. Mozley*, 5 Jur. N. S. 1120; *Hadley v. Macdonnell*, 7 Ch. 312; but of *Plant v. Kendrick*, L. R. 10 C. P. 692). And see, for other cases of joint interest, *Liddell v. Norton*, Kay, App. xi, where the documents had been pawned before the institution of the suit, and the defendant was too poor to redeem them; *Re Williams*, 7 Jur. N. S. 323; *North v. Huber*, 29 Beav. 437.

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Documents in pawn.

So no order can be made for inspection of documents in the custody of the Court having jurisdiction in lunacy (*Vivian v. Little*, 11 Q. B. D. 370).

Documents in custody of a Court.

But where a defendant had in his possession letters written to him by a person not party to the suit, which were admitted to be material, he was compelled to produce them, though they were marked "private and confidential," and though the sender objected to the production (*Hopkinson v. Lord Burghley*, 2 Ch. 447; 15 W. R. 543, where Lord Cairns, L. J., said, "the sender of the letter must be supposed to have given an authority to the receiver to use it for every lawful purpose, and it has been held that publication is not such a lawful purpose. But if there can be one purpose more lawful than another, it would be to produce the letter in a court of justice for the furtherance of the ends of justice"); and see *Penkethman v. White*, 2 W. R. 380; *Lee v. Hammerton*, 12 W. R. 975, where the report of a medical officer of an insurance company being material, had to be produced, though confidential. An undertaking not to use the letters for any collateral purpose must be given in such a case (*Hopkinson v. Lord Burghley*; *Richardson v. Hastings*, 7 Beav. 354); and generally when the plaintiff obtains an order for production and inspection of documents, he does so upon an implied undertaking not to make public any information so obtained, or to communicate such information to persons not parties to the suit (*Williams v. The Prince of Wales Assurance Co.*, 23 Beav. 338); and, it seems, the Court would grant an injunction to restrain him from so doing (*ibid.*). See, too, *Reynolds v. Godlee*, 4 K. & J. 88; and *Enthoven v. Cobb*, 5 De G. & Sm. 595; on appeal, 2 De G. M. & G. 632; *Boven v. Pearson*, 11 W. R. 819; *Hutchinson v. Glover*, 1 Q. B. D. 138.

Third party's interest.

Private letters.

Where a co-defendant has an interest in the documents scheduled, he should be served with the summons to produce (*Gresley v. Mousley*, 2 K. & J. 288). Even if the Court should hold that there are grounds for not ordering production of the documents on account of a third person's interest therein, still the party must give all the information in his power as to such documents as he has partial possession of, and make discovery of their contents so far as they are material (*Taylor v. Rundell*, Cr. & Ph. 104; *Bovill v. Cowan*, 15 W. R. 608; *Clinch v. Financial Corporation*, 2 Eq. 271). And as to the expense of getting such information, see *Bethell v. Casson*, 1 H. & M. 806.

What information must be given as to protected documents.

As to relevancy, see note (x), *supra*. It has been doubted whether a document required only for comparison of handwriting is a relevant document (*Wilson v. Thornbury*, 17 Eq. 517).

Relating to matters in question.

15. Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other party, in whose pleadings or affidavits (a) reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter, unless he shall satisfy the Court or a judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or judge shall deem sufficient for not complying with such notice: in which case the Court or judge may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or judge shall think fit (b).

Notice to produce for inspection documents referred to in pleadings or affidavits.

(a) These words include particulars of claim (*Cass v. Fitzgerald*, W. N. (1884), 18). "Pleadings or affidavits."

(b) Under this rule production will be ordered at once of documents referred to in the pleadings, unless some good reason against it can be shown; see *Quilter v. Healy*, 23 Ch. D. 42; *Webster v. Whewall*, 15 Ch. D. 120. The privilege claimed for documents is not lost by their being referred to in the pleadings; the penalty

Ord. XXXI. for non-production is that they cannot afterwards be used in evidence (*Roberts v. Oppenheim*, 26 Ch. D. 724).

Costs. No costs of a notice or inspection under this rule will be allowed unless there was good reason for it (Ord. LXV. r. 27 (17)).

Form of notice.

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 9 in Appendix B., with such variations as circumstances may require (c).

(c) For this form, see *post*.

Time and place for inspection.

17. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of bankers' books, or other books of account, or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground (d). Such notice shall be in the Form No. 10 in Appendix B., with such variations as circumstances may require (e).

Books.

(d) This provision as to books in use in business merely adopts the old practice in Chancery; see *Mertens v. Haigh*, Johns. 735; *Hooper v. Gumme*, 2 J. & H. 602. As to costs where documents are produced at the solicitor's office, see *Brown v. Sewell*, 16 Ch. D. 517.

Form.

(e) For this form, see *post*.

Order for inspection.

18. If the party served with notice under rule 17 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, the judge may, on the application of the party desiring it, make an order for inspection in such place and in such manner as he may think fit; and, except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party (f).

(f) If the defendant is required to produce or obtain information as to deeds, &c., not in his possession, he is entitled to have the costs of so doing first tendered to him (*Bethell v. Casson*, 1 H. & M. 806); see note to r. 14, *ante*.

A plaintiff who obtains the common order for production may inspect documents which are ordinarily produced only on payment of customary fees (e.g., court rolls), without payment of such fees (*Hoare v. Wilson*, 4 Eq. 1).

Inspection by agent.

The order gives liberty to inspect to "the applicant, his solicitor and agent:" Seton, p. 136.

So an undertaking to produce "to the plaintiff," means "to the plaintiff, his solicitors and agents," unless that be guarded against by the terms of the undertaking (*Williams v. Prince of Wales Assurance Company*, 23 Beav. 338); but neither it nor the common order authorises inspection by a non-professional relative of the plaintiff, though alleged to be the only person acquainted with the accounts to be inspected

(*Summerfield v. Pritchard*, 17 Beav. 9). The plaintiff's agent, for the purposes of inspection, ought, it seems, to be a legal agent, or at least a general agent, and not one appointed for the special purpose (*Draper v. Manchester, &c. Railway Company*, 3 De G. F. & J. 23).

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But on a special application, and on a special case being made out for it, an accountant may be allowed to inspect documents (*Bonnardet v. Taylor*, 1 J. & H. 383); but not an accountant who has any personal interest in the case (*Draper v. Manchester, &c. Railway*); see, however, *Lindsay v. Gladstone*, 3 Eq. 132; *Att.-Gen. v. Whitwood Local Board*, 19 W. R. 1107. Thus, in *Re Joint Stock Discount Company*, 15 W. R. 99, an accountant was allowed to inspect the books of a company in course of being wound up on behalf of the shareholders on certain conditions; and where the issue in a cause depended in a great measure upon the state of the originals of certain engineering plans and documents, and the defendant deposed that he was not possessed of any engineering knowledge, and that the inspection of the documents would be useless to him without the aid and assistance of an engineer, the order for production and inspection was directed to extend to the defendant's surveyor (*Swansea Vale Railway Company v. Budd*, 2 Eq. 274). In *Republic of Peru v. Woguelin*, 41 L. J. Ch. 165, where the documents were very numerous, a room was hired and special directions given as to inspection. Where a creditor supported his claim in chambers by the production of certain documents which the plaintiff believed to be forged, liberty was given to have them examined by scientific persons to test their genuineness, the creditor's solicitor being allowed to be present at such examination (*Groves v. Groves*, Kay, App. xix.; 2 W. R. 86); but it is only under special circumstances that an order will be made for inspection by intended witnesses (*Boyd v. Petrie*, 3 Ch. 818). The common order for production does not authorise inspection by a co-defendant (*Bartley v. Bartley*, 1 Dr. 233). Inspection by plaintiff's counsel was allowed in *Blair v. Massey*, 1 R. 5 Eq. 623.

The fact that an order has been made for production of documents at a particular place, does not prevent the Court making a fresh order appointing a different place if circumstances render it desirable (*Prestney v. Corporation of Colchester*, 24 Ch. D. 376).

No lien for costs attaches, even in favour of the next friend of an infant plaintiff, who has repudiated the suit, upon any deed brought in merely to enable the plaintiff to obtain inspection for the purposes of discovery (*Dunn v. Dunn*, 3 Drew. 17; 7 De G. M. & G. 635). As soon, therefore, as the purposes of discovery are answered, the deed will be ordered to be re-delivered to the producing party (*Ibid.*).

No lien for costs on deeds produced.

The order for production will give leave to seal up immaterial parts (*Mansell v. Feeney* (2), 2 J. & H. 320; *Heugh v. Garrett*, 32 L. T. 45; *Quilter v. Healy*, 23 Ch. D. 42); and where defendants ordered to produce had omitted to state their desire to seal up part of a book in their original affidavit, they were allowed to make a special application for leave to do so by summons without paying the costs thereof (*Talbot v. Marshfield*, 1 Eq. 6).

Sealing up irrelevant parts.

A party under such order is justified in making copies, &c., of all parts of the document produced not sealed up under the terms of the order (*Coleman v. West Hartlepool Harbour Company*, 5 L. T. 266).

As to the course where the parts of a document for which privilege is claimed are so interspersed with the rest of the document that sealing up would be impossible, see *Churton v. Frewin*, 2 Dr. & S. 394; *Kettlewell v. Barstow*, 7 Ch. 686.

As to production of partnership books, see *Re Pickering*, 25 Ch. D. 247, where it was held that as the plaintiff and defendant were both interested in the partnership property the defendant was not entitled to the ordinary power to seal up such entries as he might swear to be irrelevant, but only entries relating to certain specified private matters mentioned in the order.

Partnership books.

19. An order upon the lord of a manor to allow limited inspection of the Court rolls may be made on the application of a copyhold tenant supported by an affidavit that he has applied for inspection, and that the same has been refused (*g*).

Inspection of Court rolls

(*g*) Where an order for production has been obtained the tenant is entitled to inspection without payment of the customary fees (*Hoare v. Wilson*, 4 Eq. 1). As to production of Court rolls of a manor, see *Warrick v. Queen's College*, 3 Eq. 683).

Fees.

20. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a judge

Determination of ques-

Ord. XXXI. may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection (*h*).

Right to discovery depending on decision of action.

(*h*) Thus, where the issue raised was whether the defendant had agreed to pay the plaintiff a sixth of his profits, the plaintiff was not entitled to the production of the books and accounts of the defendant before the hearing (*Turney v. Bayley*, 12 W. R. 633; see *Mansell v. Feeney*, 2 J. & H. 323); so where in a patent suit an interrogatory assumed infringement (*De la Rue v. Dickinson*, 3 K. & J. 388; *Crossley v. Stewart*, 1 N. R. 426; *Forbes v. Tanner*, *ibid.* 464; *Kay v. Hargreaves*, 14 L. T. 281; *Finnegan v. James*, 19 Eq. 72; *Hoffman v. Postill*, 4 Ch. 673); see as to the discretion of the Court in these cases, where the plaintiff asks for discovery to which he is not entitled if he is wrong, and which, if he wins, will be his as a matter of course, *Elmer v. Creasy*, 9 Ch. 69; *Lett v. Parry*, 1 H. & M. 517; *Lockett v. Lockett*, 4 Ch. 336; *Saull v. Browne*, 17 Eq. 402; 9 Ch. 364; *G. W. Colliery Company v. Tucker*, 9 Ch. 376; *Thompson v. Dunn*, 5 Ch. 573; *Carver v. Pinto Leite*, 5 Ch. 90; *Heugh v. Garrett*, 32 L. T. 45.

Where the materiality of the discovery depends upon the determination of the question in dispute, and the discovery sought is likely to cause considerable trouble and to prove offensive to the person from whom it is sought, the Court will, under this rule, postpone the discovery until the question has been determined (*Wood v. Anglo-Italian Bank*, 34 L. T. 255). See also *Re Leigh, Rowcliffe v. Leigh*, 6 Ch. D. 256; *Saunders v. Jones*, 7 Ch. D. 435; *Benbow v. Low*, 16 Ch. D. 93; *Verminek v. Edwards*, 29 W. R. 189; *Parker v. Wells*, 18 Ch. D. 477; *Whyte v. Ahrens*, 26 Ch. D. 717.

Penalties for refusing to answer or make discovery.

21. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a judge for an order to that effect, and an order may be made accordingly (*i*).

(*i*) Where a husband and wife were ordered to make discovery and the husband absconded and the wife alone made the discovery, it was held a substantial compliance with the order (*Hartley v. Owen*, W. N. (1876), 193; 34 L. T. 752).

This rule takes the place of Cons. Ord. XII., by which a defendant might be attached for not answering. It does not authorize attachment for not giving names of partners under Ord. XVI. r. 14, or for not giving in accounts under Ord. XV. (*Pike v. Keene*, 24 W. R. 322).

It is not imperative on the Court to dismiss the action under the rule (*Hartley v. Owen*; and see also *Twyeross v. Grant*, W. N. (1875), 201, 225); but it will generally be dismissed for default on the part of the plaintiff (*Republic of Liberia v. Roye*, 9 Ch. 569; 1 App. Cas. 139).

Ord. LII. r. 4, applies to a notice of motion to commit under this rule (*Litchfield v. Jones*, 26 Ch. D. 64).

See, generally, as to attachment, Ord. XLIV., *post*.

Order for interrogatories, &c. may be served on solicitor.

22. Service of an order for interrogatories or discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order (*k*). But the party against whom the application for an attachment is made

may show in answer to the application that he has had no notice or knowledge of the order. Ord. XXXI.

(k) See *Joy v. Hadley*, 22 Ch. D. 571; *Re Mulcaister*, W. N. (1878), 81; 26 W. R. Service. 435.

23. A solicitor, upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment. Solicitor to give notice of order to client.

24. Any party may, at the trial of a cause, matter, or issue, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always, that in such case the judge may look at the whole of the answers, and if he shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in (l). Part only of answer may be used in evidence at trial.

(l) For the practice in the Court of Chancery, as to reading the defendant's answer to interrogatories, see Seton, p. 29, and cases there cited.

25. In every cause, or matter, the costs of discovery, by interrogatories or otherwise, shall, unless otherwise ordered by the Court or a judge, be secured in the first instance as provided by Rule 26 of this Order, by the party seeking such discovery, and shall be allowed as part of his costs where, and only where, such discovery shall appear to the judge at the trial, or, if there is no trial, to the Court or a judge, or shall appear to the taxing officer, to have been reasonably asked for (m). Security to be given for costs of discovery.

(m) Security will not be dispensed with except for some good reason (*Compagnie du Pacifique v. Guano Co.*, W. N. (1883), 166), and certainly not merely because the other side is ready to waive the deposit (*Hall v. Liardet* (No. 2), W. N. (1883), 175; *Aste v. Stumore*, 13 Q. B. D. 326). But poverty is a sufficient ground (*Burr v. Hubbard*, W. N. (1883), 198; *Smith v. Went*, W. N. (1884), 81). Where, however, though the plaintiff was poor, his action was supported by an association and a public subscription, security was required (*Henderson v. Ripley*, W. N. (1884), 85). Dispensing with security.

Where interrogatories are delivered to several defendants, the deposit must be made in respect of each set of interrogatories (*Smith v. Reed*, W. N. (1883), 196). But a single deposit is sufficient before an application for an order for discovery of documents is made against several plaintiffs (*Campbell v. Lord Poulett*, W. N. (1884), 48). Several sets of interrogatories.

26. Any party seeking discovery by interrogatories shall, before delivery of interrogatories, pay into Court to a separate account in the action, to be called "Security for Costs Account," (n) to abide further order, the sum of 5*l.*, and, if the number of folios exceeds five, the further sum of 10*s.* for every additional folio. Any party seeking discovery otherwise than by interrogatories shall, before making application for discovery, pay into Court, to a like account, to abide further order, the sum of 5*l.*, and may be ordered further to pay into Court as aforesaid such additional sum as the Court or a judge shall direct. The party seeking discovery shall, with his interrogatories or order for discovery, serve a copy of the receipt for the said payment Amount of security.

Ord. XXXI. into Court, and the time for answering or making discovery shall in all cases commence from the date of such service (o). The party from whom discovery is sought shall not be required to answer or make discovery unless and until the said payment has been made.

Security for costs. (n) The deposit is security for the general costs of the suit (*Jubb v. Bibbs*, W. N. (1883), 208).

Receipt. (o) This rule is construed strictly (*Jones v. Jones*, W. N. (1884), 17).
See also note to r. 25; and see Supreme Court Funds Rules, rr. 30 and 44, *ante*, pp. 222, 226.

Security, how to be dealt with. 27. Unless the Court or a judge shall at or before the trial otherwise order, the amount standing to the credit of the "Security for Costs Account" in any cause or matter, shall after the cause or matter has been finally disposed of be paid out to the party by whom the same was paid in on his request, or to his solicitor on such party's written authority, in the event of the costs of the cause or matter being adjudged to him, but, in the event of the Court or judge ordering him to pay the costs of the cause or matter, the amount in Court shall be subject to a lien for the costs ordered to be paid to any other party (p).

(p) See *Jubb v. Bibbs*, cited in note to rule 26.

Where no taxation is required. 27A. If after a cause or matter has been finally disposed of, by consent or otherwise, no taxation of costs shall be required, the taxing officer, master, or chief clerk (as the case may be) may, either by consent of the parties, or on being satisfied that any party who has lodged any money to the "Security for Costs Account" in such cause or matter has become entitled to have the same paid out to him, give a certificate to that effect, which certificate shall be acted on and have effect in all respects as if the same had been an order made in the said cause or matter (pp).

(pp) This rule was added by R. S. C., October, 1884.

Discovery in action against or by sheriff. 28. In any action against or by a sheriff in respect of any matters connected with the execution of his office, the Court or a judge may, on the application of either party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery shall be made by the officer actually concerned.

ORDER XXXII.

ADMISSIONS.

Notice of admissions. 1. Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party (q).

(q) As to admissions on the pleadings, see Ord. XIX. r. 13, *ante*, p. 358.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless at the trial or hearing the Court or a judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense (*r*).

Ord. XXXII.

Notice to admit documents.

(*r*) This rule is taken from sect. 7 of Lord Cairns' Act (now repealed). Admissions between co-defendants to which the plaintiff is not a party cannot be entered as evidence as against the plaintiff, and therefore cannot be included in an order for payment of the costs of the action (*Dodds v. Tuke*, 25 Ch. D. 617).

3. A notice to admit documents shall be in the Form No. 11 in Appendix B., with such variations as circumstances may require (*s*).

Form of notice.

(*s*) For this form, see *post*.

4. Any party may, by notice in writing, at any time not later than nine days before the day for which notice of trial has been given, call on any other party to admit, for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court or a judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the Court or a judge certify that the refusal to admit was reasonable, or unless the Court or a judge shall at any time otherwise order or direct. Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: provided also, that the Court or a judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just (*t*).

Notice to admit facts.

(*t*) A notice to admit facts cannot be set aside (*Crawford v. Chorley*, W. N. (1883), 198).

5. A notice to admit facts shall be in the Form No. 12 in Appendix B., and admissions of facts shall be in the Form No. 13 in Appendix B., with such variations as circumstances may require (*u*).

Form of notice.

(*u*) For the forms here referred to, see *post*.

6. Any party may at any stage of a cause or matter, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court or a judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court or a judge

Judgment on admissions.

Ord. XXXII. may upon such application make such order, or give such judgment, as the Court or judge may think just (*v*).

Judgment on admissions.

(*v*) The corresponding provision of the repealed rules (Ord. XL. r. 11), was limited to "admissions of fact in the pleadings," under the present rule the admissions may be made "either on the pleadings or otherwise." The application for judgment is usually made by motion in Court, though under special circumstances where it is very desirable to avoid expense it may be made by summons (*Cook v. Heynes*, W. N. (1884), 75; *Gough v. Heatley*, W. N. (1884), 14; 32 W. R. 385; 49 L. T. 772; *Padgett v. Binns*, W. N. (1884), 10).

Cases.

Orders were made under the repealed rule in the following cases: for administration (*Hetherington v. Longrigg*, 10 Ch. D. 162); for accounts (*Turquand v. Wilson*, 1 Ch. D. 85; *Martin v. Gale*, 4 Ch. D. 428; *Rumsey v. Reade*, 1 Ch. D. 643); for execution of the trusts of a settlement (*Bennett v. Moore*, 1 Ch. D. 692); for dissolution of partnership (*Thorp v. Holdsworth*, 3 Ch. D. 637); for partition (*Burnell v. Burnell*, 11 Ch. D. 213; *Gilbert v. Smith*, 2 Ch. D. 686); for foreclosure (*Rutter v. Tregent*, 12 Ch. D. 758; *Barnard v. Weiland*, W. N. (1882), 103; 30 W. R. 947); and in an action against husband and wife where the joint statement of defence showed no defence as regarded the husband (*Jenkins v. Davies*, 1 Ch. D. 696).

Further consideration may be reserved.

The order may reserve further consideration, in which case it should contain a statement that the Court does not require any further trial of the action (*Bennett v. Moore*; *Gilbert v. Smith*; *Brassington v. Cussons*, 24 W. R. 881).

Order not made as of the course.

It is discretionary with the judge whether or not to make an order, and the Court of Appeal will not interfere with his discretion (*Mellor v. Sidbottom*, 5 Ch. D. 342). An order will only be made in a clear case (*Chilton v. Corporation of London*, 7 Ch. D. 735); and see *Mersey Steamship Co. v. Skuttleworth*, 11 Q. B. D. 531; 10 Q. B. D. 486.

The procedure under the rule is optional, and a party who does not avail himself of it does not lose his right to rely on admissions at the trial (*Tildesley v. Harper*, 7 Ch. D. 403; 10 Ch. D. 393).

An order may be made after issue joined and notice of trial given (*Brown v. Pearson*, W. N. (1882), 45; 30 W. R. 436).

Where defendants in a foreclosure action craved leave to refer to the deeds mentioned in the statement of claim, and only admitted them subject to their being produced and proving to be to the effect stated (which was done), this was held a sufficient admission (*Barnard v. Weiland*, W. N. (1882), 103; 30 W. R. 947).

A lessor who claims possession is entitled to judgment against the lessee on admissions when the only defence set up is that the lessee is not in possession, and that all his interest has passed to his trustee in bankruptcy (*Croft v. Collingwood*, W. N. (1884), 33).

Where one defendant does not appear.

Where one defendant does not appear and another appears and defends, the plaintiff may apply for judgment upon admissions against the latter, and proceed against the former under Ord. XXVII. (*Parsons v. Harris*, 6 Ch. D. 634; *Bridson v. Smith*, 24 W. R. 392; W. N. (1876), 103).

Application by defendant.

Where the plaintiff has replied specially the defendant may apply on admissions to dismiss the action (*Pascoe v. Richards*, W. N. (1881), 11; 29 W. R. 330); but it has been held that a defendant cannot move on admissions for judgment on his counterclaim only (*Rolfe v. Maclaren*, 3 Ch. D. 106).

Evidence of admissions.

7. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof be required.

Form of notices to produce.

8. Notice to produce documents shall be in the Form No. 14 in Appendix B., with such variations as circumstances may require. An affidavit of the solicitor, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served (*w*).

(*w*) For this form, see *post*.

Unnecessary documents.

9. If a notice to admit or produce comprises documents which are not

necessary, the costs occasioned thereby shall be borne by the party giving such notice. Ord. XXXII.

ORDER XXXIII.

ISSUES, INQUIRIES, AND ACCOUNTS.

1. Where in any cause or matter it appears to the Court or a judge that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the Court or a judge. Settlement of issues.

2. The Court or a judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner (x). Inquiries or accounts may be directed.

(x) This rule generalises the provisions of Cons. Ord. XX., which extended only to preliminary accounts and inquiries, and Cons. Ord. XXXV. r. 19, which authorised the Court to order any further accounts or inquiries which might become expedient in prosecuting a decree. Both these orders are now repealed. Under the former (Cons. Ord. XX.) it was held that the Court would not act where some of the defendants were out of the jurisdiction (*Derbishire v. Home*, 14 Jur. 969; see *Barrett v. Buck*, 2 Hare, 520); or where some of the defendants objected that persons not parties were interested (*Ibid.*; and see *Logan v. Baines*, 10 Sim. 604); for the inquiry must be binding on all parties (*Meinertzhagen v. Davis*, 10 Sim. 289; but see now Ord. XVI. r. 9, *ante*). Nor was the rule acted upon where the plaintiff's title (*Wilson v. Applegarth*, 10 Sim. 657; *Kinshela v. Lee*, 7 Beav. 300), or the substantial equity of the case (*Belcher v. Whitmore*, 7 Beav. 245) was denied by the defendant. See, too, *Wallis v. Sarel*, 8 Jur. 640; and *Reed v. Don Pedro Mining Company*, 11 W. R. 935, where the Lords Justices refused to direct a reference as to title, one of the defences set up by the answer being that the title was not made out in time.

In *Fozlowe v. Amcoats*, 4 Jur. 1053, a suit for specific performance, the Court on motion under this rule referred it to the master to inquire whether the plaintiff had shown a good title, and when first, without prejudice to the question of specific performance. And in general the inquiries were such as would have been directed at the hearing (*Meinertzhagen v. Davis*, 10 Sim. 289); and they were regulated by the nature of the suit (*Collinson v. Ballard*, 2 Hare, 119); and they were not such as would involve the decision of the questions at issue in the cause (*Curd v. Curd*, 2 Hare, 116; *Breeze v. English*, *id.* 118; *Lee v. Shaw*, 10 Sim. 369; *Frost v. Hamilton*, 4 Beav. 33).

Any further accounts or inquiries directed after judgment must, it is conceived, be such only as are auxiliary to the working out of the judgment, not such as are at variance with its principle (*Partington v. Reynolds*, 4 Drew. 253; 4 Jur. N. S. 200); and no addition can in general be made to a judgment, except as to something raised upon the pleadings (*Foster v. Foster*, 3 Ch. 330). See, also, *Nelson v. Booth*, 3 De G. & J. 119; *Curling v. Austin*, 2 Dr. & Sm. 129. Further accounts or inquiries.

An order charging an executor with wilful default may be made at any time during the progress of the action, provided he is so charged in the pleadings, either originally or by amendment properly introduced, *i. e.*, before judgment (*Mayer v. Murray*, 8 Ch. D. 424; *Job v. Job*, 6 Ch. D. 562; *Barber v. Mackrell*, 12 Ch. D. 534; and see *Re Brier*, 26 Ch. D. 238). Such an order may be made where the statement of claim alleges wilful default, though at the trial the Court gave no relief on that footing, but, nevertheless, did not dismiss the claim to such relief (*Re Symons, Luke v. Tonkin*, 21 Ch. D. 757). Charges of wilful default, however, ought as a rule to be disposed of at the hearing, and not left over to be raised afterwards (*Smith v. Armitage*, 24 Ch. D. 727). Wilful default.

An exception to the above rule occurs in the case of a mortgagee in possession, who is always ordered to account on the footing of wilful default in respect of property of which he has taken possession, though no charge of wilful default has been made on the pleadings or proved at the trial (*Mayer v. Murray*, 8 Ch. D. 424; *Lord Kensington v. Bouverie*, 7 De G. M. & G. 134). Exception.

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Where the plaintiff has obtained a common administration decree he cannot bring a subsequent action against the same defendant, charging wilful default, without the leave of the Court (*Laming v. Gee*, 10 Ch. D. 715; *Harvey v. Bradley*, 4 Eq. 13).

See further, as to wilful default, *Seton*, 476, and cases there cited.

Application,
how made.

An application for accounts or inquiries under this rule is ordinarily made by summons served on all parties; it need not, as a general rule, be supported by evidence (*Daniell*, 570, 1011).

Appeal.

An order, adding to a judgment, may be appealed from in the usual way (*Foster v. Foster*, 3 Ch. 330).

Special
directions as
to mode of
taking
account.

3. The Court or a judge may, either by the judgment or order directing an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the account, the books of account in which the accounts in question have been kept shall be taken as *primâ facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised (y).

(y) This rule is taken from the Chancery Procedure Act, 1852, 15 & 16 Vict. c. 86, s. 54, now repealed.

Application,
how made.

Applications under this rule, after the hearing, should be made by summons at chambers; see *Hardwick v. Wright*, 15 W. R. 953; *Banks v. Cartwright*, W. N. (1867), 27; 15 W. R. 417.

Special direc-
tions as to
mortgaged
property.

Special directions for including certain costs were held unnecessary in a redemption suit (*Blackford v. Davis*, 4 Ch. 304).

Special accounts of the sale of a mortgaged estate were directed against a mortgagee who had been in possession (*Wolff v. Vanderzee*, 17 W. R. 547); and see *Nelson v. Booth*, 3 De G. & J. 119; *Dean v. Thwaite*, 21 Beav. 621; *Hobson v. Jones*, 9 Eq. 456, 462.

Books *primâ*
facie evidence.

In taking the ordinary accounts in an administration suit, the chief clerk admits a settled account without an order (*Newen v. Watten*, 31 Beav. 315); but he may not take books as *primâ facie* evidence without such order (*Cookes v. Cookes*, 11 W. R. 817).

As to special directions where vouchers have been lost, &c., see *Lodge v. Pritchard*, 3 De G. M. & G. 906; *Ewart v. Williams*, 7 De G. M. & G. 74.

Where Court
will and will
not act under
the rule.

For cases where accounts were ordered to be taken as *primâ facie* evidence of the truth of the matters therein contained against the plaintiff, with liberty to surcharge and falsify, see *Sleight v. Lawson*, 3 K. & J. 292; *Stainton v. Carron Co.*, 24 Beav. 346. Where the books of a manufactory, of which the plaintiff was manager, were kept by the defendant, it was held by V.-C. Wood that the contents, though not binding on the plaintiff, might, as he had free access thereto, be taken as *primâ facie* evidence against him, with liberty to him to surcharge and falsify (*Ogden v. Battams*, 1 Jur. N. S. 791, *qu. vid.*). In partnership cases the books are evidence by the general law, and no special direction is necessary; see *Gothing v. Keighley*, 9 Ch. D. p. 551. Accounts which went back nearly thirty years were ordered to be taken as *primâ facie* evidence as against *cestuis que trust*, who had always had access to them (*Banks v. Cartwright*, W. N. (1867), 27; 15 W. R. 417); and see *Hardwick v. Wright*, 15 W. R. 953.

Entries by
solicitor.

In *Morgan v. Higgins*, 5 Jur. N. S. 240, where a solicitor was ordered to deliver a bill of costs, an agreement for payment of a fixed sum being set aside, V.-C. Stuart refused to direct that entries made by him several years before, and contemporaneous with the transactions, should be taken as *primâ facie* evidence under this section; and see *Coleman v. Mellersh*, 2 Mac. & G. 309; and as to limiting an account to a certain time, *Dean v. Thwaite*, 21 Beav. 621.

Account to
be verified by
affidavit.

4. Where any account is directed to be taken, the accounting party, unless the Court or a judge shall otherwise direct, shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and be left in the judge's chambers, or with the official or other referee, as the case may be (z).

(z) This rule is taken from Cons. Ord. XXXV. r. 33, now repealed.

The accounting party may be cross-examined on his affidavit, but he is entitled to notice of the points on which he is to be cross-examined (*Lord v. Lord*, 2 Eq. 605; *Wormsley v. Sturt*, 22 Beav. 398; *McArthur v. Dudgeon*, 15 Eq. 102; *Glover v. Ellison*, 20 W. R. 408; *Woods v. Oliver*, W. N. (1880), 51; and see next rule). The cross-examination may take place before the account is vouched (*Meacham v. Cooper*, 16 Eq. 102).

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Cross-examination on affidavit.

The charging party may in like manner and subject to the same rule as to notice be cross-examined upon the particulars of the amount with which he wishes to charge the accounting party (*Bates v. Eley*, 1 Ch. D. 473).

Cross-examination of charging party.

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

Notice to accounting party.

(a) This rule is identical with Cons. Ord. XXXV. r. 34, now repealed. See note to last rule.

6. Every judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for an inquiry what parts (if any) of such personal estate are outstanding or undisposed of, unless the Court or a judge shall otherwise direct (b).

Inquiry as to outstanding personal estate.

(b) This rule reproduces Cons. Ord. XXIII. r. 14, now repealed.

7. Where by any judgment or order, whether made in Court or in chambers, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number, and such judgment or order shall be in the Form No. 28 in Appendix L, with such variations as the circumstances of the case may require (c).

Directions for accounts and inquiries to be numbered.

(c) This rule reproduces Cons. Ord. XXIII. r. 15, now repealed. For the form here referred to, see *post*.

8. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose (d).

Just allowances to be made.

(d) This rule is taken from Cons. Ord. XXIII. r. 16 (now repealed), with only verbal alterations.

What are "just allowances" depends on the circumstances of the case, and is a matter not usually determined by the Court in the first instance. See *Brown v. De Tastet*, Jac. 294. Just allowances have been held to include executor's charges and expenses (*Fearn v. Young*, 10 Ves. 184); payments by them in discharge of legacies (*Nightingale v. Lawson*, 1 Cox, 23); deduction for dower out of rents receivable by widow-trustee (*Graham v. Graham*, 1 Ves. sen. 262); expenses of managing and carrying on a partnership business (*Brown v. De Tastet*; *Cook v. Collingridge*, Jac. 607); expenses of a sale (*Crump v. Baker*, 18 Ves. 285; *Wilkes v. Saumion*, 7 Ch. D. 188); but not to include setting off taxed costs by a solicitor accountable for rents received by him as steward or agent (*Jolliffe v. Heest*, 12 Sim. 398; *Waters v. Shaftesbury*, 2 Ch. 231; 14 W. R. 572).

"Just allowances."

As to what are just allowances as between mortgagor and mortgagee, see *Blackford v. Davis*, 4 Ch. 304; *Wilkes v. Saumion*, 7 Ch. D. 188; *Tipton Green Co. v. Tipton Moot Co.*, 7 Ch. D. 192; *Scholefield v. Lockwood*, 11 W. R. 555; *Bellamy v. Brickenden*, 2 J. & H. 137; *Shepard v. Jones*, 21 Ch. D. 469; *Rees v. Metropolitan Board of Works*, 14 Ch. D. 372; *Seton*, 1079.

Mortgagor and mortgagee.

9. If it shall appear to the Court or a judge, on the representation of any chief clerk or otherwise, that there is any undue delay in the prosecution of any accounts or inquiries, or in any other proceedings

Delay in proceeding under judgment.

O. XXXIII. under any judgment or order, the Court or judge may require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof, and as to the costs of the proceedings, as the circumstances of the case may require; and for the purposes aforesaid, any party or the official solicitor may be directed to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions which may be given; and any costs of the official solicitor shall be paid by such parties or out of such funds as the Court or judge may direct; and if any such costs be not otherwise paid, the same shall be paid out of such moneys (if any) as may be provided by Parliament (e).

(e) This rule is substantially the same as Cons. Ord. XXXV. r. 23, now repealed. See Ord. LXL. r. 24, *post*, as to the right of any person interested to obtain information as to the state of the action.

Conduct of cause.

See as to applying for the conduct of a cause on the plaintiff's delay, *Earle v. Sidebottom*, W. N. (1868), 121; *Butlin v. Arnold*, 1 H. & M. 715; *Simons v. Bagnell*, 19 W. R. 217.

Delay for three years:

Where a plaintiff obtained a decree giving him the right to prosecute inquiries in chambers, and produced no evidence to enable the master to prosecute the inquiry for three years, on a certificate by the master to that effect, an application by the plaintiff that he might be permitted to prosecute the inquiry was refused with costs (*James v. Gwynne*, 2 Jur. N. S. 436); and where a plaintiff neglected to prosecute the suit for a year, he had to pay the costs of the master's report (*Ridley v. Tiplady*, 20 Beav. 44); and see *Parkinson v. Lucas*, 28 Beav. 627, in which case a reference under the old practice to the master had not been prosecuted for ten years, and the Court transferred the reference to chambers, to be there disposed of at once, and intimated that if this was not done, it would be disposed of summarily.

for a year:

for ten years.

Transferring conduct of suit.

When the plaintiff in the first of several suits has been guilty of negligence in prosecuting certain orders, the Court will give the conduct of such orders to the plaintiff in one of the other suits, though it will not take from the plaintiff in the first suit the conduct of the causes generally (*Vanderwell v. Vanderwell*, 1 L. T. 266).

Powers of party to whom carriage of suit is transferred.

The party to whom the carriage of the suit is transferred may inspect briefs, documents, &c., in the possession of the original plaintiff necessary to the carrying on of the suit (*Bennett v. Baxter*, 10 Sim. 417; and see further, *Smith v. Guy*, 2 C. P. D. 298).

As to carrying on a creditor's suit after the death of the plaintiff, see *Dixon v. Wyatt*, 4 Madd. 392; and as to the costs of a plaintiff from whom the carriage of a suit is taken, see *Re Taylor*, 1 Eq. 495; *Armstrong v. Armstrong*, 12 Eq. 614; *Joseph v. Goode*, W. N. (1875), 4; 23 W. R. 215.

As to removing a next friend and substituting the official solicitor, see *Re Correllis*, W. N. (1884), 126.

ORDER XXXIV.

I. SPECIAL CASE.

Questions of law may be stated as a special case.

1. The parties to any cause or matter (f) may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference,

whether of fact or law, which might have been drawn therefrom if Ord. XXXIV. proved at a trial.

(f) For the definition of the words "cause or matter," see Judicature Act, 1873, "Cause or s. 100, ante, p. 276. The repealed rule was limited to questions of law arising in matter." an action.

Where the answers to a special case stated in an action in fact dispose of the action, the proper course is to take the answers in the shape of a judgment, making declarations to the effect of the answers, the action being, if necessary, set down *pro forma* for trial on motion for judgment (*Harrison v. Cornwall Minerals Ry. Co.*, 16 Ch. D. 66).

The judgment given on a special case may be appealed from in the ordinary way Appeal. (*Re Taylor, Tomlin v. Underhay*, 22 Ch. D. 495, where the case was stated by order of the Court); but it is doubtful whether a party to the case, who did not appear at the hearing below, is entitled to appeal (*Allum v. Dickinson*, 9 Q. B. D. 632).

2. If it appear to the Court or a judge, that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the Court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed (g). Court may order question of law to be raised by special case or otherwise.

(g) Under this rule a judge has power, after writ and appearance and before statement of claim, to order a point of law to be raised by special case or otherwise; and if such an order has been made the Court of Appeal will not readily interfere (*Metropolitan Board of Works v. New River Co.*, 1 Q. B. D. 727; 2 Q. B. D. 67). The rule has reference only to cases where the action has not yet come on for trial, but by analogy to the rule the Court will, at the trial of an action involving questions both of law and fact, decide the questions of law first if such decision may render it unnecessary to decide the questions of fact (*Pooley v. Driver*, 5 Ch. D. 458). The Court will always be ready in any proper case to raise a question of law under this rule (*Tattersall v. National Steamship Co.*, W. N. (1884), 32). Questions of law will not be tried speculatively, *i. e.* they must be necessary for the decision of the action (*Republic of Bolivia v. National Bolivian Navigation Co.*, 24 W. R. 361; W. N. (1876), 77). Cases.

Where the Court orders a special case to be stated in an action, and a decision is given upon it under a mistake of fact, the special case cannot be amended, but the Court is not bound by the decision unless it has been adopted by subsequent orders, but may disregard it, direct the action to go on to trial, and direct inquiries to ascertain the real facts (*Re Taylor, Tomlin v. Underhay*, 22 Ch. D. 495). Mistake.

3. Every special case shall be printed by the plaintiff, and signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff. Printed copies for the use of the judges shall be delivered by the plaintiff (h). Printing and signature.

(h) Signature of counsel is not necessary (*Hare v. Hare*, W. N. (1876), 44); and see Ord. XIX. r. 4. As to printing, see Ord. LXVI., *post*. Signature of counsel.

4. No special case in any cause or matter to which a married woman, (not being a party thereto in respect of her separate property or of any separate right of action by or against her,) infant, or person of unsound mind not so found by inquisition is a party, shall be set down for argument without leave of the Court or a judge (i), the application for which must be supported by sufficient evidence that the statements Printing.
Persons under disability.

Ord. XXXIV. contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true (*k*).

Application for leave to set down.

(i) The application under this rule for leave to set down is made by *ex parte* motion (Daniell, 1969; Seton, 1647; *Sidebotham v. Watson*, 1 W. R. 229); the rule is substantially the same as sect. 13 of Sir G. Turner's Act.

Marriage or birth of party interested after case set down.

For the practice under that Act when a woman, who was a party, married after the case was set down, see *Johnston v. Brown*, 8 Eq. 584; *Atty v. Etough*, 13 Eq. 462. As to married women, see now the Married Women's Property Act, 1882, *ante*, p. 192.

Where an infant interested in the case was born after the setting down, a decree was made, prefaced by an order to amend and set down against the infant (*Barnaby v. Tassell*, 11 Eq. 363). See *Savage v. Snell*, 11 Eq. 264; *Cadman v. Cadman*, W. N. (1871), 76.

(*k*) Counsel's statement that the statements in the case were true has been held sufficient (*Elwes v. Elwes*, 20 W. R. 480).

Entry for argument.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 25 in Appendix G., and also if any married woman, infant, or person of unsound mind not so found by inquisition be a party to the cause or matter, producing a copy of the order giving leave to enter the same for argument (*l*).

"Proper officer."

(*l*) As to the meaning of "proper officer," see Ord. LXXI. r. 1, *post*. For the form here referred to, see *infra*.

Agreement as to payment of money and costs.

6. The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that, on the judgment of the Court being given in the affirmative or negative of the questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal (*m*).

Costs of special cases.

(*m*) In the absence of any special agreement, the costs are in the discretion of the Court, and the ordinary rules as to costs apply; and see *Usticke v. Peters*, cited below. In practice, however, the costs are frequently arranged, see *Blinston v. Warburton*, 2 K. & J. 406; or a question is asked how and by whom the costs of the action and special case are to be borne (*Harrison v. Cornwall Minerals Ry. Co.*, 16 Ch. D. 66; 29 W. R. 258).

Former practice. General rule as to costs of special case.

Under the old Special Case Act, 13 & 14 Vict. c. 35, the costs were also in the discretion of the Court, and as a general rule, the Court, in disposing of them, was governed by the rules which regulated it in ordering payment of the costs of a suit instituted by bill. Thus, if the difficulty arose out of a testator's will, the costs, as in an administration suit, were ordered to be borne by the testator's general estate (*Cookson v. Bingham*, 17 Beav. 262; *Hindle v. Taylor*, 5 De G. M. & G. 577; *Armistage v. Coates*, 35 Beav. 1; *Earl Cowley v. Wellesley*, *ibid.* 635; but see *Lloyd v. Cocker*, 27 Beav. 649); or if there were no general estate, by the fund specifically bequeathed (*Cookson v. Bingham*, but see also, *Lloyd v. Cocker*). In *Barnaby v. Tassell*, 11 Eq. 363, the costs of all parties to a special case on the construction of a will were ordered to be paid out of the estate, the personal estate being first liable; and see *Miller v. Miller*, 13 Eq. 263, where solicitor and client costs of all parties were given out of the fund in dispute.

Where costs of special case ordered to be

In *Usticke v. Peters*, 4 K. & J. 457, however, V.-O. Wood held that the costs of a special case were not to be decided on the same principle as those of an administration suit, and that a plaintiff succeeding upon a special case arising out of the con-

struction of a will was entitled to his costs from the defendant, each party fairly claiming what he thought himself entitled to; and there being no question of conduct involved. From the report of the case, it does not appear that any question as to the costs was inserted in the special case. So in *Mortimore v. Mortimore*, 4 De G. & J. 472, a special case having been stated for the opinion of the Court at the instance of a tenant for life, with a view to obtaining an increase of her income by an investment, of which the Court in its judgment expressed disapprobation, the income of the tenant for life was ordered to bear the costs; and see *Sabin v. Heape*, 27 Beav. 561. Ord. XXXIV.
paid by unsuccessful party.

7. This order shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto. Application of order.

8. Any special case may hereafter be stated, for the same purposes and in the same manner as was provided by the Act 13 & 14 Vict. c. 35 (n), and the same shall be deemed to be a special case stated in a matter within the meaning of this order. Special case under Sir G. Turner's Act.

(n) The practice under this Act (commonly known as Sir G. Turner's Act) fell into disuse; and by R. S. C., April, 1880 (now repealed), it was provided that no special case should thereafter be stated under it. By the Statute Law Revision and Civil Procedure Act, 1881, 44 & 45 Vict. c. 59 (27th August, 1881), the Act was repealed, except sects. 19 to 25. These sections enabled an account of debts and liabilities to be taken on the application of an executor or administrator. They were reproduced in the form of draft rules, and submitted to the Rules Committee, who considered the practice under them to be obsolete and no longer wanted; and by the Statute Law Revision and Civil Procedure Act, 1883, 46 & 47 Vict. c. 49 (25th August, 1883), the whole Act was repealed. Sir George Turner's Act, 13 & 14 Vict. c. 35.

It does not seem to be quite clear what is the precise effect of this order upon the practice under the repealed Act; and it is therefore thought advisable that the following portions of the Act should be retained in the present edition.

Section 1 provides as follows:

"It shall be lawful for persons interested or claiming to be interested in any question cognizable in the said Court [of Chancery] as to the construction of any Act of Parliament, will, deed, or other instrument in writing, or any article, clause, matter, or thing therein contained, or as to the title or evidence of title to any real or personal estate contracted to be sold or otherwise dealt with, or as to the parties to or the form of any deed or instrument for carrying any such contract into effect, or as to any other matter falling within the original jurisdiction of the said Court as a Court of Equity, or made subject to the jurisdiction or authority of the said Court by any statute not being one of the statutes relating to bankrupts, and including among such persons all lunatics, married women, and infants, in the manner and under the restrictions hereinafter contained, to concur in stating such questions in the form of a special case for the opinion of the said Court, and it shall also be lawful for all executors, administrators, and trustees to concur in such case."

S. 1, power to persons interested in questions cognizable in Court of Chancery to state original special cases for the opinion of the Court.

By s. 2 of the Act "the committee of the estate of any lunatic interested or claiming to be interested in any such question as aforesaid may, after having been authorized in that behalf by the Lord Chancellor concur in such case in his own name and in the name and on the behalf of the lunatic;" and by s. 3, "a husband interested or claiming to be interested in the right of his wife in any such question as aforesaid may concur in such case in his own name and in the name of his wife where the wife has no claim to any interest distinct from her husband, and a married woman having or claiming any interest in any such question as aforesaid distinct from her husband may in her own right concur in such case, provided that her husband also concurs therein;" and by s. 4, "the guardian of any infant interested or claiming to be interested in any such question as aforesaid may concur in such case in the name and on the behalf of the infant, unless such guardian has an adverse interest."

S. 2, lunatics;
S. 3, married women;
S. 4, infant;

By s. 5, "the Court may by order to be made in the matter of any lunatic not so found, or in the matter of any infant [and in the matter of the Act, *Star v. Newbery*, 20 Beav. 14], upon the application of any person, on behalf of the lunatic or upon the application of the infant, by motion or petition, appoint any person shown by affidavit to be a fit person, and to have no interest adverse to the interest of the lunatic or infant, to be the special guardian of such lunatic or infant for the purpose of concurring in such case, in the name and on behalf of the lunatic or infant, and any such person so appointed may lawfully so concur: Provided always, that it shall be lawful for the said Court to require notice of

Ss. 5, 6, special guardian.

Ord. XXXIV. "such application to be given to such person, if any, as the Court shall think fit."

By s. 6, "in any case in which any such order as aforesaid shall have been made by the said Court in the matter of any infant without notice to the guardian of the infant, the Court, if it shall think fit, may discharge such order, upon the application of such guardian by motion or petition; and may appoint some other fit person to be the special guardian of such infant for the purpose of such special case, and may also give such directions as may be necessary for substituting in such special case either the name of the guardian so applying, or of the special guardian so appointed in lieu of the name of the special guardian so displaced; Provided always, that the discharge of any order appointing a special guardian shall not invalidate anything which shall in the meantime have been done by such special guardian, unless the Court shall, upon notice to all parties, specially so direct."

Parties to original special case.

It has been held that persons might represent classes for the purpose of special cases under the Act; see Ord. XVI. rr. 8, 9, 11, *ante*; *Bayley v. Miles*, W. N. (1870), 42; 30 L. T. 784; *Bardwell v. Sheffield Waterworks Co.*, 14 Eq. 517; *Re Brown*, 29 Beav. 401; *Swallow v. Binns*, 9 Hare, App. xlvii.

Where a special case under the Act sought to have the construction of a trust deed determined, it was held that the trustees ought to be parties (*Vorley v. Richardson*, 8 De G. M. & G. 126, overruling *Darby v. Darby*, 18 Beav. 412).

Ss. 7—9. Form of original special case; amendment.

Sect. 7 provided as to the form of an original special case (which might be amended, *Thistlethwaite v. Garnier*, 5 De G. & Sm. 73; *Domville v. Lamb*, 9 Hare, App. lv.; *Palmer v. Floyer*, 18 W. R. 887; *Bell v. Cade*, 2 J. & H. 122) as follows:—

"Every such special case is to be entitled as a cause between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant, and that in the title to such cases lunatics and infants shall be described as such, and their committees, guardians, or special guardians named; and that where in any such case a married woman is named as a plaintiff and her husband as a defendant thereto, a next friend of such married woman shall be named in the title to such case."

Sect. 8 is substantially the same as rule 1 in the text; and by s. 9, "every such special case to which an infant or lunatic is a party by his guardian or special guardian shall also state how such guardian or special guardian was constituted; and where any married woman having or claiming any interest distinct from her husband is a party to such case, it shall be stated therein that she concurs in such case in her own right."

S. 10. Signature by counsel, &c.

By s. 10, original special cases are to be signed by counsel (but this is no longer necessary, Ord. XIX. r. 4; *Hare v. Hare*, W. N. (1876), 44), and appearances are to be entered by defendants.

Ss. 11—13. Setting down for hearing.

Sects. 11—13 related to setting down for hearing, and the parties are to be bound by the statements in the case after the defendants have appeared, except married women, infants, and lunatics, who are not to be bound till leave is given by the Court to set the case down.

Upon hearing, Court to determine question and make declaration.

Proviso that a case may be sent to common law Court.

Proviso that Court may refuse to decide.

By s. 14, "it shall be lawful for the Court, upon the hearing of any such special case as aforesaid, to determine the questions raised therein, or any of them, and by decree to declare its opinion thereon, and, so far as the case shall admit of the same, upon the right involved therein, without proceeding to administer any relief consequent upon such declaration; and that every such declaration of the said Court contained in any such decree shall have the same force and effect as such declaration would have had, and shall be binding to the same extent as such declaration would have been, if contained in a decree made in a suit between the same parties instituted by bill: Provided always, that it shall be lawful for the said Court, if it shall see fit so to do, before proceeding to make such decree as aforesaid, to send any case or cases for the opinion of any of her Majesty's Courts of common law, reserving the consideration of all further directions and of the costs, and to make such decree as aforesaid upon such further directions: Provided also, that if upon the hearing of such special case as aforesaid the Court shall be of opinion that the questions raised thereby or any of them cannot properly be decided upon such case, the said Court may refuse to decide the same."

Under this section it was held that the Court had no jurisdiction upon a special case under the Act to make binding declarations of future rights (*Burt v. Sturt*, 1 W. R. 145; *Greenwood v. Sutherland*, 10 Hare, App. xii.; *Garlick v. Lawson*, *ibid.* xiv.; *Gosling v. Gosling*, Jo. 265. But see *Earl of Tyrone v. Marquis of Waterford*, 1 De G. F. & J. 613). In *Bell v. Cade*, 2 J. & H. 122, it was held that the Court might declare whether a person claiming a future right in remainder took such an interest in the property in question as to entitle him to file a bill to have it secured for his benefit, and compare *Webb v. Byng*, 8 De G. M. & G. 633; *Savage v. Tyers*, 7 Ch. 376; *Key v. Key*, 4 De G. M. & G. 73; *Forsbrook v. Forsbrook*, 3 Ch. 93; *Pryse v. Pryse*, 15 Eq. 86. See further, as to the discretion of the Court to refuse to decide a question on a special case, *Bright v. Tyndall*, 4 Ch. D. 189; *Bulkeley v. Hope*, 8 De G. M. & G. 36.

Ord. XXXIV.

Declarations as to future rights.

By s. 15, "every executor, administrator, trustee, or other persons making any payment or doing any act in conformity with the declaration contained in any decree made upon a special case is in all respects to be as fully and effectually protected and indemnified by such declaration as if such payment had been made or act done under or in pursuance of the express order of the Court made in a suit between the parties, save only as to any rights or claims of any person in respect of matters not determined by such declaration."

S. 15.

Trustees, &c. protected.

By s. 16, "where any person shall be desirous to have a special case reheard, or to appeal from the decision thereon, the Court may, upon application for that purpose, either at the time of the decree upon such special case being made or at any time afterwards, and upon such conditions, if any, as the Court shall think fit, order that the declaration contained in such decree shall not be acted upon for such time as the said Court shall think just."

S. 16.

Rehearings and appeals.

By s. 17, "the filing of a special case, and the entering of appearances thereto by the persons named as defendants therein, shall be taken to be a *lis pendens*, and may be registered under 2 & 3 Vict. c. 11, and, until so registered, shall not bind a purchaser or mortgagee without express notice thereof."

S. 17.

Original special case a *lis pendens*.

And by s. 18, "any documents referred to in a special case, and any copies thereof, or extracts therefrom, identified by the signature of the solicitors for all parties, or of the London agents of such solicitors, may be produced and read at the hearing of such case, without further proof; the Court may at any time after the filing of the special case, and the entering of appearances thereto by the persons named as defendants therein, order any document which may be admitted thereby to be in the possession of any party to such case to be deposited and produced in such manner and for such purposes as the Court shall think fit."

S. 18.

Production of documents.

See, as to the statement of facts, *Donville v. Lamb*, 9 Hare, App. iv.; *Bulkeley v. Hope*, 8 De G. M. & G. 36; and as to prefacing the order where they are omitted, *Lane v. Debenham*, 17 Jur. 1005.

S. 18.

Statement of facts.

Ss. 31, 32, gave power to make general rules and orders under the Act. None such were made as to special cases; but an order as to advertisements for creditors was made; see p. 499, *post*.

By s. 33, all decrees and orders under the Act were to be subject to appeal. Sect. 34 provided, *inter alia*, that the word "lunatics" shall include idiots and persons of unsound mind, and whether found such by inquisition or not:

S. 33.

Meaning of "lunatic,"

The word "guardian" shall mean father or testamentary guardian, or guardian appointed by the Court of Chancery (not being a special guardian appointed under the provisions of the Act).

"guardian."

II. ISSUES OF FACT WITHOUT PLEADINGS.

9. When the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the Court or a judge, proceed to the trial of any such questions of fact without formal pleadings; and such questions may be stated for trial in an issue in the form No. 15 in Appendix B., with such variations as circumstances may require, and such issue may be entered for trial and tried in the same manner as any issue joined in an ordinary action, and the proceedings shall be under the control and jurisdiction of the Court or judge, in the same way as the proceedings in an action (o).

Trial of questions of fact without pleadings.

(o) This and the three following rules are taken from sects. 42—45 of the Common Law Procedure Act, 1852. For the form here referred to, see *infra*.

Ord. XXXIV. 10. The Court or a judge may by consent of the parties order that, upon the finding in the affirmative or negative of such issue as in the last preceding rule mentioned, a sum of money, fixed by the parties, or to be ascertained upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them either with or without the costs of the cause or matter.

Entry of judgment and execution. 11. Upon the finding on any such issue, as in Rule 9 mentioned, judgment may be entered for the sum so agreed or ascertained as aforesaid with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the finding or for a new trial.

Record of proceedings. 12. The proceedings upon such issue, as in Rule 9 mentioned, may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action.

ORDER XXXV.

PROCEEDINGS IN DISTRICT REGISTRIES.

Proceedings in district registry. 1. Where a cause or matter is proceeding in a district registry, all proceedings, except where by these rules it is otherwise provided, or the Court or a judge shall otherwise order, shall be taken in the district registry, down to and including the entry of final judgment, and every final judgment and every order for an account, by reason of the default of the defendant, or by consent, shall be entered in the district registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in the central office (*p*).

District registries. (*p*) See as to the establishment of District Registries, Judicature Act, 1873, s. 60, amended by Judicature Act, 1875, s. 13, and ss. 61—66, and notes thereto, *ante*, p. 269.

As to the issue of writs out of district registries, see Ord. V. rr. 1, 3, 4, *ante*, p. 311; and as to the plaintiff's address, see Ord. IV. r. 3, *ante*, p. 310. As to appearance, see Ord. XII., *ante*, p. 322; and as to proceeding in default of appearance, see Ord. XIII. r. 11.

It would seem that chancery actions commenced in district registries ought to be tried in London before the judge to whom they have been assigned (*Iriam v. Iriam*, 2 Ch. D. 608; *Re Smith, Hutchinson v. Ward*, 6 Ch. D. 692; and see *Re Bowen*, 20 Ch. D. 538). The action is set down in the district registry for hearing in London, and the papers are then sent up to London for the hearing without further order (*Birmingham Waste Co. v. Lane*, 24 W. R. 292; *Lumb v. Whiteley*, W. N. (1877), 40).

A district registrar has the same powers as a judge at chambers (r. 6); but he has no power to appoint a receiver, or direct a banking account to be opened; nor can he take accounts directed by the judge unless the judgment specially directs him to do so (*Re Smith, Hutchinson v. Ward*). But he may, it seems, make an order for an account under Ord. XV. r. 1, and (if the order so directs) he can then proceed to take the account himself (*Re Bowen*).

In making a report of the result of accounts and inquiries in an administration suit the registrar should adopt the form of a chief clerk's certificate (*Re Bowen*).

The Court may order accounts and inquiries to be taken and made in a district registry; see *Macdonald v. Foster*, 6 Ch. D. 193 (administration); *Sykes v. Schofield*, 14 Ch. D. 629 (partition); *Re Judkins*, W. N. (1880), 198 (where the order was

made on a petition). An application for a sale, however, should be made to the judge of the Chancery Division (*Sykes v. Schofield*); and he may then direct the sale to take place either in his own chambers or in the country, and whichever way he decides the Court of Appeal will not interfere (*Sykes v. Schofield*; *Macdonald v. Foster*). Ord. XXXV.

A receiver appointed in an action commenced in a district registry must give security in London, but may pass his accounts in the country (*Re Capper*, W. N. (1878), 66).

2. Where the writ of summons issues out of a district registry, and the plaintiff is entitled to enter interlocutory judgment under any of the rules of Order XIII., or where the cause or matter is proceeding in the district registry and the plaintiff is entitled to enter interlocutory judgment under any of the rules of Order XXVII., in either case such interlocutory judgment, and when damages shall have been assessed, final judgment, shall be entered in the district registry, unless the Court or a judge shall otherwise order. Entry of judgment in district registry.

3. Where a cause or matter is proceeding in a district registry, and the judgment or any other order therein is directed to be entered in the central office, the same shall be so entered, and an office copy of every such judgment or order shall be transmitted to the district registry to be filed with the proceedings in the action. Entry of judgment in central office.

4. Where a cause or matter is proceeding in a district registry all writs of execution for enforcing any judgment or order therein, and all summonses under the Debtors Act, 1869, shall issue from the district registry, unless the Court or a judge shall otherwise direct. Where final judgment is entered in the district registry, costs shall be taxed in such registry unless the Court or a judge shall otherwise order (*g*). Writs of execution and summonses under Debtors Act, 1869.
Costs.

(*g*) Except under very special circumstances the Court will not order costs of an action commenced in a district registry to be taxed elsewhere than in London (*Day v. Whittaker*, 6 Ch. D. 734; *Wilson v. Alltree*, 27 Ch. D. 242; and see *Irlam v. Irlam*, 24 W. R. 949). Where the costs are taxed in the country the same rules as to fees, &c., apply as in London (Ord. LXV. r. 27 (43)).

5. Where a cause or matter is proceeding in a district registry, all proceedings relating to the following matters, namely,— Proceedings to be taken in district registry.

- (a.) Leave to enter judgments under Order XVI., rules 50 and 51;
- (b.) Leave to issue or renew writs of execution;
- (c.) Examination of judgment debtors for garnishee purposes, or under Order XLII., rule 32;
- (d.) Garnishee orders;
- (e.) Charging orders *nisi*;

shall, unless the Court or a judge shall otherwise order, be taken in the district registry.

6. Where a cause or matter is proceeding in a district registry the district registrar may exercise all such authority and jurisdiction in respect thereof as may be exercised by a judge at chambers, except such as by these rules a master is precluded from exercising (*r*). Jurisdiction of district registrar.

(*r*) If a motion be made in the action in London, the effect is to remove the case from the district registry, and the registrar has no longer power to make orders in the action (*Dyson v. Pickles*, W. N. (1879), 12; 27 W. R. 376). See note (*p*), *ante*, p. 406.

Ord. XXXV. 7. Every application to a district registrar shall be made in the same manner in which applications at chambers are directed to be made by these rules.

Applications, how made. 8. If any matter appears to the district registrar proper for the decision of a judge, the registrar may refer the same to a judge, and the judge may either dispose of the matter or refer the same back to the registrar with such directions as he may think fit (s).

(s) See W. N. (1875), 250.

Appeal to judge.

9. Any person affected by any order, finding, or decision of a district registrar may appeal to a judge. Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the district registrar had jurisdiction only by consent. Such appeal shall be by way of indorsement on the summons by the registrar at the request of any party (t) or by notice in writing (u) to attend before the judge without a fresh summons within six days after the party complaining has notice of the order, finding, or decision complained of, or such further time as may be allowed by a judge or the registrar (v).

(t) The appealing party can insist on having the summons endorsed by the registrar (*Danger v. Nelson*, W. N. (1884), 96).

Notice of appeal.

(u) A notice of appeal signed by the country solicitor alone is a good notice (*Mayor of Rotherham v. Peace*, W. N. (1883), 216).

(v) Section 49 of the Judicature Act, 1873, does not apply to a master or a district registrar, and therefore the judge can vary as to costs the order of a district registrar dismissing an action without costs (*Foster v. Edwards*, 48 L. J. C. P. 767).

Appeal no stay of proceedings.

10. An appeal from a district registrar shall be no stay of proceedings unless so ordered by a judge or the registrar.

Proceedings to be subject to control of judge.

11. Every district registrar and other officer of a district registry shall be subject to the orders and directions of the Court or a judge, as fully as any other officer of the Court, and every proceeding in a district registry shall be subject to the control of the Court or a judge, as fully as a like proceeding in London.

Of what judge.

12. Every reference to a judge by or appeal to a judge from a district registrar in any cause or matter in the Chancery Division shall be to the judge to whom the cause or matter is assigned.

Removal of action from district registry.

13. In any action which would, under the foregoing rules, proceed in the district registry, the action may, subject to rule 14, be removed from the district registry as of right in the cases and within the times following:—

(1.) Where the writ is specially indorsed under Order III. rule 6, and the plaintiff does not within four days after the appearance of such defendant give notice of an application for an order against him under Order XIV.; then such defendant may remove the action as of right at any time after the expiration of such four days, and before delivering a defence, and before the expiration of the time for doing so:

(2.) Where the writ is specially indorsed, and the plaintiff has

made such application as in the last paragraph mentioned, Ord. XXXV. and the defendant has obtained leave to defend in manner provided by Order XIV. ; then such defendant may remove the action as of right at any time after the order giving him leave to defend, and before delivering a defence, and before the expiration of the time for doing so :

- (3.) Where the writ is not specially indorsed under Order III. rule 6, any defendant may remove the action as of right at any time after appearance, and before delivering a defence, and before the expiration of the time for doing so (w).

(w) Ord. V. r. 1 gives the plaintiff the right to sue in a district registry ; Ord. XXXV. r. 13 gives the defendant the right in certain events to have the cause removed to London ; but by rule 14 this right of the defendant is subject to the discretion of the judge, who may, for good cause shown, order the action to proceed in the country ; as to what will or will not be considered such " good cause," see *Smith v. Bell*, W. N. (1883), 196 ; *Walker v. Cratbree*, *ib.* 197.

(4.) [Applies only to Admiralty actions *in rem*.]

14. Any party or person desirous to remove an action as of right under the last preceding rule may do so by serving upon the other parties to the action, and delivering to the district registrar, a notice, signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action shall be removed accordingly : Provided, that if the Court or a judge shall be satisfied that the defendant giving such notice is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, or that there is other good cause for proceeding in the district registry, such Court or judge may order that the action may proceed in the district registry notwithstanding such notice (x).

Mode of removal.

(x) See note to r. 13.

15. Except in Admiralty actions *in rem*, the notice for removal shall be accompanied by a certificate signed by the defendant or his solicitor that his defence has not been delivered, and that the time for delivering the same has not expired.

Certificate on removal.

16. In any case not provided for by rules 13 and 14, any party to a cause or matter proceeding in a district registry may apply to the Court or a judge, or to the district registrar, for an order to remove the cause or matter from the district registry to London, and the Court, judge, or registrar, may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall be just (xx).

Removal to London.

(xx) See *Re Eberaley's Co.*, W. N. (1884), 252.

17. Any party to a cause or matter proceeding in London may apply to the Court or a judge for an order to remove the cause or matter from London to any district registry, and the Court or judge may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall be just.

Removal to district registry.

18. Where, under the preceding rules of this order, a cause or matter is removed from a district registry, the defendant shall, upon

Address for service.

Ord. XXXV. such removal, give notice to the plaintiff of an address for service in London, in all respects as if the appearance had been originally entered in London.

Filing in district registry. 19. Where a cause or matter is proceeding in a district registry all pleadings and other documents required to be filed shall be filed in the district registry.

Transmission of documents. 20. Whenever a defendant appears in London to a writ issued out of a district registry or any proceedings are removed from the district registry to London, by notice under rule 14 of this order, or by order of the Court or a judge, the district registrar shall transmit to the Central Office all original documents (if any) filed in the district registry, and a copy of all entries of the proceedings in the books of the district registry.

Filing of chief clerk's certificate, &c. 21. When a cause or matter in the Chancery Division is proceeding in a district registry, all certificates of the chief clerk and taxing officers and other documents (required to be filed) used in London before the judge in Chambers, or before any taxing officer or referee, and not already filed in the district registry, shall be filed in the same office as they would have been filed in if the proceedings had originally commenced in London; and if the Court or judge shall so direct, office copies thereof shall be transmitted to the district registry.

Removal of documents from district registry. 22. No affidavit or record of the Court shall be taken out of a district registry (except upon removal of the proceedings to London) without the order of a judge or of the district registrar, and no *subpoena* for the production of any such document shall be issued.

District registrars to account. 23. Every district registrar shall account for and pay over to the Treasury all moneys paid into Court at the registry of which he is registrar, in such manner and at such times as may be from time to time directed by the Treasury (*y*).

(*y*) Money ordered to be paid into Court by a receiver should be paid into Court in the ordinary way, and not be paid into a bank "to the credit of the district registrar" (*Finlay v. Davis*, 12 Ch. D. 735).

Forms. 24. The forms contained in the Appendices shall, as far as they are applicable, be used in or for the purposes of district registries, with such variations as circumstances may require.

ORDER XXXVI.

TRIAL.

I. Place.

Place of trial. 1. There shall be no local venue for the trial of any action, except where otherwise provided by statute. Every action in every division shall, unless the Court or a judge otherwise orders, be tried in the county or place named on the statement of claim, or (where no statement of claim has been delivered or required) by a notice in writing to be served on the defendant, or his solicitor, within six days after appearance. Where no place of trial is named, the place of trial shall,

unless the Court or a judge shall otherwise order, be the county of Ord. XXXVI. Middlesex (z).

(z) Where notice of trial had been given for the assizes, the Court refused to order the trial to be removed to London merely because the action was one of those assigned to the Chancery Division (*Philips v. Beale*, 26 Ch. D. 621); and see r. 1 a. See however, *Green v. Bennett*, 32 W. R. 848.

1a. The provisions of Ord. XXXVI. r. 1, shall apply to every action, Chancery notwithstanding that it may have been assigned to any judge (zz). actions.

(zz) This rule was added by R. S. C., October, 1884.

II. Mode of Trial.

[Rule 2 applies only to actions of slander, libel, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage.]

3. Causes or matters assigned by the principal Act to the Chancery Division (a) shall be tried by a judge without a jury, unless the Court or a judge shall otherwise order (b). Actions assigned to the Chancery Division to be tried without a jury.

(a) For these causes and matters, see Jud. Act, 1873, s. 34, ante, p. 263.

(b) Chancery actions where the questions raised are mixed questions of law and fact and the verdict of a jury would not decide the case, but the judge himself would afterwards have to decide the whole issue between the parties, will not be ordered to be tried by a jury; *secus*, where there is some simple issue of fact the verdict on which would decide the issues in the action (*Cardinall v. Cardinall*, 25 Ch. D. 772; *Ruston v. Tobin*, 10 Ch. D. p. 563). The following actions have been held unsuitable for trial with a jury: actions to establish a partnership where a long correspondence and a number of books of account had to be put in evidence (*Cardinall v. Cardinall*); specific performance (*Swindell v. Birmingham Syndicate*, 3 Ch. D. 127; *Sykes v. Firth*, W. N. (1877), 38; 46 L. J. Ch. 627; *Pilley v. Baylis*, 5 Ch. D. 241; *Usell v. Whelpton*, 29 W. R. 799; *Wood v. Kay*, W. N. (1879), 206); actions to set aside agreements on the ground of fraud (*Ruston v. Tobin*, 10 Ch. D. 558; *Back v. Hay*, 5 Ch. D. 235; *Moss v. Bradburn*, W. N. (1884), 14); to restrain the use of a trade name where special questions were involved (*Singer Co. v. Loog*, 11 Ch. D. 556; and see *Spratt's Patent v. Ward*, 11 Ch. D. 240); to obtain the delivery up of promissory notes obtained by misrepresentation, where there was a voluminous correspondence and the case was one of complexity (*Garling v. Royds*, W. N. (1876), 291; 25 W. R. 123): where the question in the action was one of conveyancing depending on deeds, plans, and photographs (*Wedderburn v. Pickering*, 13 Ch. D. 769; *Att.-Gen. v. Arkecoll*, W. N. (1882), 182); where the question in the action was whether lands had become superfluous within the meaning of the Lands Clauses Act (*Smith v. North Staffordshire Ry. Co.*, 44 L. T. 85). So, where the parties had agreed to take the evidence by affidavit and had acted on such agreement for two years and at great expense, the Court refused to order a trial with a jury (*Brooke v. Wigg*, 8 Ch. D. 510; and see *Dent v. Sovereign Life Assurance Co.*, 27 W. R. 379).

As to an action to restrain a trade libel, see *Thomas v. Williams*, 14 Ch. D. 864.

One of several defendants will not generally be allowed to have the action tried with a jury if his co-defendants oppose (*Back v. Hay*; *Mirehouse v. Barnett*, W. N. (1878), 110; 47 L. J. Ch. 689).

On the other hand, in actions for administration by a creditor on a bill of exchange (*Clarke v. Cookson*, 2 Ch. D. 746; and see *Re Martin*, *Hunt v. Chambers*, 20 Ch. D. 365); for an injunction and damages in respect of a nuisance (*West v. White*, 4 Ch. D. 631; *Powell v. Williams*, 12 Ch. D. 234; *Clarke v. Skipper*, 21 Ch. D. 134); to restrain an interference with ancient lights (*Bordier v. Burrell*, 5 Ch. D. 512); to restrain an interference with a right to pen back water (*Petar v. Lailey*, W. N. (1881), 22); and for dissolution of partnership (*Clements v. Norris*, 26 W. R. 94), it has been held that the issues of fact might well be tried by a jury.

Where the case is a proper one to be tried by a jury, the better course is at once to transfer the whole action to the Queen's Bench Division (*Re Martin*, *Hunt v. Chambers*).

The discretion of the judge as to the mode of trial will rarely be interfered with by the Court of Appeal (*Swindell v. Birmingham Syndicate*; *Brooke v. Wigg*; *Ruston v. Tobin*; *Re Martin*, *Hunt v. Chambers*; *Burgoine v. Moordaff*, 8 P. D. 205).

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Trial of issues without a jury.

4. The Court or a judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the principal Act could, without any consent of parties, have been tried without a jury (*c*).

(*c*) This rule is substantially identical with the repealed Ord. XXXVI. r. 26.

Actions requiring prolonged examination of documents, &c.

5. The Court or a judge may direct the trial without a jury of any cause, matter or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in their or his opinion conveniently be made with a jury (*d*).

(*d*) Comp. Judicature Act, 1873, s. 57, *ante*, p. 268.

General power to order trial with a jury.

6. In any other cause or matter, upon the application of any party thereto for a trial with a jury of the cause or matter or any issue of fact, an order shall be made for a trial with a jury (*e*).

(*e*) Under this rule it would seem that in any cause or matter, other than those mentioned in the preceding rules of this Order, any party if he likes can *insist* on a trial with a jury, and the Court has no discretion in the matter.

Actions are not tried with a jury in the Chancery Division. Chancery actions, if they are to be tried by a jury, and are not transferred, must be set down in the general list to be tried by one of the judges of the Queen's Bench Division (*Warner v. Murdoch*, 4 Ch. D. 750; *Clarke v. Cookson*, 2 Ch. D. 746); but as a rule such actions should be transferred (*Re Martin, Hunt v. Chambers*, 20 Ch. D. 365).

Normal mode of trial to be by a judge alone.

7.—(a.) In every cause or matter, unless under the provisions of rule 6 of this order a trial with a jury is ordered, or under rule 2 of this order either party has signified a desire to have a trial with a jury, the mode of trial shall be by a judge without a jury; provided that in any such case the Court or a judge may at any time order any cause, matter, or issue to be tried by a judge with a jury, or by a judge sitting with assessors, or by an official referee or special referee with or without assessors:

Special jury, at instance of plaintiff;

(b.) The plaintiff in any cause or matter in which he is entitled to a jury may have the issues tried by a special jury, upon giving notice in writing to that effect to the defendant at the time when he gives notice of trial:

at instance of defendant.

(c.) The defendant, in any cause or matter in which he is entitled to a jury, may have the issues tried by a special jury, on giving notice in writing to that effect at any time after the close of the pleadings or settlement of the issues and before notice of trial, or if notice of trial has been given, then not less than six clear days before the day for which notice of trial has been given:

Costs.

(d.) Provided that a judge may at any time make an order for a special jury upon such terms, if any, as to costs and otherwise as may be just (*f*).

Hearings in private.

(*f*) As to hearings in private, see *Andrew v. Raeburn*, 9 Ch. 522; *Nagle-Gillman v. Christopher*, 4 Ch. D. 173; *Ogle v. Brandling*, 2 R. & My. 688.

Different questions may be tried by

8. Subject to the provisions of the preceding rules of this order, the Court or a judge may, in any cause or matter, at any time or from

time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the places for such trials, and in all cases may order that one or more issues of fact be tried before any other or others (*g*).

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different modes.

(*g*) An order to try one issue in an action before another will only be made on very special grounds (*Piercy v. Young*, 15 Ch. D. 475). See also *Emma Mining Co. v. Grant*, 11 Ch. D. 918; *Tasmanian Co. v. Clark*, 27 W. R. 677; *Thompson v. Wood-fine*, 26 W. R. 678.

9. Every trial of any question or issue of fact with a jury shall be by a single judge, unless such trial be specially ordered to be by two or more judges.

Jury trial to be with a single judge.

10. Nothing in this order shall affect any proceedings under any of the provisions of the Common Law Procedure Acts relating to arbitration (*h*).

Arbitration under C. L. P. Acts.

(*h*) For these provisions, see the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), ss. 3—17; sects 3 and 6 are repealed as to County Courts by 21 & 22 Vict. c. 74, s. 5. See also Wilson's Judicature Acts, 4th ed. p. 340, *seq.* Where a reference to arbitration has been made under an agreement the submission ought to be made a rule of Court according to the common law practice before the Judicature Acts (*Jones v. Jones*, 14 Ch. D. 593); and this may be done by an *ex parte* application at chambers (*Re Davey*, 49 L. J. Ch. 568). Where an action has been referred by the Court, it is not necessary to make the award a rule of Court before an order can be made founded on the award (*Jones v. Wedgewood*, 19 Ch. D. 56). A general agreement to refer to arbitration cannot be revoked by one of the parties (*Piercy v. Young*, 14 Ch. D. 200).

III. Notice and Entry of Trial.

11. Notice of trial may be given in any cause or matter by the plaintiff or other party in the position of plaintiff. Such notice may be given with the reply (if any) whether it closes the pleadings or not, or at any time after the issues of fact are ready for trial (*i*).

Notice of trial.

(*i*) See *Philips v. Beale*, 26 Ch. D. 621, cited in note (*z*) to r. 1 of this order.

12. If the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as the Court or a judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, or may apply to the Court or judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or a judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or judge may seem just (*j*).

Default by plaintiff in giving notice of trial.

(*j*) An application to dismiss for want of prosecution should generally be made by summons rather than by motion in Court (*Freason v. Loe*, 26 W. R. 138), but may be made either way (*Evelyn v. Evelyn*, 13 Ch. D. 138; *Crick v. Hewlett*, 27 Ch. D. 354; 32 W. R. 922). If the usual notice of motion is given and the plaintiff does not at once submit to speed the cause and tender the costs of the motion, the defendant, if the usual order is made, will have his costs of making the motion in Court (*Evelyn v. Evelyn*). If the plaintiff, after giving notice of trial omits to enter the trial within six days his notice becomes nugatory, and the action may be dismissed under this rule (*Crick v. Hewlett*). As to the close of the pleadings when there are several defendants, see *Ambroise v. Evelyn*, 11 Ch. D. 759.

Dismissal for want of prosecution.

As to vacating the registration as a *lis pendens* of an action which has been dismissed for want of prosecution, see *Pooley v. Bosanquet*, 7 Ch. D. 541.

Lis pendens.

Ord. XXXVI. 13. Notice of trial shall state whether it is for the trial of the cause or matter or of issues therein; and *in actions in the Queen's Bench Division* the place and day for which it is to be entered for trial. It shall be in the Form No. 16 in Appendix B., with such variations as circumstances may require (*k*).

(*k*) Notice of trial "by a judge in Middlesex" is sufficient in the case of a Chancery action (*Harris v. Gamble*, 7 Ch. D. 877). See this form, *infra*. By R. S. C., October, 1884, r. 5, rule 13 is to be read as if the words in italics were omitted therefrom.

Ten days' notice to be given.

14. Ten days' notice of trial shall be given, unless the party to whom it is given has consented, or is under terms or has been ordered to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court or a judge. Short notice of trial shall be four days' notice, unless otherwise ordered.

Notice to be given before entry of trial.

15. Notice of trial shall be given before entering the trial; and the trial may be entered notwithstanding that the pleadings are not closed provided that notice of trial has been given.

Time of entry.

16. In London and Middlesex, unless within six days after notice of trial is given the trial shall be entered by one party or the other, the notice of trial shall be no longer in force (*l*).

(*l*) See *Crick v. Hewlett*, 27 Ch. D. 354, cited in note (*j*) to rule 12, *ante*, p. 413. See r. 20.

Notice for what day in London or Middlesex.

17. Notice of trial for London or Middlesex shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the trial may come on in its order upon the list.

At the assizes.

18. Notice of trial elsewhere than in London or Middlesex shall be deemed to be for the first day of the then next assizes at the place for which notice of trial is given.

Counter-mandating notice.

19. No notice of trial shall be countermanded except by consent, or by leave of the Court or a judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just.

Omission to enter trial.

20. If the party giving notice of trial for London or Middlesex omits to enter the trial on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last preceding rule, within four days enter the trial.

Setting down for further consideration in the Chancery Division.

21. When any cause or matter in the Chancery Division shall have been adjourned for further consideration, the same may, after the expiration of eight days, and within fourteen days from the filing of the chief clerk's certificate, be set down by the registrar in the cause book for further consideration, on the written request of the solicitor for the plaintiff or party having the conduct of the proceedings, and after the expiration of such fourteen days the cause or matter may be set down by the registrar on the written request of the solicitor for the plaintiff or for any other party; and in either case, upon production of the judgment or order adjourning further con-

sideration, or an office copy thereof, and an office copy of the chief clerk's certificate or a memorandum of the date when the certificate was filed, endorsed on the request by the proper officer. The request may be in the Form No. 26 in Appendix L. The cause or matter when so set down shall not be put into the paper for further consideration until after the expiration of ten days from the day on which the same was so set down, and shall be marked in the cause book accordingly. Notice thereof shall be given to the other parties in the action at least six days before the day for which the same may be so marked for further consideration. Such notice may be in the Form No. 27 in Appendix L. (*m*).

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(*m*) This rule is taken from Cons. Ord. XXI. r. 10. For these forms, see *infra*. Evidence referred to in the chief clerk's certificate cannot be read at the hearing on further consideration, unless notice to read it has been given (*Re Chennell*, 8 Ch. D. p. 504); and see *Re Brier*, 26 Ch. D. p. 242.

IV. Entry in District Registry.

22A. If, when the lists in Order XXXVI. Part IV., mentioned have been closed for the Autumn and Spring Assizes respectively at Liverpool or Manchester, it shall appear that ten or more witness causes by the principal Act assigned to the Chancery Division are included in the list of trials for such sittings, special sittings for the trial of such causes, commencing on the first day of December or the tenth day of June then next respectively or as near those times as conveniently may be, shall be held before one of the judges of the High Court (according to such arrangements as may be from time to time determined among themselves): Provided that in any case where at the time aforesaid it shall appear that the number of such causes is less than ten, no special sittings shall take place for that occasion at that place, but such business shall be, subject to any application which may be made for changing the place of trial, transacted at the then current assizes: Provided also, that no cause shall be included in the list for any such special sittings in which all the parties are resident within the County Palatine of Lancaster: And provided also, that if it shall appear to the judge holding any such special sittings that any cause appearing in the list for trial thereat ought not to have been included therein, he may order the same to be struck out, and give such directions as he may think fit as to the trial thereof in the High Court (*mm*).

Special sittings for the trial of Chancery actions.

(*mm*) This and the next rule were added by R. S. C., October, 1884.

Order XXXVI. rule 22, is hereby annulled, and the following rule shall stand in lieu thereof:

22B. After notice of trial has been given of any cause, matter, or issue to be tried elsewhere than in London or Middlesex, either party may, at any time not less than seven days before the commission day appointed for such place, enter the trial at the next assizes in the district registry (if any) of the city or town where the trial is to be

Entering trial.

Ord. XXXVI. had, or with the associate. No later entry shall be allowed, except by leave of a judge going that circuit, or by order of a judge at chambers subject to the consent of a judge going that circuit (*nn*).

(*nn*) See note to rule 22A.

Place of entry.

23. So long as there is no district registry in the places enumerated in the first of the following columns, entries for trial may be made in the district registries in the second of the following columns, *i. e.*, trials at—

Bodmin	- { may be entered in the district registry at	- - } Truro.
Carnarvon	„	Bangor.
Chelmsford	„	Colchester.
Lancaster	„	Preston.
Lewes	„	Brighton.
Monmouth	„	{ Newport, Monmouthshire.
Stafford	„	Hanley.
Wells	„	Bridgwater.
Warwick	„	Birmingham.
Winchester	„	Southampton.

District registries are now established at Aberystwith, Carnarvon and Winchester (W. N. (1884), Part II. p. 425).

Lists of trials. 24. The district registrars shall provide two numbered lists for trials with juries and trials without juries respectively. The entry shall be made in the proper list in such vacant number as the party entering shall select, and the lists shall be open for the inspection of all parties interested therein at all times during office hours. At the time of entry two copies of the documents mentioned in rule 30 of this Order shall be delivered as directed by the said rule, one of which shall be duly stamped with the amount of the fee payable on entry of the action or issue for trial.

Postponement or withdrawal of trial. 25. When a trial which has been entered has been postponed or withdrawn under Order XXVI. rule 2, or settled, the party who made the entry shall immediately thereupon give notice thereof to the district registrar, and such entry shall be expunged from the list.

Close of lists. 26. The district registrar shall close the lists and transmit a corrected copy of the said lists, together with the two copies of the documents above referred to, to the associate at the assize town in such time that the same may be received at his office before the opening of the commission.

Entry of trial by associate. 27. Trials shall be entered by the associate in such vacant numbers in the lists so transmitted as the party entering may select. The lists shall then be re-numbered consecutively, and shall be the cause lists for the assizes.

Entry by both parties. 28. If a trial be entered by both parties, it shall be tried in the order of the plaintiff's entry, and the defendant's entry shall be vacated.

V. Lists for London and Middlesex.

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29. Separate lists of trials with juries and trials without juries respectively, to be tried at the sittings of the Queen's Bench Division for London and Middlesex respectively, shall be prepared, and the trials on each list shall be allotted without reference to any other list, and shall be tried at such times and in such Courts of the said Division as the Lord Chief Justice of England may arrange.

Lists in Queen's Bench Division.

VI. Papers for Judge.

30. The party entering the trial shall deliver to the proper officer (n) two copies of the whole of the pleadings, one of which shall be for the use of the judge at the trial. Such copies shall be in print, except as to such parts, (if any), of the documents as are by these rules permitted to be written.

Copies of pleadings to be delivered to the registrar.

(n) The registrar is the "proper officer" in the Chancery Division. See Ord. LXXXI. r. 1, *post*. Proper officer.

VII. Proceedings at Trial.

31. If, when a trial is called on, the plaintiff appears, and the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him (o).

Default of appearance at the trial by the defendant.

(o) The plaintiff is not generally required to prove service of notice of trial (*Chorlton v. Dickie*, 13 Ch. D. 160, overruling *Cockshott v. London Cab Co.*, 47 L. J. Ch. 126; *W. N.* (1877), 214; 26 *W. R.* 31).

Service of notice of trial.

For the former practice, see Cons. Ord. XXIII. r. 12; *Hakewell v. Webber*, 9 Ha. 541; *Hughes v. Jones*, 26 *Beav.* 24.

32. If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counterclaim, shall be entitled to judgment dismissing the action, but if he has a counterclaim, then he may prove such counterclaim so far as the burden of proof lies upon him (p).

By the plaintiff.

(p) A test action has been dismissed with costs under this rule (*Robinson v. Chadwick*, 7 Ch. D. 878; 26 *W. R.* 556); but another may be substituted for it (*Amos v. Chadwick*, 9 Ch. D. 459; 26 *W. R.* 840). The defendant need not prove that he has been served with notice of trial (*James v. Crow*, 7 Ch. D. 410; 26 *W. R.* 236; *Ex parte Lows*, 7 Ch. D. 160; 26 *W. R.* 229). Where the action has abated by the bankruptcy of the sole plaintiff the rule does not apply, and the action will merely be struck out of the list (*Eldridge v. Burgess*, 7 Ch. D. 411). Where no papers were delivered, and the plaintiff did not appear, the action was dismissed with costs (*Farrell v. Wale*, 36 *L. T.* 95).

33. Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court or a judge upon such terms as may seem fit, upon an application made within six days after the trial; such application may be made either at the assizes or in Middlesex (q).

Setting aside judgment by default.

(q) A judgment will be set aside under this rule whenever a proper case can be shown, but the party in default must pay the actual costs of the day when the action was called on, and of the application to restore (*Cockle v. Joyce*, 7 Ch. D. 56; 47 *L. J. Ch.* 543; 26 *W. R.* 59; 37 *L. T.* 428; *Wright v. Clifford*, 26 *W. R.* 369); including all costs thrown away, and the costs of applications both to a Divisional Court and

Terms on which judgment set aside.

Ord. XXXVI. to the Court of Appeal (*King v. Sandeman*, 26 W. R. 569; 38 L. T. 461; but see *Burgoine v. Taylor*, 26 W. R. 568; 38 L. T. 438, where no costs of the appeal were given). In *Birch v. Williams*, 24 W. R. 700, the solicitor, through whose oversight the dismissal was caused, had to pay the costs.

Postpone-
ment of trial. 34. The judge may, if he think it expedient for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he shall think fit (*r*).

(*r*) Where the plaintiffs brought the action to a hearing in an imperfect state, and it was allowed to stand over in order that they might amend, they were required to pay the actual costs of the day (*Lydall v. Martinson*, 5 Ch. D. 780; 25 W. R. 866; 37 L. T. 69); including the expenses of the defendant's witnesses, who had been kept in attendance (*Ibid.*). See also *Dowdeswell v. Dowdeswell*, W. N. (1877), 228; *Mozley v. Cowie*, 47 L. J. Ch. 271; 26 W. R. 854; 38 L. T. 908.

Issue of new
habeas corpus
where trial is
postponed 35. Where a party is brought up to attend the trial or hearing of a cause or matter by virtue of any writ of *habeas corpus* duly issued from the central office, and by reason of the pressure of other business, or from any other cause, the trial or hearing of the cause or matter in which such party is concerned is postponed to a future day, a new writ of *habeas corpus* may be issued for such future day, if the Court or a judge shall so direct, without payment of any fee (*s*).

(*s*) This rule is taken from Cons. Ord. XXX. r. 3.

Order of
addresses to
the jury. 36. Upon a trial with a jury, the addresses to the jury shall be regulated as follows: the party who begins, or his counsel, shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury a second time for the purpose of summing up the evidence, and the opposite party, or his counsel, shall be allowed to open his case, and also to sum up the evidence, if any, and the right to reply shall be the same as heretofore (*t*).

(*t*) As to the order in which the speeches of counsel should be made on the trial of a witness action in the Chancery Division, see *Kino v. Rudkin*, 6 Ch. D. 163; *Bonne-well v. Jenkins*, W. N. (1877), 202; *Metzler v. Wood*, W. N. (1877), 260.

[Rule 37 applies only to actions for libel or slander.]

Disallowance
of questions
in cross-
examination. 38. The judge may in all cases disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter.

Entry of
judgment. 39. The judge may, at or after a trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after a trial without the order of a Court or judge.

Officer to note
time of com-
mencement
and termina-
tion of trial. 40. The registrar, master, or other proper officer present at any hearing or trial, shall make a note of the times at which such hearing or trial shall commence and terminate respectively, on each day on which the same shall take place, for communication to the taxing officer if required.

41. Upon every trial at the assizes, or at the sittings of the Queen's Bench Division for London and Middlesex, where the officer present at the trial is not the officer by whom judgments ought to be entered, the associate or master shall enter all such findings of fact as the judge may direct to be entered, and the directions, if any, of the judge as to judgment, and the certificates, if any, granted by the judge, in a book to be kept for the purpose.

Ord. XXXVI.
Entry of findings of fact.

42. If the judge shall direct that any judgment be entered for any party absolutely, the certificate of the associate or master to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate shall be in the Form No. 17 in Appendix B. with such variations as circumstances may require (u).

Certificate of entry of judgment.

(u) See this form, *infra*.

VIII. *Assessors, Commissioners, and Referees.*

43. Trials with assessors shall take place in such manner and upon such terms as the Court or a judge shall direct.

Trial with assessors.

44. In any cause or matter the Court, or a judge of the division to which the cause or matter is assigned, may, at any time, or from time to time, order the trial and determination of such cause or matter, or of any issue of fact, or partly of fact and partly of law, therein, by any commissioner appointed in pursuance of the 29th section of the principal Act, or at the sittings to be held in London and Middlesex, and such cause, matter, or issue shall be tried and determined accordingly.

Trial by commissioner.

45. The business to be referred to the official referees appointed under the principal Act (v), shall be distributed among such official referees in rotation by the clerks to the registrars of the Supreme Court, Chancery Division, in the manner now used in the distribution of business amongst the conveyancing counsel of the Court (w).

Distribution of business among official referees.

(v) See Judicature Act, 1873, ss. 56, 57, and notes thereto, *ante*, p. 267.

(w) As to the rota for the conveyancing counsel, see Ord. LI. rr. 9—13, *post*.

Jud. Act, 1873, ss. 56, 57.

Conveyancing counsel.

46. When an order shall have been made referring any business to the official referee in rotation, such order, or a duplicate of it, shall be produced to the registrar's clerk, whose duty it is to make such distribution as in the last rule mentioned; and such clerk shall (except in the case provided for by rule 47 of this order), indorse on the reference a note specifying the name of the official referee in rotation to whom such business is to be referred; and the order so indorsed shall be a sufficient authority for the official referee to proceed with the business so referred.

Mode of distribution.

47. The two last preceding rules of this order are not to interfere with the power of the Court or a judge to direct or transfer a reference to any one in particular of the said official referees, where it appears to the Court or judge to be expedient; but every such reference or transfer shall be recorded in the manner mentioned in Ord. LI.

Reference to particular official referee.

Ord. XXXVI. r. 10, and a note to that effect be endorsed on the order of reference or transfer; and in case any such reference or transfer shall have been or shall be made to any one in particular of the said referees, then the clerk in making the distribution of the business according to such rotation as aforesaid shall have regard to any such reference or transfer.

Mode of trial before referee. 48. Where any cause or matter, or any question in any cause or matter, is referred to a referee, he may, subject to the order of the Court or a judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a judge, proceed with the trial *de die in diem*, in a similar manner as in actions tried with a jury (*x*).

(*x*) This last provision is directory only, and a party who has acquiesced in a breach of it cannot move to set aside the award on this ground alone (*Robinson v. Robinson*, 24 W. R. 675). See *Hamlyn v. Bettely*, 6 Q. B. D. 63.

As to the sittings of the official referees, see also Ord. LXIII. r. 16, *post*.

Fees of official referee. By an order of 24th of April, 1877, it is provided that the fee to be taken by an official referee shall be 5*l.* for the entire reference, irrespective of the time occupied, which sum is to be paid before the reference is proceeded with, and is to be collected by stamps.

Sittings out of London. Where the sittings under a reference are to be held elsewhere than in London, a convenient place in which the sittings may be held must be provided to the satisfaction of the official referee, by and at the expense of the party proceeding with the reference; and there must be paid (in addition to the above fee of 5*l.*), 1*l.* 1*s.* 6*d.* for every night the official referee, and 15*s.* for every night the referee's clerk, is absent from London on the business of the reference, together with the reasonable expenses of their travelling from London and back.

Room. A deposit on account of expenses may be required before proceeding with the reference, or at any time during the course thereof; and a memorandum of the amount deposited must be delivered to the party making the deposit.

Additional fee. The fees and expenses, and deposit (if any), must be paid, in the first instance, by the party proceeding with the reference.

Deposit. Where a Queen's counsel sat as special referee the remuneration allowed was five guineas a sitting (*Wallis v. Lichfield*, W. N. (1876), 130).

Evidence and attendance of witnesses. 49. Subject to any order to be made by the Court or judge ordering the same, evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by *subpœna* (*y*), and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials are conducted before a judge.

(*y*) This provision only applies to a reference to an official or special referee (*Rooney v. Whiteley*, W. N. (1883), 225).

Discovery and production of documents. 50. Subject to any such order as last aforesaid, the referee shall have the same authority with respect to discovery and production of documents, and in the conduct of any reference or trial, and the same power to direct that judgment be entered for any or either party, as a judge of the High Court.

Committal or attachment. 51. Nothing in these rules contained shall authorize any referee to commit any person to prison or to enforce any order by attachment or otherwise.

52. The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee; or the Court may decide the question referred to any referee on the evidence taken before him, either with or without additional evidence as the Court may direct (z).

Ord. XXXVI.
Referee may submit questions to the Court or state facts specially.

(z) For an instance of a case stated by an official referee for the opinion of the Court, see *Asser v. Goetze*, W. N. (1880), 204. Official referee.

The referee in his report should state the facts upon which his report is based, and the principle upon which he may have assessed any damages (*Mayor of Birmingham v. Allen*, W. N. (1877), 190; but see *Dunkirk Colliery Co. v. Lever*, 9 Ch. D. 20). See also *Walker v. Bunkell*, 22 Ch. D. 726; *Burrard v. Calisher*, W. N. (1882), 11.

53. Whenever a report shall be made by a referee, he shall on the same day cause notice thereof to be given to all the parties to the trial or the reference before him by prepaid post letter directed to the address for service of each party, who shall in due course of post be deemed to have notice of such report.

Notice of referee's report to be given to the parties.

54. Where under the fifty-sixth section of the principal Act the report of the referee has been made in a cause or matter, the further consideration of which has been adjourned, it shall be lawful for any party, on the hearing of such further consideration, without notice of motion or summons, to apply to the Court or judge to adopt the report, or without leave of the Court or a judge to give not less than four days' notice of motion, to come on with the further consideration, to vary the report or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other referee (a).

Adoption of report on further consideration.

(a) See note to next rule.

55. Where under the fifty-sixth section of the principal Act the report of the referee has been made in a cause or matter, the further consideration of which has not been adjourned, it shall be lawful for any party by an eight days' notice of motion to apply to the Court to adopt and carry into effect the report of the referee, or to vary the report, or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other referee (b).

Adoption of report where no further consideration.

(b) This and the preceding rule which are new, embody the decision in *Burrard v. Calisher*, 19 Ch. D. 644.

IX. *Writ of Inquiry and Reference as to Damages.*

56. The provisions of Rules 14, 15, 19, 34, 35, 36 and 37 of this Order, shall, with the necessary modifications, apply to an inquiry, pursuant to a writ of inquiry.

Writ of inquiry.

Ord. XXXVI. [Rule 57 applies only to the Queen's Bench Division.]

Continuing
cause of
action.

58. Where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

ORDER XXXVII.

I. EVIDENCE GENERALLY.

In the absence
of agreement
to the con-
trary, evi-
dence to be
taken *vid
voce*.

1. In the absence of any agreement in writing (*c*) between the solicitors of all parties, and subject to these rules, the witnesses at the trial of any action or at any assessment of damages shall be examined *vid voce* and in open Court, but the Court or a judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit (*d*), or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with be examined by interrogatories or otherwise before a commissioner or examiner; provided that, where it appears to the Court or judge that the other party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit (*e*).

Agreement to
take evidence
by affidavit.

(*c*) The agreement should be a formal one (*New Westminster Brewery Co. v. Hamah*, 1 Ch. D. 278, decided under the old rule). Parties who unreasonably refuse to consent to the evidence being taken by affidavit may be visited with costs (*Patterson v. Wooler*, 2 Ch. D. 586; 24 W. R. 455; and see *Att.-Gen. v. Paghham Harbour Co.*, W. N. (1876), 94). A consent may be given by the guardian *ad litem* of an infant defendant without the leave of the Court (*Knatchbull v. Fowle*, 1 Ch. D. 604; *Fryer v. Wiseman*, W. N. (1876), 3; 24 W. R. 205).

Even though the parties have agreed to take the evidence by affidavit, the judge has power at the trial, if he thinks the affidavits unsatisfactory, to transfer the action into the witness list, and direct the evidence to be given *vid voce*, without allowing the affidavits to be read at all (*Lovell v. Wallis*, W. N. (1883), 231).

As to the course to be pursued where after an agreement to take evidence by affidavit one of the parties finds himself unable to procure affidavit evidence, see *Warner v. Mosses*, 16 Ch. D. 100.

Unless the agreement provides that the evidence shall be given by affidavit *alone*, a witness who has made an affidavit may supplement it by *vid voce* evidence (*Glossop v. Heston Local Board*, W. N. (1878), 72).

(*d*) The evidence of witnesses residing in New South Wales was ordered to be given by affidavit under this rule (*Macdonald v. Antelme*, W. N. (1884), 72).

(*e*) Where one party desires the production of a witness for cross-examination the Court cannot order an affidavit used on a previous interlocutory application to be read at the trial (*Blackburn Union v. Brooks*, 7 Ch. D. 68; but see *Patterson v. Wooler*, 2 Ch. D. 586).

When an action has been in the paper for trial and has been adjourned for a month at the plaintiff's request, it is too late for the plaintiff to move for a commission to take the evidence of himself and another witness who is in India, and to postpone the trial till the return of the depositions (*Stewart v. Gladstone*, 7 Ch. D. 394).

[Rule 2 applies only to Admiralty actions.]

Evidence
taken in
another cause
may be read
without leave.

3. An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the Court or a judge, to be

obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence giving two days' previous notice to the other parties of his intention to read such evidence (f). O. XXXVII.

(f) This rule is new; under the old practice an order was necessary before evidence taken in one cause could be read in another; see Cons. Ord. XIX. rr. 4, 5; Daniell, 596.

4. Office copies of all writs, records, pleadings, and documents filed in the High Court of Justice shall be admissible in evidence in all causes and matters and between all persons or parties, to the same extent as the original would be admissible. Office copies to be admissible in evidence to the same extent as originals.

II. EXAMINATION OF WITNESSES.

5. The Court or a judge may, in any cause or matter (g) where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before the Court or judge or any officer of the Court, or any other person and at any place, of any witness or person (h), and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a judge may direct (i). Court may make an order for the examination of witnesses.

(g) *E. g.* a summons under the Vendor and Purchaser Act, 1874; see *Re Springall*, W. N. (1875), 225. "Cause or matter."

(h) These words include a party to the cause (*Nadin v. Bassett*, 25 Ch. D. 21).

(i) An order will be made under this rule whenever a necessary witness is going abroad, or is likely from illness, age, or other infirmity, to be unable to attend the trial, or, in short, whenever the interests of justice really require it: see *Warner v. Mosses*, 16 Ch. D. 100; *Nadin v. Bassett*. "Witness or person."
Order, when made.

In a proper case the Court will make an order for the examination of witnesses *de bene esse* upon an *ex parte* application, but the order may be discharged on sufficient grounds; see *Bidder v. Bridges*, 26 Ch. D. 1, where it was held that though the fact of a witness being seventy years of age is generally a good ground for such an order, the practice will not necessarily be applied to an extraordinary case, *v. g.* where an order has been made to examine thirty witnesses. Evidence *de bene esse*.

Where the witnesses are abroad the usual practice is to issue a commission or appoint a special examiner (*Re Imperial Land Co. of Marseilles*, W. N. (1877), 244; *Spiller v. Paris Skating Rink Co.*, W. N. (1878), 228; *London Bank of Mexico v. Hart*, 6 Eq. 467; *Crofts v. Middleton*, 9 Ha. App. xviii.; *Rawlins v. Wickham*, 4 Jur. N. S. 990; *Edwards v. Spaight*, 2 J. & H. 617). In *Ongley v. Hill*, W. N. (1874), 157, the British Minister at Teheran was appointed though his own attendant was one of the witnesses. In *The M. Mozham*, 1 P. D. 107, and *Stewart v. Gladstone*, 7 Ch. D. 394, applications for a commission were refused. A commission will not be granted unless the evidence is material to the issue raised (*Langen v. Tate*, 24 Ch. D. 522). Nor will a plaintiff who is abroad be allowed to have his own evidence taken by commission when it is clear that he is making the application merely because he wishes to keep out of the way and avoid cross-examination in Court (*Berdan v. Greenwood*, 20 Ch. D. 764, n.; *Re Boyse, Crofton v. Crofton*, 20 Ch. D. 760; and see *Langen v. Tate*). But, in the absence of special circumstances, there is no objection to the evidence of a plaintiff who resides abroad being taken by commission (*Armour v. Walker*, 25 Ch. D. 673; 32 W. R. 214; *Banque Franco-Egyptienne v. Lutscher*, 28 W. R. 133). If a plaintiff desires to have the evidence of one of his own witnesses taken abroad, the *onus* is on him to show that it is for the interests of justice that this should be done (*Lawson v. Vacuum Brake Co.*, 27 Ch. D. 137, where the application was refused). The witnesses need not necessarily be named in the commission (*Nadin v. Bassett*, 25 Ch. D. 21; *Armour v. Walker*).

A commission may be issued to a foreign Court; but where it appeared that under the ordinary procedure of the foreign Court the witness would not be cross-examined the application was refused (*Re Boyse, Crofton v. Crofton*, 20 Ch. D. 760); see *Valentine v. Hall*, W. N. (1866), 50; *Imperial Land Co. of Marseilles v. Masterman*, W. N. (1873), 223. Commission to examine witnesses.

O. XXXVII.

Form of order.

6. An order for a commission to examine witnesses shall be in the Form No. 36 in Appendix K., and the writ of commission shall be in the Form No. 13 in Appendix J., with such variations as circumstances may require (*k*).

Single commissioner.

(*k*) A single commissioner may be authorized to administer the oath to himself (*Wilson v. De Coulon*, 22 Ch. D. 841; 31 W. R. 839).
For these forms, see *infra*.

Request to examine witnesses.

6A. If in any case the Court or a judge shall so order, there shall be issued a request to examine witnesses in lieu of a commission. The Forms 1 and 2 in the Appendix hereto shall be used for such order and request respectively, with such variation as circumstances may require, and may be cited as Forms 37A and 37B in Appendix K. (*kk*).

(*kk*) This rule was added by R. S. C., October, 1884. See these forms, *infra*.

Court may order production of documents at any stage of the proceedings.

7. The Court or a judge may in any cause or matter at any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court or judge may think fit to be produced: Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial (*l*).

(*l*) An order will not be made for production before the trial by a person not a party to the action, except for the purpose of some particular application (*Central News Co. v. Eastern Telegraph Co.*, W. N. (1884), 23; 53 L. J. Q. B. 236).

Person disobeying order to be guilty of contempt.

8. Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of Court, and may be dealt with accordingly (*m*).

(*m*) See rule 13 and note thereto, *post*, p. 425.

Costs of person producing documents.

9. Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in Court (*n*).

Costs and expenses of witnesses.

(*n*) As to costs and expenses of witnesses generally, see *Morgan & Wurtzburg on Costs*, p. 41.

It seems that professional witnesses, even though residing within the bills of mortality, may require compensation before giving evidence (*Clark v. Gill*, 1 K. & J. 19). The scale of allowance in such a case does not depend on a witness's valuation of his own time, but consists of a fixed payment corresponding with that allowed in the old Courts of common law (*Nokes v. Gibbon*, 3 Jur. N. S. 282; *Turner v. Turner*, 7 W. R. 573; *Thomas v. Parry*, W. N. (1880), 184; *Re Working Men's Mutual Society*, 21 Ch. D. 831). A witness may require to have his travelling expenses paid before attending to be examined (*Brocas v. Lloyd*, 23 Beav. 129); and when brought up to be examined he may insist, before giving evidence, on being paid for his loss of time also (*Wiltshire v. Marshall*, W. N. (1866), 80; *Re Working Men's Mutual Society*, where a country auctioneer was held entitled to a guinea a day compensation and his expenses); and the rule applies to parties to suits as well as to other witnesses (*Davey v. Durrant*, 24 Beav. 493; 2 De G. & J. 506).

Examiner to be furnished with copy of

10. Where any witness or person is ordered to be examined before any officer of the Court, or before any person appointed for the pur-

pose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties (o). O. XXXVII.
necessary documents.

(o) See note to next rule.

11. The examination shall take place in the presence of the parties, their counsel, solicitors or agents, and the witnesses shall be subject to cross-examination and re-examination (p). Conduct of examination.

(p) This and the preceding rule are taken from the Chancery Procedure Act, 1852, 15 & 16 Vict. c. 86, s. 31.

The examiner's room is not a public Court (*Re Western of Canada Oil Co.*, 6 Ch. D. 109).

12. The depositions taken before an officer of the Court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties, or such of them as may think fit to attend. If the witness shall refuse to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there should appear any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question (q). Depositions to be taken down in writing and signed.

Where questions objected to.

(q) This rule is taken from the Chancery Procedure Act, 1852, s. 32.

The examiner ought not, where the examination is taken *ex parte*, to refuse to allow questions to be put unless upon matters which would clearly not be evidence (*Surr v. Walmsley*, 2 Eq. 439). He has power, it seems, to determine question as to the adverse nature of a witness's evidence (*Ohlsen v. Terreno*, 10 Ch. 127; but see *Buckley v. Cooke*, 1 K. & J. 29; *Wright v. Wilkin*, 6 W. R. 643; 4 Jur. N. S. 804). Powers of examiner.

13. If any person duly summoned by *subpœna* to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed at the central office, and thereupon the party requiring the attendance of the witness may apply to the Court or a judge *ex parte* or on notice for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be (r). Witness refusing to attend or be sworn.

(r) This rule is taken from Chancery Procedure Act, 1852, s. 33, now repealed.

The principal grounds upon which a witness may refuse to answer a question are (1), that the answer may criminate him; (2), that he cannot answer without a Grounds of refusal by witness.

O. XXXVII. breach of professional confidence: see Dan. p. 659; and see Ord. XXXI., and notes thereto, *ante*, p. 381.

A witness may object to answering a question on the ground that the answer would criminate him, without giving his reasons; but if he gives his reasons the Court will consider them, and if they are unfounded will compel him to answer (*Aston's Case*, 27 Beav. 474; 4 De G. & J. 320; *R. v. Boyes*, 7 Jur. N. S. 1158; *Re Fernandez*, 10 C. B. N. S. 3, 39, 40).

Where an order has been made for taking the examination of a witness before one of the examiners of the Court, and the witness fails to attend or refuses to be sworn, the proper course is to serve him with a *subpoena*, and if he still fails to attend or refuses to be sworn, then to move for an order that he attend at his own expense (*Stuart v. Balkis Company*, W. N. (1884), 122).

Validity of objection, how decided.

14. If any witness shall object to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the central office to be there filed, and the validity of the objection shall be decided by the Court or a judge (s).

Motion that witness attend and be examined.

(s) The validity of the objection is considered on a motion by the examining party that the witness attend the examiner at his own expense and be examined, notice of the motion being served on the witness (*Daniell*, 661); and the costs follow the event.

Where, prior to the Chancery Procedure Act, 1852, a commissioner, notwithstanding the demurrer of a witness, took upon himself to examine him, the depositions were suppressed, though the demurrer was held untenable (*Goodale v. Gawthorn*, 4 De G. & Sm. 97).

Costs.

15. In any case under the two last preceding rules, the Court or a judge shall have power to order the witness to pay any costs occasioned by his refusal or objection (t).

(t) See notes to the last two rules.

Depositions to be signed by the examiner and filed.

16. When the examination of any witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the central office, and there filed (u).

(u) This rule is taken from Chancery Procedure Act, 1852, s. 34.

Where an examiner omitted to sign the depositions, they were allowed to be filed without delay upon payment of costs, and upon a proper explanation being given (*Stephens v. Wanklin*, 19 Beav. 585). And when an examiner dies without signing, they may be signed by his successor (*Bryson v. Warwick and Birmingham Canal Company*, 1 W. R. 124); or filed without any signature (*Felthouse v. Bailey*, 14 W. R. 327).

Filing of depositions.

An examiner appointed to take evidence for the hearing of the cause, must return all the depositions at once (*Clark v. Gill*, 1 K. & J. 13).

Examiner may make a special report.

17. The person taking the examination of a witness under these rules may, and if need be shall, make a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon, and the Court or a judge may direct such proceedings and make such order as upon the report they or he may think just (v).

(v) This rule is taken from 1 Will. IV. c. 22, s. 8, and the C. L. P. Act, 1854, ss. 55 and 56.

Depositions, when to be given in evi-

18. Except where by this order otherwise provided, or directed by the Court or a judge, no deposition shall be given in evidence at the

hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the Court or judge is satisfied that the deponent is dead, or beyond the jurisdiction of the Court, or unable from sickness or other infirmity to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence saving all just exceptions without proof of the signature to such certificate (*w*). O. XXXVII.
dence at the
trial.

(*w*) This rule is taken from 1 Will. IV. c. 22, s. 10. See *Duke of Beaufort v. Crawshay*, L. R. 1 C. P. 699.

19. Any officer of the Court, or other person directed to take the examination of any witness or person, may administer oaths (*x*). Examiner
may adminis-
ter oaths.

(*x*) This rule reproduces the latter part of sect. 35 of the Chancery Procedure Act, 1852.

20. Any party in any cause or matter may by *subpœna ad testificandum* or *duces tecum* require the attendance of any witness before an officer of the Court, or other person appointed to take the examination, for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the cause or matter shall be bound on being served with such *subpœna* to attend before such officer or person for cross-examination (*y*). Power to
require
attendance
of witnesses.

Cross-exami-
nation on
affidavit.

(*y*) This rule is taken, with only slight alterations, from the Chancery Procedure Act, 1852, 15 & 16 Vict. c. 86, s. 40. The effect of this and the next rule is that any party may, without leave of the Court, issue a *subpœna* for the examination of a witness at any stage of an action; but the Court will exercise a control over this privilege to prevent its being used oppressively (*Raymond v. Tapson*, 22 Ch. D. 430).

The following affidavits have been decided to be open to cross-examination:—

An affidavit made in support of a petition under the Trustee Relief Act (*Re Bondyshe*, 5 W. R. 816). What affi-
davits are
open to cross-
examination.

A creditor's affidavit as to his claim, even though he had obtained a judgment at law (*Casi v. Poyser*, 3 Sm. & Gif. 369; *Re Baker*, 11 W. R. 1127).

An accounting defendant's affidavit verifying his claim (*Re Lord*, 2 Eq. 605; *Meacham v. Cooper*, 16 Eq. 102); and see note to Ord. XXXIII. r. 4, *ante*, p. 398. Affidavit of
creditor veri-
fying claim;

An affidavit filed in support of an application for leave to amend (*Catholic Publishing Co. v. Wyman*, 11 W. R. 399); but when the Court, exercising its discretion, had given leave to amend, it was held that no purpose could be answered by allowing the cross-examination, which was therefore refused (*ibid.*). of plaintiff
applying for
leave to
amend.

Affidavits in support of, or against interlocutory motions (*Lloyd v. Whitty*, 19 Beav. 57). But when an affidavit had been filed in support of a motion for injunction, but the motion went off, it was held that the affidavit was not open to cross-examination (*Hooper v. Campbell*, 13 W. R. 1003; *Singer v. Audsley*, 13 Eq. 401). On motions.

An affidavit as to documents is not within the rule; see note to Ord. XXXI. r. 12, *ante*, p. 387. Affidavit as to
documents.

But the cross-examination cannot be read against co-defendants (*Rehden v. Wesley*, 26 Beav. 432).

A person (whether a party or not) who has made an affidavit cannot withdraw it in order to escape cross-examination (*Re Quartz Hill Co.*, 21 Ch. D. 642; *Catholic Publishing Co. v. Wyman*; *Clarke v. Law*, 2 K. & J. 28; *Prole v. Soady*, 3 Ch. 220; *Pike v. Robinson*, W. N. (1873), 178; but see *Re Sykes*, 2 J. & H. 415). Affidavit
cannot be
withdrawn.

Where the affidavit was a formal one, merely proving service abroad, and had no relation to the merits of the case, a motion for cross-examination was disallowed (*Official Manager of National, &c. Association v. Carstairs*, 11 W. R. 866); and so

O. XXXVII. where the proposed cross-examination was vexatious (*Fenton v. Cumberlege*, W. N. (1883), 116).

As to a cause standing over when a witness was too ill to appear for cross-examination, see *Nason v. Clamp*, 12 W. R. 973.

If no opportunity to cross-examine affidavit has less weight, but may be admitted.

Affidavits which the opposite party has had no opportunity of testing by cross-examination may, in pressing cases (but see *Bingley v. Marshall*, 6 L. T. 682), be admitted, but will have less weight attached to them: e. g. where a plaintiff at law moved to dissolve an injunction, and the motion was not allowed to stand over that the other side might cross-examine his witnesses (*Normanville v. Stanning*, 10 Hare, App. xx.; *Mayer v. Spence*, 1 J. & H. 87; *Wightman v. Wheelton*, 23 Beav. 397; but see *Besemeres v. Besemeres*, Kay, App. xviii., where the motion stood over that the witnesses might be cross-examined). For other cases where affidavits have been admitted for what they were worth, though on account of death or from other causes, no cross-examination had taken place on them, see *Abadom v. Abadom*, 24 Beav. 243; *Morley v. Morley*, 5 De G. M. & G. 610; *Davies v. Otty*, 13 W. R. 484; *Braithwaite v. Kearns*, 34 Beav. 202; *Ridley v. Ridley*, *ibid.* 329; *Tanswell v. Scurrah*, 11 L. T. 761.

Mode of taking evidence subsequently to trial.

21. Evidence taken subsequently to the hearing or trial of any cause or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial (z).

(z) This rule is taken from the Chancery Procedure Act, 1852, s. 41.

Evidence at any stage to be taken as at the trial

22. The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage (a).

(a) Cf. Cons. Ord. XIX. r. 10, and Chancery Procedure Act, 1852, s. 31.

Special directions.

23. The practice of the Court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the Court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions which may be given in any case (b).

(b) This rule is taken from Cons. Ord. XIX. r. 11.

Evidence taken before issue joined.

24. No affidavit or deposition filed or made before issue joined in any cause or matter shall without special leave of the Court or a judge be received at the hearing or trial thereof, unless within one month after issue joined, or within such longer time as may be allowed by special leave of the Court or a judge, notice in writing shall have been given by the party intending to use the same to the opposite party of his intention in that behalf (c).

(c) This rule is taken from Cons. Ord. XIX. r. 12.

Evidence taken at the trial may be used subsequently.

25. All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter (d).

(d) This rule is taken from G. O., 5th February, 1861, rule 15.

III. SUBPŒNA.

Delivery and filing of præcipe.

26. Where it is intended to sue out a subpœna, a præcipe for that purpose, in the Form No. 21 in Appendix G., and containing the name or firm and the place of business or residence of the solicitor intending to sue out the same, and, where such solicitor is agent only,

then also the name or firm and place of business or residence of the principal solicitor, shall in all cases be delivered and filed at the central office (e). O. XXXVII.

(e) The rules in this part of the order are taken from Cons. Ord. XXVIII. For the form here referred to, see *infra*.

27. A writ of subpoena shall be in one of the Forms 1 to 7 in Appendix J., with such variations as circumstances may require (f). Form of subpoena.

(f) For these forms, see *post*.

28. Where a subpoena is required for the attendance of a witness for the purpose of proceedings in chambers, such subpoena shall issue from the central office upon a note from the judge. Issue of subpoena.

29. Every subpoena other than a subpoena duces tecum shall contain three names where necessary or required, but may contain any larger number of names. Subpoena to contain three names.

30. No more than three persons shall be included in one subpoena duces tecum, and the party suing out the same shall be at liberty to sue out a subpoena for each person if it shall be deemed necessary or desirable (g). Subpoena duces tecum not to contain more than three names.

(g) A subpoena for documents must specify the documents required, and must be founded on the ordinary affidavit as to documents (*Piott v. Mullins*, 1 Sm. & Giff. 1; *Wing v. Harvey*, *ibid.* App. x.; *McIntosh v. Great Western Ry. Co.*, 4 De G. M. & G. 544); or the application for documents under it will be dismissed with costs (*Lee v. Angas*, 2 Eq. 59; *Newland v. Steere*, 13 W. R. 1014); but see *Re Emma Silver Mining Co.*, 10 Ch. 194. Subpoena for documents must not be vague.

31. In the interval between the suing out and service of any subpoena the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ re-sealed upon leaving a corrected præcipe of such subpoena marked with the words "altered and re-sealed," and signed with the name and address of the solicitor suing out the same. Correction of errors in subpoena.

32. The service of a subpoena shall be effected by delivering a copy of the writ, and of the indorsement thereon, and at the same time producing the original writ. Service of subpoena.

33. Affidavits filed for the purpose of proving the service of a subpoena upon any defendant must state when, where, and how, and by whom, such service was effected. Affidavit of service of subpoena.

34. The service of any subpoena shall be of no validity if not made within twelve weeks after the *teste* of the writ. Time of service.

IV. PERPETUATING TESTIMONY.

35. Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim (h).

(h) See note to next rule.

O. XXXVII. 36. In all actions to perpetuate testimony touching any honour, title, dignity, or office, or any other matter or thing in which the Crown may have any estate or interest, the Attorney-General may be made a defendant, and in all proceedings in which the depositions taken in any such action, in which the Attorney-General was so made a defendant, may be offered in evidence, such depositions shall be admissible notwithstanding any objection to such depositions upon the ground that the Crown was not a party to the action in which such depositions were taken (i).

5 & 6 Vict. c. 69. (i) This and the preceding rule are taken from 5 & 6 Vict. c. 69, ss. 1 and 2, now repealed; as to proceedings under this Act generally, see *Campbell v. Lord Dalhousie*, L. R. 1 Sc. & Div. 462; *Daniell*, 1512—1515.

If an action is actually pending concerning certain rights another action to perpetuate testimony in favour of such rights is improper; the witnesses must be examined *de bene esse* in the pending suit (*Earl Spencer v. Peck*, 3 Eq. 415). As to whether persons interested in a will made by a lunatic still alive before his lunacy can institute such an action to support the will against future litigation, see *Re Tayleur*, 6 Ch. 416. For a recent instance of an action to perpetuate testimony at the instance of the committee of a lunatic, see *Re Stoer*, 9 P. D. 120.

The Court has jurisdiction to perpetuate testimony with a view to proceedings in a foreign Court (*Morris v. Morris*, 2 Ph. 205).

Witnesses not to be examined till action commenced. - 37. Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose (k).

(k) See note to next rule.

Action not to be set down for trial. 38. No action to perpetuate the testimony of witnesses shall be set down for trial (l).

(l) This and the preceding rule are taken from Cons. Ord. IX. rr. 6 and 7.

Admitting right to examine. In a suit for the perpetuation of testimony a defendant need make no discovery beyond an admission of the plaintiff's title to examine the witnesses (*Ellice v. Roupell*, 32 Beav. 299; see *Lancaster v. Lancaster*, 6 Sim. 439; *Coveny v. Athill*, 1 Dick. 355). See also *Brigstocke v. Koch*, 7 Jur. N. S. 63.

Want of prosecution. If a suit to perpetuate testimony is not diligently prosecuted (*Wright v. Tatham*, 2 Sim. 459; *Beavan v. Carpenter*, 11 Sim. 22), the proper order is that the plaintiff do proceed within a certain time, or pay the defendant his costs (*ibid.*; and see *Barham v. Longman*, 2 Sim. 460).

Setting down. As to setting down, see *Ellice v. Roupell*, 32 Beav. 308, and cases there cited; and *Vaughan v. Fitzgerald*, 1 Sch. & Lefroy, 316.

Costs of defendant. When the witnesses have been examined there is an end of the cause (*Morrison v. Arnold*, 19 Ves. 670); and the defendant upon an allegation that he did not examine any witnesses is entitled to his costs (*Foulds v. Mudgeley*, 1 V. & B. 138); but if he examines witnesses himself he is not entitled to any costs (*Shrine v. Powell*, 15 Sim. 81). Where the defendant obtains the usual order for his costs, and such order recites that the testimony of witnesses has been taken, the examination must be regarded as completely taken, and cannot be excluded because there was no sufficient cross-examination (*Watkins v. Atchison*, 10 Ha. App. xlv.).

Unless the witnesses are incapacitated from travelling their depositions taken in a suit to perpetuate testimony cannot be read (*Morrison v. Arnold*, 19 Ves. 670; and see *Watkins v. Atchison*). For an order directing publication of testimony taken in an old suit, see *Vane v. Vane*, 24 W. R. 453, 565; W. N. (1876), 109, 132; and see also *Llanover v. Homfray*, 13 Ch. D. 380.

V. EXAMINERS OF THE COURT.

Examination to be taken before an examiner of the Court. 39. The examination of any witness or person ordered to be taken under Rules 1 and 5 of this Order shall, in any cause or matter in the Chancery Division, unless the Court or a judge shall otherwise direct, be taken before one of the examiners of the Court, and may, in any

cause or matter in the Queen's Bench and Probate, Divorce and Admiralty Divisions, if the Court or a judge shall so direct, be taken before one of such examiners (*m*).

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(*m*) The rules in this part of the order were added in February, 1884, upon the retirement of the examiners in Chancery; they provide for the appointment of examiners of the Court to take the examination of witnesses in rotation, but do not interfere with the appointment, where necessary, of a special examiner.

40. A sufficient number of barristers-at-law, of not less than three years' standing, shall be from time to time appointed by the Lord Chancellor to act as examiners of the Court for a period not exceeding five years, and shall be at any time removable by the same authority.

Examiners to be appointed by the Lord Chancellor.

41. The examinations to be taken before the examiners of the Court shall be distributed among them in rotation by the first clerk to the registrars of the Chancery Division, and in his absence by the second clerk, and in the absence of the first and second clerks by such of the other clerks to the registrars as the senior registrar may determine.

Examinations to be distributed among examiners.

42. The clerk in the last preceding rule mentioned shall be responsible for making the distribution according to regular and just rotation and in such manner as to keep secret from all persons the rota or succession of examiners of the Court: and it shall be his duty to keep a record thereof with proper indexes and dates.

Rota of examiners.

43. The party prosecuting the order or his solicitor shall produce such order or a duplicate thereof to the clerk in rule 41 mentioned, who shall, except in the case provided for in rule 49, add at the foot thereof a memorandum specifying the name of the examiner of the Court in rotation before whom the examination is appointed to be taken; and the order or duplicate shall be left by the party prosecuting the same, or his solicitor, with the examiner so appointed, and shall be a sufficient authority for him to proceed with the examination.

Reference to examiner.

44. Upon production of the order indorsed with his name the examiner of the Court shall give an appointment in writing specifying the place and time (within not more than seven days) at which, subject to any application from the parties, the examination shall be taken; and the party prosecuting the order or his solicitor shall within twenty-four hours, or such shorter time (if any) as may be mentioned in the order, give notice of the appointment to all parties.

Examiner to give appointment.

45. In determining the place and time at which an examination shall be taken, the examiner shall have regard to the convenience of the witnesses or persons to be examined and all the circumstances of the case; and he shall proceed with such examination at the place and time appointed, and subject to such adjournment as he shall think necessary or just continue the same *de die in diem* (*n*).

Place and time of examination.

(*n*) This rule was substituted for the original r. 45 by Rules of the Supreme Court, October, 1884.

46. The examiner may, with the consent in writing of all parties, take the examination of any witnesses or persons in addition to those

Examination of additional witnesses.

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Completion of examination. 47. Upon the completion of an examination taken before an examiner of the Court, he shall indorse the original depositions with a note, authenticated by his signature, certifying the number of hours or days (as the case may be) exclusively employed thereupon, and the fees received in respect thereof (*o*).

(*o*) The present rules 47, 48 and 50, were substituted for those originally issued by Rules of the Supreme Court, October, 1884.

Where examiner unable to act, examination to be offered to next examiner.

48. In case any examiner of the Court, before whom according to the rotation any examination is to be taken, shall be engaged as counsel in the cause or matter to which such examination relates, or shall from illness or from any other cause be unable or decline to take such examination, the same shall be assigned by the clerk in rule 41 mentioned to another examiner of the Court according to the rotation aforesaid: Provided that it shall be the duty of any examiner before whom any examination is pending to decline any other examination in any case where the acceptance thereof is likely to create delay or inconvenience in the taking of any examination before him (*p*).

(*p*) See note (*o*) to rule 47.

Reference to particular examiner.

49. The Court or a judge may, if they or he think fit, direct or transfer an examination to any one in particular of the examiners of the Court.

Fees and expenses.

50. The Court or a judge may, on the application of an examiner, order the payment to him by the party prosecuting the order of the fees and expenses payable to him on account of any examination, but without prejudice to any question on the taxation of costs as to the party by whom the costs of such examination should eventually be borne (*q*).

(*q*) See note (*o*) to rule 47.

FEEES.

	£	s.	d.
Fees on examination.			
1. For every examination before an examiner of the Court in London or Middlesex (<i>r</i>)	1	1	0
2. For the examiner's clerk	0	2	6
3. For each hour, or part of an hour, occupied in such examination beyond two hours	0	10	6
4. For the examiner's clerk, where such examination occupies more than three hours, (in addition to fee No. 2) per day	0	2	6
5. For every examination before an examiner of the Court elsewhere than in London or Middlesex (<i>r</i>)	5	5	0
6. For every day of six hours, or part of a day, occupied in such examination beyond the first day	5	5	0

The party prosecuting the order, or his solicitor, shall also pay all reasonable travelling and other expenses, including charges for the room (other than the examiner's chambers) where the examination is taken. O. XXXVII.

N.B. The fees, Nos. 1, 2, and 5 (as the case may be) shall be paid by the party prosecuting the order, or his solicitor, on obtaining the examiner's note of time and place for the examination. The fees, Nos. 3, 4, and 6 (as the case may be), shall be paid so soon as the examination has been concluded, together with any travelling or other expenses as above mentioned.

(r) The following rule was added by R. S. C., October, 1884:—

Examiners' Fees.

Instead of the words "in London or Middlesex" in fees 1 and 5, read "within three miles from the principal entrance of the Royal Courts of Justice."

ORDER XXXVIII.

I. AFFIDAVITS AND DEPOSITIONS.

1. Upon any motion (oo), petition, or summons evidence may be given by affidavit; but the Court or a judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit (pp). Evidence on motion, petition or summons.

(oo) As to motions for judgment, see *Ellis v. Robins*, 50 L. J. Ch. 512.

(pp) As to what affidavits are open to cross-examination, see note to Ord. XXXVII. r. 20, ante, p. 427. Where the parties resided in the country, the registrar of the County Court was directed to take the cross-examination (*Lumb v. Osburn*, W. N. (1884), 218).

2. Every affidavit shall be intituled in the cause or matter in which it is sworn (qq); but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the taxing officer. Affidavits, how intituled.
Costs.

(qq) Affidavits must be correctly intituled, see *May v. Prinsep*, 11 Jur. 1032; *Maackenzie v. Maackenzie*, 5 De G. & Sm. 338; *Salomon v. Stalman*, 4 Beav. 243, where a misnomer of the defendant in an affidavit of service was held a ground for discharging with costs the order obtained on the motion; but see *Hawes v. Bamford*, 9 Sim. 653; *Re Varteg Chapel*, 10 Hare, App. xxxvii.; *Pearson v. Wilcox*, 10 Hare, App. xxxv., where affidavits erroneously intituled were allowed to be taken off the file and re-sworn without a fresh stamp; *Fisher v. Coffey*, 1 Jur. N. S. 956. See also *Underdown v. Stannard*, W. N. (1871), 170; *Re Harris*, 7 Jur. N. S. 166; *Re Barnes*, 5 L. T. 587. Title must be correct.
Correction of errors in title.

Under special circumstances an affidavit may be ordered to be filed though not intituled in any cause or matter (*Salvidge v. Tutton*, 20 L. T. 300); and a statutory declaration of no settlement, made in New South Wales, but not intituled in the cause, was allowed to be filed with an affidavit verifying the signatures (*Whiting v. Bassett*, 14 Eq. 70).

An affidavit in a contemplated action should be intituled in the contemplated action and in the matter of the Judicature Acts (*Young v. Brassey*, 1 Ch. D. 277). Contemplated action.

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Facts deposed to must be within knowledge of witness, except on interlocutory applications.

Costs.

"Interlocutory motions."

Grounds of belief must be shown.

Costs.

Affidavits in England, where sworn.

Commissioners for oaths.

Officer.

Commissioners to express time and place of taking affidavits.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted (*rr*). The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same (*s*).

(*rr*) The words "interlocutory motions" include all interlocutory applications (*Re New Callao*, 26 Sol. J. 403). Where the proceeding, though interlocutory in form, finally decides the rights of the parties, evidence on information and belief is not admissible, and the opposite party is not bound to contradict it; but if in the Court below he deals with the evidence as admissible, he may be precluded from objecting to it in the Court of Appeal (*Gilbert v. Budean*, 9 Ch. D. 259).

The affidavit must show the grounds of the witness's belief (*Biäder v. Bridges*, 26 Ch. D. 1).

(*s*) Affidavits by persons having no personal knowledge of the matters deposed to cannot be used at the hearing, and the costs of them will be disallowed: *per Jessel, M. R., W. N. (1876), 59*; and see also *Hirst v. Procter, W. N. (1882), 12*; and Ord. LXV. r. 27 (20), *infra*. As to scandalous matter in affidavits see r. 11.

4. Affidavits sworn in England shall be sworn before a judge, district registrar, commissioner to administer oaths (*t*), or officer empowered under these rules to administer oaths (*u*).

(*t*) As to commissioners to administer oaths in England, see the Oaths in Chancery Act, 16 & 17 Vict. c. 78. By s. 1 of this Act, the "masters extraordinary" were to cease to be so styled, and they and all persons thereafter appointed to discharge their duties were to be designated "commissioners to administer oaths in Chancery in England," and by Cons. Ord. IV. the commissioners were not to do any act incident to their office within ten miles of Lincoln's Inn Hall. Sect. 2 empowers the Lord Chancellor to appoint any persons practising as solicitors within ten miles of Lincoln's Inn Hall, at their place of business (see *Re Record and Writ Clerks*, 3 De G. M. & G. 723), to administer oaths and take declarations in Chancery, who are to be styled "London commissioners to administer oaths in Chancery," and to be entitled to a fee of one shilling and sixpence for every oath administered by them, and every declaration, affirmation, or attestation of honour taken by them. Sect. 3 provides for the appointment of commissioners for the Channel Islands (see *Re Dodd*, 6 W. R. 174), and the Isle of Man; sect. 4 relates to stamps on appointments; sect. 5 contains a saving of the power of the Lord Chancellor to appoint persons to administer oaths, and provides that any reference in Acts of Parliament to the masters extraordinary shall apply to commissioners; and sect. 7 provides that persons authorised to administer oaths in Chancery may administer oaths in the Chancery of the county palatine of Lancaster.

By the 77th section of the Judicature Act, 1873, the commissioners are attached to the Supreme Court; and by sect. 82 of the same Act, they are made commissioners to administer oaths in all causes and matters which may from time to time be depending in the High Court or the Court of Appeal. See further as to the appointment and removal of the commissioners, sect. 84 of the same Act.

(*u*) Any officer of the Court may administer oaths (Ord. XXXVII. r. 19, *ante*, p. 427).

5. Every commissioner to administer oaths shall express the time when and the place where he shall take any affidavit, or the acknowledgment of any deed, or recognizance; otherwise the same shall not be held authentic, nor be admitted to be filed or enrolled without the leave of the Court or a judge; and every such commissioner shall express the time when, and the place where, he shall do any other act incident to his office (*v*).

(*v*) This rule is taken from Cons. Ord. IV. An affidavit filed on the registration of a bill of sale was held sufficient where the commissioner signed his name in the jurat but did not add his title as commissioner (*Ex parte Johnson*, 26 Ch. D. 338).

6. All examinations, affidavits, declarations, affirmations, and attestations of honour in causes or matters depending in the High Court, and also acknowledgments required for the purpose of enrolling any deed in the central office, may be sworn and taken in Scotland or Ireland or the Channel Islands, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any judge, Court, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of her Majesty's consuls or vice-consuls in any foreign parts out of her Majesty's dominions; and the judges and other officers of the High Court shall take judicial notice of the seal or signature, as the case may be, of any such Court, judge, notary public, person, consul, or vice-consul, attached, appended, or subscribed to any such examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or to any other deed or document (*w*).

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Examinations, &c., how taken in Scotland, Ireland, Channel Islands, colonies and abroad.

(*w*) This rule is taken from the Chancery Procedure Act, 1852, 15 & 16 Vict. c. 86, s. 22; but the concluding words of that section, "to be used in the said Court," are omitted; see as to these words, *Brooke v. Brooke*, 17 Ch. D. 833.

Isle of Man.

As to the Isle of Man, see 16 & 17 Vict. c. 78, s. 6.

(A.) Under this rule, when affidavits in the colonies and within her Majesty's dominions are sworn before the judges, Courts, and persons mentioned in the text, no verification of their signature is necessary (*Hayward v. Stephens*, W. N. (1866), 318; 36 L. J. Ch. 135), because the Court is directed to take judicial notice of such signature; and see *Re Goss*, 12 Jur. N. S. 595; W. N. (1866), 256.

Affidavits sworn in the colonies;

(B.) Affidavits in foreign countries not forming part of her Majesty's dominions may be sworn in two ways—

in foreign countries;

(1.) Under the rule, before the resident consul or vice-consul, and judicial notice will be taken of his authority and official seal without formal verification: compare the cases in which such official seal is taken in proof of the qualification of a notary public, &c.,—*e. g.*, *Haggitt v. Iniff*, 5 De G. M. & G. 910; and see *Ferguson v. Benyon*, 16 W. R. 71; *Bateman v. Cook*, 3 De G. M. & G. 39.

before consul;

(2.) Though the most regular course is now to have the affidavit sworn before the consul, it is settled that there is nothing to prevent its being sworn, if more convenient, according to the former practice, irrespectively of the rule—*viz.*, before notaries public, or before persons duly authorised by the law of the foreign country to administer oaths there; (*Cooke v. Wilby*, 25 Ch. D. 769; *Cooper v. Moore*, W. N. (1884), 78; *Brittlebank v. Smith*, *ibid.* 120; *Levitt v. Levitt*, 2 H. & M. 626; *Haggitt v. Iniff*; *Re Kenah*, 15 W. R. 781); but when affidavits are thus sworn the Court is not authorised to take judicial notice of such person's authority and signature, but will require proper proof of both (*Baillie v. Jackson*, 3 De G. M. & G. 38; *Re Earl*, 4 K. & J. 300; *Re Davis*, 8 Eq. 98). A certificate of the clerk of a superior Court of New York was held sufficient verification in *Levitt v. Levitt*; see *Alexander v. Nurse*, W. N. (1871), 249; and where the fund was small such verification of signature was dispensed with (*Mayne v. Butter*, 13 W. R. 128); and so where the suit was uncontested (*Lees v. Lees*, W. N. (1868), 268). See also *Smith v. Davies*, 17 W. R. 69; *Lyle v. Elthwood*, 15 Eq. 67, where a written consent was given; *Whiting v. Bassett*, 14 Eq. 70, where a declaration having been made before a notary public abroad, the declarants' signatures were allowed to be verified by an affidavit in the cause; *Bell v. Turner*, 17 Eq. 439.

before notary public, &c.

In *Drevoon v. Drevoon*, 12 W. R. 66, where the person desiring to make an affidavit lived a hundred miles from any resident consul, and there was great difficulty in swearing it before any notary public, the Court appointed a resident solicitor special examiner to take the evidence; and in *Re Seriven*, 17 L. T. 641, affidavits made in the state of Missouri, U. S., attested by the governor as being sealed with the great seal of the state, were admitted, there being no resident consul; and see *Cooper v. Moore*, W. N. (1884), 78.

It must be remembered, that the fact of a consul or other duly authorised person's signature being attached to a document does not make the document itself receivable in evidence, the Court being only bound to take judicial notice of the seal or signature (*Re Forbes*, 1 W. R. 32; and see *Re Goss*, 12 Jur. N. S. 595; W. N. (1866), 256).

Signature of person authorized to administer oath.

O. XXXVIII. As to the general words at the end of the rule, see *Armstrong v. Stockham*, 11 Jur. 97.

False swearing or forging official seal. Sections 23 and 24 of the Chancery Procedure Act, 1852, are still in force, and provide penalties for false swearing before any person authorized to administer oaths, or for forging the signature or seal of any such person, or of any judge or notary public.

Affidavits to be in first person, and divided into paragraphs.

7. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule (x).

Costs.

(x) The first paragraph of this rule is taken from Cons. Ord. XVIII. r. 1, and sect. 37 of the Chancery Procedure Act, 1852.

Form of affidavit.

The form must be "I make oath and say," (*Allen v. Taylor*, 10 Eq. 52), but affidavits sworn in America in the third person were received as evidence in *Re Husband*, 12 L. T. 303; *Dryden v. Frost*, 8 Sim. 380; and trifling irregularities have been overlooked; see r. 14; *Gates v. Buckland*, 13 W. R. 67; *Moek v. Ward*, 10 Hare, App. i.; but the signature of the party cannot be dispensed with (*Anderson v. Stather*, 9 Jur. 1085; as to marksmen, see rule 13, and *Anon. v. Christopher*, 11 Sim. 409); nor the words "make oath" (*Phillips v. Prentice*, 2 Hare, 542; *Re Newton*, 2 De G. F. & J. 3). But after the affidavit had been filed it was held too late to take the objection that the words "make oath and say" were omitted (*Ex parte Yorkington*, 9 Ch. 298).

Irregular affidavits, when admitted.

Description of deponent.

8. Every affidavit shall state the description and true place of abode of the deponent (y).

(y) This rule does not apply to affidavits by the parties to the action, who may be described as "the above-named plaintiff," or "the above-named defendant," simply; see *Daniell*, 625. It is not sufficient to describe a deponent as "gentleman" (*Re Orde*, 24 Ch. D. 271; 31 W. R. 801, where the costs of the affidavit were disallowed on this ground).

Several deponents.

9. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents (z).

Signature of deponent.

(z) An affidavit should be signed by the deponent at the side of the jurat (*Anderson v. Stather*, 9 Jur. 1085; and see *Re Yearley*, W. N. (1874), 158); and the person before whom it is sworn must sign his name at the foot of the jurat (*Ex parte Heymann*, 7 Ch. 488).

Affidavits, where to be filed.

10. Every affidavit or other proof used in admiralty actions shall be filed in the admiralty registry: every affidavit used in probate actions shall be filed in the probate registry: every affidavit used on the Crown side of the Queen's Bench Division shall be filed in the crown office department: every affidavit used in a cause or matter proceeding in a district registry shall be filed there: and every other affidavit used shall be filed in the central office (a). There shall be appended to every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the Court or a judge shall otherwise direct (b).

(a) As to the time for filing affidavits to be used on interlocutory applications, see

rule 25 of this order and note thereto, *post*, p. 439. Affidavits are filed in the filing and record department of the office (Ord. LXI. r. 1, *infra*).

(b) The latter part of this rule is taken from G. O., 5th February, 1861, rule 18.

11. The Court or a judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client (c).

Scandalous matter.

(c) This rule is new, but it only adopts the practice of the old Court of Chancery; see *Cracknall v. Janson*, 11 Ch. D. 1; *Goddard v. Parr*, 3 W. R. 633; 24 L. J. Ch. 783; *Kernick v. Kernick*, 12 W. R. 335; *Taylor v. Keily*, W. N. (1876), 139; and as to scandalous matter generally, see Ord. XIX. r. 27, *ante*, p. 360; Ord. XXXI. rr. 6, 7, *ante*, p. 385.

The Court has jurisdiction, apart from any rule, to order oppressive and improper documents to be taken off the file (*Hill v. Hart Davis*, 26 Ch. D. 470).

Taking documents off the file.

12. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall without leave of the Court or a judge be read or made use of in any matter depending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or if taken at the central office, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten and signed or initialed in the margin of the affidavit by the officer taking it (d).

Alterations in affidavits.

(d) See *Gill v. Gilbard*, 9 Ha. App. xvi. No alteration can properly be made in any affidavit after it has been sworn, and any commissioner initialing such an alteration commits an irregularity, and renders himself liable to the revocation of his commission. (*Notice, per L. C.; W. N. (1882), Part II., 81*).

13. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent (e).

Affidavit of illiterate or blind person.

(e) Where a marksman signed an affidavit with his name, his hand being guided, the affidavit was ordered to be taken off the file (*Amon. v. Christopher*, 11 Sim. 409); and so, where it did not appear that the affidavit of an illiterate deponent had been read over to him in the presence of the commissioner (*Re Longstaff*, W. N. (1884), 216). See further, as to affidavits by blind or illiterate persons, *Daniell*, 629; *Fernyhough v. Naylor*, W. N. (1875), 22; 23 W. R. 228. Where a deponent is of unsound mind on any point the fact should be noticed in the jurat (*Spittle v. Walton*, 11 Eq. 420).

Marksman.

14. The Court or a judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a

Court may receive defective or irregular affidavit.

O. XXXVIII. memorandum to be made on the document that it has been so received (*ee*).

(*ee*) See note to r. 7.

Original affidavit.

15. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in Court or in Chambers, who shall send it to be filed. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly authenticated with the seal of the office (*f*).

Unfiled affidavit.

(*f*) Unfiled affidavits may be used on an *ex parte* application where the matter is pressing and when the offices are closed (*A.-G. v. Lewis*, 8 Beav. 179; *Carr v. Morice*, 16 Eq. 125; *Campana v. Webb*, 22 W. R. 622; *Niemann v. Harris*, W. N. (1870), 6; *Mercers' Co. v. Great Northern Railway*, 14 Beav. 20); but not where the respondent has been served and does not appear and the application is made on an affidavit of service (*Farrer v. Sykes*, 43 L. J. Ch. 392).

Affidavit not to be sworn before solicitor of party.

16. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such solicitor, or before the party himself (*g*).

(*g*) This and the next rule are new but adopt the settled practice of the Court; see *Dulce of Northumberland v. Todd*, 7 Ch. D. 777, and cases there cited. It has been held, however, that a plaintiff, being a solicitor but not the solicitor in the cause, may put in an affidavit sworn before his clerk (*Poster v. Harvey*, 4 De G. J. & Sm. 69; 9 L. T. 405). See next rule.

Clerk or partner of solicitor.

17. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk, or partner (*h*).

(*h*) See note to rule 16.

Affidavit filed after time.

18. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Court or a judge (*i*).

(*i*) This and the next rule are taken from R. G. H. T. 1853, rr. 145, 146.

Affidavit in support of *ex parte* application to be made before application.

19. Except by leave of the Court or a judge no order made *ex parte* in Court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion (*k*).

(*k*) See note to rule 18.

II. AFFIDAVITS AND EVIDENCE IN CHAMBERS.

Notice to be given of intention to use affidavit in chambers.

20. The party intending to use any affidavit in support of any application made by him in Chambers in the Chancery Division shall give notice to the other parties concerned of his intention in that behalf (*l*).

(*l*) This rule is taken from Cons. Ord. XXXV. r. 27.

An undertaking not to use an affidavit at the hearing does not preclude its being used upon an inquiry in Chambers (*Jenner v. Morris*, 10 W. R. 640).

21. All affidavits which have been previously made and read in Court upon any proceeding in a cause or matter may be used before the judge in Chambers (*m*). O. XXXVIII.

Affidavits used in Court may be used in Chambers.

(*m*) This rule is taken from Cons. Ord. XXXV. r. 28; cf. G. O., February 5, 1861, r. 15.

Affidavits used in Chambers are open to cross-examination; but an application to compel attendance for cross-examination will be refused if made vexatiously (*Fenton v. Cumberlege*, W. N. (1883), 116).

22. Every alteration in an account verified by affidavit to be left at chambers shall be marked with the initials of the commissioner or officer before whom the affidavit is sworn, and such alterations shall not be made by erasure (*n*). Alterations in accounts to be initialed.

(*n*) This and the two following rules are taken from rules 10, 11 and 12 of the Regulations as to Business in Chambers of 8th August, 1857.

23. Accounts, extracts from parish registers, particulars of creditors' debts, and other documents referred to by affidavit, shall not be annexed to the affidavit, or referred to in the affidavit as annexed, but shall be referred to as exhibits (*o*). Accounts, &c. to be referred to as exhibits.

(*o*) See note to rule 22.

24. Every certificate on an exhibit referred to in an affidavit signed by the commissioner or officer before whom the affidavit is sworn shall be marked with the short title of the cause or matter (*p*). Certificates on exhibits to be intitled in the cause.

(*p*) See note to rule 22.

III. TRIAL ON AFFIDAVIT.

25. Within fourteen days after a consent for taking evidence by affidavit as between the parties has been given, or within such time as the parties may agree upon, or the Court or a judge may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof (*q*). Time for filing affidavits by the plaintiff.

(*q*) The rules in this part of the order apply only to evidence at the trial of the action. As to the consent here mentioned, see Ord. XXXVII. r. 1, and note thereto, *ante*, p. 422. Evidence at trial.

Under the old practice no affidavit to be used at the hearing, even of a suit for an injunction, could be sworn before bill filed (*Francome v. Francome*, 13 W. R. 355; *Fennel v. Brown*, 18 Jur. 1051); but see now *Young v. Brassey*, 1 Ch. D. 277, where an affidavit was allowed to be entitled in an action not yet begun and in the matter of the Judicature Acts. Affidavit in action not yet begun.

So in general affidavits to be used in support of a petition should be sworn after it is presented (*Re Western Benefit Building Society*, 33 Beav. 368); but where the petition was for payment of money out of Court, an affidavit sworn before the petition was presented, but after payment of the money in, was received (*Re Varley*, 14 W. R. 98; *Re Gombault*, W. N. (1868), 243).

Affidavits to be used on motions or petitions may be filed up to the last moment before the hearing (*Munroe v. Wivenhoe, &c. Rail. Co.*, 13 W. R. 880; *Ex parte Leicester*, 6 Ves. 429; *Jones v. ———*, 8 Ves. 46; *Electric Telegraph Co. v. Nott*, 2 Coop. 67, where the hearing was postponed to give time to file them; see, however, *Clement v. Griffith*, Coop. 470). In a very special case affidavits filed after the motion was opened were admitted (*East Lancashire Rail. Co. v. Hattersley*, 8 Hare, 87; and see *Smith v. Swansea Dock Co.*, 9 Hare, App. xx.); and where an affidavit was filed too late for the hearing of a petition, it has been admitted on appeal (*Re Gibraltar Banking Co.*, 13 L. T. 263). Time for filing affidavits on interlocutory applications.

O. XXXVIII.

Affidavits of service.

Affidavits of service ought properly to be filed before the rising of the Court on the day on which the application is made (*Lord Milltown v. Stuart*, 8 Sim. 34); but this rule has often been departed from since the Judicature Acts, and the Court of Appeal recently declined to discharge an order simply because the rule had not been complied with (*Seear v. Webb*, 25 Ch. D. 84); and the registrars are now authorized to accept an affidavit of service sworn and filed at any time before the order is drawn up (*Memorandum*, 28 Sol. J. 591).

Time, when enlarged.

The time for filing affidavits and taking evidence may be enlarged in proper cases; see *Anderton v. Yates*, 15 Jur. 833; *Mayes v. Mayes*, 11 Jur. N. S. 1033; *Wragg v. Wragg*, 11 Jur. 701.

Cases of surprise.

Thus, where affidavits were filed just before the close of the time, containing charges as to which no issue had been raised in the pleadings, counter affidavits were allowed (*Scott v. Mayor of Liverpool*, 1 De G. & J. 369); and similar leave was given, the period for cross-examination being also enlarged, in *Phillips v. Ward*, 2 Jur. N. S. 33; and see *Hope v. Threlfall*, 1 Sm. & G. App. xxi.; *Douglas v. Archbutt*, 23 Beav. 293. So the Court has a discretion to allow such affidavits to be read at the hearing (*Boyse v. Colclough*, 1 K. & J. 124; *Thompson v. Partridge*, 4 De G. M. & G. 794; *Bayley v. Cass*, 10 W. R. 370; but see *Smith v. Pilgrim*, 2 Ch. D. 133); and the cause may be ordered to stand over, to give the other side time to answer them (*Heath v. Wallingford*, 12 L. T. 631).

For purpose of answering late affidavits,

Where the Court gave a plaintiff leave, seven months after he had given notice of motion for decree, to use as evidence an examination of the defendant taken in another cause, the defendant was allowed to file affidavits in explanation, though the cause was in the paper (*Watson v. Cleaver*, 20 Beav. 137).

or to explain them.

The Court has a discretion to allow one party to cross-examine the other's witnesses before filing his own affidavits; see *Morey v. Vandenburg*, 14 L. T. 642.

Not applied for *ex parte*.

The application for extended time should not be made *ex parte* (*Richards v. Curlewis*, 2 W. R. 481).

Leave was granted, after the time for closing evidence had passed, to file affidavits verifying extracts from a register of a Scotch Court of law (*McLauchlan v. Lord*, 14 L. T. 98).

This and the two next rules are founded on Cons. Ord. XXXIII. Pt. II. rr. 5, 6 and 7.

By the defendant.

26. The defendant, within fourteen days after delivery of such list, or within such time as the parties may agree upon, or the Court or a judge may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.

Affidavits in reply.

27. Within seven days after the expiration of the last-mentioned fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply (*r*), and shall deliver to the defendant or his solicitor a list thereof.

Affidavits strictly in reply.

(*r*) The plaintiff's affidavits in reply may be confirmatory of his evidence in chief (*Peacock v. Harper*, 7 Ch. D. 648).

Affidavits in reply will not be ordered to be taken off the file on the defendant's allegation that they are not confined to matters strictly in reply; but, if at the hearing they turn out to be so, the Court will disregard them, or give the defendant leave to answer them (*Gilbert v. Comedy Opera Co.*, 16 Ch. D. 594).

Cross-examination of deponent.

28. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court or a judge. The

party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production (s). O. XXXVIII.

(s) This and the next rule are taken from General Order, 5th February, 1861, r. 19. G. O. 5th Feb. 1861, r. 19.

The deponent may be cross-examined, even though his affidavit has not been used by the party who filed it (*Ex parte Child*, 20 Ch. D. 126). Cross-examination of deponent.

If the deponent is not produced for cross-examination when required, his affidavit cannot be used without special leave, and it is therefore irregular to move to take it off the file (*Meyrick v. James*, W. N. (1877), 120; 46 L. J. Ch. 579; and see *De Brito v. Hillel*, 15 Eq. 213).

The party producing the deponent bears the cost thereof in the first instance, whether the cross-examination takes place at the trial, or, it would seem, on an affidavit filed after decree for the purpose of proceedings in Chambers; see Ord. XXXVII. rr. 21, 22, *ante*, p. 428; *Re Knight, Knight v. Gardner*, 25 Ch. D. 297, where the contrary was decided under Ord. XXXVIII. r. 4, R. S. C. 1875. Expense of producing deponent for cross-examination.

29. The party to whom such notice as is mentioned in the last preceding rule is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined (t). Attendance for cross-examination, how enforced.

(t) See Ord. XXXVII., Pt. II., *ante*, p. 423.

30. When the evidence under this order is taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time after the close of the evidence as in other cases is by these rules provided after the close of the pleadings (u): provided that other affidavits may be printed if all the parties interested consent thereto, or the Court or a judge so order: provided also, that this rule shall not apply in the Probate, Divorce and Admiralty Division to default actions *in rem*, or references in actions, or actions for limitation of liability, unless the Court or a judge shall otherwise order. Evidence to be printed.

(u) As to notice of trial, see Ord. XXXVI., Pt. III., *ante*, p. 413.

Evidence may be taken by affidavit, under a judge's order, after notice of trial has been given, notwithstanding this rule (*Waring v. Lacey*, 24 W. R. 318). As to printing, see Ord. LXVI., *infra*.

ORDER XXXIX.

MOTION FOR NEW TRIAL.

1. Every motion for a new trial or to set aside a verdict, finding, or judgment, shall be made (1) in every cause or matter by the principal Act assigned to the Probate, Divorce and Admiralty Division, where there has been a trial thereof or of any issue therein with a jury, to a Divisional Court of that Division, one of the judges of which shall (when practicable) sit on the hearing of such motion; (2) in every other cause or matter, where there has been a trial thereof or of any issue therein with a jury, to a Divisional Court of the Queen's Bench Division; and (3) where there has been a trial without a jury, by appeal to the Court of Appeal (v). Motion for new trial.

(v) Where an action has been tried by a County Court judge without a jury, the application must be made to the Divisional Court, and not to the Court of Appeal (*Swansea Building Society v. Davies*, 12 Q. B. D. 21).

- O. XXXIX. 2. No judge shall sit on the hearing of any motion for a new trial in any cause or matter tried with a jury before himself.
- Judge. 3. Every application for a new trial shall be by notice of motion, and no rule *nisi*, order to show cause, or formal proceeding other than such notice of motion, shall be made or taken. The notice shall state the grounds of the application, and whether all or part only of the verdict or findings is complained of.
- Application for new trial to be by notice of motion.
- Notice of motion. 4. The notice of motion shall be an eight days' notice, and shall be served within the times following: viz., if the trial has taken place in London or Middlesex, within eight days after the trial; if the trial has taken place elsewhere than in London or Middlesex, within seven days after the last day of sitting on the circuits for England and Wales during which the trial shall have taken place. The time of the vacations shall not be reckoned in the computation of the time for serving the notice of motion.
- Amendment. 5. The notice may be amended at any time by leave of the Court or a judge on such terms as the Court or judge may think just.
- Grounds for granting new trial. 6. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the Court may give final judgment as to part thereof, or some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties (*w*).
- (*w*) As to the practice of the Court of Chancery in granting new trials of issues, see Daniell, p. 757 *et seq.* This rule applies to a motion in the High Court for a new trial in a County Court action (*Shapcott v. Chappell*, 12 Q. B. D. 58).
- New trial on some question only. 7. A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.
- Stamping not a sufficient ground. 8. A new trial shall not be granted by reason of the ruling of any judge that the stamp upon any document is sufficient, or that the document does not require a stamp.

ORDER XL.

MOTION FOR JUDGMENT.

- Motion for judgment. 1. Except where by the Acts or by these rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment (*x*):
- Motion for judgment to be set down in (x) The following notice was issued in 1876 as to the hearing of motions for judgment and of short causes—
“The Master of the Rolls and the Vice-Chancellors have given directions that

“ motions for judgment in actions shall not be brought on as ordinary motions but shall be set down in the cause book. Ord. XL.

“ They can be marked short on production of the usual certificate of counsel, and will then be placed in the paper on the first short cause day after the day for which notice is given. If not marked short, they will come into the general paper in their regular turn. cause book, but can be heard as short cause.

“ It will be advisable that the notices of motion for judgment should, if it is intended to mark them short, contain a statement to that effect, and also a statement that no further notice will be given of their having been so marked. Such statement will dispense with the necessity for giving defendants further notice that motions for judgment have been marked short.

“ Where a defendant makes his defence and the plaintiff moves under Ord. XL. r. 11 [now Ord. XXXII. r. 6, *ante*, p. 395], for such order as he is entitled to on the admissions of the defendant, the action need not be set down, but if, on the motion being made it appears that there must be a discussion or argument, it may be ordered to go into the general paper subject to any order for its being advanced.” See W. N. (1877), p. 88 (Pt. II.) ; Seton, p. 38.

An action for the rectification of a settlement will not be heard as a short cause (*Clelland v. Clelland*, W. N. (1884), 14).

“ In order to set the motion down a copy of the notice of motion must, if the action is proceeding in London, be produced to the officer of the registrar’s office of the Royal Courts of Justice, and two printed copies of the pleadings must, at the same time, be delivered to him, one for the use of the judge at the trial and the other for the use of the registrar. The copy of the notice of motion produced to the officer is retained by him, and should be indorsed with a memorandum signed by the solicitor of the party setting down the motion that a guardian *ad litem* has been appointed for any infant defendant, or that there is not any infant defendant” (*Daniell*, 666).

2. Where at the trial the judge or referee abstains from directing any judgment to be entered, the plaintiff may set down a motion for judgment. If he does not set down such a motion and give notice thereof to the other parties within ten days after the trial, any defendant may set down a motion for judgment, and give notice thereof to the other parties. Setting down motion.

3. Where, at or after a trial with a jury, the judge has directed that any judgment be entered, any party may apply to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason that the finding of the jury upon the questions submitted to them has not been properly entered. Setting aside judgment for improper entry of finding of jury.

4. Where, at or after a trial by a judge, either with or without a jury, the judge has directed that any judgment be entered, any party may apply to set aside such judgment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong. For entry of wrong judgment.

5. An application under rules 3 and 4 of this order shall be to the Court of Appeal, unless, where there has been a trial with a jury, there is also a motion for a new trial, in which case it shall be to the Divisional Court by which such motion shall be heard. Application, to what Court.

6. Where at a trial by a referee he has directed that any judgment be entered, any party may move to set aside such judgment, and to enter any other judgment, on the ground that upon the finding as entered the judgment so directed is wrong: Provided that in the Queen’s Bench Division such motion shall be made to a Divisional Court. Trial by referee.

7. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a Setting down motion after trial of issues.

Ord. XL.

motion for judgment as soon as such issues or questions have been determined. If he does not set down such a motion, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down a motion for judgment, and give notice thereof to the other parties.

Setting down motion before trial of issues.

8. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a judge for leave to set down a motion for judgment, without waiting for such trial or determination (*y*). And the Court or judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues of fact.

(*y*) Such leave is not given unless it is certain what issues are necessary to the decision of the action (*Republic of Bolivia v. National Bolivian Navigation Co.*, 24 W. R. 361).

Motion to be set down within one year.

9. No motion for judgment shall, except by leave of the Court or a judge, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do.

Powers of Court on a motion for judgment.

10. Upon a motion for judgment, or upon an application for a new trial, the Court may draw all inferences of fact, not inconsistent with the finding of the jury, and if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit (*z*).

(*z*) Where there is no further question of law to be tried, further consideration will not generally be reserved a second time in Court, but liberty will be given to apply in chambers (*Gilbert v. Russell*, W. N. (1875), 225).

ORDER XII.

ENTRY OF JUDGMENT.

Entry of judgment.

1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the cause, other than any petition or summons; such copy shall be in print,

except such parts (if any) thereof as are by these rules permitted to be written : Provided that no copy need be delivered of any document a copy of which has been delivered on entering any previous judgment in such cause. The Forms in Appendix F. shall be used, with such variations as circumstances may require (a).

Ord. XLI.

(a) An order of which there was no entry and the original of which was lost was directed to be redrawn (*Ex parte Dean of St. Paul's*, W. N. (1870), 93; 18 W. R. 724; and see *Russell v. Tapping*, 3 W. R. 379). For these forms, see *infra*.

[Rule 2 applies only to the Queen's Bench Division.]

3. Where any judgment is pronounced by the Court or a judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, unless the Court or judge shall otherwise order, and the judgment shall take effect from that date (b): Provided that by special leave of the Court or a judge a judgment may be ante-dated or post-dated (c).

Date of entry where judgment pronounced in Court.

(b) See *Re Risca Coal Co.*, 10 W. R. 701.

(c) As to ante-dating or post-dating orders, see *Turner v. London & South Western Ry.*, 17 Eq. 561; *Winkley v. Winkley*, 29 W. R. 629; 44 L. T. 572; *Daniell*, 810; *Seton*, 1546. In the former case the plaintiff died after hearing but before judgment, and the Court dated the judgment as of the date of the hearing.

4. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

In other cases.

5. Every judgment or order made in any cause or matter requiring any person to do an act (d) thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done, and upon the copy of the judgment or order which shall be served upon the person required to obey the same there shall be indorsed a memorandum in the words or to the effect (d) following, viz. :—

Order to do an act to limit time for performance.

“If you, the within-named A. B., neglect to obey this judgment [or order] by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment [or order]” (dd).

Indorsement.

(d) See *Treherne v. Dale*, 27 Ch. D. 66.

(dd) This rule is taken from Cons. Ord. XXIII. r. 10, as varied by Ord. 7 Jan. 1870, rule 1 (L. R. 5 Ch. xxxiii.); it applies to an order which may be served on the solicitor of the party (*Hampden v. Wallis*, 26 Ch. D. 746). If the order omits to fix a time the Court on motion will make a supplemental order for that purpose (*Needham v. Needham*, 1 Ha. 633; *Morley v. Clavering*, 30 Beav. 108; *Gilbert v. Endeau*, 9 Ch. D. p. 266); “forthwith” is a sufficient expression of time (*Thomas v. Nokes*, 6 Eq. 521; *Re Nowell*, 11 W. R. 896).

Where the order names a day for doing the act and does not merely limit a time after service for that purpose, it must be served before the day named (*Adkins v. Bliss*, 2 De G. & J. 286); if the service cannot be effected before that day an order must be obtained enlarging the time, or fixing a new period where the day appointed has passed (*Duffield v. Elwes*, 2 Beav. 268); and such further order must be endorsed and served like the original order (*Adkins v. Bliss*).

Substituted service of the judgment or order may be permitted if a proper case can be shown, the order for which is obtained on *ex parte* motion; see *Daniell*, p. 878; and see Ord. IX. and notes thereto, *ante*, p. 316, and Ord. LXVII. *infra*, as to service generally.

Service.

Ord. XLI.

Entry of judgment on filing of affidavit or production of document.

Entry of judgment pursuant to order or certificate.

Certificate of amount of judgment to be filed.

Entry of judgment by consent where defendant has appeared by solicitor.

Where defendant has not appeared, or appeared in person.

6. Where under the Acts or these rules, or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required, he shall enter judgment accordingly.

7. Where by the Acts or these rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

8. Where reference is made to a master to ascertain the amount for which final judgment is to be entered, the master's certificate shall be filed in the central office when judgment is entered.

9. In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor or agent.

10. Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, except in cases where the defendant is a barrister, conveyancer, special pleader, or solicitor.

ORDER XLII.

EXECUTION.

No demand necessary when money ordered to be paid, or property to be delivered up or transferred.

1. Where any person is by any judgment or order directed to pay any money, or to deliver up or transfer any property real or personal to another, it shall not to be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand (*e*).

(*e*) This rule is taken from Cons. Ord. XXIX. r. 1. As to whether the service should be personal or not, see *Re a Solicitor*, W. N. (1884), 217. See, however, note (*s*) to r. 17, *post*, p. 449.

Non-performance of condition on which judgment, &c. has been obtained.

2. Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may on breach or non-performance of the condition take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the Court or a judge shall otherwise direct (*f*).

(*f*) This rule is taken from Cons. Ord. XXIII. r. 22.

Judgment for recovery of money.

3. A judgment (*g*) for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Court whose jurisdiction is

transferred by the principal Act (*h*) might have been enforced at the time of the passing thereof (*i*). Ord. XLII.

(*g*) "Judgment" includes "decree" (Judicature Act, 1873, s. 100); and orders may be enforced in the same way as judgments to the same effect (rule 24, *post*, p. 451, and note thereto). "Judgment."

(*h*) "The principal Act" means the Judicature Act, 1873 (Ord. LXXI. r. 1, *infra*). "Principal Act."

(*i*) There were five different modes of enforcing a judgment for money, viz.:—
 (1) By writ of *fi. fa.* or *elegit*; (2) by sequestration; (3) by attachment of debts; (4) by attachment or committal for six weeks in cases allowed by the Debtors Act, 1869; (5) by proceeding under the Judgment Acts. Former modes of enforcing judgment.

As to the Debtors Act, see *ante*, p. 187 *et seq.*; and as to execution generally, see Daniell, 323; Seton, 1555.

4. A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorised by law, by attachment (*k*). For payment of money into Court.

(*k*) As to sequestration, see Ord. XLIII. r. 6, *post*, p. 454; and as to attachment, see Ord. XLIV., *post*, p. 455.

A judgment for payment of money into Court may also be enforced by the appointment of a receiver (*Stanger Leathes v. Stanger Leathes*, W. N. (1882), 71).

5. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession (*l*). For recovery of land.

(*l*) As to the writ of possession, see Ord. XLVII., *post*, p. 462.

An order for foreclosure absolute is not a judgment for the recovery of land within the meaning of this rule (*Wood v. Wheeler*, 22 Ch. D. 281).

6. A judgment for the recovery of any property other than land or money may be enforced: For recovery of property other than money or land.

(a.) By writ for delivery of the property:

(b.) By writ of attachment:

(c.) By writ of sequestration (*m*).

(*m*) As to these writs, see Ord. XLVIII., *post*, p. 463; Ord. XLIV., *post*, p. 455; and Ord. XLIII. r. 6, *post*, p. 454.

7. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal. To do act other than payment of money, or to abstain from doing anything.

8. In these rules the term "writ of execution" shall include writs of *feri facias*, *capias*, *elegit*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding rules of this order shall be applicable to the case. Definition of "writ of execution," and "issuing execution against any party."

9. Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a judge for leave to issue execution against such party. And the Court or judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may Where judgment is upon conditions.
Leave to issue execution.

Ord. XLII. direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

Execution against partnership firm.

10. Where a judgment or order is against a firm, execution may issue :

- (a.) Against any property of the partnership ;
- (b.) Against any person who has appeared in his own name under Ord. XII. r. 15, or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner ;
- (c.) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a judge for leave so to do ; and the Court or judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined (n).

(n) Where a firm is sued in the firm's name the judgment must be against the firm, and cannot be separately entered against one partner who has failed to appear (*Jackson v. Litchfield*, 8 Q. B. D. 474).

But where judgment has been recovered against the firm the plaintiff may bring an action on the judgment against any individual member (*Clark v. Cullen*, 9 Q. B. D. 355). See further, as to execution against partners, *Davis v. Morris*, 10 Q. B. D. 436 ; *Munster v. Railton*, 10 Q. B. D. 475 ; 11 Q. B. D. 435, reversing the decision below ; *Ex parte Blain*, 12 Ch. D. 522 ; *Ex parte Young*, 19 Ch. D. 124.

Issue of writ of execution.

11. No writ of execution shall be issued without the production to the officer by whom the same should be issued of the judgment or order upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the creditor to execution.

Præcipe for writ.

12. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a *præcipe* for that purpose. The *præcipe* shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firm against whose goods, the execution is to be issued ; and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The Forms in Appendix G. shall be used, with such variations as circumstances may require (o).

(o) For these forms, see *infra*.

Name of solicitor or party suing out writ to be indorsed on writ.

13. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued

out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be. Ord. XLII.

14. Every writ of execution shall bear date of the day on which it is issued. The Forms in Appendix H. shall be used, with such variations as circumstances may require (*p*). Date of issue.

(*p*) For these forms, see *infra*. For a variation in the form see *Bolton v. Bolton*, 3 Ch. D. 276; and see also *Pyman v. Burt*, W. N. (1884), 100. Form of writs.

15. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered (*q*). Expenses of execution.

(*q*) A sheriff who recovers a judgment debt by compulsion of a *fi. fa.* is entitled to poundage, though he is paid out without a sale of any of the goods seized (*Mortimore v. Cragg*, 3 C. P. D. 216, overruling *Roe v. Hammond*, 2 C. P. D. 300); but there must have been an actual seizure (*Bissicks v. Bath Colliery Company*, 3 Ex. D. 174). See also *Re Craycraft*, 8 Ch. D. 596; *Ex parte Lithgow*, 10 Ch. D. 169; *Sneary v. Aday*, 1 Ex. D. 299; *Nash v. Dickenson*, L. R. 2 C. P. 252. Poundage.

16. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4*l.* per cent. per annum from the time when the judgment or order was entered or made, provided that in cases where there is an agreement between the parties that more than 4*l.* per cent. interest shall be secured by the judgment or order, then the indorsement may be accordingly to levy the amount of interest so agreed (*r*). Writ for recovery of money to state amount and interest.

(*r*) The writ should be delivered to the sheriff and not to the sheriff's officer (*Triminger v. Keene*, W. N. (1882), 106).

The costs of an action in the absence of any special order bear interest from the date of the judgment and not from the date of the allocatur only (*Pyman v. Burt*, W. N. (1884), 100).

17. Every person to whom any sum of money or any costs shall be payable under a judgment or order shall, so soon as the money or costs shall be payable, be entitled to sue out one or more writ or writs of *feri facias* or one or more writ or writs of *elegit* to enforce payment thereof, subject nevertheless as follows: When execution for money or costs may be issued.

(*a.*) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period:

(*b.*) The Court or a judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he shall think fit (*s*).

(*s*) This rule is founded on Cons. Ord. XXIX. r. 6.

In order to issue writs of *feri facias* or *elegit* (as to which see Ord. XLIII., *infra*), the order must be for payment to a person, not to his account in a bank (*Re Leeds Banking Company*, 1 Ch. 150). Under Cons. Ord. XXIX. r. 1, from which r. 1 of Form of order for payment of money.

Ord. XLII.

Naming period for payment.

Issue of separate writs for money and costs.

Execution, except for money, costs or land, may be issued within fourteen days.

Writ to remain in force for one year only unless renewed.

Evidence of renewal.

Execution may issue within six years of judgment.

Where leave to issue execution necessary.

this Order is taken (see *ante*, p. 446), it was held that the decree need not be served before the writs were issued (*Land Credit Company of Ireland v. Fermoy*, 5 Ch. 323). It was held under the old practice that the period named must not be before the day of entering the judgment (*Adkins v. Bliss*, 2 De G. & J. 286).

18. Upon any judgment or order for the recovery or payment of a sum of money and costs, there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall only be for costs and shall be issued not less than eight days after the first writ (*t*).

(*t*) See as to this rule *Harris v. Jewell*, W. N. (1883), 216.

19. A party who has obtained judgment or an order, not being a judgment for payment of money or costs, or for the recovery of land, may issue execution in fourteen days, unless the Court or a judge shall order execution to issue at an earlier or later date with or without terms.

20. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the Court or a judge, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his solicitor, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

21. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

22. As between the original parties to a judgment or order, execution may issue at any time within six years from the recovery of the judgment or the date of the order.

23. In the following cases, viz. :

- (*a*.) Where six years have elapsed since the judgment or date of the order, or any change has taken place by death or otherwise in the parties entitled or liable to execution (*u*);
- (*b*.) Where a husband is entitled or liable to execution upon a judgment or order for or against a wife;
- (*c*.) Where a party is entitled to execution upon a judgment of assets *in futuro*;
- (*d*.) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company, or against a public officer or other person representing such company;

the party alleging himself to be entitled to execution may apply to the Court or a judge for leave to issue execution accordingly. And such Court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or judge may impose such terms as to costs or otherwise as shall be just. Ord. XLII.

(u) Where a plaintiff obtained judgment with costs and died, his executors obtained leave to issue execution on an *ex parte* application, but without costs (*Mercer v. Laurence*, 26 W. R. 506; W. N. (1878), 103); and see *Davis v. Andrews*, W. N. (1884), 94, where one of two partners who had recovered judgment died before execution. The executor of a creditor who has obtained final judgment cannot issue a bankruptcy notice unless he has obtained leave under this rule to issue execution on the judgment (*Ex parte Woodall*, 13 Q. B. D. 479). Change in the parties.

24. Every order of the Court or a judge in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect (v). Enforcement of orders.

(v) This rule is substantially the same as Ord. XLII. r. 20 of the repealed rules, under which it was held that an order dismissing an action with costs for want of prosecution could not be enforced by attachment of debts (*Cremetti v. Crom*, 4 Q. B. D. 225; *sed qu.*, see *Nott v. Sands*, W. N. (1883), 74; and see now Ord. XLV. r. 1, *post*, p. 455).

A sequestration may be issued (without leave) against a receiver for disobeying an order to pay money into Court (*Sprunt v. Pugh*, 7 Ch. D. 567).

25. An order of commitment under the Debtors Act, 1869, shall bear date on the day on which such order was made, and shall continue in force for one year from such date and no longer; but it may be renewed in the manner provided for writs of execution by Rule 20 of this Order (w). Commitment under Debtors Act, 1869.

(w) As to the Debtors Act, 1869, see *ante*, p. 187.

26. Any person not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter (x). Enforcing obedience by and against persons not parties.

(x) This rule is taken from Cons. Ord. XXIX. r. 2.

27. No proceeding by *audita querela* shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or judge may give such relief and upon such terms as may be just. Audita querela abolished: application for stay of execution.

28. Nothing in this Order shall take away or curtail any right here- Saving as to process.

Ord. XLII. tofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever (y).

(y) See *Anglo-Italian Bank v. Davies*, 9 Ch. D. 275.

Issue of several writs.

29. Nothing in this Order shall affect the order in which writs of execution may be issued.

Court may direct performance of judgment by another person, at the costs of the disobedient party.

30. If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract be not complied with, the Court or a judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court or judge, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a judge may direct, and execution may issue for the amount so ascertained, and costs (yy).

(yy) See Judicature Act, 1884, s. 14, *ante*, p. 303.

Execution against corporation.

31. Any judgment or order against a corporation wilfully disobeyed may, by leave of the Court or a judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property.

II. DISCOVERY IN AID OF EXECUTION.

Examination of judgment debtor as to debts due to him.

32. When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the Court or a judge for an order that the debtor liable under such judgment or order, or in the case of a corporation that any officer thereof, be orally examined, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before a judge or an officer of the Court as the Court or judge shall appoint; and the Court or judge may make an order for the attendance and the examination of such debtor, or of any other person, and for the production of any books or documents (z).

(z) This rule corresponds to Ord. XLV. r. 1, of the repealed rules, but is more extensive; the rule is taken from C. L. P. Act, 1854, s. 60.

The debtor is liable under this rule to be subjected to a cross-examination of the most rigorous description (*Republic of Costa Rica v. Strousberg*, 16 Ch. D. 8); but he is entitled to his expenses before attending to be examined (*Protector Co. v. Whittlam*, 36 L. T. 467).

Where the creditor has obtained an order for payment by instalments, and no default has been made, the Court will refuse to order an examination (*Hayton v. Beall*, W. N. (1881), 12; 29 W. R. 333).

Removal of difficulties in execution of judgment other than for recovery of money.

33. In case of any judgment or order other than for the recovery or payment of money, if any difficulty shall arise in or about the execution or enforcement thereof, any party interested may apply to the Court or a judge, and the Court or judge may make such order thereon for the attendance and examination of any party or otherwise as may be just.

34. The costs of any application under the last two preceding rules or either of them, and of any proceedings arising from or incidental thereto, shall be in the discretion of the Court or a judge, or in the discretion of such officer as in rule 32 mentioned, if the Court or a judge shall so direct.

Ord. XLII.

Costs.

ORDER XLIII.

I. WRITS OF FIERI FACIAS, ELEGIT, AND SEQUESTRATION.

1. Writs of *feri facias* and of *elegit* shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed (a).

Effect and execution of writs of *fi. fa.* and *elegit*.

(a) Sect. 146 (1) of the Bankruptcy Act, 1883, now provides that the writ of *elegit* shall not extend to goods; see *Hough v. Windus*, 12 Q. B. D. 224.

As to equitable execution, see the Judgment Act, 1864, *ante*, p. 177.

2. Where it appears, upon the return of any writ of *feri facias*, that the sheriff or other officer has by virtue of such writ seized, but not sold, any goods of the person directed to pay a sum of money or costs, the person to whom such sum of money or costs is payable shall, immediately after such writ with such return shall have been filed as of record, be at liberty to sue out a writ of *venditioni exponas* (b).

Writ of *venditioni exponas*.

(b) This rule is taken from Cons. Ord. XXIX. r. 9.

3. Where it appears, upon the return of any writ of *feri facias* or any writ of *elegit*, that the person against whom such writ was so issued is a beneficed clerk, and has no goods or chattels, nor any lay fee in the bailiwick of the sheriff to whom such writ was directed, the person to whom the sum of money or costs mentioned in such writ is or are payable shall, immediately after such writ with such return shall have been filed as of record, be at liberty to sue out one or more writs of *feri facias de bonis ecclesiasticis*, or one or more writs of sequestration (c).

Writ of *fi. fa. de bonis ecclesiasticis*.

(c) This rule is taken from Cons. Ord. XXIX. r. 11.

Before a *fi. fa. de bonis ecclesiasticis* can issue it must be shown that the clerk has no goods or chattels, not only that they are insufficient (*Rabbits v. Woodward*, W. N. (1869), 152, 179; 20 L. T. 693, 778).

4. Such writs as in the last preceding rule mentioned, when sealed, shall be delivered to the bishop to be executed by him, and such writs, when returned by the bishop, shall be delivered to the parties or solicitors by whom respectively they were sued out, and shall thereupon be filed as of record in the central office; and for the execution of such writs the bishop or his officers shall not take or be allowed any fees other than such as are or shall be from time to time allowed by lawful authority (d).

Execution by bishop.

(d) This rule is taken from Cons. Ord. XXIX. r. 13.

Ord. XLIII.

Writs in aid of *fi. fa.* or *elegit.*

5. Writs of *venditioni exponas*, *distringas nuper vice comitem*, *feri facias de bonis ecclesiasticis*, *sequestrari facias de bonis ecclesiasticis*, and all other writs in aid of a writ of *feri facias* or of *elegit*, may be issued and executed in the same cases and in the same manner as heretofore.

Writ of sequestration.

6. Where any person is by any judgment or order directed to pay money into Court or to do any other act in a limited time, and after due service of such judgment or order refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order shall, at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration in Chancery had before the commencement of the principal Act, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration were before the same date dealt with by the Court of Chancery (*e*).

(*e*) This rule is substantially the same as Ord. XLVII. r. 1, of the repealed rules, and appears to supersede rules 3 and 7 of the General Order, 7th January, 1870, though these are not expressly repealed; for these rules see 5 Ch. xxxiv.

As to sequestration generally, see Daniell, 908. It is doubtful whether a sequestration can properly be issued to enforce a simple judgment for a debt; see *Ex parte Nelson*, 14 Ch. D. 41. The writ may be issued without leave of the Court (*Sprunt v. Pugh*, 7 Ch. D. 567), except to enforce payment of costs (rule 7). As to the priority of a sequestration over a mortgage, see *Ward v. Booth*, 14 Eq. 195. An order for sale ought to be obtained in chambers (*Turner v. Clifford*, W. N. (1870), 199).

What property liable to sequestration.

The following different kinds of property have been held liable to sequestration: the accrued dividend on a fund in Court payable to a married woman for her separate use without power of anticipation (*Claydon v. Finch*, 15 Eq. 266; and see *Slade v. Hulme*, 30 W. R. 28; *Miller v. Miller*, L. R. 2 P. & M. 54); a balance at a bank (*Miller v. Huddleston*, 22 Ch. D. 233); a deposit on appeal (*Conn v. Garland*, 9 Ch. 101); pensions for past services (*Willecock v. Terrell*, 3 Ex. D. 323; 39 L. T. 84; *Sansom v. Sansom*, 4 P. D. 69; 48 L. J. P. D. & A. 25; 27 W. R. 692; 39 L. T. 612; *Dent v. Dent*, L. R. 1 P. & M. 366; *McCarthy v. Gould*, 1 Ba. & B. 387); a rent-charge (*Wilson v. Metcalfe*, 1 Beav. 263; and see *Clinton v. Clinton*, L. R. 1 P. & M. 215); but not the pension of an officer in the Indian army (*Birch v. Birch*, 8 P. D. 163). The Court has no jurisdiction to order the Lords of the Treasury or the Paymaster-General to pay a pension charged on the Consolidated Fund to sequestrators; but an order will be made restraining the pensioner from receiving and empowering the sequestrators to receive the pension (*Willecock v. Terrell*); and see also *Crispin v. Cumano*, L. R. 1 P. & M. 622). Where sequestration could not be obtained a receiver was appointed (*Bryant v. Bull*, 10 Ch. D. 153; 48 L. J. Ch. 325; 27 W. R. 246; 39 L. T. 470). Where the party had no goods, and his only property was an army pension, the Court made a four-day order for payment, and that in default sequestration might issue (*Snow v. Bolton*, 17 Ch. D. 433; 29 W. R. 583; 44 L. T. 571; but see *Birch v. Birch*). The costs of a sequestration, when discharged, are taxed as between party and party (*Re Shapland*, 23 W. R. 40; W. N. (1874), 202).

Costs of sequestration.

Sequestration for costs.

7. No subpoena for the payment of costs, and, unless by leave of the Court or a judge, no sequestration to enforce such payment, shall be issued (*f*).

(*f*) For an instance of such leave being given, see *Snow v. Bolton*, cited in note to rule 6; the application for leave is made in chambers (*ibid.*).

ORDER XLIV.

ATTACHMENT.

1. A writ of attachment shall have the same effect as a writ of attachment issued out of the Chancery Division has heretofore had (g). Effect of writ of attachment.

(g) See note to next rule.

2. No writ of attachment shall be issued without the leave of the Court or a judge, to be applied for on notice to the party against whom the attachment is to be issued (h). Attachment not to be issued without leave.

(h) Service of the notice of motion on the solicitor on the record of the party to be attached is sufficient (*Browning v. Sabin*, 5 Ch. D. 511; *Richards v. Kitchen*, W. N. (1877), 128; 25 W. R. 602; but see *Mann v. Perry*, W. N. (1881), 4; 44 L. T. 248); or the notice may be served by leaving it at the residence of the party (*Re a Solicitor*, 14 Ch. D. 152; *S. C.*, *nom. Re Ryan*, 28 W. R. 529); and see as to service generally, Ord. LXVII., *infra*. An order for attachment obtained without notice will be discharged (*Dallas v. Glyn*, 3 Ch. D. 190; 46 L. J., Ch. 51; 24 W. R. 881; 34 L. T. 897; *Re a Solicitor*, 1 Ch. D. 445; 24 W. R. 103). As to service when the residence of the party is not known, see *Tilney v. Stansfeld*, 28 W. R. 582; W. N. (1880), 77. No date need be specified for the return of the writ by the sheriff (*Owen v. Pritchard*, W. N. (1876), 147). See also Ord. LII. r. 4, *post*, p. 479. Service of notice of motion.

A writ of attachment may be ordered to issue on a notice of motion to commit for contempt (*Piper v. Piper*, W. N. (1876), 202); but where leave has been given to issue a writ of attachment an order for committal will not be made instead (*Buist v. Bridge*, 29 W. R. 117; 43 L. T. 432; W. N. (1880), 176). An exact copy of the order, for non-compliance with which the attachment was issued, must be served, otherwise the attachment will be set aside (*Re Holt*, 11 Ch. D. 168; 27 W. R. 485; 40 L. T. 207; and see *Seton*, p. 1597). As to service of an order for discovery or inspection, see Ord. XXXI. r. 22, *ante*, p. 392; *Joy v. Hadley*, 22 Ch. D. 571. The order which it is desired to enforce must have been *properly framed and endorsed*; see Ord. XLI. r. 5, *ante*, p. 445; *Hampden v. Wallis*, 26 Ch. D. 746.

A common law judge at chambers can grant leave to issue an attachment (*Salm Kyrburg v. Posnanski*, W. N. (1884), 146); but not a chancery judge (*Re Knight, Knight v. Gardiner*, W. N. (1883), 162). Chambers.

As to the right of a sheriff to break open an outer door in executing a writ of attachment, see *Harvey v. Harvey*, 26 Ch. D. 644.

For an order for attachment against a solicitor who had failed to pay costs which he had been ordered to pay for misconduct, see *Tilney v. Stansfeld*, 28 W. R. 582; W. N. (1880), 77. Attachment of solicitor.

A solicitor may be attached for default in payment of a balance found due from him upon taxation of his bill of costs under the common order (*Re Rush*, 9 Eq. 147; 18 W. R. 331; *Re White*, 19 W. R. 39; 23 L. T. 387; and see *Re V—*, Ir. R. 8 Eq. 355). But he cannot be attached for non-payment of costs incurred simply as an unsuccessful litigant (*Re Hope*, 7 Ch. 523; overruling *Re Barfield and Rush*, 19 W. R. 466; 24 L. T. 248). And the right to an attachment may be lost by making terms with him (*Harvey v. Hall*, 16 Eq. 324).

The costs of an attachment are taxed costs (*Abud v. Riches*, 2 Ch. D. 528; 24 W. R. 637); they should be asked for on the application for leave to issue the writ (*ibid.*; *Tilney v. Stansfeld*, 28 W. R. 582; W. N. (1880), 77). Costs.

ORDER XLV.

ATTACHMENT OF DEBTS.

1. The Court or a judge may, upon the *ex parte* application of any person who has obtained a judgment or order for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment or order, and upon affidavit by himself or his solicitor stating that judgment has been recovered, or Power to make garnishee order.

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the order made, and that it is still unsatisfied, and to what amount, and that any other person is indebted to such debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to such debtor shall be attached to answer the judgment or order; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a judge or an officer of the Court, as such Court or judge shall appoint, to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order (i).

Oral examination.

(i) As to the oral examination of the debtor, see Ord. XLII. rr. 32—34, *ante*, p. 452.

Attachment of debts.

As to the force and effect of the rule, which is taken from sect. 61 of the C. L. P. Act, 1854, see generally *Tapp v. Jones*, L. R. 10 Q. B. 591; *Howell v. Metropolitan Ry. Co.*, 19 Ch. D. 508; *Chatterton v. Watney*, 16 Ch. D. p. 382; 17 Ch. D. p. 262; and the recent important case of *Webb v. Stenton* (C. A.), 11 Q. B. D. 518.

What debts attachable.

The following have been held to be attachable:—Rent (*Mitchell v. Lee*, L. R. 2 Q. B. 259); proceeds of an execution in the hands of the sheriff (*Murray v. Simpson*, 8 Ir. C. L. App. xlv.); a debt for which a cheque had been given, the cheque having been stopped before presentation (*Cohen v. Hale*, 3 Q. B. D. 371); an equitable debt (*Wilson v. Dundas*, W. N. (1875), 232; *Webb v. Stenton*, 11 Q. B. D. 518); money in the hands of an official liquidator (*Ex parte Turner*, 2 De G. F. & J. 354); money payable by a receiver (*Re Cowan*, 14 Ch. D. 638, but see *Webb v. Stenton*); interest on railway stock guaranteed by one railway company to another (*Boueh v. Sevenoaks Ry.*, 4 Ex. D. 133); a debt due to the testator's estate upon a judgment against the executor (*Fowler v. Roberts*, 2 Giff. 226; *Burton v. Roberts*, 6 H. & N. 93); and see also *Miller v. Mynn*, 1 E. & E. 1075; *Ward v. Ward*, 14 Ch. D. 506; *Re Bryan*, 14 Ch. D. 516; *Booth v. Trail*, 12 Q. B. D. 8; *Gordon v. Jennings*, 9 Q. B. D. 45.

“Debts owing or accruing.”

But there can be no attachment except of a debt, *i. e.*, a sum of money presently owing, *debitum in presenti*—whether *solvendum in presenti* or only *in futuro* (*Webb v. Stenton* (C. A.), 11 Q. B. D. 518, where it was held that there could be no attachment of the future income of a tenant for life of a trust fund). This case shakes the authority of *Re Cowan*, and shows that the form of the garnishee order absolute in Seton, p. 311, is wrong (*per Lindley*, L. J., 11 Q. B. D. 528).

What not attachable.

The following have been held *not* to be attachable:—Damages before judgment, though after verdict (*Johnson v. Diamond*, 11 Ex. 73; *Jones v. Thompson*, E. B. & E. 63); a debt due to the judgment debtor jointly with another (*Macdonald v. Tacquah Co.*, 13 Q. B. D. 535; 32 W. R. 760); surplus of a bankrupt's estate in the hands of the trustee (*Re Greensill*, L. R. 8 C. P. 24; and see *Mack v. Ward*, W. N. (1884), 16); salary not yet actually payable (*Hall v. Pritchett*, 3 Q. B. D. 215); unpaid purchase-money due under a contract for the sale of land (*Howell v. Metropolitan Ry.*, 19 Ch. D. 508); money in the hands of the Court (*Dolphin v. Layton*, 4 C. P. D. 130; and see *Stevens v. Phelps*, 10 Ch. 417; *Howell v. Metropolitan Ry.*); and see *Richardson v. Ebnit*, 2 C. P. D. 9; *Chatterton v. Watney*, 16 Ch. D. 378; 17 Ch. D. 259; *Walker v. Rooke*, 6 Q. B. D. 631; *Fyσε v. Brown*, 13 Q. B. D. 199.

Affidavit.

The affidavit in support of the application need not state the amount of the debt due to the judgment debtor (*Lucy v. Wood*, W. N. (1884), 58).

Garnishee order for costs.

A garnishee order should not be issued for costs, without first applying for payment of them (*Nott v. Sands*, W. N. (1883), 74).

A debt may be attached though more than six years have elapsed since the judgment (*Fellows v. Thornton*, W. N. (1884), 248).

Service of garnishee order binds the debt.

2. Service of an order that debts, due or accruing to a debtor liable under a judgment or order, shall be attached, or notice thereof to the garnishee, in such manner as the Court or judge shall direct, shall bind such debts in his hands (k).

Effect of bankruptcy of debtor.

(k) A garnishee order *nisi* does not create a charge until service of it on the garnishee (*Hamer v. Giles*, 11 Ch. D. 942); and see *Re Stanhope Co.*, 11 Ch. D. 160.

By sect. 45 of the Bankruptcy Act, 1883, where a creditor has attached any debt due to the debtor, he cannot retain the benefit of the attachment against the trustee

in bankruptcy of the debtor unless he has received the debt before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor. Ord. XLV.

The attachment of a debt overrides the general lien of a solicitor over the judgment in respect of general costs due to him from the garnishee (*Hough v. Edwards*, 1 H. & N. 171); but, as to the solicitor's right to obtain a charging order under the statute, notwithstanding a previous garnishee order, see *Birchall v. Pugin*, L. R. 10 C. P. 397; *Shippey v. Grey*, 49 L. J. 524; 28 W. R. 877; 42 L. T. 673; *The Leader*, L. R. 2 A. & E. 314; *Hamer v. Giles*, 11 Ch. D. 942.

Solicitor's lien, how affected by garnishee order.

As to set-off by a garnishee, see *Tapp v. Jones*, L. R. 10 Q. B. 591; *Sampson v. Seaton Ry. Co.*, *ibid.* 28. Set-off.

3. If the garnishee does not forthwith pay into Court the amount due from him to the debtor, liable under a judgment or order, or an amount equal to the judgment or order, and does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon summons, then the Court or judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order. Issue of execution against garnishee.

4. If the garnishee disputes his liability, the Court or judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined. Procedure where garnishee disputes his liability.

5. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or a judge may order such third person to appear, and state the nature and particulars of his claim upon such debt (*l*). Where third party interested.

(*l*) As to the proper mode of proceeding where there is a suggestion that the money sought to be attached is trust money, see *Roberts v. Death*, 8 Q. B. D. 319; 30 W. R. 76. And see next rule.

6. After hearing the allegations of any third person under such order, as in rule 5 mentioned, and of any other person whom by the same or any subsequent order the Court or a judge may order to appear, or in case of such third person not appearing when ordered, the Court or judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding rules of this order, and may bar the claim of such third person, or make such other order as such Court or judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or judge shall think just and reasonable (*m*). Determination of questions where third party interested.

(*m*) An order made by consent under this rule is final (*Eade v. Winsler*, 47 L. J. Q. B. 584).

7. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the debtor, liable under a judgment or order, to the amount Garnishee discharged by payment or execution.

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(*n*) The provisions of this rule do not apply to a conditional debt (*Howell v. Metropolitan Ry.*, 19 Ch. D. 508).

Debt attach-
ment book.

8. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein may be taken by any person upon application to the proper officer.

Costs.

9. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a judge.

ORDER XLVI.

CHARGING ORDERS, *DISTRINGAS*, AND STOP ORDERS.

Charging
order.

1. An order charging stock or shares may be made by any Divisional Court or by any judge, and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided, by the Acts 1 & 2 Vict. c. 110, ss. 14 and 15, and 3 & 4 Vict. c. 82, s. 1 (*o*).

(*o*) The following are the sections referred to:—

1 & 2 Vict.
c. 110, s. 14.
Charging
order.

XIV. "And be it enacted, that if any person against whom any judgment shall have been entered up in any of her Majesty's superior Courts at Westminster shall have any government stock, funds, or annuities, or any stock or shares of or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a judge of one of the superior Courts, on the application of any judgment creditor, to order that such stock, funds, annuities, or shares, or such of them or such part thereof respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon, and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor; provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order."

3 & 4 Vict.
c. 82, s. 1.
Provisions
extended to
contingent
interest and
to stock in
Court.

I. "The aforesaid provisions of the said Act (*i. e.*, 1 & 2 Vict. c. 110, s. 14) shall be deemed and taken to extend to the interest of any judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent, as well in any such stocks, funds, annuities, or shares as aforesaid as also in the dividends, interest, or annual produce of any such stock, funds, annuities or shares; and whenever any such judgment debtor shall have any estate, right, title or interest, vested or contingent, in possession, remainder, or reversion, in, to, or out of any such stocks, funds, annuities or shares as aforesaid, which now are, or shall hereafter, be standing in the name of the Accountant-General of the Court of Chancery, or the Accountant-General of the Court of Exchequer, or in, to, or out of the dividends, interest, or annual produce thereof, it shall be lawful for such judge to make any order as to such stock, funds, annuities, or shares, or the interest, dividends, or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of such judgment debtor: Provided always, that no order of any judge as to any stock, funds, annuities, or shares standing in the name of the Accountant-General of the Court of Chancery or the Accountant-General of the Court of Exchequer, or as to the interest, dividends, or annual produce thereof, shall prevent the Governor and Company of the Bank of England, or any public company, from permitting any transfer of such stocks, funds, annuities, or shares, or payment of the interest, dividends, or annual produce thereof, in such manner as the Court of Chancery or the Court of Exchequer respectively may direct, or shall have any greater effect than if such

"debtor had charged such stock, funds, annuities or shares, or the interest, dividends, or annual produce thereof, in favour of the judgment creditor, with the amount of the sum to be mentioned in any such order."

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XV. "And in order to prevent any person against whom judgment shall have been obtained from transferring, receiving or disposing of any stock, funds, annuities, or shares hereby authorised to be charged for the benefit of the judgment creditor under an order of a judge, be it further enacted, that every order of a judge charging any government stock, funds, or annuities, or any stock or shares in any public company, under this Act, shall be made in the first instance *ex parte*, and without any notice to the judgment debtor, and shall be an order to show cause only; and such order, if any government stock, funds, or annuities standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is to be affected by such order, shall restrain the Governor and Company of the Bank of England from permitting a transfer of such stock in the meantime and until such order shall be made absolute or discharged; and if any stock or shares of or in any public company, standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected by any such order, shall in like manner restrain such public company from permitting a transfer thereof; and that if, after notice of such order to the person or persons to be restrained thereby, or in case of corporations to any authorised agent of such corporation, and before the same order shall be discharged or made absolute, such corporation or person or persons shall permit any such transfer to be made, then and in such case the corporation or person or persons so permitting such transfer shall be liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment; and that no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor; and further, that, unless the judgment debtor shall within a time to be mentioned in such order show to a judge of one of the said superior Courts sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his attorney or agent, be made absolute: provided that any such judge shall, upon the application of the judgment debtor, or any person interested, have full power to discharge or vary such order, and to award such costs upon such application as he may think fit."

1 & 2 Vict. c. 110, s. 15. Order of judge to be made in the first instance *ex parte*, and

interim restraint of transfer by company, &c.

The duties of the accountant-general are now performed by the paymaster-general; see Chancery Funds Act, 1872, ss. 4, 6, *ante*, p. 204.

Accountant-general.

An application for a charging order is made by summons (Daniell, 939); and must be supported by evidence of the title of the applicant to the debt and of the debtor's title to the property sought to be charged (*ibid.*). The order may be made by any judge of the High Court; see *Hopewell v. Barnes*, 1 Ch. D. 630.

Application, how made.

As to the charging of contingent interests, see *Cragg v. Taylor*, L. R. 2 Ex. 131; *Dixon v. Wrench*, L. R. 4 Ex. 154; *South Western Loan Co. v. Robertson*, 3 Q. B. D. 17; 30 W. R. 102, where it was held that stock is none the less chargeable because it is standing in the name of a trustee for other persons besides the judgment debtor.

Contingent interests.

It does not follow from sect. 14 of the Act that collateral proceedings may not be instituted before the six months expire (*Bristed v. Wilkins*, 3 Hare, 235, 239); *e. g.*, a stop order may be obtained (*Watts v. Jefferys*, 3 M. & G. 372; and see *Wells v. Gibbs*, 22 Beav. 204).

Six months' rule.

When the order is made absolute, the bank or public company, which is bound by the statute to hold its hand during the pendency of the order *nisi*, will no longer be bound to take notice of the charge, unless the judgment creditor has instituted an action or taken some other steps (see *Reeve v. Taylor*, 13 Sim. 480), but must pay the dividends to the persons legally entitled thereto as before the charging order was made, and his receipt will discharge the company (*Churchill v. Bank of England*, 11 M. & W. 323; *Bristed v. Wilkins*, 3 Hare, 235). Such person will be bound, the order having been made absolute, to give effect to the charge on the stock or shares, and the bank or company is no longer concerned with the questions arising between the judgment creditor and other persons interested.

Effect of interim and absolute order on the company or the bank.

Nothing which has taken place subsequent to the original charging order is a sufficient cause to prevent its being made absolute; therefore, where a decree had been made for administration of the debtor's estate subsequently to the order *nisi*, an injunction to restrain the creditor from applying to have the order made absolute was refused (*Haly v. Barry*, 3 Ch. 452; *Scott v. Lord Hastings*, 1 K. & J. 633); but if the debtor had assigned the property before the original charging order was made, the creditor does not by such order obtain even an inchoate right (*Warburton v. Hill*, Kay, 470, as explained in *Haly v. Barry*); and see *Robinson v. Nesbitt*, L. R. 3 C. P. 264, overruling *Watts v. Porter*, 3 E. & B. 743.

Order, when to be made absolute.

A charging order has no greater effect than an instrument of charge executed by the judgment debtor would have had (*Re Onslow*, 20 Eq. 677); and separate

- Ord. XLVI. proceedings are still necessary to enforce it as before the Judicature Acts (*Leggott v. Western*, 12 Q. B. D. 287).
- Charging order for costs. A charging order cannot be made absolute when it appears that the judgment debtor was dead when the order *nisi* was obtained (*Finney v. Hinde*, 4 Q. B. D. 102; 27 W. R. 413; 40 L. T. 193).
- A charging order for costs cannot be obtained till the costs have been taxed (*Hidgery v. Tepper* (C. A.), 6 Ch. D. 364; 25 W. R. 872; 37 L. T. 297; *Jones v. Williams*, 8 M. & W. 349); *Burns v. Irving*, 3 Ch. D. 291, has not been followed.
- A charging order cannot affect the income of a fund to which a married woman is entitled for her separate use without power of anticipation (*Stanley v. Stanley*, 7 Ch. D. 589).
- Distringas* abolished. 2. No writ of *distringas* shall hereafter be issued under the Act 5 Vict. c. 5, s. 5.
- Definition of "company" and "stock." 3. In the following rules of this order the expression "company" includes the Governor and Company of the Bank of England and any other public company, whether incorporated or not, and the expression "stock" includes shares, securities, and money.
- Service of affidavit and filed notice on company. 4. Any person claiming to be interested in any stock standing in the books of a company may, on an affidavit by himself or his solicitor in the Form No. 27 in Appendix B, with such variations as circumstances may require, and on filing the same in the central office with a notice in the Form No. 22 in the same Appendix, with such variations as circumstances may require, and on procuring an office copy of the affidavit and a duplicate of the filed notice authenticated by the seal of the central office, serve the office copy and duplicate notice on the company (*p*).
- (*p*) For these forms, see *infra*.
- Name and address of claimant to be given. 5. There shall be appended to the affidavit a note stating the person on whose behalf it is filed, and to what address notices (if any) for that person are to be sent.
- Service of notices on claimant. 6. All such notices shall be deemed to have been duly sent if sent through the post by a prepaid letter directed to that person at the address so stated or at any such substituted address as hereinafter mentioned, whether the person to whom the notice is sent is living or not.
- Alteration of address. 7. The address so stated may, from time to time, be altered by the person by or on whose behalf the affidavit is filed, but no notice sent by post before the alteration to the address originally given or for the time being substituted therefor shall be affected by any subsequent alteration. Any such alteration of address may be made by service of a memorandum thereof on the company in the manner required for service of a notice under this order.
- Service of affidavit and filed notice to have the effect of *distringas*. 8. The service of the office copy of the affidavit and of the duplicate of the filed notice shall have the same force and effect against the company as a writ of *distringas* duly issued under the Act 5 Vict. c. 5, s. 5, would have had against the Bank of England if these rules had not been made (*q*).
- Effect of *distringas*. (*q*) As to the effect of a *distringas*, see *Re Marquis of Hertford*, 1 Ha. 584; *Wilkins v. Sibley*, 4 Giff. 442; 9 Jur. N. S. 388. The effect of it is to prevent the stock being dealt with without notice to the person putting on the *distringas*.

9. A notice filed under rule 4 of this order may at any time be withdrawn by the person by whom or on whose behalf it was given on a written request signed by him, or its operation may be made to cease by an order to be obtained by motion on notice or by petition or by summons at chambers duly served by any other person claiming to be interested in the stock sought to be affected by the notice.

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Withdrawal of notice by claimant.

10. If, whilst a notice filed under rule 4 of this order continues in force, the company on whom it is served receive from the person in whose name the stock specified in the notice is standing, or from some person acting on his behalf or representing him, a request to permit the stock to be transferred or to pay the dividends thereon, the company shall not, by force or in consequence of the service of the notice, be authorized, without the order of the Court or a judge, to refuse to permit the transfer to be made or to withhold the payment of the dividends for more than eight days after the date of the request (r).

Company cannot refuse to deal with the stock for more than eight days after request.

(r) This rule is taken from Cons. Ord. XXVII. r. 4.

Where the bank gave notice that an application had been made to them to allow a transfer of the stock and to pay the dividends thereon, the Court, on *ex parte* motion to restrain the bank from dealing with the stock, granted an *interim* injunction over the next motion day, and directed notice of the order to be served on the legal owners of the stock (*Re Blaksley*, 23 Ch. D. 549).

11. If the person who files a notice under rule 4 of this order desires to correct the description of the stock referred to in the filed notice, he may file an amended notice and serve on the company a duplicate thereof sealed with the seal of the central office, and in that case the service of the notice shall be deemed to have been made on the day on which the amended duplicate is so served.

Description of the stock may be corrected.

12. Where any monies or securities are in Court to the general credit of any cause or matter, or to the account of any class of persons, and an order is made to prevent the transfer or payment of such monies or securities, or any part thereof, without notice to the assignee of any person entitled in expectancy or otherwise to any share or portion of such monies or securities, the person by whom any such order shall be obtained on the shares of such monies or securities affected by such order shall be liable, at the discretion of the Court or a judge, to pay any costs, charges, and expenses which, by reason of any such order having been obtained, shall be occasioned to any party to the cause or matter, or any persons interested in any such monies or securities (s).

Costs occasioned by stop order on funds in Court.

(s) This and the next rule are taken from Cons. Ord. XXVI. rr. 1, 2.

As to stop orders generally, see Daniell, 1633 *et seq.*, and cases there cited. A stop order gives no priority among charges equal in degree (*Warburton v. Hill, Kay*, 470; *Greening v. Beekford*, 5 Sim. 195; *Swayne v. Swayne*, 11 Beav. 463; *Hulkes v. Day*, 10 Sim. 41; *Lister v. Tidd*, 4 Eq. 462; *Ex parte Kent*, 19 W. R. 596); for by granting a stop order the Court decides nothing as to the rights and priorities of contending parties (*Lucas v. Paacock*, 9 Beav. 118; *Hawkesley v. Gowan*, 12 W. R. 1100; and see *Re Blunt*, 10 W. R. 379). Trustees in bankruptcy who obtained no stop order were postponed to a mortgagee who obtained one after the bankruptcy (*Stuart v. Cockerell*, 8 Eq. 607); and see *Palmer v. Loekke*, 18 Ch. D. 381.

Stop orders.

But a person who puts a stop order on a fund in Court obtains priority over a person who merely gives notice to the trustees, although the notice is given before

Ord. XLVI. the stop order is obtained (*Pinnock v. Bailey*, 23 Ch. D. 497; 31 W. R. 912); and see *Mutual Society v. Langley*, 26 Ch. D. 686; 32 W. R. 792.

Costs of
obtaining
stop order.

Persons having claims on funds in Court are not entitled under all circumstances to the costs of obtaining a stop order (*Grimsby v. Webster*, 8 W. R. 725, but such costs were allowed in that case); and see *Edwards v. Grove*, 29 L. J. Ch. 839. But the mortgagee of a fund in Court empowered by his mortgage deed to apply for a stop order, is entitled to the costs of his so doing (*Waddilove v. Taylor*, 6 Ha. 307); he must, however, ask specially for them, or they will not be allowed by the taxing-master under the common order to tax the mortgagee's costs (*ibid.*). A trustee who, before paying into Court, became aware that a *distringas* had been placed on the fund, and omitted to mention the claim, was made personally liable for the assignee's costs of obtaining a stop order (*Re Allen*, 40 L. T. 456). In *Hoole v. Roberts*, 12 Jur. 108, an incumbrancer petitioning for a stop order, after notice that a petition had been presented for payment out of the fund, was not allowed his costs. See also *Mildmay v. Quicke*, 6 Ch. D. 553.

Application
should be by
summons.

The application for a stop order should be made by summons (*Wrench v. Wynne*, 17 W. R. 198; 38 L. J. Ch. 235; *Wellesley v. Mornington*, 41 L. J. Ch. 776; *Walsh v. Wason*, 22 W. R. 676; 30 L. T. 743), whether the assignor concurs or opposes; the costs of a petition will be refused (*Walsh v. Wason*); and in *Wellesley v. Mornington* the petitioner was ordered to pay the difference between the costs of obtaining the order on a summons at Chambers and the costs of the petition. But see *Re Day*, 49 L. T. 499; and see next rule.

Prospective
order.

In *Re Duke of Cleveland's Harle Estates*, January 17, 1862, V.-C. Kindersley granted a prospective stop order, restraining the payment of funds hereafter to be paid in to a particular account; but refused to make such a prospective order where there was no certainty that any fund would be brought into Court (*Wellesley v. Mornington*, 11 W. R. 17). The operation of the order, though general in terms, is confined to the amount on which the order was founded (*Macleod v. Buchanan*, 33 Beav. 234).

Service on the assignor is necessary, though a party to the cause (*Parsons v. Groome*, 4 Beav. 521; *Levinger v. Crombie*, 21 W. R. 37; *Re Nowell*, 11 W. R. 896); but not on other parties to the cause (*Glasbrook v. Gillatt*, 9 Beav. 611); and see r. 13.

Service of
application
for stop order.

13. Any person presenting a petition or taking out a summons for any such order as aforesaid shall not be required to serve such petition or summons upon the parties to the cause or matter, or upon the persons interested in such parts of the monies or securities as are not sought to be affected by any such order (*t*).

(*t*) See note to rule 12.

ORDER XLVII.

WRIT OF POSSESSION.

Writ of
possession.

1. A judgment or order that a party do recover possession of any land may be enforced by writ of possession in manner before the commencement of the principal Act used in actions of ejectment in the superior Courts of common law (*u*).

(*u*) An order for foreclosure absolute cannot be enforced by writ of possession (*Wood v. Wheeler*, 22 Ch. D. 281).

As to the writ of possession generally, see Daniell, 948.

The old writ of assistance is superseded by this writ (*Hall v. Hall*, 47 L. J. Ch. 680).

Suing out writ
of possession.

2. Where by any judgment or order any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment or order shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment or order and that the same has not been obeyed.

3. Upon any judgment or order for the recovery of any land and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs at the election of the successful party.

Ord. XLVII.
Separate writs for recovery of possession and for costs.

ORDER XLVIII.

WRIT OF DELIVERY.

1. Where it is sought to enforce a judgment or order for the recovery of any property other than land or money by writ of delivery, the Court or a judge may, upon the application of the plaintiff, order that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property, upon paying the value assessed, if any, and that if the property cannot be found, and unless the Court or a judge shall otherwise order, the sheriff shall distrain the defendant by all his lands and chattels in the sheriff's bailiwick, till the defendant deliver the property; or, at the option of the plaintiff, that the sheriff cause to be made of the defendant's goods the assessed value, if any, of the property (*v*).

Enforcing judgment, &c. for recovery of property other than land or money by writ of delivery.

(*v*) This rule is taken from sect. 78 of the C. L. P. Act, 1854.

As to the writ of delivery generally, see Daniell, 952; *Ivory v. Crwickshank*, W. N. (1875), 249; *Chilton v. Carrington*, 15 C. B. 730; *Corbett v. Lewin*, W. N. (1884), 62.

2. A writ of delivery shall be in the Form No. 10 in Appendix H; and when a writ of delivery is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages and costs awarded, and interest (*w*).

Form of writ of delivery.

(*w*) For this form, see *infra*.

ORDER XLIX.

TRANSFERS AND CONSOLIDATION.

1. Causes or matters may be transferred from one division to another of the High Court or from one judge to another of the Chancery Division by an order of the Lord Chancellor, provided that no transfer shall be made from or to any division without the consent of the President of the Division (*x*).

Transfer of causes or matters.

(*x*) When all parties consent the transfer will be made on a written application to the Lord Chancellor's secretary, otherwise the application must be to the Lord Chancellor in Court (*Mem.* 1 Ch. D. 41). The Court of Appeal has no power to order a transfer from one judge to another of the same division (*Re Hutley*, 1 Ch. D. 11; *Re Boyd*, *ib.* 12). See also *Hillman v. Mayhew*, 1 Ex. D. 132; *Humphreys v. Edwards*, W. N. (1875), 208; 45 L. J. Ch. 112; *Holloway v. York*, 2 Ex. D. 333; *Storey v. Waddic*, 4 Q. B. D. 289; Daniell, pp. 29, 1892. As to transfers from one division to another, see *Metropolitan Inner Circle Ry. v. Metropolitan Ry.*, W. N. (1879), 193; *China Steamship Co. v. Marine Insurance Co.*, W. N. (1881), 89.

Transfers.

An action will be transferred from one judge of the Chancery Division to another whenever it appears to be convenient so to do; see *Curlewis v. Whidborne*, 10 W. R. 261; *Sidebottom v. Sidebottom*, 14 W. R. 507; *Corser v. Jones*, 14 W. R. 704; *Sayers v. Corrie*, 9 Ch. 52.

If the parties neglect to apply the judge will, on his attention being called to the propriety of a transfer, apply to the Lord Chancellor himself (*Swale v. Swale*, 22 Beav. 401).

Ord. XLIX.

Notice of application.

One clear day's notice should be given to the other parties to the suit by the party desiring to transfer (*Sidebottom v. Sidebottom*; *Bond v. Barnes*, 2 De G. F. & J. 387; *Humphreys v. Edwards*, 45 L. J. Ch. 112; W. N. (1875), 208).

Retransfer of actions.

Refusal on insufficient grounds to consent may be visited with costs (*Coeg v. Hunasgeria Coffee Company*, 4 Ch. 415); and see further, as to costs, *Lyall v. Weldhen*, 9 Ch. 287; *Sayers v. Corrie*; *Lucas v. Siggers*, 7 Ch. 517.

Where an action has been transferred by general order from one Court to another, a retransfer will not, without consent, be ordered where it will delay the hearing. Where it will not cause delay, the Court will give weight to the fact that the judge from whom it has been transferred has by means of interlocutory applications gained an acquaintance with the facts (*Platt v. Walter*, 1 Ch. 471); but it will not take into consideration that such judge has decided a similar point in another case (*Wilson v. Gray*, 14 W. R. 783).

Before an application for retransfer is made, notice must be given to the other side (*Dennis v. Morris*, 21 W. R. 43).

A retransfer of a cause was asked for on the ground that Queen's counsel had advised in the cause before transfer and briefs had been delivered two months, but it was held that the reasons were not sufficient (*Tiffin v. Parker*, 12 W. R. 698).

Transfer for hearing or trial only.

2. In the Chancery Division a transfer of a cause or matter from one judge to another may by the same or a separate order be ordered to be made or to be deemed to have been made for the purpose only of hearing or of trial, and in such case the original and any further hearing shall take place before the judge to whom the cause or matter shall be so transferred; but all other proceedings therein, whether before or after the hearing or trial of the cause or matter, shall be taken and prosecuted in the same manner as if such cause or matter had not been transferred from the judge to whom it was assigned at the time of transfer, and as if such judge had given or made the judgment or order, if any, therein, unless the judge to whom the cause or matter is transferred shall direct that any further proceedings therein, before or after the hearing or trial thereof, shall be taken and prosecuted before himself or before an official referee or special referee (y).

(y) See, as to this rule, *Cave v. Cave*, W. N. (1880), 108; 28 W. R. 764; *Porter v. West*, W. N. (1880), 195; 29 W. R. 236; *Lloyd v. Jones*, 7 Ch. D. 390; *Shaw v. Brown*, W. N. (1881), 27.

Transfer from one division to another.

3. Any cause or matter may, at any stage, be transferred from one division to another by an order made by the Court or any judge of the division to which the cause or matter is assigned: Provided that no such transfer shall be made without the consent of the President of the Division to which the cause or matter is proposed to be transferred (z).

(z) This rule refers only to a transfer from one division to another (*Chapman v. Real Property Trust*, 7 Ch. D. 732). The order to transfer may be made without the consent of the President, but not the transfer itself (*Humphreys v. Edwards*, W. N. (1875), 208; 45 L. J. Ch. 112). An action will be transferred to or from the Chancery Division whenever it is convenient to do so. Actions of the kind usually commenced in the Queen's Bench Division were transferred to the Chancery Division in the following cases:—*Holloway v. York*, 2 Ex. D. 333; *Hillman v. Mayhew*, 1 Ex. D. 132; *London Land Company v. Harris*, 13 Q. B. D. 540 (in each of which there was a counterclaim for specific performance); *Young v. King*, W. N. (1876), 11; *Johnson v. Moffatt*, *ibid.* 21; *Holmes v. Harvey*, 25 W. R. 80. But in *Storey v. Waddle*, 4 Q. B. D. 289; *Standard Discount Company v. Barton*, 37 L. T. 581, the application to transfer was refused. See further, as to transfers from one division to another, *Cannot v. Morgan*, 1 Ch. D. 1; *Humphreys v. Edwards*, 45 L. J. Ch. 112; W. N. (1875), 112; *Hawkins v. Morgan*, 49 L. J. Q. B. 618;

The Fulca, W. N. (1880), 172; *China Steamship Company v. Marine Insurance Company*, W. N. (1881), 89; *Ladd v. Puleston*, W. N. (1883), 72. Ord. XLIX.

4. A particular application in any cause or matter may by the direction of the Lord Chancellor be heard and disposed of by any judge of the High Court who shall consent so to do, to whatever division or judge such cause or matter may have been assigned. Order for hearing of application by a particular judge.

5. When an order has been made by any judge of the Chancery Division for the winding-up of any company, or for the administration of the assets of any testator or intestate, the judge in whose Court such winding-up or administration shall be pending shall have power, without any further consent, to order the transfer to such judge of any cause or matter pending in any other Court or division brought or continued by or against such company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered, as the case may be (a). Transfer after order for winding-up or administration.

(a) The words of this rule are wider than those of the corresponding repealed rule, Ord. LI. r. 2a, and remove the difficulties experienced in *Re National Funds Assurance Co.*, 25 W. R. 23; and *Re Madras Irrigation Co.*, 16 Ch. D. 702, overruling *Re Landore Co.*, 10 Ch. D. 489. See *Re Sharpe*, W. N. (1884), 28.

An action against an executor personally may be transferred (*Re Timins*, W. N. (1878), 141; 26 W. R. 692; *Re Stubbs*, 8 Ch. D. 154; but see *Chapman v. Mason*, W. N. (1879), 93).

The application to transfer is made *ex parte* (*Re Landore Co.*; *Field v. Field*, W. N. (1877), 98; *Whitaker v. Robinson*, W. N. (1877), 201; *Re United Kingdom Telegraph Co.*, 29 W. R. 332). Application, how made.

6. When any summons under Ord. LV. rr. 3, 4, shall have been marked with the name of a judge other than the judge by rule 11 of the same order prescribed, such last-mentioned judge shall, unless cause shall appear to him to the contrary, without any further consent, order the transfer to such judge of the summons so improperly marked. Transfer of summons under Ord. LV.

7. Any cause or matter transferred from any other division to the Chancery Division, shall, by the order directing the transfer, be assigned to one of the judges of that division to be named in the order. Causes, &c. transferred to the Chancery Division to be assigned to a particular judge.

8. Causes or matters pending in the same division may be consolidated by order of the Court or a judge in the manner in use before the commencement of the principal Act in the superior Courts of common law (b). Consolidation of causes or matters.

(b) This rule adopts the old common law practice with regard to the consolidation of actions. An order to consolidate may be obtained where two or more actions are pending between the same plaintiff and the same defendant, or between the same plaintiff and different defendants, or between different plaintiffs and the same defendant, or between different plaintiffs and different defendants; and whatever the nature of the actions. See *Daniell*, 1888; *Chitty's Archbold*, 1085 *et seq.*; *Amos v. Chadwick*, 4 Ch. D. 869; 9 Ch. D. 459; *Holden v. Silkstone Co.*, 30 W. R. 98; *Teale v. Teale*, W. N. (1882), 83; *Holmes v. Harvey*, W. N. (1876), 276 (where the actions were in different divisions, and were transferred before being consolidated); *Smith v. Whicheard*, 24 W. R. 900; *Thomson v. South Eastern Ry.*, 9 Q. B. D. 320. Consolidation of actions.

A defendant only, and not a plaintiff, can apply for an order to consolidate (*Amos v. Chadwick*). After consolidation the several plaintiffs are in the same condition as if they had originally been co-plaintiffs (*Holden v. Silkstone Co.*).

Ord. XLIX. The application is made by motion or summons; the other parties should be served, and the notice of motion or summons should be intitled in all the actions (Daniell, 1889).

Staying proceedings. Where two suits were instituted for administration the Court stayed proceedings in the second suit, although it prayed additional relief, on the defendant in the first suit undertaking not to offer opposition to any matters not covered by the original decree which the judge in chambers might think fit to add thereto (*Guyer v. Peterson*, 26 Beav. 83; *Matthews v. Palmer*, 11 W. R. 610); and in another case, instead of staying proceedings in the second suit, the Court ordered the two suits to be consolidated, and the inquiries directed by the first decree to be extended (*Hoskins v. Campbell*, 2 H. & M. 43; *Re Wortley*, 4 Ch. D. 180, which, however, is not accurately reported). See also *Zambaco v. Cassavetti*, 11 Eq. 439; *Re Swire*, 21 Ch. D. 647; *Townsend v. Townsend*, 23 Ch. D. 100; *Macrae v. Smith*, 2 K. & J. 411; *Lankester v. Wood*, 14 L. T. 512.

In another case the Court stayed proceedings in the second suit only so far as the first suit gave identical relief (*Dryden v. Foster*, 6 Beav. 146). Compare *Piffard v. Vanrenen*, 13 W. R. 425; and for a case of consolidation of a large number of suits, see *Foxwell v. Webster*, 2 Dr. & Sm. 257; 12 W. R. 186; 4 De G. J. & Sm. 77.

ORDER L.

I. INTERLOCUTORY ORDERS AS TO MANDAMUS INJUNCTIONS OR INTERIM PRESERVATION OF PROPERTY, &c.

Order for preservation or interim custody of subject-matter of litigation.

1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured (c).

(c) An order under this rule for payment into Court of money received by a person acting in a fiduciary character may be enforced by attachment (*Hutchinson v. Hartmont*, W. N. (1877), 29).

As to the time when the plaintiff may apply under this rule, see rule 7, *post*, p. 469.

Order for early trial.

1A. Whenever an application shall be made before trial for an injunction or other order, and on the opening of such application, or at any time during the hearing thereof, it shall appear to the judge that the matter in controversy in the cause or matter is one which can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purposes of the application, it shall be lawful for the judge to make an order for such trial accordingly, and to direct such trial to be held at the next or any other assizes for any place, if from local or other circumstances it shall appear to him to be convenient so to do, and in the meantime to make such order as the justice of the case may require (cc).

(cc) This rule was added by R. S. C., October, 1884.

Order for sale of perishable goods.

2. It shall be lawful for the Court or a judge, on the application of any party, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as the Court or judge may think desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping,

or which for any other just and sufficient reason it may be desirable to have sold at once (d).

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(d) Under this rule the sale of a horse has been ordered (*Bartholomew v. Freeman*, 3 C. P. D. 316). As to a sale of bonds see *Coddington v. Jacksonville Ry.*, 39 L. T. 12.

3. It shall be lawful for the Court or a judge upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorize any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorize any samples to be taken, or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence (e).

Order for preservation or inspection of property.

(e) The application for an order under this rule is by motion, which should ordinarily be made on notice (rule 6; *Habershon v. Gill*, W. N. (1875), 231), though, under special circumstances, orders have been made on *ex parte* applications (*Melhuish v. Milton*, 24 W. R. 609; *Hennessy v. Bohmann*, W. N. (1877), 14). Orders have been made under this rule for inspection of premises (*Hennessy v. Bohmann*); for inspection of mines (*Cooper v. Ince Hall Co.*, W. N. (1876), 24; *Mitchell v. Darley Colliery Co.*, 10 Q. B. D. 457); for detention and preservation of property (*Melhuish v. Milton*); to open and inspect a drain and try an experiment (*Lumb v. Beaumont*, 27 Ch. D. 356; 32 W. R. 985); and to restrain a defendant from ceasing to pump water out of a mine (*Strelley v. Pearson*, 15 Ch. D. 113). See also *Nicholas v. Dracachis*, 1 P. D. 72; *Velati v. Braham*, 46 L. J. C. P. 415; *Flower v. Lloyd*, W. N. (1876), 169, 230; 24 W. R. 703. An order directing the costs of the inspection to be paid by the applicant cannot be appealed against without leave (*Mitchell v. Darley Colliery Co.*).

Application for order, how made.

4. It shall be lawful for any judge, by whom any cause or matter may be heard or tried with or without a jury, or before whom any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein.

Inspection by judge.

5. The provisions of rule 3 of this order shall apply to inspection by a jury, and in such case the Court or a judge may make all such orders upon the sheriff or other person as may be necessary to procure the attendance of a special or common jury at such time and place, and in such manner as they or he may think fit (f).

Inspection by jury.

(f) Cf. sects. 58, 59 of the C. L. P. Act, 1854. As to inspection by a jury, see *Pickard v. Great Northern Ry. Co.*, W. N. (1883), 194.

6. An application for an order under section 25, sub-section 8, of the principal Act, or under rules 2 or 3 of this order, may be made to the Court or a judge by any party. If the application be by the plaintiff for an order under the said sub-section 8 it may be made either *ex parte* or with notice, and if for an order under rules 2 or 3 of this order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application (g).

Application for mandamus, injunction or receiver, or for sale, inspection, &c.

(g) The "principal Act" is the Judicature Act, 1873, and sect. 25 (8) here referred to empowers the Court, by interlocutory order, (1) to grant a mandamus, (2) to

- Ord. L. grant an injunction, and (3) to appoint a receiver, whenever it appears to be "just or convenient" so to do; see *ante*, p. 259.
- As to the meaning of the words "interlocutory order," see *Smith v. Cowell*, 6 Q. B. D. 76.
- Mandamus. 1. As to mandamus, see Ord. LIII., *post*, p. 482; *Daniell*, p. 1638.
- Injunctions. 2. Any act which a common law Court (under the Common Law Procedure Act, 1854, ss. 79, 81, 82), or a Court of Equity only, could formerly restrain by injunction, can now be restrained by the High Court. The jurisdiction of granting injunctions thus vested in the High Court is practically unlimited, and can be exercised by any judge of the Court, whenever it is right or just to do so, having regard to settled legal reasons or principles (*Beddow v. Beddow*, 9 Ch. D. 89, *per* Jessel, M. R.). But the Judicature Act has given no power to the High Court to issue an injunction in a case in which no Court before that Act had power to give any remedy whatever (*North London Ry. v. Great Northern Ry.* (C. A.), 11 Q. B. D. 30). In the last-mentioned case, Brett, M. R., expressed the opinion that the Judicature Act has dealt only with procedure, and not with jurisdiction at all, and that where no Court had power to issue an injunction before that Act, the High Court has no such power now. See further, as to the jurisdiction of the High Court to grant injunctions, *Hedley v. Bates*, 13 Ch. D. 498; *Day v. Brownrigg*, 10 Ch. D. 294; *Gaskin v. Balls*, 13 Ch. D. 324; *Thomas v. Williams*, 14 Ch. D. 864; *Hill v. Hart Davis*, 21 Ch. D. 798 (both cases of libel); *Fletcher v. Rodgers*, 27 W. R. 97; *Shaw v. Earl of Jersey*, 4 C. P. D. 120, 359; *Stannard v. Vestry of St. Giles*, 20 Ch. D. 190; *Aslatt v. Corporation of Southampton*, 16 Ch. D. 143; *Loog v. Bean*, 26 Ch. D. 306 (slander).
- Jurisdiction. Where an injunction is desired it is usual, though not necessary, to claim it by the indorsement on the writ; see *Colebourne v. Colebourne*, 1 Ch. D. 690.
- Writ should be indorsed for injunction. An application for an interlocutory injunction should be made without delay. In a pressing case an injunction may be obtained *ex parte*, or before service of the writ of summons (*Re H.*, 1 Ch. D. 276; *Colebourne v. Colebourne*, *ibid.* 690); or, in a very urgent case, even before the writ is issued; but ordinarily an injunction will only be granted on notice: see *Daniell*, 1608.
- On an *ex parte* application the facts must be *fully and fairly stated* to the Court, or the injunction will be dissolved, whatever the merits. On *ex parte* applications the usual practice now is to grant an interim order restraining the defendant until after a particular day, and giving the plaintiff leave to serve notice of motion for the day before such day; and the plaintiff is almost invariably required to give an undertaking as to damages; see *Daniell*, 1611; *Bolton v. London School Board*, 7 Ch. D. 766; *Graham v. Campbell*, 7 Ch. D. 490; *Chappell v. Davidson*, 8 De G. M. & G. 1; *Secretary for War v. Chubb*, W. N. (1880), 128; and as to what the undertaking extends to, see *Smith v. Day*, 21 Ch. D. 421; *Ex parte Hall*, 23 Ch. D. 644; *Griffith v. Blake*, 27 Ch. D. 474; 32 W. R. 833. Notice that an injunction has been granted may be given by telegram (*Ex parte Langley*, 13 Ch. D. 110); or in any other way (*Avery v. Andrews*, 51 L. J. Ch. 414).
- A defendant may be committed for breach of an injunction, although the order was not served on him, provided he had notice of the order *abunde*, and knew the plaintiff intended to enforce it (*United Telephone Co. v. Dale*, 25 Ch. D. 778).
- See further as to injunctions, r. 12, *post*, p. 471.
- Receivers. 3. There is no limit to the power of the Court to appoint a receiver on motion, except that it is only to be exercised when it is "just and convenient" (*Gawthorpe v. Gawthorpe*, W. N. (1878), 91; *Day v. Brownrigg*, 10 Ch. D. p. 307; *Anglo-Italian Bank v. Davies*, 9 Ch. D. 275; *Westhead v. Riley*, 25 Ch. D. 413); and the Court will now appoint a receiver in many cases in which the Court of Chancery would have refused to do so, *e.g.*, at the instance of a legal mortgagee (*Truman v. Redgrave*, 18 Ch. D. 547, where the form of order appointing a receiver and manager, with an injunction, is given; *Tillett v. Nixon*, 25 Ch. D. 238). As to obtaining equitable execution by the appointment of a receiver, see note (c) to sect. 1 of the Judgment Act, 1864, *ante*, p. 177.
- "Receiver" includes consignee or manager appointed by or under an order of the Court; see Ord. LXXI. r. 1, *infra*; and as to the difference between a receiver and a manager, see *Re Manchester Ry.*, 14 Ch. D. 645.
- The Court of Appeal appointed a plaintiff (who was appealing from a decision involving a lease of his own property) receiver and manager without security (*Hyde v. Warden*, 1 Ex. D. 309); and in another case a plaintiff was appointed interim receiver for fourteen days without security (*Taylor v. Eckersley*, 2 Ch. D. 302).
- Where an infant was interested, a receiver was appointed on petition (*Re Leeming*, 20 L. J. Ch. 550, and see *Re Baron*, cited in *Seton*, 723, where a receiver was appointed on summons in chambers), and if the parties consent, or the application is to supply the vacant place of a receiver already appointed, it may be made *in chambers*. No appeal to the Court above lay from the appointment of a receiver by a judge in chambers (*Ley v. Ley*, 27 L. T. O. S. 267); but see Jud. Act, 1873, s. 50.
- Receiver appointed without security.
- Application in chambers.

An interim receiver was appointed before defendant's appearance (*Taylor v. Eckersley*, 2 Ch. D. 302; *Meaden v. Sealey*, 6 Hare, 620; *Hart v. Tulk*, *ibid.* 611; *Tanfield v. Irvine*, 2 Russ. 149).

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The appointment was made on an *ex parte* motion in *Taylor v. Eckersley*; and see *Dowling v. Hudson*, 14 Beav. 423, in a note to which all the cases will be found collected. But when the defendant had not absconded, it was held that the motion could not be made *ex parte* (*Caillard v. Caillard*, 25 Beav. 512).

For example of an application by a defendant under this rule, see *Sargant v. Read*, 1 Ch. D. 606. A defendant who has appeared may move *ex parte* for a receiver (*Hick v. Lockwood*, W. N. (1883), 48).

Application by defendant.

Jessel, M. R., made an interlocutory order for the appointment of a receiver and manager of an iron company on the application of a debenture holder in an action for foreclosure (*Peck v. Trinsmaran Iron Co.*, 2 Ch. D. 115; and see *Taylor v. Eckersley*, 2 Ch. D. 302).

Manager of a company.

A plaintiff should endorse his writ with a claim for a receiver when this is a substantial object of his action (*Colebourne v. Colebourne*, 1 Ch. D. 690); but it is not absolutely necessary for him to do so (*Norton v. Gould*, W. N. (1877), 206).

Indorsement of writ.

A party to the suit has been appointed receiver (*Davis v. Barrett*, 13 L. J. Ch. 304; *Taylor v. Eckersley*, 2 Ch. D. 302). But he must act without salary, except by express order and by consent (*Powys v. Blagrove*, 18 Jur. 462; *Hoffman v. Duncan*, *ibid.* 69; *Baylies v. Baylies*, 1 Coll. 548). A practising barrister may be appointed (*Garland v. Garland*, 2 Ves. jun. 137); but not the solicitor in the cause (*ibid.*), nor the solicitor under a commission of lunacy (*Ex parte Pincke*, 2 Meriv. 452), nor the next friend of infant plaintiffs (*Stone v. Wishart*, 2 Madd. 64), nor a trustee (*Anon*, 3 Ves. 515; *Anon v. Jolland*, 8 Ves. 72); except in a special case, and without salary (*Sutton v. Jones*, 15 Ves. 584; *Sykes v. Hastings*, 11 Ves. 363; and see *Banks v. Banks*, 14 Jur. 659). A peer will not generally be appointed (*Att.-Gen. v. Gee*, 2 V. & B. 268). Where a member of the firm of solicitors acting for the plaintiff had been appointed, the Court of Appeal discharged him, and made him pay the costs (*Re Lloyd*, 12 Ch. D. 447).

Who may be appointed receiver.

The granting of a receiver is a matter of discretion, to be governed by a view of the whole circumstances of the case, one of such circumstances being the probability of the plaintiff being ultimately entitled to a decree (*Owen v. Homan*, 3 M. & G. 378).

Appointment a matter of discretion.

As to the mode of applying for a receiver to protect the property of a deceased person, until a legal personal representative can be appointed, see *Overington v. Ward*, 34 Beav. 175, and cases there cited.

Receiver of property of deceased

As to the powers of a receiver generally, see *De Winton v. Mayor of Brecon*, 26 Beav. 533; 5 Jur. N. S. 882; and for the powers of receivers of railway and other companies, see *Gardner v. London, Chatham and Dover Ry. Co.*, 2 Ch. 223; but see as to railway companies, 30 & 31 Vict. c. 127, s. 4, *ante*, p. 168.

deceased persons. Powers of receivers.

A receiver may, on its being ascertained to be for the benefit of the estate, be entitled to an allowance for money laid out on the estate without previous order (*Tempest v. Ord*, 2 Meriv. 55; *Blunt v. Clitherow*, 6 Ves. 799; but see *Att.-Gen. v. Vigor*, 11 Ves. 563); and see as to receiver's allowances, rule 16, *post*, p. 471.

Allowances for money expended.

The direction that a receiver shall manage as well as sell and let the estate, authorizes him to bring in proposals for ordinary repairs of the buildings on the estate (*Thornhill v. Thornhill*, 14 Sim. 600); and see as to the costs, where a receiver, without the express sanction of the Court, defends an action, *Swaby v. Dixon*, 5 Sim. 629; *Bristowe v. Needham*, 2 Ph. 190; and cf. *De Winton v. Mayor of Brecon*, 28 Beav. 200; 6 Jur. N. S. 1046.

Duty to defend action.

A receiver is appointed for the benefit of all parties (*Faullner v. Daniel*, 3 Hare, 204); and he will not be discharged merely on the application of the party on whose application he was appointed (*ibid.*; *Largan v. Bowen*, 1 Sch. & Lef. 296; *Davis v. Duke of Marlborough*, 2 Sw. 108); and, on the other hand, all parties are bound by his possession (*Neate v. Pink*, 3 M. & G. 476); and if any loss arises from his default the estate must bear it (*Hutchinson v. Massarene*, 2 Ball & B. 55). But where the rights of any party to the property have been established, the receiver is to be treated as his receiver (*Boehm v. Wood*, T. & R. 345).

Receiver appointed for benefit of all parties.

The possession of the receiver cannot be disturbed without the leave of the Court, even when he is appointed without prejudice to the rights of persons having prior estates, and when the right to take possession is clear (*Randfield v. Randfield*, 1 Drew. & Sm. 310; *Lane v. Sterne*, 3 Giff. 629); and see *Searle v. Choat*, 25 Ch. D. 723, where the party aggrieved brought an action against the receiver. But the receiver is not in possession until his recognizances are completed (*Defries v. Creed*, 6 N. R. 17; *Edwards v. Edwards*, 2 Ch. D. 291); see, however, *Ex parte Evans*, 13 Ch. D. 252. See further as to receivers, rules 16—22, *post*, p. 471 *seq.*

Possession of receiver not disturbed without leave of Court.

7. An application for an order under rule 1 of this order may be

Time for application

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 for order for
 custody or
 preservation.
 Order for
 delivery up
 of property on
 payment into
 Court of
 amount
 claimed.

made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a judge.

8. Where an action is brought to recover, or a defendant in his defence seeks by way of counterclaim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or judge may direct, and that, upon such payment into Court being made, the property claimed be given up to the party claiming it (*h*).

(*h*) See *Morgan v. Greatrex*, W. N. (1884), 2.

Where real or
 personal
 property is sub-
 ject of pro-
 ceedings,
 Court may
 allow whole
 or part of
 annual
 income.

9. Where any real or personal estate forms the subject of any proceedings in the Chancery Division, and the judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the judge may, at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the real estate or a part of the personal estate, or the whole or part of the income thereof, up to such time as the judge shall direct (*i*).

(*i*) This rule is taken from the Chancery Procedure Act, 1852, 15 & 16 Vict. c. 86, s. 57, now repealed.

Where allow-
 ance will be
 made.

The allowance will not be made unless the executors admit assets (*Knight v. Knight*, 16 Beav. 358); nor unless the parties are clearly entitled, and there is some pressing reason for making it (*Rowley v. Burgess*, 2 W. R. 652; *Chubb v. Carter*, W. N. (1867), 179). In *Stacey v. Southey*, 1 Drew. 400, an allowance of the income of a married woman's separate estate was ordered to be made to her, pending a suit to charge her with the value of timber cut, security having been given for the value of the timber.

Application
 made in
 chambers.

Applications under this rule should be made in chambers (*Bentley v. Craven*, 1 W. R. 362).

Conduct of
 sale in action
 for admi-
 nistration
 or execution
 of trusts.

10. Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court or a judge shall otherwise direct (*j*).

(*j*) The corresponding repealed rule applied only to trustees. Where one of four trustees is plaintiff and the other three are defendants, the latter are the proper persons to have the conduct of the sale (*Re Gardner*, 48 L. J. Ch. 644).

Injunction to
 be by judg-

11. No writ of injunction shall be issued. An injunction shall be

by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had (*k*).

Ord. L.

(*k*) As to injunctions see rule 6 and note thereto, *ante*, p. 467.

ment or order instead of writ.

12. In any cause or matter in which an injunction has been, or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a judge may grant the injunction, either upon or without terms, as may be just.

General power of granting injunction.

13. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall first have been given to the proper officer; but in other cases it may be given without notice to any officer (*l*).

Compounding penal action.

(*l*) This and the two following rules are taken from R. G. H. T. rules 118—120.

14. The order to compound a penal action shall expressly state that the defendant undertakes to pay the sum for which the Court has given him leave to compound the action (*m*).

Undertaking to pay composition.

(*m*) See note to rule 13.

15. When leave is given to compound a penal action, where part of the penalty goes to the Crown, the Queen's half of the composition shall be paid into the hands of the Master of the Crown Office Department of the central office for the use of her Majesty (*n*).

Disposition of Queen's moiety of composition.

(*n*) See note to rule 13.

15A. In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Court or a judge in determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment, and may, if they or he shall so think fit, direct any inquiries on these or other matters before making the appointment (*nn*).

Appointment of receiver by way of equitable execution.

(*nn*) This rule was added by R. S. C., October, 1884. See *ante*, p. 177.

II. RECEIVERS.

16. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the Court or a judge and taken before a person authorised to administer oaths, duly to account for what he shall receive as such receiver, and to pay the same as the Court or judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such

Receiver to give security.

Ord. L.

security shall be by recognizance in the Form No. 21 in Appendix L, unless the Court or a judge shall otherwise order (o).

(o) This rule is taken from Cons. Ord. XXIV. r. 1.

Salary and allowances of receivers.

The receiver's allowance depends on the degree of difficulty or facility with which the rents are collected (*Day v. Craft*, 2 Beav. 488). The maximum allowance is usually 5l. per cent. (Seton, 425). But for extraordinary trouble and expenses an additional allowance may, by express order, be made (*Potts v. Leighton*, 15 Ves. 276; *Re Ormsby*, 1 B. & B. 189; *Malcolm v. O'Callaghan*, 3 M. & Cr. 52). Where a receiver has been appointed and received rents with the knowledge of a mortgagee, the latter is only entitled to the rents in the receiver's hands after deduction of his remuneration and expenses (*Davy v. Price*, W. N. (1883), 226).

Recognizances. When dispensed with.

The security usually required is the recognizance of the receiver, together with two sureties for double the amount of the annual income (Seton, 426; *Mead v. Lord Orrery*, 3 Atk. 237). In certain cases a receiver may be appointed on his own recognizances only (*Wilson v. Wilson*, 11 Jur. 793), and in some cases without recognizances; see *Bainbrigge v. Blair*, 3 Beav. 424; *Mammers v. Furze*, 11 Beav. 30; *Hyde v. Warden*, 1 Ex. D. 309; *Taylor v. Eckersley*, 2 Ch. D. 302. If parties not competent to consent are interested, security must always be given (*Tylee v. Tylee*, 17 Beav. 583).

Who may be sureties.

The sureties must be persons resident in England, even where the property to be collected lies out of the country (*Cockburn v. Raphael*, 2 S. & S. 453). The sureties are liable for interest as well as the receiver (*Dawson v. Raynes*, 2 Russ. 466), and for costs of proceedings against the receiver, and to appoint a new one (*Ex parte Mansell*, 3 J. & Lat. 351; and see *Re Locke*, 2 Ph. 509). As to the surety's lien on the receiver's property, see *Brandon v. Brandon*, 7 W. R. 250.

Their liability.

Their lien.

A receiver is not constituted receiver till he has given security (*Edwards v. Edwards*, 2 Ch. D. 291, explained in *Ex parte Evans*, 13 Ch. D. 252).

Defaulting receiver.

As to the jurisdiction over defaulting receivers, see *Bristowe v. Needham*, 11 W. R. 926; *Brandon v. Brandon*, 1 Dr. & Sm. 16; *Dixon v. Wilkinson*, 4 Drew. 614; 4 De G. & J. 508.

Receiver, when charged with interest.

A receiver who keeps money in his hands even for a quarter of a year after it ought to have been paid in, will be charged with interest (*Fletcher v. Dodd*, 1 Ves. jun. 85). Interest may be charged though the accounts have been settled (*Hicks v. Hicks*, 3 Atk. 274; *Fletcher v. Dodd*); and even though the receiver has been discharged (*Harrison v. Boydell*, 6 Sim. 211, where the receiver having failed to pay in his balance was ordered to pay the same and the amount allowed for his salary with interest).

Under the old practice it was held that, unless the objection to the allowance of poundage to the receiver was raised before the Master, the Court would not enter into it (*Ward v. Swift*, 8 Hare, 139).

Rate of interest.

Where the default was made by the executors of a receiver (see *Ludgator v. Channell*, 3 M. & G. 175), it was held by V.-C. Knight-Bruce that they ought only to be charged with interest at 4l. per cent. (*Clements v. Beresford*, 10 Jur. 771).

Not allowed to make interest on balances in his hands.

A receiver being in the position of a quasi trustee, will not be allowed to make interest on the balance in his hands (*Shaw v. Rhodes*, 2 Russ. 529; and see *Dreuer v. Maudsley*, 8 Jur. 547; *Earl of Lonsdale v. Church*, 3 B. C. C. 41); and will be answerable for the loss of monies with the control of which he has parted, *ex. gr.*, monies deposited in a bank in the name of his sureties (*Salway v. Salway*, 2 Russ. & M. 215; on appeal to the House of Lords, 9 Bligh, N. S. 181, *sub nom.* *White v. Baugh*). So, if he remits the money to his own credit at his banker's, and the banker fails (*Wren v. Kirton*, 11 Ves. 377). So, if he places it in what he knows to be improper hands (*Knigh v. Lord Plymouth*, 3 Atk. 480). *Secus*, if the money be paid to a person apparently solvent at the time for the purpose of its safe transmission (*ibid.*) or for safe custody (see 3 Ves. 566, and *Salway v. Salway*, 4 Russ. 60). A receiver, being a trustee of the money due from him, cannot as against the persons entitled thereto plead the Statute of Limitations (*Seagram v. Tuck*, 18 Ch. D. 296).

For the form here referred to, see *infra*.

For what losses answerable.

Adjournment to chambers for receiver to give security.

17. Where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver, the Court or a judge may adjourn to chambers the cause or matter then pending, in order that the person named as receiver may give security as in the last preceding rule mentioned, and may thereupon direct such judgment or order to be drawn up (p).

(p) This rule is new.

18. When a receiver is appointed with a direction that he shall pass accounts, the Court or judge shall fix the days upon which he shall (annually, or at longer or shorter periods), leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part thereof as shall be certified as proper to be paid by him. And with respect to any such receiver as shall neglect to leave and pass his accounts and pay the balances thereof at the times so to be fixed for that purpose as aforesaid, the judge before whom any such receiver is to account may from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary therein claimed by such receiver, and may also, if he shall think fit, charge him with interest at the rate of 5*l.* per cent. per annum upon the balances so neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver (*g*).

Ord. L.

Appointing days for receiver to leave and pass accounts and pay balances. Penalties for neglect.

(*g*) This rule is taken from Cons. Ord. XXIV. r. 2. See note to rule 16, *ante*, p. 472.

19. Receivers' accounts shall be in the Form No. 14 in Appendix L., with such variations as circumstances may require (*r*).

Form of accounts.

(*r*) For this form, see *infra*.

20. Every receiver shall leave in the Chambers of the judge to whom the cause or matter is assigned his account, together with an affidavit verifying the same in the Form No. 22 in Appendix L., with such variations as circumstances may require. An appointment shall thereupon be obtained by the plaintiff or person having the conduct of the cause for the purpose of passing such account (*s*).

Accounts to be left at chambers.

Passing accounts.

(*s*) Cf. Cons. Ord. XXIV. r. 3. For this form, see *infra*.

21. In case of any receiver failing to leave any account or affidavit, or to pass such account, or to make any payment, or otherwise, the receiver or the parties, or any of them, may be required to attend at Chambers to show cause why such account or affidavit has not been left, or such account passed, or such payment made, or any other proper proceeding taken, and thereupon such directions as shall be proper may be given at Chambers or by adjournment into Court, including the discharge of any receiver and appointment of another, and payment of costs (*t*).

Default by receiver in leaving or passing accounts or otherwise.

(*t*) This rule is taken from Cons. Ord. XXXV. r. 23.

22. A certificate of the chief clerk stating the result of a receiver's account shall from time to time be taken. Form 3 in the Appendix hereto shall be substituted for Form 22 in Appendix L. (*tt*).

Result of receiver's account to be certified.

(*tt*) This rule is substituted for the original r. 22 by R. S. C., October, 1884.

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Accounts of liquidators.

23. The accounts of liquidators shall be passed and verified in the same manner as is by this order directed as to receivers' accounts.

Accounts of guardians.

24. The accounts of guardians shall be passed and verified in the same manner as is by this order directed as to receivers' accounts (u).

(u) This rule was added by R. S. C., October, 1884.

III. LIQUIDATORS.

ORDER LI.

SALES BY THE COURT.

I.—*In the Chancery Division.*

Order for sale of real estate.

1. If in any cause or matter relating to any real estate, it shall appear necessary or expedient that the real estate or any part thereof should be sold, the Court or a judge may order the same to be sold, and any party bound by the order and in possession of the estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as may be thereby directed (v).

(v) This rule is taken from the Chancery Procedure Act, 1852, 15 & 16 Vict. c. 86, s. 55 (now repealed), but is more extensive. The following cases may be consulted on that section:—*London & County Banking Company v. Dover*, 11 Ch. D. 204; *Bell v. Turner*, 2 Ch. D. 409; *Tulloch v. Tulloch*, 3 Eq. 574; *Prince v. Cooper*, 16 Beav. 546; *Heath v. Fisher*, 17 W. R. 69; *Martin v. Hadlow*, 1 W. R. 101.

In a suit to execute the trusts of a will the Court may direct a sale to raise the costs of the suit, even though some of the plaintiffs are infants (*Mandeno v. Mandeno*, Kay, App. ii.; *Swan v. Webb*, 1 W. R. 90); but not against the will of a person beneficially interested who submits to pay his share of the costs (*Lees v. Lees*, 15 Eq. 151).

A sale will not be ordered under this rule unless the Court is satisfied that it is really "necessary or expedient" (*Miles v. Jarvis*, W. N. (1883), 203).

As to directing a sale in a mortgage action see the Conveyancing Act, 1881, sect. 25, and notes thereto, *ante*, p. 115.

Reference to conveyancing counsel on sale by the Court.

2. Before any estate or interest shall be put up for sale under a judgment or order, an abstract of the title shall unless otherwise ordered be laid before some conveyancing counsel approved by the Court or judge for his opinion thereon, to enable proper directions to be given respecting the conditions of sale and other matters connected with the sale. The conditions of sale shall specify a time for the delivery of the abstract of title to the purchaser or to a solicitor (w).

(w) This rule is taken from the Chancery Procedure Act, 1852, sect. 56, now repealed. As to the discretion of the Court under that section, see *Gibson v. Woollard*, 5 De G. M. & G. 335.

Sale, how to be effected.

3. Where a judgment or order is given or made, whether in Court or in chambers, directing any property to be sold unless otherwise ordered, the same shall be sold with the approbation of the judge to whom the cause or matter is assigned, to the best purchaser that can

be got, the same to be allowed by the judge, and all proper parties shall join in the sale and conveyance as the judge shall direct (x).

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(x) This rule is taken from Cons. Ord. XXXV. r. 13, now repealed, The judge may (1) fix reserved biddings upon a sale, (2) direct deposits to be made, and appoint persons to receive the same, and (3) receive proposals for private contract.

Questions as to sale considered in chambers. - Conduct of sale.

The conduct of the sale is ordinarily entrusted to the plaintiff (*Knott v. Cottes* (No. 4), 27 Beav. 33), even though he would not have been entitled thereto according to the contract if performed without suit (*Dale v. Hamilton*, 10 Hare, App. vii.). When, however, it appears to be for the benefit of all parties it may be given to a defendant (*Knott v. Cottes*). When a sale is directed, every party to the suit having the title deeds is bound to facilitate the sale (*ibid.*).

As to the conduct of a sale in an action for administration, or for execution of trusts, see Ord. L. r. 10, *ante*, p. 470.

When the conduct of a sale has been given to one party, no other party will be allowed to interfere in any way without the leave of the Court (*Dean v. Wilson*, 10 Ch. D. 136).

A purchaser under a decree cannot generally take possession (*Hutton v. Mansell*, 2 Beav. 260), or pay his money into Court (*Denning v. Henderson*, 1 De G. & Sm. 689), without accepting the title; but see *Dempsey v. Dempsey*, 1 De G. & Sm. 691. And an application to pay the money into Court, and to be let into possession without prejudice to objections to the title, will be refused (*Rutter v. Marriott*, 10 Beav. 33; but see *Marfell v. Rudge*, 2 Y. & Coll. Exch. R. 566). A purchaser under a decree is entitled to his costs when the title is bad (*Smith v. Nelson*, 2 S. & S. 557).

Effect of taking possession or paying purchase-money into Court upon objections for title.

If the estate is not sold, there must be a new sale by auction, unless the judge authorises a sale by private tender or otherwise (*Berry v. Gibbons*, 15 Eq. 150).

Costs where title bad.

The practice of opening the biddings on a sale by the Court was abolished, except in cases of fraud, by the Sale of Land by Auction Act, 1867, 30 & 31 Vict. c. 43, s. 7 of which enacts, that "The practice of opening the biddings on any sale by auction of land under or by virtue of any order of the High Court of Chancery shall, from and after the time appointed for the commencement of this Act (*viz.*, Aug. 1, 1867), be discontinued, and the highest *bonâ fide* bidder at such sale, provided he shall have bid a sum equal to or higher than the reserved price (if any), shall be declared and allowed the purchaser, unless the Court or judge shall, on the ground of fraud or improper conduct in the management of the sale, upon the application of any person interested in the land (such application to be made to the Court or judge before the chief clerk's certificate of the result of the sale shall have become binding), either open the biddings, holding such bidder bound by his bidding, or discharge him from being the purchaser, and order the land to be resold upon such terms as to costs or otherwise as the Court or judge shall think fit."

Opening biddings abolished. 30 & 31 Vict. c. 43, ss. 7-9.

Section 5 of the same Act enacts, that "the particulars or conditions of sale by auction of any land shall state whether such land will be sold without reserve, or subject to a reserved price, or whether a right to bid is reserved; if it is stated that such land will be sold without reserve, or to that effect, then it shall not be lawful for the seller to employ any person to bid at such sale, or for the auctioneer to take knowingly any bidding from any such person."

Except in cases of fraud.

In order to entitle parties to open the biddings after a sale by auction under the Court since the passing of this Act, there must be either fraud or such misconduct as borders on fraud; and for a consideration of the circumstances necessary to justify the presumption of such misconduct, see *Delves v. Delves*, 20 Eq. 77; *Brown v. Oakshott*, W. N. (1869), 207; *Griffiths v. Jones*, 15 Eq. 279; *Guest v. Smith*, 5 Ch. 551, where the purchaser was by reason of his fiduciary position disqualified. The principle of the Act applies equally to a sale by private contract entered into under the sanction of the Court (*Re Bartlett*, 16 Ch. D. 561).

Or misconduct bordering on fraud.

As to the position of the solicitor to one of the parties to the suit who (*i.e.*, the solicitor) has obtained leave to bid and his duty to disclose to the Court facts within his knowledge, see *Boswell v. Coaks*, 27 Ch. D. 424; 23 Ch. D. 302.

4. Affidavits for the purpose of enabling the judge to fix reserved biddings shall state the value of the property by reference to an exhibit containing such value, so that the value may not be disclosed by the affidavit when filed (y).

Affidavits as to reserved biddings.

(y) This and the two following rules are taken from the Regulations as to Business, August 8, 1857, rr. 13-15.

Ord. LI. 5. As soon as particulars and conditions of sale settled at chambers have been printed, two prints thereof, certified by the solicitor to be correct prints of the particulars and conditions settled at the judge's chambers, shall be left at chambers (z).

(z) See note to rule 4.

Affidavit of result of sale. 6. An office copy of the affidavit of the person appointed to sell of the result of the sale, with the bidding paper and particulars therein referred to, shall be left at chambers at least one clear day before the day appointed for settling the certificate of the result of the sale (a).

(a) See note to rule 4.

II.—Conveyancing Counsel.

Court or judge may take the opinion of conveyancing counsel of the Court. 7. The Court or a judge may refer to the conveyancing counsel of the Court any matter relating to the investigation of the title to an estate with a view to an investment of money in the purchase or on mortgage thereof, or with a view to a sale thereof, or to the settlement of a draft of a conveyance, mortgage, settlement, or other instrument, or any other matter which the Court or judge may think fit to refer, and may receive and act upon the opinion given in the matter referred (b).

(b) See note to next rule.

Objections to opinion to be disposed of in chambers or in Court. 8. Any party may object to the opinion given by any conveyancing counsel, and thereupon the point in dispute shall be disposed of by the judge at chambers or in court, as he may think fit (c).

Conveyancing counsel of the Court. (c) This and the preceding rule are taken from the Master in Chancery Abolition Act, 1852, 15 & 16 Vict. c. 80, s. 40, now repealed. Section 41 of that Act empowers the Lord Chancellor to nominate any number of conveyancing counsel in actual practice, not less than six, who shall have practised as such for ten years at least, to be the conveyancing counsel of the Court.

As between the vendor and the purchaser the conveyancing counsel of the Court must be treated as the agent of the vendor (*Re Banister*, 12 Ch. D. 131).

Fees of conveyancing counsel. The fees of the conveyancing counsel are in the taxing master's discretion (*Rumsey v. Rumsey*, 21 Beav. 40).

Model conveyance. Where land is ordered to be sold in lots, and one conveyance has been settled by the conveyancing counsel, it may be adopted by the chief clerk for all the other lots in cases where no special circumstances exist to render such a course inconvenient (*Re Eyre*, 4 K. & J. 268).

The judge in chambers will, in a proper case, direct the opinion of one of the conveyancing counsel to be taken (*Yates v. Plumb*, 2 Sm. & G. 174).

To approve deeds where infants, &c., are interested. In ordinary cases, where a deed has to be approved by the Court, the Court has a discretion whether it will refer a matter to the conveyancing counsel or not, see *Blaxland v. Blaxland*, 9 Hare, App. lxxviii.; but, as a general rule, where infants or persons under disability are concerned, the title is referred to, or the conveyance settled by, the conveyancing counsel.

As to the manner of settling deeds to be executed by incapacitated persons under the decree of the Court, see *Harvey v. Brooke*, 9 Hare, App. xi.; *Re Bennett*, 18 Jur. 33; *Pegg v. Wisden*, 16 Jur. 1105.

When conveyancing counsel dispensed with. Where the expense of a reference to the conveyancing counsel would have been out of proportion to the amount to be settled, the trusts were inserted in the order on the petition (*Chamberlain v. Chamberlain*, 1 Sm. & Giff. App. xxviii.); nor is it an imperative rule, that the title of land in which the purchase monies of settled lands are about to be invested must in every case be laid before the conveyancing counsel of the Court.

9. The business to be referred to the conveyancing counsel of the Court shall be distributed among them in rotation by the first clerk to the registrars of the Chancery Division, and in his absence by the second clerk, and in the absence of the first and second clerks, by such of the other clerks to the registrars as the senior registrar may determine (*d*).

Ord. LI.

Business referred to conveyancing counsel to be distributed in rotation.

(*d*) This and the four following rules reproduce Cons. Ord. II. rr. 1—5.

10. The clerk making such distribution shall be responsible for the business being distributed according to regular and just rotation, and in such manner as to keep secret from all persons the rota or succession of conveyancing counsel of the Court, and it shall be his duty to keep a record of the references with proper indexes, and to enter therein all such references, with the dates when the same are made.

Duty of clerk making the distribution.

11. When any business is referred to the conveyancing counsel of the Court, a short memorandum or minute of the order of reference shall be prepared and signed by the registrar if made in Court, or by the chief clerk if made in chambers, and the party prosecuting the order, or his solicitor, shall take the memorandum or minute to the registrar's clerk, whose duty it is to make such distribution as aforesaid, and such clerk shall add at the foot thereof a note specifying the name of the conveyancing counsel of the Court in rotation to whom the business is to be referred, and the memorandum or minute shall be left by the party prosecuting the order, or his solicitor, with the conveyancing counsel, and shall be a sufficient authority for him to proceed with the business so referred.

Opinion, &c. of conveyancing counsel, how obtained.

12. In case the conveyancing counsel of the Court in rotation shall, from illness or from any other cause, be unable or decline to accept the reference, the same shall be offered to the other conveyancing counsel of the Court successively according to their seniority at the bar, until some one of them shall accept the same.

Where counsel in rotation unable to act.

13. The judge may, if he thinks fit, direct or transfer a reference to any one in particular of the conveyancing counsel of the Court (*e*).

Reference to one in particular of conveyancing counsel.

(*e*) See *Re Martin*, 22 L. J. Ch. 248.

[Rules 14—16 of this order apply only to Admiralty actions.]

ORDER LII.

MOTIONS AND OTHER APPLICATIONS.

1. Where by these rules any application is authorised to be made to the Court or a judge, such application, if made to a Divisional Court or to a judge in Court, shall be made by motion (*f*).

Motions

(*f*) The evidence on motion or petition may be given by affidavit; see Ord. XXXVIII. r. 1, *ante*, p. 433.

Evidence on motions.

After a motion has been opened no addition can be made to the evidence, except as a matter of indulgence (*Jacobs v. Brett*, 20 Eq. p. 5).

Ord. L.II.

Costs of motions.
General rules.

In disposing of the costs of a motion in an action, the Court is generally guided by the following rules, laid down in 1823 by V.-C. Sir John Leach, 1 Sim. & St. 357:—

1. That the party making a *successful motion* is entitled to his costs, as costs in the action (*Mounsey v. Earl of Lonsdale*, 10 Eq. 557; 6 Ch. 141), but the party opposing it is not entitled to his costs as costs in the action. [This rule does not apply where the motion is occasioned by the default of the moving party; see *Morgan & Wurtzburg on Costs*, 51, or where he is seeking an indulgence, *e. g.*, to stay proceedings pending an appeal.]

2. That the party making a *motion which fails* is not entitled to his costs, as costs in the action; but the party opposing it is entitled to his costs, as costs in the action. See *Corcoran v. Witt*, 13 Eq. 53; 25 L. T. 653.

3. That where a motion is made by one party, and *not opposed* by the other, the costs of both parties are costs in the action. [This rule does not apply where the motion is rendered necessary by the other party's default, *Morgan & Wurtzburg*, 54, *e. g.*, on motions to dismiss for want of prosecution, or to commit for contempt or to discharge an irregular order.]

Where no order is made as to costs.

The above rules are now followed when the order is silent as to costs; but there are exceptions: *e. g.*, where a motion for an injunction to stay the infringement of a patent was ordered to *stand over* until after the trial of an action, nothing being said as to costs, and the plaintiff failed in establishing the validity of the patent, it was held, on the bill being dismissed with costs, that the defendant's costs of the motion were costs in the cause (*Batts v. Clifford*, 1 J. & H. 74).

Where a motion was adjourned to the trial, nothing being said as to costs, and at the trial the plaintiff got judgment with costs, the taxing master refused to allow him the costs of the motion, and the plaintiff only obtained them on a subsequent application to the judge (*Fritz v. Hobson*, 14 Ch. D. 542; 28 W. R. 722; 42 L. T. 677; see also *Viney v. Chaplin*, 3 De G. & J. 282; *Mounsey v. Earl of Lonsdale*).

Where costs are reserved till hearing.

The costs of an interlocutory motion which rests upon affidavits which may be displaced by evidence in the cause, will, as a general rule, be reserved till the hearing (*Waring v. Manchester, Sheffield and Lincolnshire Ry. Co.*, 14 Jur. 613—616. See *Jones v. Batten*, 10 Hare, App. xi.). And it is a useful precaution to ask that the costs may be reserved, not simply until the hearing, but until the hearing or further order; otherwise there may be a difficulty in obtaining them, if the action be dismissed without ever coming to trial; see *Rumbold v. Forteach*, 4 Jur. N. S. 608. Where an action is dismissed with costs this includes all costs reserved (*Hodges v. Hodges*, 25 W. R. 162; *Mem. W. N.* (1876), 271).

"It is the common course that where a party asks for something he is entitled to, and also for something that he is not entitled to, he pays the costs of the motion though he succeeds" (*per* Lord Langdale in *Lancashire v. Lancashire*, 9 Beav. 130; and see *Sturch v. Young*, 5 Beav. 557).

Costs may be given though not asked for by the notice of motion (*Clarke v. Jacques*, 11 Beav. 623; *Butler v. Gardener*, 12 Beav. 525; *Dawson v. Jay*, 2 W. R. 598), but *semble*, not if the respondent does not appear (*Pratt v. Walker*, 19 Beav. 281).

Right of parties served to costs of appearance.

Parties served with a notice of motion are not, according to the modern practice of the Court, entitled to appear merely to ask for their costs (*Campbell v. Holyland*, 7 Ch. D. 166), though the old rule was different (*Heneage v. Aikin*, 1 J. & W. 377; *Bamford v. Watts*, 2 Beav. 202); but if they have any real interest in the matter which will justify their appearing, they will be entitled to their costs.

Where, however, a party was served without any intimation that he need not appear, Jessel, M. R., allowed him 40s. costs (*Campbell v. Holyland*); probably he would only get 30s. under the present rules; see Ord. LXV. r. 27 (19). The proper course is for the moving party, when he serves his notice of motion on a person who has no interest, to tender him 30s. costs, with an intimation that if the respondent appears his costs will be objected to; the respondent will then appear at his own risk as to costs. See *Morgan & Wurtzburg on Costs*, p. 67.

Gross sum in lieu of taxed costs.

As to directing payment of a sum in gross in lieu of taxed costs, see Ord. LXV. r. 23, *post*.

A motion to discharge a prisoner from custody has precedence over all others (*Ashton v. Shorrocks*, 29 W. R. 117).

Motion to discharge prisoner.

The practice as to the costs of an abandoned motion is laid down by Cons. Ord. XL. r. 23, which is still followed, though the rule itself has been repealed. The rule was as follows:—

Costs of abandoned motion.

Where a party gives a notice of motion and does not move accordingly, he shall pay to the other side costs to be taxed by the taxing-master, unless the Court itself shall direct, upon production of the notice of motion, what sum shall be paid for costs.

Cons. Ord. XL. r. 23.

This rule was acted upon under the new practice (*Berry v. Exchange Trading Co.*, 1 Q. B. D. 77; 45 L. J. Q. B. D. 224).

A motion is abandoned—

(a) If the plaintiff amends, and gives a new notice of motion (*Eccles v. Liverpool Borough Bank*, Johns. 402; *London and Blackwall Ry. Co. v. Limehouse Board of Works*, 3 K. & J. 123; *Smith v. Dixon*, 12 W. R. 934).

(b) If counsel is not instructed to move on the seal day mentioned in the notice (*Re Compton Smith*, 23 Beav. 284, and see *Wedderburne v. Llewellyn*, 13 W. R. 939); and a motion before the Appeal Court will be treated as abandoned if not made when called on (*Turner v. Turner*, 15 Jur. 1165). Where the motion is renewed it will not be heard till the costs of the abandoned motion have been paid (*Bellechamber v. Giani*, 3 Madd. 450; and see *Oldfield v. Cobbett*, 12 Beav. 91, and note to 23 Beav. 550, *ibid.*).

When the party giving the notice of motion dies before it is brought on, and his executors decline to proceed with the motion, the other side is not entitled to the costs of the motion, as costs of the abandoned motion or as costs in the cause (*Lewis v. Armstrong*, 3 M. & K. 69; *Warner v. Armstrong*, 4 Sim. 140).

If a party applies for the costs under this rule he must mention the abandoned notice of motion to the Court, and produce it to the registrar before the order is drawn up (*Withey v. Haigh*, 3 Madd. 437).

It is too late to ask for the costs of an abandoned motion at the hearing, or at least on speaking to minutes (*Eccles v. Liverpool Borough Bank*, Johns. 402); and see *Woodcock v. Oxford, Worcester and Wolverhampton Ry. Co.*, 17 Jur. 33, where it was held that such costs were to be applied for on the seal day after the day for which the notice of motion was given. See, too, *Farquharson v. Pitcher*, 4 Russ. 510, where it was held that after a cause has been dismissed for want of prosecution, the plaintiff cannot obtain the costs of an abandoned motion; *Wedderburne v. Llewellyn*, 13 W. R. 939, and the other cases cited in *Morgan & Wurtzburg on Costs*, p. 65.

Ord. LII.

What is an abandoned motion.

Representatives reviving and not moving.

How and when costs under rules to be applied for.

2. No motion or application for a rule nisi or order to show cause shall hereafter be made in any action, or (a) to set aside, remit, or enforce an award, or (b) for attachment, or (c) to answer the matters in an affidavit, or (d) to strike off the rolls, or (e) against a sheriff to pay money levied under an execution.

No application to be made for a rule nisi or order to show cause.

3. Except where according to the practice existing at the time of the passing of the principal Act (g) any order or rule might be made absolute *ex parte* in the first instance, and except where notwithstanding rule 2 a motion or application may be made for an order to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or a judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* (h) upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or judge may think just; and any party affected by such order may move to set it aside.

Notice of motion to be given except in certain cases.

(g) The "principal Act" is the Judicature Act, 1873; see Ord. LXXI. r. 1, *infra*.

(h) As to moving *ex parte* for an injunction or a receiver, see Ord. L. r. 6, and note, *ante*, p. 467.

"Principal Act."

4. Every notice of motion to set aside, remit, or enforce an award, or for attachment, or to strike off the rolls, shall state in general terms the grounds of the application; and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion (i).

Where grounds of application to be stated.

(i) See *Litchfield v. Jones*, 25 Ch. D. 64; *Hampden v. Wallis*, 26 Ch. D. 746.

5. Unless the Court or a judge give special leave to the contrary there must be at least two clear days between the service of a notice of

Two days' notice to be given.

- Ord. LII. motion and the day named in the notice for hearing the motion (*k*): provided that in applications to answer the matters in an affidavit or to strike off the rolls, the notice of motion shall be served on the parties not less than ten clear days before the time fixed by the notice for making the motion.
- Cons. Ord. XXXIII. r. 2. (*k*) This first part of the rule is taken from Cons. Ord. XXXIII. r. 2. Leave to serve short notice of motion will be given whenever the circumstances of the case require it, but the applicant must state to the Court that the notice applied for is short, and the same fact must appear on the notice of motion (*Dawson v. Beeson*, 22 Ch. D. 504, and cases there cited). During vacation, leave to serve short notice of motion can only be granted by a judge (*Conacher v. Conacher*, W. N. (1881), 2; 29 W. R. 230).
- Where persons omitted to be served. 6. If on the hearing of a motion or other application the Court or a judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or judge may think fit to impose.
- Adjournment. 7. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or judge shall think fit.
- Service on defendant who has not appeared. 8. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose.
- Service of notice of motion with the writ. 9. The plaintiff may, by leave of the Court or a judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant.
- [Rule 10 applies only to Admiralty actions.]
- No order for return of writ. 11. No order shall issue for the return of any writ, or to bring in the body of a person ordered to be attached or committed; but a notice from the person issuing the writ or obtaining the order for attachment or committal (if not represented by a solicitor), or by his solicitor, calling upon the sheriff to return such writ or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of such sheriff.
- Sheriff going out of office. 12. When any sheriff shall, before going out of office, arrest any defendant, and render return of *cepi corpus*, he may be called upon by a notice, as provided by the last preceding rule, to bring in the body within the time allowed by law, although he may be out of office before such notice is given.
- Date of order. 13. Every order, if and when drawn up, shall be dated the day of the week, month and year, on which the same was made, unless the Court or a judge shall otherwise direct, and shall take effect accordingly.

14. Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave (a) for the issue of any writ other than a writ of attachment; (b) for the amendment of any writ or pleadings; (c) for the filing of any document; or (d) for any act to be done by any officer of the Court other than a solicitor, it shall not be necessary to draw up such order unless the Court or a judge shall otherwise direct; but the production of a note or memorandum of such order, signed by a judge, registrar, master, chief clerk, or district registrar, shall be sufficient authority for such enlargement of time, issue, amendment, filing, or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this rule. The solicitor of the person on whose application such order is made, shall forthwith give notice in writing thereof to such person (if any) as would, if this rule had not been made, have been required to be served with such order.

Ord. LII.
What orders need not be drawn up.

15. It shall not be necessary to obtain an order to enter a judgment or order *nunc pro tunc*, but in all cases in which such entries were formerly made under orders of course, the solicitor applying to have a judgment or order so entered, shall leave with the clerk of entries a memorandum in writing countersigned by the Chancery registrar, and bearing a stamp according to the scale of Court fees for the time being in force.

Order not necessary to enter judgment *nunc pro tunc*.

16. At the foot of every petition (not being a petition of course) presented to the Court, and of every copy thereof, a statement shall be made of the persons (if any) intended to be served therewith, and if no person is intended to be served, a statement to that effect shall be made at the foot of the petition and of every copy thereof (l).

Statement of persons to be served with petitions.

(l) This rule is taken from Cons. Ord. XXXIV. r. 1. The foot note should describe the persons to be served by name, and not simply as plaintiffs or defendants (*Anon. W. N. (1876), 219; Meyrick v. Laws, W. N. (1877), 223*). See as to amendment of the foot note, *Re Tweedy, 9 W. R. 398*. As to petitions generally, see Daniell, 1561.

Cons. Ord. XXXIV. r. 1.
Foot note.

17. Unless the Court or a judge gives leave to the contrary, there must be at least two clear days between the service and the day appointed for hearing a petition.

Time for service.

18. In the case of applications under Acts of Parliament directing the purchase-money of any property sold to be paid into Court, any persons claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof, or, if the petitioners* are aware of any such right or claim, they must in such affidavit state or refer to and except the same (m).

Affidavit on application as to money in Court under Act of Parliament.

* Sic.

(m) This rule is taken from Cons. Ord. XXXIV. r. 3. See note (h), *ante*, p. 29.

Ord. LIII. 19. All petitions, summonses, statements, affidavits, and other written proceedings for the opinion, advice, or direction of a judge under the 30th section of the Act 22 & 23 Vict. c. 35, shall be intitled in the matter of that Act, and in the matter of the particular trust, will, or administration, and every such petition or statement shall state the facts concisely, and shall be divided into paragraphs numbered consecutively (*n*).

Title and form of petitions, &c. under 22 & 23 Vict. c. 35, s. 30.

(*n*) This and the three succeeding rules are taken from the Order of March 20th, 1860, which prescribed the manner of proceeding under 22 & 23 Vict. c. 35 (Lord St. Leonards' Act), s. 30. For this section, see *ante*, p. 102.

Statement on which summons is grounded to be left at chambers and transmitted to registrar.

20. At the time when any such summons, as in the last preceding rule mentioned, is sealed, the statement upon which the same is grounded shall be left at the chambers of the judge to whom the same is assigned, and shall on the conclusion of the proceeding be transmitted to the Chancery registrar by the chief clerk, with the minutes of the opinion, advice, or direction given by the judge, and the registrar shall cause such statement to be transmitted to the central office, to be there filed (*o*).

(*o*) See note to rule 19.

Service of petition or summons.

21. Every such petition or summons as in rule 19 mentioned, shall be served seven clear days before the hearing thereof, unless the person served shall consent to a shorter time (*p*).

(*p*) See note to rule 19.

Opinion, &c. of judge, how passed and entered.

22. The opinion, advice, or direction of the judge, as in rule 19 mentioned, shall be passed and entered and remain as of record in the same manner as any order made by the Court or a judge, and the same shall be termed "a judicial opinion," or "judicial advice," or "judicial direction," as the case may be (*q*).

(*q*) See note to rule 19.

[Rule 23 applies only to Admiralty actions.]

ORDER LIII.

I. ACTION OF MANDAMUS.

Claim for, mandamus to be indorsed on writ.

1. The plaintiff, in any action in which he shall claim a mandamus to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, shall indorse such claim upon the writ of summonses.

Form of indorsement.

2. The indorsement shall be in the form given in section IV. of Appendix A., Part III. (*r*).

(*r*) See this form, *infra*.

3. If judgment be given for the plaintiff the Court or judge may by the judgment command the defendant either forthwith, or on the expiration of such time and upon such terms as may appear to the Court or a judge to be just, to perform the duty in question. The Court or a judge may also extend the time for the performance of the duty. Ord. LIII.
Judgment.

4. No writ of mandamus shall hereafter be issued in an action, but a mandamus shall be by judgment or order, which shall have the same effect as a writ of mandamus formerly had. Mandamus to be by judgment or order.

[Rules 5—15 of this order refer only to prerogative mandamus, which must be applied for in the Queen's Bench Division.]

ORDER LIV.

APPLICATIONS AND PROCEEDINGS AT CHAMBERS.

I.—General.

1. Every application at chambers not made *ex parte* shall be made by summons (s). Application on notice to be by summons.

(s) Cf. 15 & 16 Vict. c. 80, s. 28.

2. Every application for payment or transfer out of Court made *ex parte*, and every other application made *ex parte* in which the judge or proper officer shall think fit so to require, shall be made by summons. Ex parte applications, when to be by summons.

3. Summonses shall not be altered after they are sealed except upon application at chambers (t). Alteration of summons.

(t) This rule is taken from Regulations as to Business, Aug. 8, 1857, r. 1.

4. An originating summons, where service is necessary, shall be served seven clear days before the return thereof. Every other summons shall be served two clear days before the return thereof, unless in any case it shall be otherwise ordered (u). Service of summons.

(u) This rule is taken from Cons. Ord. XXXV. r. 7. The summons may be returnable after the seven days (*Wycherley v. Barnard*, Johns. 41).

5. Where any of the parties to a summons fail to attend, whether upon the return of the summons, or at any time appointed for the consideration or further consideration of the matter, the judge may proceed *ex parte*, if, considering the nature of the case, he think it expedient so to do; no affidavit of non-attendance shall be required or allowed, but the judge may require such evidence of service as he may think just (v). Proceeding ex parte where party summoned makes default.

(v) This rule is taken from Cons. Ord. XXXV. r. 10.

6. Where the judge has proceeded *ex parte*, such proceeding shall not in any manner be reconsidered in the judge's chambers, unless the judge shall be satisfied that the party failing to attend was not Reconsideration of ex parte proceedings.

Ord. LIV.
Costs.

guilty of wilful delay or negligence; and in such case the costs occasioned by his non-attendance shall be in the discretion of the judge, who may fix the same at the time, and direct them to be paid by the party or his solicitor before he shall be permitted to have such proceeding reconsidered, or make such other order as to such costs as he may think just (*w*).

(*w*) This rule is taken from Cons. Ord. XXXV. r. 11.

Costs where proceeding fails by reason of non-attendance of any party.

7. Where a proceeding in chambers fails by reason of the non-attendance of any party, and the judge does not think it expedient to proceed *ex parte*, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the absent party or by his solicitor personally (*x*).

(*x*) This rule is taken from Cons. Ord. XL. r. 31.

Further consideration in chambers.

8. Where matters in respect of which summonses have been issued are not disposed of upon the return of the summons, the parties shall attend from time to time without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter (*y*).

(*y*) This rule is taken from Cons. Ord. XXXV. r. 14.

Adjournments in chambers.

The costs of obtaining a new appointment, such being unnecessary, will be disallowed (*Re Catlin*, 18 Beav. 512), but this applies only where a regular adjournment has been made; and where a witness had been summoned for examination, but, having received notice that the examination would not be proceeded with, did not attend, and no adjournment was thereon made, it was held that he could not be forced to attend again without a fresh summons being taken out (*Lawson v. Stoddart*, 12 W. R. 286).

New appointment not necessary.

Further consideration dispensed with.

Where small leaseholds had been ordered to be sold, the proceeds were distributed among numerous parties, upon the certificate of the chief clerk, *without* adjournment, to save expense, the purchasers being served with a summons to show cause in chambers why the proceeds should not be distributed by the chief clerk (*Thorp v. Owen*, 2 Sm. & G. App. i.).

Including several matters in one application.

9. In every cause or matter where any party thereto makes any application at chambers, either by way of summons or otherwise, he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the Court or judge; and upon the hearing of such application it shall be lawful for the Court or judge to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the judge thinks fit, be adjourned from chambers into Court, or from Court into chambers (*z*).

(*z*) Cf. 15 & 16 Vict. c. 80, s. 27.

Costs reserved without special direction.

When a cause is adjourned to chambers, the reservation of costs is implied without an express direction to that effect (*Wallis v. Bastard*, 2 W. R. 47; and see *Leeds v. Lewis*, 3 Jur. N. S. 1290); so, too, when *vice versa*, the cause is adjourned into Court (*Dieken v. Hamer*, 2 L. T. 276); see also *Re Fellows*, 2 Jur. N. S. 62, from which it seems that a petition ought not to ask for the costs "incidental to an inquiry" in chambers generally.

Practice on adjournment into chambers.

When any matter is adjourned to chambers, or any directions are given in Court to be acted on in chambers without any order being drawn up, a registrar's note must be obtained. See Ord. LV. r. 29, *post*.

The hearing of the case by the judge, when adjourned, is only a continuation of the hearing before the chief clerk (*Leeds v. Lewis*, 3 Jur. N. S. 1290; *Re Mitchell*, 9 Jur. N. S. 1272); and is not in the nature of an appeal (*Re Watts*, 22 Ch. D. 5). See also *Holloway v. Cheston*, 19 Ch. D. 516. In *Jaquet v. Jaquet*, 7 W. R. 543, the Master of the Rolls refused to hear in support of the summons a party who did not join therein.

Ord. LIV.

It is in the discretion of the judge to make a rule that he will hear matters requiring his *personal attention* in Court and not in chambers (*Re Agriculturist Cattle Insurance Company*, 3 De G. F. & J. 194; 11 W. R. 330, 386).

Discretion of judge.

An application to discharge an order made by a judge at chambers is made by motion in Court, but no further evidence is admissible (*Re Munns*, W. N. (1884), 117).

10. A summons other than an originating summons shall be in the Form No. 1 in Appendix K., with such variations as circumstances may require, and shall be addressed to all the persons on whom it is to be served (a).

Form of summons.

(a) For this form, see *infra*.

[Rules 11—29 apply only to the Queen's Bench and the Probate, Divorce and Admiralty Divisions.]

ORDER LV.

CHAMBERS IN THE CHANCERY DIVISION.

I.—General.

1. The business in chambers of the judges of the Chancery Division, to whom chambers are attached, shall be carried on in conjunction with their Court business (b).

Business in chambers to be carried on in conjunction with Court business.

(b) This rule is taken from 15 & 16 Vict. c. 80, s. 12.

2. The business to be disposed of in chambers by judges of the Chancery Division, shall consist of the following matters, in addition to the matters which under any other rule or by statute may be disposed of in chambers (c):

Business to be disposed of in chambers.

(c) This rule is taken from Cons. Ord. XXXV. r. 1, but the jurisdiction at chambers is considerably extended.

(1.) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights (d), or where the title depends only upon proof of the identity or the birth, marriage or death of any person (e):

Payment out of Court after judgment declaring rights, &c.

(d) As to what will amount to an "order declaring the rights" of a person under this sub-section, see *Re Brandram*, 25 Ch. D. 366.

(e) The generality of this sub-section is not cut down or qualified by sub-sect. 7, or any of the sub-sections of rule 2, following sub-sect. 1 (*Re Brandram*).

(2.) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where the cash does not exceed 1,000*l.* or the securities do not exceed 1,000*l.* nominal value (f):

Where fund does not exceed 1,000*l.*

(f) The general expressions of this sub-section are not qualified or cut down by

- Ord. LV. the subsequent sub-sections. Consequently an application for payment out of a sum not exceeding 1,000*l.* paid in under the Lands Clauses Consolidation Act, 1845, must be by summons, and the costs of a petition will not be allowed; any such summons asking for payment out to a person on behalf of the company must be sealed with the company's seal (*Ex parte Maidstone Ry. Co.*, 25 Ch. D. 168; *Re Calton*, 25 Ch. D. 240; *Re Madgwick*, 25 Ch. D. 371).
- But an application for payment out of a share amounting to less than 1,000*l.* of a fund in Court exceeding 1,000*l.* can only be made by petition (*May v. Douse*, W. N. (1884), 122).
- For payment of dividends. (3.) Applications for payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise (*ff*):
- (*ff*) See *Joad v. Ripley*, 3 Jur. N. S. 432, decided under Cons. Ord. XXXV.
- Applications under Legacy Duty Act. (4.) Applications under 36 Geo. III. c. 52, s. 32 (the Legacy Duty Act), in all cases where the money or securities in Court do not exceed 1,000*l.* or 1,000*l.* nominal value (*g*):
- (*g*) As to this Act, see *ante*, p. 51. Applications for advancement to an infant out of funds in Court exceeding 1,000*l.* paid in under the Act must be made by petition (*Re Coore*, W. N. (1883), 169).
- Applications under Trustee Relief Acts. (5.) Applications under 10 & 11 Vict. c. 96, and 12 & 13 Vict. c. 74 (the Trustee Relief Acts) in all cases where the money or securities in Court do not exceed 1,000*l.* or 1,000*l.* nominal value (*h*):
- (*h*) As to payment out under the Trustee Relief Act, see *ante*, p. 57.
- Applications under Parliamentary Deposits Act. (6.) Applications under 9 & 10 Vict. c. 20 (the Parliamentary Deposits Act) for investment, payment of dividends, and payment out of Court (*i*):
- (*i*) As to this Act, see *ante*, p. 49.
- Applications under Lands Clauses Act. (7.) Applications for interim and permanent investment and for payment of dividends under the Lands Clauses Consolidation Act, 1845, and any other Act passed before the 14th of August, 1855, whereby the purchase-money of any property sold is directed to be paid into Court (*j*):
- (*j*) See as to this sub-section, *Ex parte Mayor of London*, 25 Ch. D. 384, where it was held by Kay, J., that the rule is not *ultra vires*, and consequently that all these applications must be made by summons, and the costs of a petition will not be allowed. An application, however, for payment out of a sum of 7,000*l.* to be laid out in building, though analogous to an application for a permanent investment is not within the sub-section, and is properly made by petition (*Ex parte Jesus College*, W. N. (1884), 37).
- Applications under Trustee Acts. (8.) Applications under the Trustee Acts, 1850 and 1852, in all cases where a judgment or order has been given or made for the sale, conveyance, or transfer of any stock or of any hereditaments, corporeal or incorporeal, of any tenure or description, whatever may be the estate or interest therein (*k*):
- (*k*) This is taken from Cons. Ord. XXX. r. 1 (4), but is more extensive; the old

rule did not extend to the case of stock. See *Frodsham v. Frodsham*, 15 Ch. D. 317; *Re Moate*, 22 Ch. D. 635. Where an order has been made in Court directing that new trustees be appointed and that application be made in chambers for vesting the trust property in them when appointed, and directing an inquiry as to what the trust funds consisted of, an order may be subsequently made in chambers appointing new trustees and vesting in them the right to call for a transfer of the trust property (*Re Tweedy*, W. N. (1884), 233).

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- (9.) Applications on behalf of infants under 1 Will. IV. c. 65, ss. 12, 16 and 17, where the infant is a ward of Court, or the administration of the estate of the infant, or the maintenance of the infant is under the direction of the Court (l): Applications under 1 Will. IV. c. 65.
- (l) Comp. Cons. Ord. XXXV. r. 1 (5).
- (10.) Applications under 18 & 19 Vict. c. 43, for the settlement of any property of any infant on marriage (m): Applications under Infants Settlement Act.
- (m) See as to this Act, *ante*, p. 96.
- (11.) Applications under the Copyhold Acts respecting any securities or money in Court. Notice of any such application is not to be given to the copyhold commissioners unless the judge shall so direct (mm): Applications under Copyhold Acts.
- (mm) This is taken from rule 15 of the Chancery Funds Amended Orders, 1874.
- (12.) Applications as to the guardianship and maintenance or advancement of infants (n): Guardianship of infants.
- (n) Cf. 15 & 16 Vict. c. 80, s. 26. See *Re Coore*, cited in note (g) to sub-sect. 4.
- (13.) Applications connected with the management of property (o): Management of property.
- (o) Cf. 15 & 16 Vict. c. 80, s. 26.
- (14.) Applications for or relating to the sale by auction or private contract of property, and as to the manner in which the sale is to be conducted, and for payment into Court and investment of the purchase-money: Sales.
- (15.) All applications under 6 & 7 Vict. c. 73 (not being applications for orders of course) for the taxation and delivery of bills of costs and for the delivery by any solicitor of deeds, documents, and papers (p): Taxation under Solicitors Act, 1843.
- (p) This rule is taken from Gen. Ord. Apr. 17, 1867; as to the Solicitors Act, 1843, the statute here referred to, see *ante*, p. 1.
- (16.) Applications for orders on the further consideration of any cause or matter where the order to be made is for the distribution of an insolvent estate or for the distribution of the estate of an intestate, or for the distribution of a fund among creditors or debenture holders (pp): Orders on further consideration in certain cases.
- (pp) See *Re Sumner*, W. N. (1884), 121.
- (17.) Applications for time to plead, for leave to amend pleadings, for discovery and production of documents, and generally all Time to plead, &c.

- Ord. LV. applications relating to the conduct of any cause or matter (*q*):
- (*q*) Cf. 15 & 16 Vict. c. 80, s. 26.
- Other matters. (18.) Such other matters as the judge may think fit to dispose of at chambers (*r*).
- (*r*) Cf. 15 & 16 Vict. c. 80, s. 26.

II.—*Administrations and Trusts.*

Originating summons for specific relief without administration.

3. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law or customary heir of a deceased person, or as *cestuique trust* under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may take out, as of course, an originating summons returnable in the chambers of a judge of the Chancery Division for such relief of the nature or kind following, as may by the summons be specified and as the circumstances of the case may require, (that is to say), the determination, without an administration of the estate or trust, of any of the following questions or matters:—

- (a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or *cestuique trust* :
- (b) the ascertainment of any class of creditors, legatees, devisees, next of kin, or others :
- (c) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts :
- (d) the payment into Court of any money in the hands of the executors or administrators or trustees :
- (e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees (*s*) :
- (f) the approval of any sale, purchase, compromise, or other transaction :
- (g) the determination of any question arising in the administration of the estate or trust (*t*).

(*s*) This sub-rule applies only to an order to trustees to do or abstain from doing something within their trust (*Suffolk v. Lawrence*, 32 W. R. 899; W. N. (1884), 158). See *Re Walley*, W. N. (1884), 144.

(c) The following notice was issued in January 1884; see W. N. (1884), Pt. II. Ord. LV.
p. 90:—

NOTICE.

CHANCERY DIVISION.

Titles, &c. of Summonses issued out of the Central Office.

Solicitors issuing originating summonses are recommended to use the following forms as far as practicable for general use in chambers. But the officers of this department cannot be responsible for any alterations which may be required by the chief clerk in any particular case.

ADMINISTRATION SUMMONSES.

Are to be entitled

“In the Matter of the Estate of A. B., deceased.”

C_____	D_____	:	:	:	:	:	:	Plaintiff.
E_____	F_____	:	:	:	:	:	:	Defendant.

N.B.—This regulation is to apply to summonses under Ord. LV. r. 3, for determining particular questions with regard to an estate.

ORIGINATING SUMMONSES.

In all cases where an originating summons is taken out under the authority of an Act of Parliament, or the Rules of the Supreme Court, the summons must be entitled in a substantial matter (*as the first title*), and also in the matter of the particular Act, as well as any general Act applicable (such as the Lands Clauses Consolidation Act, 1845, or the Copyhold Acts).

- (1.) If it be a railway or other local Act, and under its powers a portion of the estate of any testator or intestate has been taken, the summons must be entitled in the matter of the estate of such testator or intestate.
And in the matter of the Act or Acts.
- (2.) If property settled by any deed of settlement then in the matter of such settlement.
And in the matter of the Act or Acts.
- (3.) If land belonging to a rector, vicar, or corporate body then it must be entitled “Ex parte the rector, vicar, or corporate body,” as the case may be.
And in the matter of the Act or Acts.
- (4.) Summonses for payment of money out of Court should bear the same title as that of the proceeding under which the fund was paid in.
- (5.) Summonses under the Settled Land Act, 1882, should be entitled as directed by the rules under the said Act, and in other respects should be in the form given in Appendix L., No. 25, of the Rules of the Supreme Court, 1883.

The address and description of the applicant and of the next friend (if any), should in all cases be stated in the summons, and if the applicant or the parties summoned apply or are summoned as trustees or in a representative capacity the fact should appear in the summons, and the rule (if any) under which the application is made should be stated therein. See also rr. 20—24, *post*, p. 494.

An executor who intends to take out a summons to determine a question arising in respect of one share only of a fund should reserve a sum for costs out of the *whole fund* before making any distribution, as the costs of the summons cannot be thrown on the one share (*Re Potts*, W. N. (1884), 106).

It is a common and convenient practice on taking out a summons under this rule for a statement of facts to be prepared and agreed to by the parties in order to save expense. The validity of a release in respect of a share in the estate of a deceased testator can be determined on a summons under this rule when administration of his estate is asked for, even if it is admitted that administration is not wanted (*Re Garnett*, 32 W. R. 474).

4. Any of the persons named in the last preceding rule may in Administration-like manner apply for and obtain an order for—

- (a) The administration of the personal estate of the deceased:
- (b) The administration of the real estate of the deceased (*u*):
- (c) The administration of the trust (*v*).

(*u*) Under this rule the sanction of the Court can be obtained to the raising of

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money by mortgage for the purpose of paying a testator's debts (*Re Walley*, W. N. (1884), 144).

(v) Where the estate had been already distributed in ignorance of the fact that the plaintiff was one of the class of persons entitled, *Kay, J.*, held that an originating summons was not the proper proceeding for obtaining administration (*Re Warren*, W. N. (1884), 112).

Cf. Chancery Procedure Act, 1852, ss. 45—47, which, however, did not extend to (e). The Court of Chancery would decline to make an order for administration under these sections where there was reason to apprehend that difficult questions might arise; see 2 Dan. 5th ed. 1071, 1072; Seton, §55. A chief clerk cannot make an order for general administration; see rule 15, *post*, p. 492.

Persons to be served.

5. The persons to be served with the summons under the last two preceding rules in the first instance, shall be the following (that is to say,)—

A. Where the summons is taken out by an executor or administrator or trustee,—

(a) For the determination of any question under sub-sections (a), (e), (f), or (g) of rule 3, the persons or one of the persons, whose rights or interests are sought to be affected :

(b) For the determination of any question, under sub-section (b) of rule 3, any member or alleged member of the class :

(c) For the determination of any question, under sub-section (c) of rule 3, any person interested in taking such accounts :

(d) For the determination of any question, under sub-section (d) of rule 3, any person interested in such money :

(e) For relief under sub-section (a) of rule 4, the residuary legatees, or next of kin, or some of them :

(f) For relief under sub-section (b) of rule 4, the residuary devisees, or heirs, or some of them :

(g) For relief under sub-section (c) of rule 4, the *cestuis que trust*, or some of them :

(h) If there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur :

B. Where the summons is taken out by any person other than the executors, administrators or trustees, the said executors, administrators or trustees (*w*).

(*w*) Where the defendant, an administratrix, was a person of unsound mind, not so found, and no appearance had been entered for her, the Court appointed the official solicitor guardian *ad litem* under Ord. XIII. r. 1 (*Re Pepper*, W. N. (1884), 141; 50 L. T. 580; 32 W. R. 765).

Other persons.

6. The Court or a judge may direct such other persons to be served with the summons as they or he may think fit.

Evidence.

7. The application shall be supported by such evidence (*x*) as the Court or a judge may require, and directions may be given as they or he may think just for the trial of any questions arising thereout.

(*x*) As to cross-examination on the affidavit in support of the summons, see *Fenton v. Cumberlege*, W. N. (1883), 116.

8. It shall be lawful for the Court or a judge upon such summons to pronounce such judgment as the nature of the case may require. Ord. LV.
Judgment.

9. The Court or a judge may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as they or he may think just. Special direc-
tions.

10. It shall not be obligatory on the Court or a judge to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order (*y*). General admi-
nistration
may be dis-
pensèd with.

(*y*) This rule applies to administration actions commenced before, but tried after the Rules of 1883 came into operation (*Re Llewellyn*, 25 Ch. D. 66, where the action was referred to chambers to determine whether a general administration of the estate should be directed). In *Re Mills*, W. N. (1884), 21, Pearson, J., said he endeavoured to avoid making a general administration decree where he could, but it was not always possible to do so, and made the usual decree, except that instead of the real estate being sold, an inquiry was directed. See also *Re Hayter*, 32 W. R. 26; *Butterfield v. Mott*, W. N. (1884), 164, where the action was dismissed with costs; *Re Barrett*, W. N. (1884), 224; and compare the cases cited in note (*h*) to Ord. LXV. r. 1, *post*, p. 540. If a proper case can be shown, the Court will of course make a decree for general administration (*Re Dickinson*, W. N. (1884), 199). The plaintiff in an action cannot take out a summons to determine questions which are at issue in the action (*Borthwick v. Ransford*, 28 Ch. D. 79).

11. When any summons under rules 3 or 4 of this order has been taken out, every subsequent summons relating to the same estate or trust shall be marked with the name of the judge, to whom, for the time being, the matter is assigned, and in case any such subsequent summons shall be marked with the name of another judge it shall be the duty of the executors, administrators, or trustees, to apply for the transfer to such first-mentioned judge of such subsequent summons (*yy*). Subsequent
summonses,
how marked.

(*yy*) See Ord. XLIX. r. 6, *ante*, p. 465.

12. The issue of a summons under rule 3 of this order shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought (*z*). Powers of
trustees, &c.,
not to be
affected.

(*z*) As to the effect of a decree for execution of the trusts on the powers of trustees, see *Bethell v. Abraham*, 17 Eq. 24; *Eastwood v. Clark*, 23 Ch. D. 134; 31 W. R. 417; *Tempest v. Lord Camoys*, 21 Ch. D. 571.

13. Any application to a judge in chambers under "The Charitable Trusts Act, 1853," sect. 28, shall be made by summons (*a*). Applications
under Charit-
able Trusts
Act, 1853.

(*a*) See note to next rule.

14. No order made under the Act in the last preceding rule mentioned by the judge in chambers shall be subject to appeal where the gross annual income of the charity has not been declared by the Charity Commissioners for England and Wales to exceed 100*l.*, unless the judge by whom such order may have been made shall certify that such appeal ought to be permitted either absolutely or on such terms as the judge may think fit to impose (*b*). Appeals in
charity cases.

(*b*) This and the preceding rule are taken from Cons. Ord. XL. rr. 10 and 13. See as to the Charitable Trusts Act, 1853, *ante*, p. 94.

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III.—Powers and Duties of Chief Clerks.

Power to judges to direct what matters, &c. shall be heard by themselves and what by their chief clerks.

15. The judges of the Chancery Division to whom chambers are attached shall have power, subject to these rules, to order what matters shall be heard and investigated by their chief clerks, either with or without their direction, during their progress; and what matters shall be heard and investigated by themselves, and particularly if the judge shall so direct, his chief clerks shall take such accounts and make such inquiries as have usually been taken and made by the chief clerks, and the judge shall give such aid and directions in every such account or inquiry as he may think fit, but subject to the right hereinafter provided for the parties to bring any particular point before the judge; provided that no judgment or order for general administration shall be made under rule 4 of this order or otherwise by a chief clerk (c).

Chief clerk not to make an order for general administration.

(c) This rule is taken from 15 & 16 Vict. c. 80, s. 29.

Right of party to see judge himself.

All orders made in chambers are considered to be made by the judge himself, and, consequently, the judge in chambers is always accessible to any of the parties engaged in proceedings there, who wish to see him, and it is the invariable practice to give any party, suggesting that he wishes to see the judge personally, the opportunity of doing so directly (*Hayward v. Hayward*, Kay, App. xxxi.; *Re Rigg*, 10 W. R. 365). See also *Saunders v. Walter*, 9 Hare, App. v.; *Re London and County Assurance Co.*, 5 W. R. 794, where upon a motion to commit a party, who refused to answer a question, and requested that the case might be adjourned for hearing before the judge, it was held, that either party has a right on the minutest point to require an adjournment of the case before the judge himself in chambers, and the motion to commit was refused with costs, *Williamson v. Jeffreys*, 9 Hare, App. lvi.; *Leeds v. Lewis*, 3 Jur. N. S. 1290; *Upton v. Brown*, 20 Ch. D. 731; *Re Watts*, 22 Ch. D. 5; and see also rule 69, and note thereto, *post*, p. 505. An adjournment from the chief clerk to the judge is not an appeal so as to subject the party who asked for the adjournment to costs if he fail (*Re Watts*).

Adjournment to judge.

Pearson, J., has recently laid down the following rule as to adjournments from the chief clerk to the judge:—

Adjournment to the judge will not be granted unless an application is made to the chief clerk, at the time when the summons is heard by him, either for an adjournment or for time to consider whether an adjournment shall be asked for. If no application is made to the chief clerk at the time, the order can only be altered by means of a motion in Court to discharge it. If an order is made against a party properly served in his absence, the result is the same as if, being present, he does not ask for an adjournment. Time to consider whether an adjournment shall be asked for will be granted, if an application for it is made at the hearing in a proper case, as if only a clerk who is not fully instructed is present, or in a country case when reference to the country solicitor is necessary (W. N. (1884), 218).

As to time of appealing from a decision of the chief clerk, see *Brasneti's Case*, W. N. (1884), 223.

Power to chief clerks to issue advertisements and summonses, administer oaths, &c., as judge shall direct.

16. Each chief clerk shall, for the purpose of any proceedings directed to be taken before him, have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to require the production of documents, to take affidavits and acknowledgments, other than acknowledgements by married women, and when so directed by the judge to examine parties and witnesses either upon interrogatories or *vivâ voce*, as the judge shall direct (d).

(d) This rule is taken from 15 & 16 Vict. c. 80, s. 30.

See as to the position and functions of the chief clerk, *Powell v. Powell*, 10 Ch. p. 135.

As to affidavits and evidence in chambers, see Ord. XXXVIII., Pt. II. *ante*, p. 438.

Practice

If a party examined in chambers refuse to give a sufficient answer, the judge

should be asked to examine him personally, and if he then refuse to answer he may be committed at once (*Hayward v. Hayward*, Kay, App. xxxi.).

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A witness has a right, if he wishes, to require that his examination should be conducted before the judge in person (*Re London and County Assurance Co.*, 5 W. R. 794); and cf. *Hayward v. Hayward*; *Re Home Counties Life Assurance Co.*, 10 W. R. 457; *Re Agriculturist Cattle Insurance Society*, 3 De G. F. & J. 194; *Ex parte Bunn*, 24 Beav. 137, where on a witness refusing to be sworn before the chief clerk, on the ground that he required the assistance of counsel, it was held, on a motion to commit the witness, that the proper course was, after he was sworn, to apply that his examination might be taken before the judge, or an examiner, or, if necessary, that the case might be adjourned into Court. See, too, *Re Esqair Mining Co.*, 8 W. R. 669, where it was held, that, although the chief clerk had power in a winding-up case to summon a witness before him until the list of contributories was definitely settled, yet a motion to commit such witness for refusing to attend could not be entertained until such refusal had been certified by the judge in chambers under the 11 & 12 Vict. c. 45.

when party examined in chambers refuses to answer.

Examination before judge in person.

In one case, witnesses, who had been examined before the hearing, upon interrogatories, were examined again *vis à voce*, before the chief clerk, as to the same matters (*Rogers v. Mort*, 10 Hare, App. liii.; cf. *Hestall v. Cheadle*, 1 Sm. & G. 78; *Routh v. Tomlinson*, 16 Beav. 251).

Examination first in Court and again in chambers.

No special order was required for the transfer of a witness's examination from chambers to the examiner's office (*Stebbing v. Atlee*, 26 L. J. Ch. 265).

Transfer of examination.

17. Parties and witnesses summoned to attend before a chief clerk shall be bound to attend in pursuance of the summons, and shall be liable to process of contempt in like manner as parties or witnesses are liable thereto in case of disobedience to any order of the Court, or in case of default in attendance, in pursuance of any order of the Court or of any writ of *subpœna ad testificandum*, and all persons swearing or affirming before any chief clerk shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing or affirming contained therein, as if the matters sworn or affirmed had been sworn and affirmed before any other person by law authorised to administer oaths, to take affidavits, and to receive affirmations (e).

Process of contempt.

(e) This rule is taken from 15 & 16 Vict. c. 80, s. 31.

In the prosecution before the chief clerk of an inquiry directed by an administration decree any person able to give information about the assets may be summoned by subpoena, and is bound to attend before an examiner and answer all proper questions put to him by the person having the conduct of the decree (*Venables v. Schweitzer*, 16 Eq. 76). See as to subpœnas, Ord. XXXVII., Pt. III., *ante*, p. 428.

18. The Court or judge may direct any computation of interest, or the apportionment of any fund, to be certified by the chief clerk, and to be acted upon by the paymaster-general or other person without further order (f).

Computation of interest or apportionment of fund.

(f) Cf. Cons. Ord. XXXV. r. 45. See as to interest the Supreme Court Funds Rules, 1884, *ante*, p. 235.

IV.—Assistance of Experts.

19. The judge in chambers may, in such way as he thinks fit, obtain the assistance of accountants, merchants, engineers, actuaries, and other scientific persons the better to enable any matter at once to be determined, and he may act upon the certificate of any such person (g).

Court may obtain assistance of accountants, merchants, &c.

(g) This rule is taken from 15 & 16 Vict. c. 80, s. 42, now repealed.

- Ord. LV. See Judicature Act, 1873, 56th and following sections, as to trial with assessors, and Ord. XXXVI., Pt. VIII., *ante*, p. 419.
- Assessors under Judicature Act. See, as to the employment of accountants, *Re Hutchinson*, 32 W. R. 392; W. N. (1884), 35; *Re London, Birmingham and Bucks Ry. Co.*, 6 W. R. 141. It seems they need not always be employed in the presence of the parties (*ibid.*).
- Accountants. The expert has no jurisdiction to call witnesses (*Morris v. Llanelly Ry. Co.*, W. N. (1868), 46).
- Expert cannot call witnesses. The object of the rule is to facilitate inquiries necessary to found a decree; thus, complicated claims of creditors, which would have had to go to arbitration if tried at common law, were referred to chambers to be disposed of by the judge with the aid of an accountant (*Mildmay v. Lord Methuen*, 1 Drew. 216, where it was held that the judge cannot delegate this power to the chief clerk; *M'Intosh v. Great Western Ry. Co.*, 3 Sm. & Giff. 146); and the amount of encroachment of alluvium on a sea-shore was referred to an expert in *Att.-Gen. v. Chambers*, 4 De G. & J. 55, 58. The rule does not give a judge power to adjourn the decision of a cause for further inquiries from engineers or others in a case where the plaintiff has a clear right to an injunction, although the injunction may be a very difficult one for the defendant to obey (*Att.-Gen. v. Colney Hatch Asylum*, 4 Ch. 146, where an injunction was granted to restrain a nuisance, and the Court of Appeal reversed an order by which it was referred to an engineer to inquire how the nuisance might be abated); so a general inquiry as to what ought to be done to preserve the plaintiff's light and air was refused in *Stokes v. City Offices Co.*, 13 W. R. 537. See also *Case v. Midland Ry. Co.*, 27 Beav. 247, where an inquiry as to the effect of using steam-boats on a canal was directed; and after the decree the opinion may be taken as to time which ought to be allowed for carrying it into effect (*Att.-Gen. v. Merthyr Tydfil Local Board of Health*, W. N. (1870), 148).
- When reference is refused. The Court will not obtain the assistance of a scientific person until an issue has been raised between the parties (*Stokes v. City Offices Co.*; *Baltic Co. v. Simpson*, 24 W. R. 390).
- Expert report. The report of an expert is not to decide the question referred to him, like an arbitrator's award, though it may give material information and guidance to the judge (*Ford v. Tynte*, 2 De G. J. & S. 127, where it was said affidavits might be received in opposition; *Adamson v. Gill*, 16 W. R. 306).
- Chief clerk's report. The chief clerk must not file such report as part of his certificate; see *Hill v. King*, 9 Jur. N. S. 527; 3 De G. J. & S. 418.

V.—Summons in Chambers.

- Form and preparation of originating summonses. 20. An originating summons shall be in the Form No 25 in Appendix L., with such variations as circumstances may require. It shall be prepared by the applicant or his solicitor, and shall be sealed in the central office, and when so sealed shall be deemed to be issued. The person obtaining the summons shall leave at the central office a copy thereof, which shall be filed and stamped in the manner required by law (*h*).
- (*h*) Cf. Cons. Ord. XXXV. r. 6. For the form here referred to, see *infra*.
- Time for attendance under originating summons to be added. 21. The day and hour for attendance under an originating summons shall be left to be added, after the sealing thereof, in the margin or at the foot of the same, and shall be there inserted when such day and hour shall have been fixed at the chambers of the judge to whom the matter is assigned by the chief clerk, who shall mark the summons with the seal used in such chambers.
- New summons. 22. Where from any cause an originating summons may not have been served upon any party seven clear days before the return thereof, an indorsement may be made upon the summons, and upon a copy thereof stamped for service appointing a new time for the parties not before served to attend at the chambers of the judge, and such indorsements shall be sealed at the judge's chambers, and the service of the

copy so indorsed and sealed shall have the same force and effect as the service of an originating summons, and where any party has been served before such indorsement, the hearing thereof may, upon the return of the summons, be adjourned to the new time so appointed (i).

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(i) This rule is taken from Cons. Ord. XXXV. r. 8.

23. The parties served with an originating summons shall, before they are heard in chambers, enter appearances in the central office and give notice thereof (k).

Entry of appearance.

(k) This rule is taken from Cons. Ord. XXXV. r. 9.

24. The summons by the chief clerk requiring the attendance of parties, witnesses or others, shall be in the form No. 1 in Appendix L, with such variations as the circumstances of the case may require (l).

Form of summons.

(l) For this form, see *infra*.

VI.—*Proceedings relating to Infants.*

25. Upon applications for the appointment of guardians of infants and allowance for maintenance the evidence shall show—

Evidence on applications for guardians and maintenance.

- (a.) The ages of the infants;
- (b.) The nature and amount of the infants' fortunes and incomes;
- (c.) What relations the infants have (m).

(m) This rule is taken from Regulations as to Business, August 8, 1857, r. 19.

26. Upon applications to obtain the sanction of the Court to infants making settlements on marriage under 18 & 19 Vict. c. 43, evidence shall be produced to show—

Evidence on applications under Infants Settlement Act.

- (a.) The age of the infant;
- (b.) Whether the infant has any parents or guardians;
- (c.) With whom or under whose care the infant is living, and, if the infant has no parents or guardians, what near relations the infant has;
- (d.) The rank and position in life of the infant and parents;
- (e.) What the infant's property and fortune consist of;
- (f.) The age, rank and position in life of the person to whom the infant is about to be married;
- (g.) What property, fortune and income, such person has;
- (h.) The fitness of the proposed trustees, and their consent to act;

The proposals for the settlement of the property of the infant, and of the person to whom such infant is proposed to be married, shall be submitted to the judge (n).

(n) This rule is taken from Regulations as to Business, Aug. 8, 1857, r. 20. For this Act, see *ante*, p. 96.

27. At any time during the proceedings at any judge's chambers under any judgment or order, the judge may, if he shall think fit, require a guardian *ad litem* to be appointed for any infant or person

Appointment of guardian *ad litem*.

Ord. LV. of unsound mind not so found by inquisition, who has been served with notice of such judgment or order (*o*).

(*o*) This rule is taken from Cons. Ord. VII. r. 7.

VII.—*Documents to be left at Chambers.*

Proceedings under judgment or order. 28. In all cases of proceedings in chambers under any judgment or order, the party prosecuting the same shall leave a copy of such judgment or order at the judge's chambers, and shall certify the same to be a true copy of the judgment or order as passed and entered (*p*).

(*p*) This rule is taken from Cons. Ord. XXXV. r. 15. As to passing and entering judgments and orders, see Ord. LXII., *infra*.

Registrar's note on adjournment to chambers. 29. Whenever any matter is adjourned from the Court to chambers, or any directions are given in Court to be acted upon at chambers, whether upon a matter adjourned into Court from chambers, or upon any other occasion, without an order being drawn up, a note signed by the registrar, stating for what purpose such matter is adjourned to chambers, or the directions given, shall be procured from the registrar and left at chambers (*q*).

(*q*) This and the two following rules are taken from Regulations as to Business, Aug. 8, 1857, rules 3, 6 and 8.

Note of names of solicitors and parties. 30. A note stating the names of the solicitors for all the parties, and showing for which of the parties such solicitors are concerned, shall be left at chambers with every judgment or order (*r*).

(*r*) See note to rule 29.

Copy of certificate of entry, &c. to be left at chambers. 31. A copy of every certificate of the central office of entry of a memorandum of service of notice of a judgment or order, and of every appearance entered by a person served with such notice to attend the proceedings, certified by the solicitor, shall be left at chambers (*s*).

(*s*) See note to rule 29.

VIII.—*Summonses to proceed.*

Time for bringing in judgment or order directing accounts or inquiries. Consequences of default. 32. Every judgment or order directing accounts or inquiries to be taken or made shall be brought into the judge's chambers by the party entitled to prosecute the same within ten days after the same shall have been passed and entered, and in default thereof any other party to the cause or matter shall be at liberty to bring in the same, and such party shall have the prosecution of such judgment or order unless the judge shall otherwise direct (*t*).

(*t*) This rule is taken from Cons. Ord. XXXV. r. 22.

Summons to proceed with accounts or inquiries. 33. Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed, and upon the return of such summons the judge, if satisfied by proper evidence that all necessary parties have been served with notice of the

judgment or order, shall thereupon give directions as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken, and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied, by addition thereto or otherwise, as may be found necessary (*u*).

Ord. LV.
Directions.
Evidence.

(*u*) This rule is taken from Cons. Ord. XXXV. r. 16. Although an account has been properly directed by a decree, *semble*, the Court would stay the taking of it if it could be shown that it would be useless (*Taylor v. Mostyn*, 25 Ch. D. 48).

34. Where by a judgment or order a deed is directed to be settled by the judge in chambers in case the parties differ, a summons to proceed shall be issued, and upon the return of the summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the judge shall think fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections (if any) within eight days after the delivery of such copy, and the proceeding shall be adjourned until after the expiration of the said period of eight days (*v*).

Settling deed under judgment, &c., in case parties differ.

(*v*) This rule is taken from Cons. Ord. XXXV. r. 17. Where an infant is a necessary party, the words "in case the parties differ" are omitted (*Calvert v. Godfrey*, 2 Beav. 267).

The order of a judge settling the form of a conveyance is subject to appeal (*Pollock v. Rabbits*, 21 Ch. D. 466).

35. Where, upon the hearing of the summons to proceed, it appears to the judge that by reason of absence, or for any other sufficient cause, the service of notice of the judgment or order upon any party cannot be made or ought to be dispensed with, the judge may, if he shall think fit, wholly dispense with such service, or may, at his discretion, order any substituted service or notice by advertisement or otherwise in lieu of such service (*w*).

Service of notice of judgment or order, where dispensed with.

(*w*) This rule is taken from Cons. Ord. XXXV. r. 18.

36. If on the hearing of the summons to proceed it shall appear that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may be given for advertisement for creditors, and for leaving the accounts in chambers, but the adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining the parties to be served, until all necessary parties shall have been served, and are bound, or service shall have been dispensed with, and until directions shall have been given as to the parties who are to attend on the proceedings.

Proceedings where necessary parties are not parties to the action or have not been served.

37. The course of proceeding in chambers shall ordinarily be the same as the course of proceeding in Court upon motions. Copies,

Course of proceeding in chambers.

Ord. LV. abstracts, or extracts of or from accounts, deeds, or other documents
Copies. and pedigrees and concise statements shall, if directed, be supplied for the use of the judge and his chief clerks, and where so directed, copies shall be handed over to the other parties. But no copies shall be made of deeds or documents where the originals can be brought in unless the judge shall otherwise direct (*x*).

(*x*) This rule is taken from Cons. Ord. XXXV. r. 26.

IX.—*Summons Book.*

Summons book.

38. At the time any summons is obtained, an entry thereof shall be made in "the Summons Book," stating the date on which the summons is issued, the name of the cause or matter, and by what party, and shortly for what purpose such summons is obtained, and at what time such summons is returnable (*y*).

(*y*) This rule is taken from Cons. Ord. XXXV. r. 24.

Lists of matters to be made out.

39. Lists of matters appointed for each day shall be made out and affixed outside the doors of the chambers of the respective judges; and, subject to any special direction, such matters shall be heard in the order in which they appear in such lists (*z*).

(*z*) This rule is taken from Cons. Ord. XXXV. r. 25.

X.—*Attendances.*

Judge may nominate one solicitor for a class.

40. Where, upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment or order, it appears to the judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings, and where the parties constituting any class cannot agree upon the solicitor to represent them, the judge may nominate such solicitor for the purpose of the proceedings before him, and where any one of the parties constituting such class declines to authorise the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the judge, with respect to which such nomination shall have been made, and all such further costs as shall be occasioned to any of the parties by his being represented by a different solicitor from the solicitor so to be nominated (*a*).

(*a*) This rule is taken from Cons. Ord. XXXV. r. 20.

Where, in an administration action, the parties beneficially entitled appeared by several solicitors but were unable to agree as to which solicitor should represent the whole class in the proceedings under the judgment, the Court appointed the official solicitor to represent the class (*Re Docwra, Docwra v. Faith*, W. N. (1884), 174, 232).

Where a number of persons in the same interest having liberty to attend the proceedings in an administration suit appeared separately on an adjourned summons,

only one set of costs was allowed (*Stevenson v. Abington*, 11 W. R. 936; *Bellew v. Bellew*, W. N. (1868), 253; *Foxen v. Foxen*, 13 W. R. 33). Where the plaintiff and defendant in an administration suit employ the same solicitor, other residuary legatees having liberty to attend the proceedings will be allowed one set of costs between them (*Daubney v. Leake*, 1 Eq. 495; 35 Beav. 311; *Hubbard v. Latham*, 35 L. J. Ch. 402; 14 W. R. 553; 14 L. T. 616; *Wragg v. Morley*, 14 W. R. 549; *Joseph v. Goode*, W. N. (1875), 4; 23 W. R. 225). See also as to costs of attendances in chambers, r. 42; Ord. LXV. r. 27 (23), *post*; *Sharp v. Lush*, 10 Ch. D. 468; 27 W. R. 528; *Re Marshall*, W. N. (1879), 12; *Day v. Batty*, 21 Ch. D. 830; *Morgan & Wurtzburg on Costs*, p. 137.

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41. Whenever in any proceeding before a judge in chambers the same solicitor is employed for two or more parties, such judge may at his discretion require that any of the said parties shall be represented before him by a distinct solicitor, and adjourn such proceedings until such party is so represented (*b*).

Judge may require parties to be represented by distinct solicitor.

(*b*) This rule is taken from Cons. Ord. XXXV. r. 21.

42. Any of the parties other than those who shall have been directed to attend may attend at their own expense, and upon paying the costs, if any, occasioned by such attendance, or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action either in addition to or in substitution for any of the parties who shall have been directed to attend.

Costs of parties not directed to attend.

43. An order is to be drawn up on a summons to be taken out by the plaintiff or the party having the conduct of the action, stating the parties who shall have been directed to attend and such of them (if any) as shall have elected to attend at their own expense, and such order is to be recited in the chief clerk's certificate.

Order.

XI.—*Advertisements for Creditors and Claimants.*

44. Where a judgment or order is given or made, whether in Court or in chambers, directing an account of debts, claims, or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time, which may be fixed for that purpose by advertisement, shall be excluded from the benefit of the judgment or order (*c*).

Claimants not coming in to prove to be excluded.

(*c*) This rule is taken from Cons. Ord. XXXV. r. 12.

After the time fixed by the advertisement no claim can be received (except in case of an adjournment) without special leave; see r. 57, *post*.

After distribution under a decree, persons making further claims may proceed by action against those persons who have received the assets, but not against the executors who are indemnified by the decree (*Clegg v. Rowland*, 3 Eq. 368; *David v. Frowd*, 1 My. & K. 209; *Good v. Blewitt*, 19 Ves. 339; *Greig v. Somerville*, 1 R. & M. 338; *Thomas v. Griffith*, 2 Giff. 504; 2 De G. F. & J. 555); and even where the assets have been distributed without a suit the executors ought not to be made parties (*Hunter v. Young*, 4 Ex. D. 256).

For the practice where a fund becomes distributable after a great lapse of time and some only of the creditors come in to claim, see *Ashley v. Ashley*, 1 Ch. D. 243; affirmed 4 Ch. D. 757.

A creditor may come in as long as there are assets (*Lashley v. Hogg*, 11 Ves. 602; *Hartwell v. Colvin*, 16 Beav. 140; *Re Metcalfe*, 13 Ch. D. 236); and although the

Ord. LV. fund has been apportioned (*Gillespie v. Alexander*, 3 Russ. 130; *Montefori v. Browne*, 7 H. L. C. 241; 4 Jur. N. S. 1201; *Knierim v. Schmauss*, 10 W. R. 860).
 In *Prowse v. Spurgin*, 5 Eq. 99, the plaintiff, a residuary legatee was held liable to pay legacies more than twenty years after the testator's death, owing to the form of the certificate to which he had assented.

Advertisements.

45. Where an advertisement is required for the purpose of any proceeding in chambers, a peremptory advertisement, and only one, shall be issued, unless for any special reason it may be thought necessary to issue a second advertisement or further advertisements, and any advertisement may be repeated as many times and in such papers as may be directed (*d*).

(*d*) This rule is taken from Cons. Ord. XXXV. r. 35.

As to the advertisements required, see *Wood v. Weightman*, 13 Eq. 434.

By whom prepared.
Signature of chief clerk.

46. The advertisement shall be prepared by the party prosecuting the judgment or order, and submitted to the chief clerk for approval, and when approved shall be signed by him, and such signature shall be sufficient authority to the printer of the Gazette to insert the same (*e*).

(*e*) This rule is taken from Cons. Ord. XXXV. r. 36. See note to r. 45.

Time to be fixed for sending in claims.

47. Advertisements for creditors and other claimants shall fix a time, within which each claimant, not being a creditor, is to come in and prove his claim, and within which each creditor is to send to the executor or administrator of the deceased, or to such other party as the judge shall direct, or to his solicitor, to be named and described in the advertisement, the name and address of such creditor and the full particulars of his claim, and a statement of his account and the nature of the security (if any) held by him. Such advertisements shall be in one of the Forms No. 2 and 3, in Appendix L., with such variations as the circumstances of the case may require. At the time of directing such advertisement a time shall be fixed for adjudicating on the claims (*f*).

(*f*) This rule is taken from Cons. Ord. XXXV. r. 37, and General Order, 27th May, 1865, r. 1.

For these forms, see *infra*.

As to using in chambers advertisements previously issued by the executor, see *Cuthbert v. Wharmby*, W. N. (1869), 12.

Office copies of affidavits.

48. Claimants filing affidavits shall not be required to take office copies, but the person who examines the claims shall take office copies and produce the same at the hearing, unless the judge shall otherwise direct (*g*).

(*g*) This rule is from Cons. Ord. XXXV. r. 39.

A claimant may be cross-examined upon his affidavit in support of his claim (*Cast v. Poyser*, 3 Sm. & Giff. 369; affirmed, 26 L. J. Ch. 353); and after his cross-examination the other side may file fresh evidence (*Lancefield v. Iggulden*, W. N. (1872), 111; 20 W. R. 621).

Creditor not to make affi-

49. No creditor need make any affidavit nor attend in support of

his claim (except to produce his security) unless he is served with a notice requiring him to do so as hereinafter provided (*h*). Ord. LV.

davit nor attend unless required.

(*h*) This Rule is taken from General Order, 27th May, 1865, r. 2.

50. Every creditor shall produce the security (if any) held by him before the judge at such time as shall be specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims, and every creditor shall, if required by notice in writing (Form No. 4 in Appendix L.) to be given by the executor or administrator of the deceased, or by such other party as the judge shall direct, produce all other deeds and documents necessary to substantiate his claim before the judge at his chambers at such time as shall be specified in such notice (*i*). Creditor to produce security or other evidence.

(*i*) This rule is from General Order, 27th May, 1865, r. 3.

As to disputing debts in chambers, and in particular the debt of the plaintiff creditor, see *Cardell v. Hawke*, 6 Eq. 464.

51. In case any creditor shall neglect or refuse to comply with the last preceding rule, he shall not be allowed any costs of proving his claim unless the judge shall otherwise direct (*k*). Creditor failing to comply not to be allowed costs.

(*k*) This rule is from General Order, 27th May, 1865, r. 4.

As to costs of proving, see rule 58, *post*.

52. The executor or administrator of the deceased, or such other party as the judge shall direct, shall examine the claims of creditors sent in pursuant to the advertisement, and shall ascertain, so far as he is able, to which of such claims the estate of the deceased is justly liable, and he shall, at least seven clear days prior to the time appointed for adjudication, file an affidavit (Form No. 5 in Appendix L.), to be made by such executor or administrator, or one of the executors or administrators, or such other party, either alone or jointly with his solicitor or other competent person, or otherwise, as the judge shall direct, verifying a list of the claims (Form No. 6 in Appendix L.), the particulars of which have been sent in pursuant to the advertisement, and stating to which of such claims, or parts thereof respectively, the estate of the deceased is in the opinion of the deponent justly liable, and his belief that such claims, or parts thereof respectively, are justly due and proper to be allowed, and the reasons for such belief (*l*). Claims to be examined and result verified by affidavit of executor or other person appointed by judge.

(*l*) This rule is taken from General Order, 27th May, 1865, r. 5.

For these forms, see *infra*.

53. In case the judge shall think fit so to direct, the making of the affidavit referred to in the last preceding rule shall be postponed till after the day appointed for adjudication, and shall then be subject to such directions as the judge may give (*m*). Affidavit may be postponed.

(*m*) This rule is from General Order, 27th May, 1865, r. 6.

54. Where on the day appointed for hearing the claims any of them remain undisposed of, an adjournment day for hearing such claims Adjournment.

Ord. LV.
Close of
evidence.

shall be fixed, and where further evidence is to be adduced, a time may be named within which the evidence on both sides is to be closed, and directions may be given as to the mode in which such evidence is to be adduced (*n*).

(*n*) This rule is from Cons. Ord. XXXV. r. 40.

Adjudication
on claims.

55. At the time appointed for adjudicating upon the claims of creditors, or at any adjournment thereof, the judge may in his discretion allow any of the claims, or any part thereof respectively, without proof by the creditors, and direct such investigation of all or any of the claims not allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and may, if he so think fit, require any creditor to attend and prove his claim, or any part thereof, and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed (*o*).

(*o*) This rule is from General Order, 27th May, 1865, r. 7.

Notice to
creditor of
allowance or
disallowance
of claims.

56. Notice (Form No. 7 in Appendix L.) shall be given by the executor or administrator, or such other party as the judge shall direct, to every creditor whose claim, or any part thereof, has been allowed without proof by the creditor, of such allowance, and to every such creditor as the judge shall direct to attend and prove his claim or such part thereof as is not allowed by a time to be named in such notice (Form No. 8 in Appendix L.), not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon shall have been adjourned, and in case any creditor shall not comply with such notice, his claim, or such part thereof as aforesaid, shall be disallowed (*p*).

(*p*) This rule is from General Order, 27th May, 1865, r. 8. For these forms, see *infra*.

Special leave
to make
claims after
time fixed by
advertisement.

57. After the time fixed by the advertisement no claims shall be received (except as hereinbefore provided in case of an adjournment), unless the judge at chambers shall think fit to give special leave, upon application made by summons, and then upon such terms and conditions as to costs and otherwise as the judge shall think fit (*q*).

(*q*) This rule is from General Order, 27th May, 1865, r. 10. See notes to rule 44, *ante*, p. 499.

Costs of
creditor esta-
blishing his
debt.

58. A creditor who has come in and established his debt in the judge's chambers under any judgment or order shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the judge, unless he shall think fit to direct the taxation thereof; and the amount of such costs, or the sum allowed in respect thereof, shall be added to the debt so established (*r*).

Costs.

(*r*) This rule is taken from Cons. Ord. XL. r. 24. It does not affect the costs to which the plaintiff in a creditor's suit is entitled (*Flintoff v. Haynes*, 4 Ha. 309). In general, all creditors required to prove their debts, are allowed a fixed sum of 1*l.* 13*s.* 4*d.*, if the debt is under 5*l.* and 2*l.* 2*s.* if above (Seton, 832). In *Waterlow v.*

Burt, 18 W. R. 683, *S. C. sub nom. Waterton v. Burt*, 39 L. J. Ch. 425; W. N. (1870), 106, three guineas was held a proper sum to allow. A creditor failing to produce his security or other evidence of his claim, will get no costs (rule 51). Creditors attending under rule 50, to produce securities or other evidence, will be allowed a proper fee for such attendance. Where an estate, which was insufficient, had been apportioned amongst the creditors, but not actually distributed, a creditor was allowed to come in on payment of the costs of the application and of the reapportionment (*Angell v. Haddon*, 1 Mad. 529). If a person claiming to be a creditor fails in his claim, he must pay the costs (*Hatch v. Scarles*, 2 Sm. & G. 157; *Yeomans v. Haynes*, 24 Beav. 127; *Colyer v. Colyer*, 10 W. R. 748; and see *Wright v. Larmuth*, W. N. (1869), 36). The proper course is to ask for the costs when the claim is adjudicated on, but an order for payment of them may be made on a distinct summons (*Yeomans v. Haynes*); and notwithstanding the pendency of an appeal against the order disallowing the claim (*Colyer v. Colyer*).

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Costs of a person failing in his claim to be a creditor.

59. A list of all claims allowed shall, when required by the judge, be made out and left in the judge's chambers by the person who examines the claims (s). Claims allowed.

(s) This rule is taken from Cons. Ord. XXXV. r. 44.

60. Where any judgment or order is made for payments by the Paymaster-general to creditors, the party whose duty it is to prosecute such judgment or order, shall send to each such creditor or his solicitor (if any) a notice (Form No. 9 in Appendix L.), that the cheques may be received from the Paymaster-general, and such party shall, when required, produce such judgment or order and any other papers necessary to enable such creditors to receive their cheques and get them passed (t).

Notice to creditors of cheques being ready.

(t) This rule is from General Order, 27th May, 1865, r. 12. See this form, *infra*.

61. Every notice by this order required to be given to creditors or other claimants shall, unless the judge shall otherwise direct, be deemed sufficiently given and served if transmitted by the post prepaid to the creditor or other claimant to be served according to the address given in the claim sent in by him pursuant to the advertisement, or in case such creditor or other claimant shall have employed a solicitor, to such solicitor according to the address given by him (u).

Notice by post to be sufficient.

(u) This rule is from General Order, 27th May, 1865, r. 13.

XII.—Interest.

62. Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of four per cent. per annum from the date of the judgment or order (v).

Interest on debts.

(v) This and the two following rules are from Cons. Ord. XLII. rr. 9, 10 and 11.

63. A creditor whose debt does not carry interest, who comes in and establishes the same before the judge in chambers under a judgment or order of the court or of the judge in chambers, shall be entitled to interest upon his debt at the rate of four per cent. per annum from the date of the judgment or order out of any assets which may remain

Debts not carrying interest.

Ord. LV. after satisfying the costs of the cause or matter, the debts established, and the interest of such debts as by law carry interest (*w*).

(*w*) See note to rule 62.

These rules do not apply to decrees made before 1841 (*Wheeler v. Gill*, 19 Eq. 316).

A creditor is entitled to interest on a debt which accrues subsequently to the judgment only from the time of proof (*Lainson v. Lainson*, 18 Beav. 7; 17 Jur. 1044). As to allowing interest on the arrears of an annuity which the testator had covenanted to pay, see *Jenkins v. Bryant*, 16 Sim. 272, and cases there cited. As to deducting income tax, see *Dinning v. Henderson*, 3 De G. & S. 702; *Crane v. Kilpin*, 6 Eq. 334. The direction to compute interest may be given on further consideration (*Flintoff v. Haynes*, 4 Ha. 309). See further as to interest, Daniell, 1027 *et seq.* If the estate is insolvent a creditor (under sect. 10 of the Judicature Act, 1875) is entitled to interest only up to the date of the judgment for administration (*Re Summers*, 13 Ch. D. 136).

Interest on legacies.

64. Where a judgment or order is made directing an account of legacies, interest shall be computed on such legacies after the rate of four per cent. per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will, and in that case according to the will (*x*).

(*x*) See note to rule 62; and as to interest on legacies generally, see *Re Olive*, W. N. (1884), 81; *Seton*, 874; *Daniell*, 1037. Interest computed on an advancement is computed from the death of the testator (*Hilton v. Hilton*, 14 Eq. 468; *Field v. Seward*, 5 Ch. D. 538. See also *Stewart v. Stewart*, 15 Ch. D. 539).

XIII.—*Certificates of the Chief Clerk.*

Result of proceedings before chief clerk to be embodied in concise certificate.

65. The directions to be given for or touching any proceedings before the chief clerk shall require no particular form, but the result of such proceedings shall be stated in the shape of a concise certificate to the judge. It shall not be necessary for the judge to sign such certificate, and unless an order to discharge or vary the same is made, the certificate shall be deemed to be approved and adopted by the judge (*y*).

(*y*) This rule is taken from 15 & 16 Vict. c. 80, s. 32.

Reference to judgment or order, documents or evidence.

66. The certificate of the chief clerk shall not, unless the circumstances of the case render it necessary, set out the judgment or order or any documents or evidence or reasons, but shall refer to the judgment, or order, documents, and evidence or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded (*z*).

(*z*) This rule is taken from Cons. Ord. XXXV. r. 47.

Form of certificate. Transcript.

67. The certificate of the chief clerk shall be in the Form No. 10 in Appendix L., with such variations as the circumstances may require, and when prepared and settled shall be transcribed in such form, and within such time as the chief clerk shall require, and shall be signed by the chief clerk either then or (if necessary) at an adjournment to be made for the purpose (*a*).

(*a*) This rule is taken from Cons. Ord. XXXV. r. 47.
For this form, see *infra*.

68. Where an account is directed, the certificate shall state the result of such account, and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed, and shall specify by the numbers attached to the items in the account which, if any, of such items have been disallowed or varied, and shall state what additions, if any, have been made by way of surcharge or otherwise, and where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the certificate. The accounts and the transcripts (if any) referred to by certificates shall be filed therewith, or retained in chambers and subsequently filed, as the judge in chambers may direct. No copy of any such account shall be required to be taken by any party (b).

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Contents of certificate in cases of account.

Transcript.

Accounts to be filed.

(b) This rule is taken from Cons. Ord. XXXV. r. 46.

69. Any party may, before the proceedings before the chief clerk are concluded, take the opinion of the judge upon any matter arising in the course of the proceedings without any fresh summons for the purpose (c).

Reference to the judge before proceedings are concluded.

(c) Cf. 15 & 16 Vict. c. 80, ss. 29, 33. As to the right of a suitor to adjourn any matter before the judge, see *Upton v. Brown*, 20 Ch. D. 731; 30 W. R. 817; *Re Watts*, 22 Ch. D. 5; and as to an appeal in such a case, see *Rhodes v. Rhodes*, 1 Ch. 483. See also r. 15 and note thereto, *ante*, p. 492.

The objections to the chief clerk's finding should, if possible, be taken before the certificate is made and at once referred to the judge in chambers, so as to save expense (*Farr v. Lovegrove*, 6 W. R. 201). If a solicitor should unreasonably insist upon his right to take a matter before the judge, *e. g.*, insist on referring every disputed item in an account, he may be ordered to pay the costs personally (*Upton v. Brown*).

70. Every certificate, with the accounts (if any) to be filed therewith, shall be transmitted by the chief clerk to the central office to be there filed, and shall thenceforth be binding on all the parties to the proceedings unless discharged or varied upon application by summons to be made before the expiration of eight clear days after the filing of the certificate; provided that the time for applying to discharge or vary certificates, to be acted upon by the Paymaster-general without further order, or certificates on passing receivers' accounts, shall be two clear days after the filing thereof (d).

Certificate to be filed at the central office. Application to discharge or vary.

(d) Cf. 15 & 16 Vict. c. 80, s. 34; Cons. Ord. XXXV. rr. 52—56.

The fact of a claim being disallowed by the chief clerk in one suit, was held no bar to its being prosecuted in another (*Teed v. Beere*, 7 W. R. 394; but see *contra*, *Thomas v. Griffith*, 2 Giff. 504; 2 De G. F. & J. 562). See, however, as to new claimants coming in after the certificate is adopted, r. 44, *ante*, p. 499.

Certificate, how far an estoppel.

The certificate cannot be objected to unless the application to vary or discharge it is properly made (*Lamb v. Orton*, 8 W. R. 111). The application to vary will be adjourned into Court, if necessary; and as to what costs are to be paid by the unsuccessful party, see *Re General Estates Co.*, 8 Eq. 123; *Alcock v. Gill*, W. N. (1870), 270.

Application to vary must be properly made.

If the cause is coming on to be heard on further consideration, such hearing and the application to vary will come on together (*Crompton v. Huber*, 3 W. R. 347; *Hudson v. Carmichael*, 18 Jur. 852). And where such hearing and application to

Coming on with further consideration.

Ord. LV. vary come on together, it may be necessary to appeal from the order as a whole ; see *Bloxam v. Whipham*, 8 W. R. 2.

Where error is apparent. When there was error apparent in the chief clerk's certificate, and the decree founded thereon, the Court altered and corrected both the decree and the certificate, without a rehearing (*Cradock v. Owen*, 2 Sm. & G. 241); and cf. *Purcell v. Manning*, 3 Jur. N. S. 1070, where, in a somewhat similar case, the Court gave leave to move to vary the chief clerk's certificate, and to present a petition of rehearing. As to rectifying a direction to take accounts on rehearing, see *Pennell v. Millar*, 23 Beav. 172.

Evidence on application to vary. Affidavits not used before the chief clerk cannot be used on applications to vary his certificate (*Re Hooper*, 9 Jur. N. S. 570; and see *Whitworth v. Whyddon*, 2 M. & G. 56; *Fleming v. East*, Kay, App. lii.). Nor was cross-examination in Court allowed on those affidavits which were used before him (*Dawkins v. Morton*, 10 W. R. 339). Whether affidavits referred to in the certificate can be read on further consideration when there is no summons to vary is doubtful; see *Re Brier*, 26 Ch. D. p. 242.

Where the summons had been obtained within the eight days, even though not returnable until after that time, it was held sufficient (*Wycherley v. Barnard*, John. 41; but see *Henshaw v. Angell*, 9 Eq. 451); and where it was impossible to move on a seal day within the eight days the Court allowed the motion to be made on a day not a seal day, and to be saved till next seal (*Cross v. Maltby*, 8 W. R. 646). The eight days ran during vacations (*Ware v. Watson*, 7 De G. M. & G. 739; and see *Re Jones*, 8 W. R. 56).

When a motion was made for payment of money found due on a certificate before the eight days had elapsed, the Court ordered the motion to stand over till the expiration of that period (*Douthwaite v. Spensley*, 18 Beav. 74).

Certificate may, under special circumstances, be discharged after it has become binding.

71. The judge may, if the special circumstances of the case require it, upon an application by motion or summons for the purpose, direct a certificate to be discharged or varied at any time after the same has become binding on the parties (e).

(e) The certificate will only be opened under special circumstances (*Re Martin, Dier v. Martin*, W. N. (1884), 112; *Howell v. Keightley*, 8 De G. M. & G. 325; 2 Jur. N. S. 455; *Reeve v. Reeve*, W. N. (1871), 52); for the certificate, whatever effect it may have on the hearing on further consideration, is conclusive against parties who have neither taken out a summons nor moved to have it varied (*Smith v. Armstrong*, 6 De G. M. & G. 150); and see *Jaquet v. Jaquet*, 7 W. R. 543; *Leigh v. Turner*, 14 W. R. 361; *Aspinall v. Brown*, 29 Beav. 462; *Ware v. Watson*, 7 De G. M. & G. 739; and it may operate to revive a statute-barred claim (*Prowse v. Spurgin*, 5 Eq. 99). In *Re Dove*, 27 Ch. D. 687, the time for applying to vary the certificate was extended at the hearing on further consideration, but the judge directed a summons to be taken out *pro forma*.

Where an order is made varying a certificate, the certificate itself, *i.e.* the actual document, is not altered (*Fox v. Bearblock*, 30 W. R. 342; W. N. (1882), 9).

XIV.—Further Consideration.

Adjournment of matter in chambers.

72. Where any matter originating in chambers shall, at the original or any subsequent hearing, have been adjourned for further consideration in chambers, such matter may, after the expiration of eight days and within fourteen days from the filing of the chief clerk's certificate, be brought on for further consideration by a summons, to be taken out by the party having the conduct of the matter, and after the expiration of such fourteen days by a summons, to be taken out by any other party. Such summons shall be in the form following:—

“That this matter, the further consideration whereof was adjourned by the order of the day of 18 , may be further considered,” and shall be served six clear days before the return. Provided that this rule shall not apply to any matter, the further con-

sideration whereof shall, at the original or any subsequent hearing, have been adjourned into Court (*f*). Ord. LV.

(*f*) This rule is taken from Regulations as to Business, Aug. 8, 1857, r. 18.

XV.—*Registering and Drawing up of Orders in Chambers.*

73. Notes shall be kept of all proceedings in the judges' chambers with proper dates, so that all such proceedings in each cause or matter may appear consecutively, and in chronological order, with a short statement of the questions or points decided or ruled at every hearing (*g*). Notes to be kept of proceedings in chambers.

(*g*) This rule is taken from Cons. Ord. XXXV. r. 57.

74. The judge may direct any order made in chambers to be drawn up by the registrars, and any such order shall be entered in the same manner as orders made in open Court (*h*). Order made in chambers may be directed to be drawn up by registrar.

(*h*) Cf. Cons. Ord. XXXV. r. 32; 15 & 16 Vict. c. 80, s. 14. An order made in chambers must, it would seem, be drawn up and entered before it can be enforced (*Ballard v. Tomlinson*, W. N. (1883), 90; 31 W. R. 563); unless it comes within the provisions of Ord. LII. r. 14, *ante*, p. 481.

As to appeals from orders made in chambers, see Judicature Act, 1873, s. 50, *ante*, p. 266.

75. The Forms Nos. 11 to 24 in Appendix L. shall be used for the respective purposes therein mentioned, with such variations as circumstances may require (*i*). Forms.

(*i*) For these forms, see *infra*.

[Ord. LVI. refers only to Admiralty actions.]

ORDER LVII.

INTERPLEADER.

1. Relief by way of interpleader may be granted,—

(a.) Where the person seeking relief (in this order called the applicant) is under liability for any debt, money, goods, or chattels, for or in respect of which he is, or expects to be, sued by two or more parties (in this order called the claimants) making adverse claims thereto : Interpleader :
by private
person ;

(b.) Where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the High Court, and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued (*k*). by sheriff or
other officer.

(*k*) The Interpleader Act, 1 & 2 Will. IV. c. 58, and the sections of the Common Law Procedure Act, 1860, relating to interpleader (except sect. 17), on which this c. 58.

Ord. LVII. order is founded, are repealed by the Statute Law Revision and Civil Procedure Act, 1883.

A foreigner without the jurisdiction may be made to interplead (*Credits Gerundese v. Van Weede*, 12 Q. B. D. 171), but not the Crown (*Candy v. Maughan*, 1 D. & L. 745).

What applicant must prove.

2. The applicant must satisfy the Court or a judge by affidavit or otherwise—

- (a.) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and
- (b.) That the applicant does not collude with any of the claimants; and
- (c.) That the applicant is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court or a judge may direct.

Titles of claimants may be adverse.

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another.

Time of application.

4. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.

Summons.

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

Stay of proceedings.

6. If the application is made by a defendant in an action the Court or a judge may stay all further proceedings in the action.

Proceedings when claimants appear.

7. If the claimants appear in pursuance of the summons, the Court or a judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant.

Power to decide summarily.

8. The Court or a judge may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just.

Question of law.

9. Where the question is a question of law, and the facts are not in dispute, the Court or a judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the Court. If a special case is stated, Ord. XXXIV. shall, as far as applicable, apply thereto.

Claimant not appearing or refusing to comply with order may be barred.

10. If a claimant, having been duly served with a summons calling on him to appear and maintain, or relinquish, his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court or a judge may make an order declaring him, and all persons claiming under him, for ever barred against the applicant, and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves.

11. Except where otherwise provided by statute, the judgment in any action or on any issue ordered to be tried or stated in an interpleader proceeding, and the decision of the Court or a judge in a summary way, under rule 8 of this order, shall be final and conclusive against the claimants, and all persons claiming under them, unless by special leave of the Court or judge, as the case may be, or of the Court of Appeal (*l*).

Ord. LVII.
Decision to be final.

(*l*) By sect. 17 of the C. L. P. Act, 1860, "the judgment in any such action or issue as may be directed by the Court or judge in any interpleader proceedings, and the decision of the Court or judge in a summary manner, shall be final and conclusive against the parties and all persons claiming by, from, or under them;" and see sect. 20 of the Appellate Jurisdiction Act, 1876, *ante*, p. 289. See, as to the construction of these sections, *Dodds v. Shepherd*, 1 Ex. D. 75; *Turner v. Bridgett*, 9 Q. B. D. 55; *Witt v. Parker*, 46 L. J. Q. B. 450. As to the construction of rule 11, see *Burstall v. Bryant*, 12 Q. B. D. 103; *Westerman v. Rees*, W. N. (1883), 228.

C. L. P. Act, 1860, s. 17.

12. When goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the High Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court or a judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just.

Sale of goods seized in execution.

13. Ords. XXXI. and XXXVI. shall, with the necessary modifications, apply to an interpleader issue; and the Court or judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.

Ords. XXXI. and XXXVI. to apply to interpleader issue.

14. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters pending in several divisions, or before different judges of the same division, such order may be made by the Court or judge before whom the interpleader proceeding may be taken, and shall be entitled in all such causes or matters; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters.

One order may be made in matters in several divisions, or before different judges of same division.

15. The Court or a judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs (*m*) and all other matters (*n*) as may be just and reasonable.

Costs.

(*m*) See, as to costs, *Hansen v. Maddox*, 12 Q. B. D. 100; *Searle v. Matthews*, W. N. (1883), 176; *C. v. D.*, W. N. (1883), 207.

(*n*) See *Howell v. Dawson*, 13 Q. B. D. 67.

ORDER LVIII.

APPEALS TO THE COURT OF APPEAL.

1. All appeals to the Court of Appeal (*o*) shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the

Rehearing by motion.

Ord. LVIII. notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part (*p*).

Rehearings and appeals.

No appeal for trifling amount, from consent orders; for costs alone; from point submitted to judge; where decision is final; from orders in judge's discretion.

Who may appeal.

Notice of appeal to parties affected.

Service.

(*o*) As to the constitution of the Court of Appeal, see Judicature Act, 1875, s. 4, *ante*, p. 278, and Appellate Jurisdiction Act, 1876, s. 15, *ante*, p. 287; as to its jurisdiction, see Judicature Act, 1873, ss. 18, 19, *ante*, pp. 252, 253, and r. 4, *post*, p. 511; and as to the style of the judges, see Judicature Act, 1877, s. 4, *ante*, p. 290.

No judge can now rehear a case (*Re St. Nazaire Co.*, 12 Ch. D. 88; *Re Manchester Building Society*, 24 Ch. D. 488); nor can the Court of Appeal rehear an appeal, even where the judgment had been obtained by fraud (*Flower v. Lloyd*, 6 Ch. D. 297). *Semble*, in such a case the proper course is to bring a fresh action to set aside the judgment on the ground of fraud (*ibid.*); but see *Flower v. Lloyd*, 10 Ch. D. 327.

(*p*) Appeals are not allowed where the amount at stake is insignificant (*Re Cross*, 7 Ch. 221); nor in the following cases:—

- (1.) From an order made by consent, or as to costs only in the discretion of the Court, except by leave; see Judicature Act, 1873, s. 49, and cases there cited, *ante*, p. 265.
- (2.) Where the submission was to the judge personally (*Ex parte Wilson*, 7 Ch. 45; *Bustros v. White*, 1 Q. B. D. 423; 45 L. J. Q. B. 642).
- (3.) Where it is provided by Act of Parliament that the decision of the Court below shall be final (Appellate Jurisdiction Act, 1876, s. 20, *ante*, p. 289).
- (4.) Where the order was made in a matter within the discretion of the judge (*Golding v. Wharton Saltworks Co.*, 1 Q. B. D. 374; *Sheffield v. Sheffield*, 10 Ch. 206; *Watson v. Rodwell*, 3 Ch. D. 380; 24 W. R. 1009); when the Court of Appeal will only interfere in a very strong case (*Re Martin, Hunt v. Chambers*, 20 Ch. D. 365; *Davy v. Garrett*, 7 Ch. D. 473; *Jarmain v. Chatterton*, 20 Ch. D. p. 499).

As to appealing from the refusal of a judge to commit for contempt, see *Jarmain v. Chatterton*, 20 Ch. D. 493; *Ashworth v. Outram*, 5 Ch. D. 943.

As to undertakings not to appeal, see *Re Hull and County Bank*, 13 Ch. D. 261.

As to appeals from orders in chambers, see Judicature Act, 1873, s. 50.

Any person interested may appeal (*Re Markham*, 16 Ch. D. 1; *Crawcour v. Salter*, 30 W. R. 329; *Daniell*, 1269); but if not a party to the record he must obtain permission from the Court of Appeal, the application for which is made *ex parte* (*Re Markham*).

Persons served with notice of a decree (*Ellison v. Thomas*, 1 De G. J. & S. 18; *Kidd v. Cheyne*, 13 Jur. 348), and one of several co-plaintiffs (*Beckett v. Atwood*, 18 Ch. D. 54; 29 W. R. 796) can appeal. As to an appeal by a party to a special case who did not appear at the hearing, see *Allum v. Dickinson*, 9 Q. B. D. 632.

Where the plaintiff in a representative suit obtains an order with which one of the class represented is dissatisfied, the latter cannot appeal; his proper course is to apply to the Court below to be made a defendant (*Watson v. Cave* (No. 1), 17 Ch. D. 19).

2. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected (*q*); but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as the Court of Appeal may think fit (*r*).

(*q*) All parties who will be affected ought to be served (*Hunter v. Hunter*, 24 W. R. 504), and if such a party is not served he may nevertheless appear and obtain his costs (*Re New Callao*, 22 Ch. D. 484). On the other hand, a party served but appearing unnecessarily will be allowed no costs (*Ex parte Webster*, 22 Ch. D. 136). An informal notice of appeal is sufficient (*Little's Case*, 8 Ch. D. 806); notice of an intention to give notice of appeal is not (*Re New Callao*; *Re Blyth and*

Young, 13 Ch. D. 416). As to substituted service, see *Ex parte Warburg*, 24 Ch. D. 364; 25 Ch. D. 336. Ord. LVIII.

Where the appellant has withdrawn his appeal with the consent of the other side he cannot afterwards revoke his withdrawal (*Watson v. Cave* (No. 2), 17 Ch. D. 23). Amendment.

(r) The Court will allow an amendment without any special circumstances being shown (*Re Stockton Iron Co.*, 10 Ch. D. 335).

3. Notice of appeal from any judgment, whether final or interlocutory, or from a final order, shall be a fourteen days' notice, and notice of appeal from any interlocutory order shall be a four days' notice (s). Length of notice.

(s) See *Re Stockton Iron Co.*, 10 Ch. D. 335. As to final and interlocutory judgments and orders, see Judicature Act, 1875, s. 12, *ante*, p. 282.

4. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court (t), together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court (u). The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may be just (v). Court of Appeal may receive further evidence on special grounds; and evidence of facts occurring after decree.

(t) As to amendments, see *Clack v. Wood*, 9 Q. B. D. 276; *Williams v. Preston*, 20 Ch. D. 672. Special leave.

The Court of Appeal in discharging an order may direct money paid under the order discharged to be refunded (*Re British Farmers Co.*, 7 Ch. D. 533).

(u) As to the admission of fresh evidence on appeals, see *Sanders v. Sanders*, 19 Ch. D. 373; 30 W. R. 281. An appellant who wishes to produce further evidence on the appeal should, if the evidence is documentary or by affidavit, merely give notice to the other side of his intention to apply at the hearing of the appeal for leave to produce such evidence (*Hastie v. Hastie*, 1 Ch. D. 562; *Justice v. Mersey Steel Co.*, 24 W. R. 199; *Re Chennell*, 8 Ch. D. 492); but if he wishes to examine fresh witnesses he must make a previous application by motion for leave so to do (*Dicks v. Brooks*, 13 Ch. D. 652); and see *Exchange Bank v. Billingham*, W. N. (1880), 2. As to the mode of objecting to new evidence on an appeal, see *Mitchell v. Candy*, W. N. (1881), 83. Where witnesses have been examined *vidé voce* at the trial further evidence by affidavit of the same witnesses will not generally be admitted on an appeal (*Taylor v. Grange*, 15 Ch. D. 165). Varying decree for parties not appealing.

Although the Court of Appeal, when called on to review the conclusion of the Court below after hearing evidence *vidé voce*, will give great weight to the consideration that the demeanour and manner of the witnesses are not before it, yet it will in a proper case act upon its own view of conflicting evidence (*Biggsby v. Dickinson*, 4 Ch. D. 24). See also *Cracknall v. Janson*, 11 Ch. D. 1. Amendment.

(v) As to amendments, see *Clack v. Wood*, 9 Q. B. D. 276; *Williams v. Preston*, 20 Ch. D. 672. Amendment.

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Although the Court of Appeal, when called on to review the conclusion of the Court below after hearing evidence *vidé voce*, will give great weight to the consideration that the demeanour and manner of the witnesses are not before it, yet it will in a proper case act upon its own view of conflicting evidence (*Biggsby v. Dickinson*, 4 Ch. D. 24). See also *Cracknall v. Janson*, 11 Ch. D. 1.

Ord. LVIII. An appellant is not at liberty to raise a new case inconsistent with that raised before the Court below, even though the evidence supports such a case (*Ex parte Reddish*, 5 Ch. D. 882).

“Further evidence.” The words “further evidence” mean evidence not used at the trial or hearing in the Court below (*Re Chennell*, 8 Ch. D. p. 505).

Claim in administration suit. Further evidence on an appeal from an order rejecting a creditor's claim in an administration suit cannot be admitted without leave (*Norton v. Compton*, 27 Ch. D. 392).

Costs. (v) As a general rule a successful appellant gets his costs (*Mem.* 1 Ch. D. 41; *Ohvant v. Wright*, 45 L. J. Ch. 1); but he may be deprived of them for any sufficient reason. Thus, where an appellant succeeded on a point not raised in the Court below (*Hussey v. Horne Payne*, 8 Ch. D. 670; affirmed, 4 App. Cas. 311; *Goddard v. Jeffreys*, 46 L. T. 904; and see *Chard v. Jervis*, 9 Q. B. D. 178), or failed in proving allegations of fraud, and succeeded on a mere point of law (*Ex parte Cooper*, 10 Ch. D. 313; *Re Harrison*, 13 Ch. D. 603), he got no costs; and so where he has been guilty of misconduct.

Where the Court of Appeal reverses the decision below and dismisses the action with costs, this will not include costs incurred in chambers under the decree which is reversed (*Marshall v. Berridge*, 19 Ch. D. 245).

Dismissal of appeal is usually with costs. If the appeal is dismissed it is usually with costs; but, for misconduct of the respondent or other sufficient reason, the dismissal may be without costs. See *Re Blyth and Young*, 13 Ch. D. 416; *Re Speight*, 13 Q. B. D. 42, followed in *Ex parte Blease*, W. N. (1884), 238; *Cooper v. Vesey*, 20 Ch. D. p. 636, where the appellants were innocent persons who had been defrauded.

When the appeal is dismissed the Court of Appeal will not vary the order as to costs of the Court below (*Harpham v. Shacklock*, 19 Ch. D. 215; and see *Graham v. Campbell*, 7 Ch. D. 490; 26 W. R. 336; 38 L. T. 195; *Harris v. Aaron*, 4 Ch. D. 749; 25 W. R. 353; 36 L. T. 43).

See further, as to costs of appeals, *Morgan & Wurtzburg on Costs*, p. 141 *et seq.*

Security for costs. As to security for costs of appeal, see rule 15, and notes thereto, *post*, p. 515.

Power to order new trial. 5. If, upon hearing of an appeal, it shall appear to the Court of Appeal that a new trial ought to be had, it shall be lawful for the said Court of Appeal, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.

Notice of cross appeal by respondent. 6. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall within the time specified in the next rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs (*w*).

(*w*) The notice given by the respondent under this rule need not be given within the time prescribed for appealing (*Ex parte Bishop*, 15 Ch. D. 400).

A respondent who seeks to have an order varied on a point in which the appellant has no interest, cannot proceed by notice under this rule, but must give a notice of appeal (*Re Cavander*, 16 Ch. D. 270); see, however, *Ralph v. Carrick*, 11 Ch. D. 873.

A respondent may give notice to a co-respondent in whose favour an order has been made that on the appeal he will ask for a variation of the order in his own favour (*Ex parte Payne*, 11 Ch. D. 539; and see *Harrison v. Cornwall Minerals Ry. Co.*, 18 Ch. D. 334; *Johnstone v. Cox*, 19 Ch. D. 17).

Costs. A respondent who has given cross notice of appeal under this rule is in the same position as to costs as if he had presented a cross appeal (*Harrison v. Cornwall Minerals Ry. Co.*); and see further, as to costs, *Robinson v. Drakes*, 23 Ch. D. 98; *Johnstone v. Cox*; *Craeknall v. Janson*, 11 Ch. D. 1; *The Lauretta*, 4 P. D. 25; 27 W. R. 902; 40 L. T. 444.

7. Subject to any special order which may be made, notice by a respondent under the last preceding rule shall in the case of any appeal from a final judgment be an eight days' notice, and in the case of an appeal from an interlocutory order a two days' notice (x).

Ord. LVIII.
Time for notice.

(x) See note to rule 6.

8. The party appealing from a judgment or order shall produce to the proper officer (y) of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal (z).

Entering appeals.

(y) See Ord. LXXI. r. 1, *infra*.

(z) An appeal from the refusal of an application may be set down without production of the order appealed from, or a copy of it (*Smith v. Grindley*, 3 Ch. D. 80; 24 W. R. 956).

"Proper officer."

An appeal must be entered before the day mentioned in the notice of appeal for the hearing, or if that day happens to be in a vacation, then before the next day of the sitting of the Court, otherwise the respondent will be entitled to have the appeal motion dismissed as an abandoned motion, although the notice of appeal was given in time (*Re National Funds Assurance Co.*, 4 Ch. D. 305; *Re Mansel*, 7 Ch. D. 711; *Shoetensack v. Price*, W. N. (1880), 69). But where the respondents' own delay was the cause of the appeal not having been set down, they were not allowed to raise the objection (*Re Harker*, 10 Ch. D. 613).

Appeal from refusal of an application.
Entry of appeal.

A party applying to discharge an abandoned notice of appeal with costs must apply on notice (*Re Oakwell Collieries*, 7 Ch. D. 706; 26 W. R. 577); and an application for the costs of such abandoned notice will not be allowed unless a previous demand for them has been made (*Griffin v. Allen*, 11 Ch. D. 913). See also *Charlton v. Charlton*, 16 Ch. D. 273.

Costs of abandoned appeal motion.

As to serving a second notice of appeal when the first had not been set down in time and the costs in such a case, see *Norton v. London and North Western Ry. Co.*, 11 Ch. D. 118; 27 W. R. 773; 40 L. T. 597. A statement made by counsel on the hearing below that he does not intend to appeal, in consequence of which the counsel on the other side does not ask for costs, will not prevent an appeal if the undertaking not to appeal is not embodied in the order (*Re Hull and County Bank*, 13 Ch. D. 261). But if the appeal is dismissed the appellant will, if the respondent asks for them, be ordered to pay the costs in the Court below (*ibid.*).

See *Lazenby v. White*, 6 Ch. 89; *London, Chatham and Dover Ry. v. Imperial Credit Association*, 3 Ch. 231 (where the right to an injunction was involved), for cases in which appeals will be advanced. An application to advance should be made on notice (*Re a Solicitor*, 26 Sol. J. 8).

Advancing appeals.

The following notice was issued from the Chancery Registrars' Office, on January 29th, 1877; see W. N. (1877), 88, Pt. II.

"The senior registrar has been directed to give notice that, in future, appeals from interlocutory orders in any of the following cases, will be set down for hearing in a separate list:—

- "1. On applications for injunctions, prohibitions, writs of *ne exeat regno*, or certiorari, and for stop orders on securities or documents in court.
- "2. On applications for and relating to the appointment of receivers, managers, or official liquidators.
- "3. On applications for enlarging the time for redemption, for payment into Court, or for doing any other act, or for taking any proceedings.
- "4. On applications relating to wards or infants and the management of their property.
- "5. On applications relating to all matters of contempt and to the execution of decrees, judgments and orders.
- "6. On applications relating to the discovery and inspection of documents.
- "7. And, generally, on all applications relating merely to matters of practice or procedure.

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"The solicitor applying to set down any appeal in such list will be required to produce his notice of motion and certify at the foot thereof the class to which it belongs."

Papers to be left for the use of the Court.

The papers required for the use of the Court should be left at least one week before the appeal is likely to be in the paper. The papers required are, three copies of the notice of appeal, three copies of the judgment or order appealed from, and three copies of the pleadings or any documents showing the nature of the appeal; they should be put together in three sets so as to form a complete set for each judge (Notice, 21 Nov. 1881; W. N. (1881), Pt. II. 581).

Time for appeal in winding-up or bankruptcy cases;

9. The time for appealing from any order or decision made or given in the matter of the winding-up of a company under the provisions of the Companies Act, 1862, or any Act amending the same, or any order or decision made in the matter of any bankruptcy, or in any other matter not being an action, shall be the same as the time limited for appeal from an interlocutory order under rule 15 (a).

from interlocutory order;

(a) The time of appealing from an interlocutory order under rule 15 is twenty-one days; see rule 15, *post*, p. 515.

winding-up order;

An appeal from a winding-up order must be brought within twenty-one days (*Re National Funds Assurance Co.*, 4 Ch. D. 305). See *Re Madras Co.*, 23 Ch. D. 248.

bankruptcy appeals.

As to bankruptcy appeals, see *Ex parte Viney*, 4 Ch. D. 794; *Ex parte Garrard*, 5 Ch. D. 61; *Ex parte Saffery*, 5 Ch. D. 365; *Ex parte Tucker*, 12 Ch. D. 308; *Ex parte Hall*, 16 Ch. D. 501.

"Any other matter."

An appeal from an order made under the Trustee Relief Act (*Re Baillie*, 4 Ch. D. 785), or under the Vendor and Purchaser Act (*Re Blyth and Young*, 13 Ch. D. 416), must be brought within twenty-one days. As to extending the time, see *Re Jacques*, 18 Ch. D. 392; 30 W. R. 394; *Re Baillie*.

From refusal of *ex parte* applications.

10. Where an *ex parte* application has been refused by the Court below, an application for a similar purpose may be made to the Court of Appeal *ex parte* within four days from the date of such refusal, or within such enlarged time as a judge of the Court below or of the Court of Appeal may allow.

Evidence of questions of fact on appeal.

11. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order, be brought before the Court of Appeal, as follows:

- (a.) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed:
- (b.) As to any evidence given orally, by the production of a copy of the judge's notes (b), or such other materials as the Court may deem expedient.

Judge's notes.

(b) Where the affidavits were long and had not been printed, the officer of the Court below who had charge of them was ordered to attend with them for the use of the Court of Appeal to save expense (*Sickles v. Morris*, 24 W. R. 102; and see *Crawford v. Hornsea Steam Co.*, 24 W. R. 422; 34 L. T. 923).

The judge's notes are not entered as evidence (*Plimpton v. Malcolmson*, W. N. (1876), 89). If they are required an application for them should be made to the Court of Appeal, it is irregular merely to bespeak them from the judge's clerk (*Swann v. Barber*, W. N. (1879), 171; *Dann v. Simmins*, W. N. (1879), 178). The application is made to the registrar (*Stainbank v. Beckett*, W. N. (1879), 203).

The notes of the judge below, supplemented by those of counsel, will generally be sufficient for the purposes of the Court of Appeal, and the costs of shorthand notes of the evidence will not be allowed unless a direction to that effect has been inserted in the order, for which a special application must be made at the hearing (*Earl de la Warr v. Miles*, 19 Ch. D. 80; *Kelly v. Byles*, 13 Ch. D. 682; *Re Duchéss of Westminster Silver Lead Co.*, 10 Ch. D. 307; *Laming v. Gee*, 28 W. R. 217). See, further, as to the costs of shorthand notes, Ord. LXV. r. 27 (9), *post*, p. 549.

12. Where evidence has not been printed in the Court below, the Court below or a judge thereof, or the Court of Appeal or a judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal (c). Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a judge thereof shall otherwise order (d).

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Printing evidence.

(c) Copies of the judge's notes were ordered to be printed for use on an appeal (*Anon. W. N. (1876), 23*).

(d) Where the *vidâ voce* evidence was very voluminous, and the appeal could not have been properly argued without referring to all parts of it, the costs of printing it were allowed (*Bigsby v. Dickinson, 4 Ch. D. 24*).

13. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

Notes of judge's ruling or direction.

14. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may be just (e).

Interlocutory order not to prejudice appeal.

(e) See as to this rule, *White v. Witt, 5 Ch. D. 589*.

15. No appeal to the Court of Appeal from any interlocutory order (f), or from any order, whether final or interlocutory, in any matter not being an action, shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated, in the case of an appeal from an order in chambers, from the time when such order was pronounced, or when the appellant first had notice thereof, and in all other cases, from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal (g). Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal (h).

Appeals from interlocutory orders, or from orders in matters not being actions, to be brought within twenty-one days; other appeals within one year.

(f) As to what orders are final and what interlocutory, see, generally, Seton, pp. 1607—1610; *Mem. 1 Ch. D. 41*; *Standard Co. v. La Grange, 3 C. P. D. 67*.

The following have been held to be interlocutory:—Orders on applications to vary the chief clerk's certificate, though combined with an order on further consideration (*Cummins v. Herron, 4 Ch. D. 787*; *White v. Witt, 5 Ch. D. 589*); order against an execution creditor on summons in an administration suit (*Pheysey v. Pheysey, 12 Ch. D. 305*), though such an order is final in this sense, that fresh evidence cannot be used on the appeal without leave (*Norton v. Compton, 27 Ch. D. 392*); finding in an interpleader issue (*M'Andrew v. Barker, 7 Ch. D. 701*); a decision upon a special case stated by an arbitrator (*Collins v. Paddington Vestry, 5 Q. B. D. 368*; but see, *contra, Shubrook v. Tufnell, 9 Q. B. D. 621*); findings of a chancery judge on agreed issues of fact, judgment being then reserved (*Krehl v. Burrell, 10 Ch. D. 420*); explained, *Lowe v. Lowe, ibid. 432*; commented on, *Potter v. Cotton, 5 Ex. D. 137*).

Orders: what interlocutory;

The following have been held to be final:—An order overruling a demurrer (*Trowell v. Shenton, 8 Ch. D. 318*); order on further consideration (*Cummins v. Herron, 4 Ch. D. 787*); and see *Re Emmet, 13 Ch. D. 484*; *Re Stockton Iron Co., 10 Ch. D. 335*.

what final.

As to the time for appealing from an order not made in an action, see r. 9, and notes thereto, *ante, p. 514*.

Order not made in an action.

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The notice of appeal must be served within the twenty-one days (*Ex parte Saffery*, 5 Ch. D. 365).

Service of notice of appeal.

(g) The dismissal of an action at the trial (*International Society v. Moscow Gas Co.*, 7 Ch. D. 241), and the disallowance of a creditor's claim in an administration suit (*Re Clagett*, 20 Ch. D. 134), are "refusals" within this rule.

"Refusal of an application."

The addition, to the refusal, of an order as to costs does not extend the time for appealing (*Swindell v. Birmingham Syndicate*, 3 Ch. D. 127; 24 W. R. 911; *Hooper v. Smith*, 26 Ch. D. 614); but where the order contains a declaration so as to bind the rights of the parties, it is not a simple "refusal" which must be appealed from within twenty-one days (*Re Clay and Tetley*, 16 Ch. D. 3; and see *Re Michell*, 9 Ch. D. 5).

Where, of several claims joined in one application, some are allowed and some refused, an appeal from the refusal must be brought within twenty-one days from the date of the refusal (*Trail v. Jackson*, 4 Ch. D. 7; *Berdan v. Birmingham Small Arms Co.*, 7 Ch. D. 24).

Extension of time for appealing.

The Court may give special leave to extend the time for appealing, and, exercising its judicial discretion, is bound to give that leave whenever the interests of justice really require it (*Re Manchester Building Society*, 24 Ch. D. 488). For instances of the application of this rule, see *International Society v. Moscow Gas Co.*, 7 Ch. D. 241; *McAndrew v. Barker*, 7 Ch. D. 701; *Highton v. Treherne*, 48 L. J. Ex. 167; *Re Blyth and Young*, 13 Ch. D. 416; *Re New Callao*, 22 Ch. D. 484; *Ex parte Ward*, 15 Ch. D. 292; *Re Mansel*, 7 Ch. D. 711; *Craig v. Phillips*, 7 Ch. D. 249; *Collins v. Paddington Vestry*, 5 Q. B. D. 368; *Pheysey v. Pheysey*, 12 Ch. D. 305, in which an extension of time was refused; and *Re Baillie*, 4 Ch. D. 785; *Ex parte Tucker*, 12 Ch. D. 308; *Re Jacques*, 18 Ch. D. 392; *Re Normanton Iron Co.*, 29 W. R. 300; *Taylor's Case*, 8 Ch. D. 643; *Re Padstow Association*, 20 Ch. D. 137 (where the appellant was not a party to the order, and appealed as soon as he knew of it); *Ex parte Arden*, W. N. (1884), 237, in which it was granted. Leave will not be given on an *ex parte* application (*Re Lawrence*, 4 Ch. D. 139). As to applying for leave to appeal after a great lapse of years, see *Curtis v. Sheffield*, 21 Ch. D. 1. As to appeals from chambers, see Judicature Act, 1873, s. 50, and note thereto, *ante*, p. 266.

Appeals from chambers.

Security for costs, when to be given.

(h) Security for costs was required in the following cases:—*Wilson v. Smith*, 2 Ch. D. 67; 45 L. J. Ch. 692; 24 W. R. 421; 34 L. T. 471, where the special circumstances were the appellant's poverty, and the great length of the evidence; *Clarke v. Roche*, 46 L. J. Ch. 372; 25 W. R. 309; 36 L. T. 78, where the appellants had failed to pay costs already incurred; *Waddell v. Blockey*, 10 Ch. D. 416; 27 W. R. 233; 40 L. T. 286, where the appellant was insolvent, and three appeals had been brought when one would have sufficed; *Wilson v. Church*, 11 Ch. D. 576; 27 W. R. 843, where in a heavy case the appellants were ordered to pay 200l. into Court; *Smith v. White*, W. N. (1879), 203, where there had been great delay in prosecuting the action; *Stock v. Hooper's Telegraph Works*, W. N. (1876), 230; *Re Tees Bottle Co.*, 20 Sol. J. 584.

It makes no difference that both parties are appealing (*Dence v. Mason*, W. N. (1879), 31).

Appellant foreigner domiciled abroad.

The fact that the appellants are foreigners not domiciled in England is a "special circumstance," entitling the respondents to security (*Grant v. Banque Franco-Egyptienne*, 2 C. P. D. 430; 47 L. J. Ch. 41; 26 W. R. 68; 38 L. T. 622; *Nuarnoss Shipping v. Royal Mail Co.*, W. N. (1880), 133). So where the appellant is resident out of the jurisdiction (*Re Kathleen Mavourneen*, W. N. (1878), 215).

Insolvent appellant.

If an appellant is insolvent and the Court is of opinion that he is vexatiously and unreasonably prosecuting the appeal, he will be ordered to give security (*Usil v. Brearley*, 3 C. P. D. 206; 26 W. R. 371). Where the question at issue had not been previously considered in a Court of Error, the Court of Appeal refused to order an insolvent appellant to give security (*Rourke v. White Moss Colliery Co.*, 1 C. P. D. 556).

The fact that the appellant has not complied with a bankruptcy summons will entitle the other side to security (*Nixon v. Sheldon*, W. N. (1884), 81; 53 L. J. Ch. 624; 50 L. T. 425).

Poverty of appellant.

The mere poverty of the appellant, moreover, is sufficient ground for requiring security (*Harlock v. Ashberry*, 19 Ch. D. 84; 30 W. R. 112); and see *Gathercole v. Smith*, W. N. (1880), 102; *Morecraft v. Evans*, W. N. (1882), 189; *Re Indian Mining Co.*, 22 Ch. D. 83. An appellant who is clearly liable to give security ought to offer it without waiting for an application to be made to the Court, and such offer, if reasonable, ought to be accepted. If afterwards an application is made to the Court, the Court in dealing with the costs will consider whose conduct made the application necessary (*The Constantine*, 4 P. D. 156; 27 W. R. 747).

Appeal from winding-up order.

Wherever an order absolute for winding-up a company has been made, and that order is appealed from by the company itself, without anyone else being made responsible for costs, the Court will be ready to entertain an application for security

(*Re Diamond Fuel Co.*, 13 Ch. D. 400; 28 W. R. 309; 41 L. T. 373; *Re Photographic Artists' Association*, 23 Ch. D. 370; 31 W. R. 509).

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An application for security must be made promptly, otherwise it will be refused (*Corporation of Saltash v. Goodman*, W. N. (1880), 167; 43 L. T. 464).

Application must be made promptly.

In *Grant v. Banque Franco-Egyptienne*, 1 C. P. D. 143; 24 W. R. 339; 34 L. T. 470, it was held that after the costs incident to an appeal had been actually incurred by the respondent, and after the time had been fixed for hearing the appeal, it was too late to apply for security; and see *Ex parte Hutchins and Romer*, W. N. (1879), 99. But special circumstances may justify an application at a very late moment (*Re Indian Mining Co.*, 22 Ch. D. 83). The applicant must of course make good the grounds on which his application is based, otherwise it will be dismissed (*Potter v. Cotton*, W. N. (1879), 204).

It is not the practice of the Court of Appeal when ordering an appellant to give security for costs to fix a time within which this must be done (*Polini v. Gray, Sturla v. Freccia*, 11 Ch. D. 741; 28 W. R. 81; 40 L. T. 861, explaining on this point, *Re Ivory*, 10 Ch. D. 372); if the order is not complied with within a "reasonable time" the respondent may move to dismiss the appeal for want of prosecution; but what is a "reasonable time" depends on the circumstances of the case (*Polini v. Gray; Sturla v. Freccia; Vale v. Oppert*, 5 Ch. D. 633; 25 W. R. 610). Where an appellant had neglected to comply with the order for nine months, the appeal was dismissed with costs for want of prosecution (*Judd v. Green*, 4 Ch. D. 784; 46 L. J. Ch. 257; 25 W. R. 293; 35 L. T. 873); and see *Ex parte Isaacs*, 10 Ch. D. 1; 47 L. J. Bkey. 111; 27 W. R. 297; 39 L. T. 520; *Kanitz v. Scarborough*, W. N. (1878), 216. If a time is limited and security is not given within that time, the right to appeal is gone (*Harris v. Fleming*, 30 W. R. 555).

Order to give security must be complied with in a reasonable time.

Application for security is made by motion on notice, but leave to serve the notice is not necessary (*Grills v. Dillon*, 2 Ch. D. 325; 45 L. J. Ch. 432; 24 W. R. 481; 34 L. T. 781).

The security is to be of such amount and given at such times and in such manner and form as the Court or judge shall direct (Ord. LXV. r. 6, *post*, p. 541); the amount depends on the probable costs of the appeal (*Morecroft v. Evans*, W. N. (1882), 189).

Amount and form of security.

16. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any judge thereof, or the Court of Appeal, may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct (i).

Stay of proceedings.

(i) This rule gives concurrent jurisdiction to the Court below and the Court of Appeal as to staying proceedings pending an appeal; and rule 17 does not take away the jurisdiction of the Court of Appeal, but only requires that it shall not be exercised till an application has first been made to the Court below; if the Court below has refused the application, a renewal of it before the Court of Appeal is not strictly an appeal, and need not be brought within twenty-one days (*Cropper v. Smith*, 24 Ch. D. 305), and see *Att.-Gen. v. Swansea Improvements Co.*, 9 Ch. D. 46, and *Otto v. Lindford*, 13 Ch. D. 394. If the action has been dismissed the Court below would seem to have no further jurisdiction in the matter, and if for any reason it is desired to keep matters *in statu quo* pending an appeal, application must be made to the Court of Appeal (*Wilson v. Church*, 11 Ch. D. 576); but any proceeding under the order of dismissal, *e. g.*, recovery of costs, may be stayed by the Court below (*Otto v. Lindford*).

Jurisdiction of Court of Appeal and Court below.

The application is by motion on notice (*Herring v. Clobery*, 12 Sim. 410; *Republic of Peru v. Weguelin*, 24 W. R. 297).

Application is by motion.

Where an appellant obtains an order to stay payment out of Court pending an appeal he must undertake to pay the difference between the income actually produced by the fund and interest at four per cent., and (if the fund has been sold) the expenses of the sale and re-investment (*Brewer v. Yorke*, 20 Ch. D. 669; *Bradford v. Young*, 28 Ch. D. 18).

The Court will stay proceedings pending an appeal where it is necessary to prevent the appeal, if successful, from being nugatory (*Wilson v. Church*, (No. 2), 12 Ch. D. 454; *Polini v. Gray*, 12 Ch. D. 438; *Walburn v. Ingilby*, 1 My. & K. 79; *Bradford v. Young*); or if irreparable mischief might otherwise result (*Walford v. Walford*, 3 Ch. 812; *Barrs v. Fewkes*, 1 Eq. 392); and see *Gibbs v. Daniel*, 4 Giff. 41, n.; *Ralli v. Universal Assurance*, 10 W. R. 327; *Adair v. Young*, 11 Ch. D. 136. A plaintiff having obtained an order for production of documents, was restrained from inspecting them, pending an appeal from the order (*Kelly v. Hutton*, 15 W. R. 916). A shareholder pronounced a contributory was allowed to

Stay of proceedings, when granted.

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pay calls into Court, pending an appeal (*Jopp's Case*, W. N. (1867), 192); and see *Colyer v. Finch*, 20 Beav. 555; *Bourne v. Buckton*, 35 L. J. Ch. 851; *Lord v. Colvin*, 1 Dr. & Sm. 475; *Wood v. Farthing*, 8 W. R. 425; *Portarlington v. Damer*, 11 W. R. 869; *Price v. Salisbury*, *ibid.* 1014; *Garcias v. Ricardo*, 1 Ph. 498; *Aberaman Iron Works v. Wickens*, 5 Eq. 485, 519.

When defendant need not answer pending appeal as to demurrer.

So where a demurrer to discovery has been overruled, and the defendant appeals, the Court will stay proceedings to enforce an answer if there has been no delay, or if the defendant would be prejudiced by answering (*Drake v. Drake*, 3 Hare, 528; *Garcias v. Ricardo*, 1 Ph. 498; *Saunders v. Richardson*, 2 W. R. 358).

When refused.

But the application has been refused where the appeal has been considered hopeless (*Lord v. Colvin*, 1 Dr. & Sm. 475), or if the effect of staying proceedings would be a reversal of the order; thus, where an injunction had been granted and a motion for a new trial of issues was being carried by appeal to the House of Lords, the Court refused to dissolve the injunction pending the appeal (*Penn v. Bibbey*, 3 Eq. 308).

In case of injunction.

So, where an injunction was refused the defendant could not be restrained, pending an appeal, (*Galloway v. Mayor of London*, 4 De G. J. & S. 59; see *Atherton v. British Nation Assurance Society*, 5 Ch. 720). And where the defendant had been ordered to execute a conveyance, and applied to suspend such execution, pending an appeal, the application was refused, on the plaintiff consenting that notice of the appeal should be endorsed on the conveyance (*Wilson v. West Hartlepool Railway Company*, 34 Beav. 414). A defendant ordered to transfer articles of furniture to the plaintiff was not allowed to retain them pending an appeal (*Harrington v. Harrington*, 3 Ch. 564). And costs have been ordered to be paid into Court notwithstanding an appeal (*Colyer v. Colyer*, 10 W. R. 748; *Archer v. Hudson*, 8 Beav. 321; see *Burdick v. Garrick*, 5 Ch. 453; but see *Merry v. Nickalls*, 8 Ch. 205; *Cooper v. Cooper*, 2 Ch. D. 492); and terms have been imposed on the party appealing and desiring to stay proceedings (*Taylor v. Midland Railway Company*, 9 W. R. 154; *McIntosh v. Great Western Railway Company*, 13 W. R. 1029; *Monypenny v. Monypenny*, 8 W. R. 430).

Terms imposed on party appealing.

Costs of motion to stay proceedings.

The costs of the motion to stay must, as a general rule, be paid by the applicant, whether successful or not (*Merry v. Nickalls*, 8 Ch. 205; 21 W. R. 305; *Cooper v. Cooper*, 2 Ch. D. 492; *Morgan v. Elford*, 4 Ch. D. 352; 25 W. R. 136; *Atherton v. British Nation Assurance Company*, 5 Ch. 720; *Grant v. Banque Franco-Egyptienne*, 3 C. P. D. 202; 26 W. R. 669). But the Court has a discretion (*Earl of Shrewsbury v. Trappes*, 2 De G. F. & J. 172; *Burdick v. Garrick*, 5 Ch. 453; *Walford v. Walford*, 3 Ch. 812; 5 Ch. 455, n. (4); *Adair v. Young*, 11 Ch. D. 136).

No stay of execution for costs pending an appeal.

The Court will not stay execution for costs pending an appeal; and the costs must be paid at once on the undertaking of the solicitor who receives them to refund in case the decision is reversed. If the solicitor declines to give the undertaking the costs must be paid into Court (*Grant v. Banque Franco-Egyptienne*, 3 C. P. D. 202; 26 W. R. 669; *Morgan v. Elford*, 4 Ch. D. 388; 25 W. R. 136; *Cooper v. Cooper*, 2 Ch. D. 492; 24 W. R. 628); and see *Otto v. Lindford*, 18 Ch. D. 394.

Applications to be made first to the Court or judge below.

17. Wherever under these rules an application may be made either to the Court below or to the Court of Appeal, or to a judge of the Court below or of the Court of Appeal, it shall be made in the first instance to the Court or judge below (*j*).

(*j*) See note to r. 16.

Application to be by motion. Allowance of interest on stay of execution.

18. Every application to a judge of the Court of Appeal shall be by motion, and the provisions of Order LIII. shall apply thereto.

19. On an appeal from the High Court, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court or a judge otherwise orders, and the taxing officer may compute such interest without any order for that purpose (*k*).

(*k*) This rule is new.

[Ord. LIX. relates to Divisional Courts. Two further rules were added by R. S. C., October, 1884.]

ORDER LX.

OFFICERS.

1. All officers who at the time when these rules come into operation are attached to the Chancery Division of the High Court shall remain attached to the said division; and all officers who at the time aforesaid are attached to the Queen's Bench Division shall remain attached to the said division; and all officers who at the time aforesaid are attached to the Probate, Divorce and Admiralty Division shall remain attached to the said division.

Existing officers to remain with their divisions.

2. Officers attached to any division shall follow the appeals from the same division, and shall perform in the Court of Appeal analogous duties in reference to such appeals as the registrars and officers of the Court of Chancery usually performed as to rehearings in the Court of Appeal in Chancery, and as the masters and officers of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively performed as to appeals heard by the Court of Exchequer Chamber.

Officers to follow appeals.

3. The office of Master of the Supreme Court of Judicature shall be deemed to be substituted for the several offices specified in the first part of the first schedule to the Supreme Court of Judicature (Officers) Act, 1879, and all enactments and documents referring to any of those offices, or to any of the persons holding them, shall, unless the context otherwise requires, be construed and have effect accordingly (1).

Masters of the Supreme Court to be substituted for specified officers.

(1) See this Act, *ante*, p. 291.

4. Where, by the practice of the Chancery Division, recognizances are required to be given, such recognizances shall be given to the two senior chief clerks for the time being of the judge to whom the cause or matter is assigned; and when the same are, by any judgment or order, directed to be vacated, the proper officer shall, on due notice thereof, attend one of the said chief clerks, who shall thereupon vacate such recognizances in the usual manner.

Recognizances to be given to two senior chief clerks.

ORDER LXI.

CENTRAL OFFICE.

1. The central office shall, for the convenient despatch of business, be divided into the departments specified in the first column of the following scheme, and the business of the office shall be distributed among the departments in accordance with that scheme, and shall be performed by the several officers and clerks in the said office who are now charged with the same or similar duties, and by such others as may from time to time be appointed by lawful authority for that purpose.

Central office to be divided into departments, and business distributed accordingly.

Ord. LXI.

SCHEME.

Name of Department.	Business.
1. Writ, appearance, and judgment.	The sealing and issue of writs of summons for the commencement of actions. The entry in the cause book of writs of summons, appearances, and judgments. The sealing and issue of notices for service under Ord. XVI. r. 48. The receipt and filing of pleadings and notices delivered on entry of judgment. The transaction of all business heretofore conducted in the Record and Writ Office, except such part thereof as is transacted in the Record Department.
2. Summons and order.	The issue of summonses in the Queen's Bench Division, and the drawing up of all orders made either in Court or in chambers in that division.
3. Filing and record.	The filing of all affidavits to be filed in the Central Office, and all depositions to be used in the Chancery Division, and such other documents as may from time to time be directed by the masters to be filed, and the making and examination of office copies of documents filed in the department. The custody of all deeds and documents ordered to be left with the masters. The business heretofore performed in the Report Office under the direction and control of the clerks of records and writs.
4. Taxing	The taxation of costs in the Queen's Bench Division, except such costs as have heretofore been taxed in the Queen's Remembrancer's Office or the Crown Office.
5. Enrolment ..	The business heretofore performed in the Enrolment Office.
6. Judgments and married women's acknowledgments.	The registry of judgments, execution, &c., and the registry of acknowledgments of deeds by married women.
7. Bills of sale ..	The registry of bills of sale and other duties connected therewith.
8. Queen's Remembrancer.	The business heretofore performed in the Queen's Remembrancer's Office.
9. Crown Office ..	The business heretofore performed in the Crown Office.
10. Associates ..	The business heretofore performed in the Associates' Offices.

Despatch of business at the central office.

2. It shall be the special duty of one of the masters to be present at, and control the business of, the central office, and to give the necessary directions with respect to questions of practice and procedure relating to the business thereof. The masters shall select five of their number to discharge this duty in turn, according to a rota to be fixed by themselves, and each of such masters according to his turn shall discharge such duty daily for a period of not less than one month at a time.

[Rule 3 applies only to taxation of costs in the Queen's Bench Division. In the Chancery Division costs are taxed by taxing masters appointed under 5 & 6 Vict. c. 103, s. 4. The taxing masters attend daily at their offices in the Royal Courts, except in vacation, when one master only attends and taxes costs in urgent cases.]

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4. The arrangements made under the two last preceding rules shall be publicly announced in such manner as the Lord Chief Justice of England shall from time to time direct. Arrangements to be announced.
5. Every master, and every first and second-class clerk in the filing and record department, shall, by virtue of his office, have authority to take oaths and affidavits in the Supreme Court. Authority to take oaths and affidavits.
6. The official seals to be used in the central office shall be such as the Lord Chancellor from time to time directs. Official seals.
7. All copies, certificates, and other documents appearing to be sealed with a seal of the central office shall be presumed to be office copies or certificates or other documents issued from the central office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the central office, shall be required for the authentication of any such copy, certificate, or other document. Sealed copies, &c. may be received in evidence.
8. It shall not be necessary to enrol any judgment or order, whether dated before or since the commencement of the Principal Act. Enrolment of judgments, &c. to be unnecessary.
9. All deeds which by any statute or statutory rule are directed or permitted to be enrolled in any of the Courts whose jurisdiction has been transferred to the High Court of Justice may be enrolled in the enrolment department of the central office. Deeds to be enrolled in the Enrolment Department.
10. A scheme under the Railway Companies Act, 1867, shall be enrolled in the enrolment department of the central office. Scheme under Railway Companies Act, 1867.
11. A scheme under the Act in rule 10 mentioned shall not be enrolled unless notice of the order confirming it has at least once in every entire week, reckoned from Sunday morning to Saturday evening, which elapses between the pronouncing of the order and the expiration of thirty days from the pronouncing thereof, been inserted in such two newspapers as shall have been appointed by the judge for the insertion of advertisements under the order made pursuant to that Act, nor unless the newspapers containing those notices are produced to the proper officer when the scheme is presented for enrolment. Order of confirmation to be advertised.
12. All acknowledgments required for the purpose of enrolling any deed or other document may be made before the clerk of enrolments or before a master, as occasion may require (*m*). Acknowledgments for enrolling deeds, &c.
- (*m*) This rule is from Cons. Ord. I. r. 40.
13. The records of all deeds and recognizances enrolled shall be sent by the clerk of enrolments, so long as that office shall continue, or by the proper officer of the enrolment department, to the Public Record Office, Rolls Yard, within two years from the time of the enrolment thereof (*n*). Enrolments to be transmitted to the Public Record Office.

(*n*) This rule is from Cons. Ord. I. r. 41.

- Ord. LXI. 14. No recognizance shall be enrolled after six months from the acknowledgment thereof, except under special circumstances, and by an order made by the Court or a judge upon motion for the enrolment thereof after that time (o).
- (o) This rule is from Cons. Ord. XLII. r. 12.
- No order on petition, &c., passed until original petition, &c., filed. 15. No order made on a petition, and no order to make a submission to arbitration, or an award, an order of the Court, and no judgment or order wherein any written admissions of evidence are entered as read, shall be passed, until the original petition, submission to arbitration, or award, or written admissions of evidence, shall have been filed in the central office, or, where the proceedings are taken in a district registry, in the district registry, and a note thereof made on the judgment or order by the proper officer (p).
- (p) This rule is from Cons. Ord. XXIII. r. 23.
- Date of filing proceedings. 16. Upon every pleading or other proceeding which is filed in the central office, the date of filing the same shall be printed or written (q).
- (q) This rule is from Cons. Ord. I. r. 45.
- Indexes to reports, &c., to be kept and to be accessible. 17. Proper indexes or calendars to the files or bundles of all documents filed at the central office shall be kept, so that the same may be conveniently referred to when required; and such indexes or calendars and documents shall, at all times during office hours, be accessible to the public on payment of the usual fee (r).
- (r) This rule is from Cons. Ord. I. r. 46.
- Entry of time of delivering certificate, with name of cause and date of certificate: of time of delivery of other documents; such entry to be accessible. 18. There shall also be entered in proper books kept for the purpose the time when any certificate is delivered at the central office to be filed, with the name of the cause and the date of the certificate; and the like entry shall be made of the time of delivery of every other document filed at the central office; and such books shall, at all times during office hours, be accessible to the public on payment of the usual fee (s).
- (s) This rule is from Cons. Ord. I. r. 47.
- Reference to record to be written or stamped on documents. 19. Every judgment, order, certificate, petition, or document made, presented, or used in any cause or matter, shall be distinguished by having plainly written or stamped on the first page thereof the year, the letter, and the number by which the cause or matter is distinguished in the books kept at the central office (t).
- (t) This rule is from Cons. Ord. I. r. 48.
- Dates of judgments, &c. to be entered in cause books. 20. There shall also be entered in the cause books, the date of every judgment, order, and certificate made in every cause or matter (u).
- (u) This rule is from Cons. Ord. I. r. 49.

21. The entry of every judgment and order in such cause books in the Chancery Division, shall contain a reference to the date and folio of the registrar's book in which the judgment or order has been entered (*v*). Ord. LXI.
References to dates and folios of registrar's book.

(*v*) This rule is from Cons. Ord. I. r. 50.

22. The registrar of judgments shall not receive any memorandum of a judgment, execution, *lis pendens*, order, rule, annuity, Crown debt, or other incumbrance, or any memorandum of satisfaction relating to the same, for registration, after the hour of two in the afternoon. Time for delivering memorandum of judgment, &c. for registration.

23. The clerk of enrolments and each of the following registrars, namely— Official searches.

- (a) The registrar of bills of sale;
- (b) The registrar of certificates of acknowledgments of deeds by married women;
- (c) The registrar of judgments;

shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search.

24. For the purpose of enabling all persons to obtain precise information as to the state of any cause or matter, and to take the means of preventing improper delay in the progress thereof, the proper officer shall at the request of any person, whether a party or not to the cause or matter inquired after, but on payment of the usual fee, give a certificate specifying therein the dates and general description of the several proceedings which have been taken in such cause or matter in the central office (*w*). Certificate of proceedings in a cause or matter to be given.

(*w*) This rule is from Cons. Ord. I. r. 53.

25. The masters shall execute the office of the registrar for the purposes of the Bills of Sale Act, 1878, and the Bills of Sale Act, 1878, Amendment Act, 1882, and any one of the masters may perform all or any of the duties of the registrar. Masters to act as registrar under Bills of Sale Acts.

26. A memorandum of satisfaction may be ordered to be written upon a registered copy of a bill of sale, on a consent to the satisfaction, signed by the person entitled to the benefit of the bill of sale, and verified by affidavit, being produced to the registrar, and filed in the central office. Entry of satisfaction on bill of sale.

27. Where the consent in the last preceding rule mentioned cannot be obtained, the registrar may, on application by summons, and on hearing the person entitled to the benefit of the bill of sale, or on affidavit of service of the summons on that person, and in either case on proof to the satisfaction of the registrar that the debt (if any) for which the bill of sale was made has been satisfied or discharged, order How effected where no consent given.

- Ord. LXI. a memorandum of satisfaction to be written upon a registered copy thereof.
- Records not to be removed. 28. No affidavit or record of the Court shall be taken out of the central office without the order of a judge or master, and no *subpœna* for the production of any such document shall be issued (*x*).
- (*x*) Cf. Cons. Ord. I. r. 42.
- Deposit to answer fees. 29. Any officer of the central office, being required to attend with any record or document at any assizes or at any Court or place out of the Royal Courts of Justice, shall be entitled to require that the solicitor or party desiring his attendance shall deposit with him a sufficient sum of money to answer his just fees, charges, and expenses in respect of such attendance, and undertake to pay any further just fees, charges, and expenses which may not be fully answered by such deposit (*y*).
- (*y*) This rule is from Cons. Ord. I. r. 43.
- Documents, where deposited. 30. Where any deeds or other documents are ordered to be left or deposited, whether for safe custody or for the purpose of any inquiry in chambers, or otherwise, the same shall be left or deposited in the central office, and shall be subject to such directions as may be given for the production thereof (*z*).
- (*z*) This rule is from Cons. Ord. XLII. r. 3.
- Filing and transmitting of certificates, petitions, admissions of evidence, submissions to arbitration, and awards made orders of Court. 31. All certificates of the chief clerk of a judge and all petitions and written admissions of evidence whereon any order is founded, and all submissions to arbitration made orders of the Court, shall be transmitted to and left at the central office, to be there filed or preserved. And all office copies thereof, or of any part thereof that may be required, shall be ready to be delivered to the party requiring the same within forty-eight hours after the same shall have been bespoken (*a*).
- (*a*) This rule is from Cons. Ord. I. r. 44.
- Forms. 32. The forms contained in the Appendices shall be used in or for the purposes of the central office, with such variations as circumstances may require (*b*).
- (*b*) For these forms, see *infra*.
- Power to prescribe forms. 33. The masters may from time to time prescribe the use in or for the purpose of the central office of such modified or additional forms as may be deemed expedient (*c*).
- (*c*) The Practice Rules drawn up by the masters, so far as they relate to the Chancery Division, are as follows:—

CENTRAL OFFICE.

Ord. LXI.

OFFICE RULES SETTLED BY THE PRACTICE MASTERS, 1880,
1881, 1882.

DOCUMENTS TO BE FILED IN THE WRIT AND APPEARANCE AND SUMMONS AND ORDER
DEPARTMENTS.

- Originating summonses issued from chancery chambers.
- Petitions of right.
- Affidavits of service.
- Lower scale certificates (chancery).
- Schemes of arrangement under Railway Abandonment Act.
- Pleadings left on entering judgment (Ord. XLI. r. 1).
- Pleadings and other documents filed under Ord. XIX. r. 6, in default of appearance.
- Writs and returns to writs, orders, &c.
- All documents required by rules or orders of Court to be filed, such as warrants of attorney, and cognovits on signing judgments (rule 25, of Hilary, 1853), orders for assessment of damages and masters findings thereon (rule 171, of Hilary, 1853), also satisfaction pieces and orders to satisfy, strike out, or amend any judgment or proceeding, or directing any act to be done in the office (except Chancery Orders and Orders of Court in Queen's Bench Division). [A copy of the order marked that the original was produced may be taken at the discretion of the officer in cases in which the original is required to be retained by the parties.]
- All pleadings to be entered in the cause books are to be opened and stamped on the day of filing, with the date seal at the top of the front page, and returned to the general filing department on Monday morning in each week.
- Copies writs filed.
- Præcipes for writs of execution.
- Præcipes for subpoenas and miscellaneous writs.
- Appearances.
- Lower scale certificates.
- Certificate of costs.
- All these should be sent to the general filing department when more than a year old.
- Orders of commitment and returns thereto may be filed and indexed in the writ, &c. department in the same way as (and with) writs of execution.

CAUSE BOOK, DISTINCTIVE MARKS, AND INDEXES.

- Actions and matters in the title of which a limited company is first must be indexed under the first letter of the first word or initial.
- Courtesy titles of eldest sons of peers are not to govern the distinctive mark which is to follow the surname, viz., "Campbell" and not "Marquis of Lorne."
- In cases, such as mayor and corporation of, &c., the initial letter of the city or borough should govern the distinctive mark.
- Owners of ships by name of ship.
- Overseers of parishes by name of parish.
- Names in which "de" occurs as part of the surname, or is preceded only by christian names, should be indexed under "D."
- Foreign companies should be indexed under the initial letter of the first word in their name, e.g., Banco de Lima under "B," Société d'Acclimatization, "S."
- Foreign titles should be indexed under the initial letter of the proper or local name in the title, e.g., Comte de Paris under "P," Duc de Montebello under "M."
- The christian and surnames of all parties to an action should be entered in full in the cause book.
- Parties are not to be allowed to see the cause book unless by express leave obtained from a master or an order by a judge.
- All searches in the cause book for writs of summons or otherwise are to be made by the clerks in the central office, and the result communicated to the party applying.
- When a certificate is given, and no inspection of a præcipe is required, only one fee of 1s. is to be taken (or 4s. if higher scale).
- A separate index is to be kept of writs in administration actions and of administration summonses, which index the public may search without fee.
- Separate books are to be kept for entering returns to writs of execution, index to lower scale certificates in chancery matters not actions, and return books, and debt attachment book.

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No other books to be kept for entries except the cause books (and desk book for facilitating reference). The judgment books may be kept in the cause book room with the cause books, or in a separate room.

WRITS OF SUMMONS, APPEARANCES, AND AMENDMENTS.

Copies of writs of summons should be signed with the name of the solicitor or solicitor's clerk suing them out as under:—

C. D. and Co.
or A. B.
for C. D. and Co.

The stamp is to be on the copy writ filed.

In the Chancery Division an order of course to amend a writ of summons as the plaintiff may be advised will not justify an alteration that strikes out the name of any plaintiff or defendant, or makes a person out of the jurisdiction a party.

In all the divisions an amendment of a writ of summons may be made by leave of a master (on payment of fee) before service. A plaintiff can be struck out only by special leave given in the order to amend; a defendant, by special leave, or on the written statement (to be filed) of the plaintiff's solicitors that a notice of discontinuance under Ord. XXIII. has been duly given.

In Chancery actions an amendment to a writ of summons pursuant to an order of Court or judge, may be made either on an undertaking to get the order drawn up, or on a separate memorandum or certificate being left for filing, signed or initialed by the judge or registrar, showing the order to have been made.

In an information where there is no relator, the Attorney-General's signature on the writ is not required; but where there is a relator (whether a person or body corporate) the original writ (not the copy filed) must be signed by the Attorney-General, and if any amendment be made it must be authorized by his signature on the original writ or draft.

In entering appearances a note should be made in the cause books "statement of claim required" or "statement of claim not required," and in cases where the action is for recovery of land, and the defence is limited, a further note to that effect should be added.

If no time is specified in an order to amend, the amendment must be made within 14 days.

If a solicitor has caused an appearance to be entered by mistake, the mistake may be rectified with the consent in writing of the solicitor for the plaintiffs, and on the fiat (on the production of such consent) of a practice master to be given on a præcipe with a 2s. 6d. (search) stamp.

A defendant in person may change his address for service (without order to change address) by leave of master, but must forthwith give notice to the other side.

In the case of infants the appearance is accepted without any authority or order; an order being obtained by the defendant's solicitor *after* the appearance has been entered.

In the case of a married woman, an order to defend separately must be obtained *before* appearance is entered.

If a writ of summons has been lost the filed copy may, for the purpose of amendment, or for any other purpose, be treated as a duplicate, but only by leave of a practice master, and on the party giving an undertaking to produce the original at the central office when found.

Writs of summons issued before the Judicature Acts came into force may be renewed without an order.

A female plaintiff must be described as "spinster," "married woman," or "widow," and if an infant, as an infant.

Where an infant or married woman is plaintiff the authority of the next friend (duly attested) must be filed before the writ of summons can be issued.

SUBSTITUTED SERVICE. AFFIDAVIT OF SERVICE.

Unless the order shall otherwise direct, a copy of the order and of the writ shall be deemed to have been served on the day following the day on which a prepaid letter containing such copy shall have been posted.

SUBPENAS.

Subpenas remain in force only till the end of the sitting or assize for which they were issued. A new writ must afterwards be issued or the former writ may be (at the option of the parties) altered as to date and sitting, or assize, and re-issued as a new writ.

The date of return in the writ and præcipe may, before service, be amended without the direction of a master, and without fee, provided the amended date be within the sitting or assize for which the subpoena issued.

A subpoena in an interpleader issue should be headed in the title of the original action, and in the title of the interpleader issue, and should be applied for in, and issued out of, the room in which the writ of summons in the original action was issued.

REMOVAL BY APPEARANCE TO LONDON OF ACTIONS COMMENCED IN DISTRICT REGISTRIES.

A fresh London distinctive mark to be given.

No separate district registry cause book to be kept.

No letter need be sent to the district registrar.

Writs of summons issued out of a district registry cannot be amended by order or fiat of master unless the action has been removed to London by appearance or otherwise.

No writ issued out of a district registry can be amended in the central office unless the duplicate filed in the district registry has been previously received in the central office.

If it becomes necessary to send to London (for amendment or otherwise) the copy writ filed in the district registry, authority may be given to send the copy writ to the central office by sealing a duplicate of the præcipe for appearance, which shall be transmitted to the district registrar by the solicitors concerned.

DISTRINGAS.

When the settlement comprises more than one sum, and the sums are in the shares or securities of different companies, a separate affidavit and notice should be made for each company, and the affidavit should be that the funds comprise "*amongst others*" the sum of, &c. [specifying the sum in the books of the one company], and a stamp of 10s. will be required for each separate notice.

If there are more sums than one, but all in the books of the Bank of England, or in the books of any one company, one affidavit and notice will be sufficient for all the sums.

In actions not specifically assigned to the Chancery Division by the Judicature Act, 1873, s. 34 (*i. e.*, so called common law actions brought in the Chancery Division), no certificate of lower scale shall be given out till after appearance. In the cause books such actions shall be distinguished by the letters L.S.

When deposited documents, or documents on the file, are ordered to be delivered to a solicitor, on his undertaking to return them, he must sign a receipt and undertaking to return (which may be endorsed on the order), and leave the order and endorsement at the central office to be returned to him on his bringing back the documents. The signature of the solicitor must be witnessed by his clerk, or by someone known to the officer delivering out the documents.

PLEADINGS AND DOCUMENTS FILED IN DEFAULT.

None of these documents will be placed in the bundles containing the writs of summons and pleadings filed on entering judgment, but will be made up into two sets of separate bundles.

The *first* containing all statements of claim filed in default.

The *second* containing summonses, warrants to tax, notices, and miscellaneous documents.

All these documents must have the date of filing and the name of the defendant against whom they were filed written on them, and be entered in the cause books under the head of pleadings, such entry to show the date of filing, nature of document, and name of defendant against whom they are filed.

None of these documents will (for the present) be delivered out without an order, but any defendant against whom documents have been filed may, after appearance, inspect the same without fee.

AS TO FILING GENERALLY.

In the Chancery Division, judgments, orders, notices of motion for attachment, and other documents requiring personal service, cannot be filed in default of appearance without an order or leave of a master, and no pleadings or other documents can be filed under Ord. XIX. r. 6, unless an affidavit of service under Ord. XIII. rr. 2 and 9, or an office copy thereof, be first produced to the officer.

ORDERS AND JUDGMENTS.

When parties have not drawn up their orders on the day of the hearing of the summons, the solicitor shall, before having his order issued, take it to the filing office, and having endorsed on the back the words "the affidavits referred to within are on the file," the seal will be affixed to certify that the affidavits are filed. Such certificate will have the same effect as producing the affidavits on drawing the order.

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As to County Court certificates of result of trial, no fee to be charged for search. Judgment may be signed on a certificate of "no affidavit filed in answer to interrogatories," or on a certificate of non-payment of money into Court without affidavit.

On entering judgments under Ord. XLI. r. 1, in actions in the Chancery Division, when drawn up by the chancery registrars, the engrossment of the judgment together with the pleadings to be filed shall be brought to the writ appearance and judgment department, and the officer receiving the same shall make a note in the margin of the engrossment that the pleadings have been filed, and shall authenticate such note with the small seal of the office, and return the engrossment to the solicitor.

The date of the judgment as shown by the engrossment of the order and the date of leaving the pleadings shall be entered in the cause book.

The solicitor on leaving the pleadings must endorse thereon and sign a certificate in the words or to the effect following:—

"I certify that these are all the pleadings required to be left for filing."

When judgment is signed under Ord. XLI. rr. 4 and 5, on any order, certificate, or other document, such document shall be filed.

Original stamped judgment to be filed and office copy to be delivered out at 6*d.* a folio. The judgment need not be signed by the solicitor entering it.

If judgment removed from Lord Mayor's Court the fixed cost of removal to be one guinea in all cases.

An allocatur for costs is to be placed on a certificate in the form settled.

Judgments are to be numbered consecutively in each alphabetical division in the right-hand corner, and the number entered in the cause book.

In cases where the plaintiff is entitled to a final judgment as to part of his claim, and to an interlocutory judgment as to the remainder, one judgment only is necessary, final as to part and interlocutory as to the rest, and one fee paid.

In the case of cross judgments in the same action where after a trial there is a direction for judgment for plaintiff against some of the defendants, and for some of the defendants against the plaintiff, and also for some of the defendants against the others, the whole direction may be embodied in one judgment, and the different parties may take office copies for use.

Date of filing of pleadings filed on entering judgment and of certificates of costs are to be entered in cause books and on the documents.

AS TO COSTS ON JUDGMENTS FOR DEFAULT OF APPEARANCE.

	£	s.	d.
In town cases	3	14	0
In country and agency cases and cases in which service effected beyond five miles from General Post Office, St. Martin's-le-Grand.....	4	6	0

And 6*s.* in addition for each service beyond one defendant.

The above allowances include all mileage.

AS TO THE COSTS OF REMOVING JUDGMENTS FROM INFERIOR COURTS FOR PURPOSES OF EXECUTION.

The order should direct that the party removing the judgment have his costs of and relating to the removal (to be taxed).

NOTE.—All questions of practice, sufficiency of affidavits, &c., are to be referred to a practice master, and not to any other master.

ADDITIONAL OFFICE RULES SETTLED BY THE PRACTICE MASTERS, MARCH, 1834.

AS TO SIGNING COPY WRIT. (Ord. V. r. 12.)

The signatures to the statement of claim indorsed on the writ is not to be taken as a sufficient compliance with the rule requiring the writ to be signed.

LOST WRIT. (Ord. VIII. r. 3, FEE, &c.)

When a copy writ is sealed in lieu of the original, under the above rule, no fee is to be taken.

A note should be made on the face of the copy near the seal, showing that it is so sealed under the above rule pursuant to order, setting out the name of the judge and date of the order, and an entry made in the cause book of the sealing and name of the judge, date of order, and date and time of filing.

ORIGINATING SUMMONSES.

Originating summonses in the Chancery Division are to be issued in the same manner as writs of summons. The stamp denoting the fee is to be put on the copy filed, and the original sealed and delivered to the party issuing, but no other duplicates or copies for service are to be sealed.

All other originating summonses are to be issued in the summons and order department in the same manner as ordinary summonses for chambers.

ASSIGNING JUDGE.

The assignment to a particular judge of every cause or matter commenced in the Chancery Division (otherwise than by petition) shall be made in room No. 65, before the issue of the writ or summons or service of the notice of motion.

APPEARANCE AFTER JUDGMENT.

When a memorandum of appearance by a defendant is handed in without a previous search for judgment (for which search the proper fee should be taken) and judgment has been signed, the appearance must not be entered in the usual way, but the stamp on the memorandum of appearance must be retained as a used stamp, and not treated as fit for allowance. The duplicate is not to be sealed, but the party who has handed in the memorandum may be informed without further payment, that judgment has been signed. A note should, in such cases, be made in the cause book that a memorandum of appearance was brought in after judgment signed, and the fee should be accounted for amongst the appearance fees.

OFFICE COPIES OF JUDGMENTS.

An office copy of a judgment may be obtained in the same manner as an office copy of any other document on a fiat of a judge or master.

On an application on behalf of a judgment creditor for an office copy of a judgment for bankruptcy proceedings, no fee for the search to be taken or required.

When application is made to produce a judgment for the purpose of setting it aside or otherwise a search fee of 2s. 6d. is payable.

JUDGMENTS, COURT FEES, 1884.

On entering judgments on certificates of registrars of County Courts and on returns to writs of inquiry the fee of 10s. is to be taken. (Court Fees, Nos. 57 and 58.)

DEPOSITIONS, &c. FILING FEE.

No copy of any deposition or other document requiring a filing fee shall be issued or examined until such filing fee shall have been paid.

FILING DOCUMENTS. DATE AND TIME OF FILING.

Every document left for filing must be marked with the year, day, hour, and minute when so left, and if filed in writ and appearance department, an entry made thereof in the cause book, or if there is no cause or matter there, then in an index book.

FILING MASTERS CERTIFICATES.

Ord. XLI. r. 8 (No. 576.) This rule is to apply to certificates or awards made on references under the Common Law Procedure Act, 1854, which must be filed. (A 2s. 6d. fee is payable on filing these as awards.)

ORDERS BY CONSENT.

An order is not to be drawn up upon a consent, signed by a party or his solicitor, written upon a summons, unless it has been initialed by a judge or master.

AS TO SATISFACTION OF BILLS OF SALE.

If the attesting witness and deponent is a solicitor, and described as such, the entry of the satisfaction will be directed by the registrar (the papers being otherwise correct) as of course; but under special circumstances the registrar may accept any other deponent if satisfied that he is a proper person to attest and verify the signature and consent.

AS TO COGNOVITS AND WARRANTS OF ATTORNEY.

The filing for the purpose of signing judgment shall be either by registering the original or by filing the original (before signing judgment) in the bills of sale department. A certificate of the filing shall in either case be given by that department, which certificate shall show the parties to the cognovit or warrant of attorney and the amount for which judgment is to be signed. Judgment may be signed

Ord. LXI. on this certificate being produced and filed in the writ, appearance, and judgment department.

AS TO WRITS OF ELEGIT.

From 1st January, 1884, the new form (which under the Bankruptcy Act, 1883, s. 146, does not extend to goods) is only to be used. And the amount indorsed to be levied for *costs of the execution*, including warrant, but exclusive of inquisition and expenses of execution, is not to exceed 2*l.*, without the express leave of a master.

AS TO SUBPENAS AND ORDERS FOR THE ATTENDANCE OF WITNESSES.

Order not subpoena (see 3 & 4 Will. IV. c. 42).

For attendance before an arbitrator under an agreement or order by consent referring action or matter in difference to arbitration.

Subpoena ad test. or duces tecum to be issued as of course.

Or before a master upon a reference under the Common Law Procedure Act, 1854.

Or for attendance of any person in any cause or matter for producing documents at any stage of the proceedings under Ord. XXXVII. r. 7, of Rules of Supreme Court, 1883.

Subpoena on a note from a judge.

For attendance before an officer of the Court or other person appointed to take an examination for the purpose of using witness' evidence upon any proceeding in a cause or matter, or for cross-examination on affidavit already made, Ord. XXXVII. r. 20.

On proceedings in chambers, Ord. XXXVII. r. 28.

For attendance upon trial before a judge or before an official or special referee when trial ordered to take place before a referee.

Subpoena ad test. or duces tecum as of course.

Or for attendance before an officer of the Court to whom it has been referred to ascertain the amount for which final judgment is to be entered under Ord. XXXVI. r. 57.

Or on execution of a writ of inquiry.

Ord. XXXVI. rr. 49, 57.

For witnesses residing out of the jurisdiction of the Court but within the United Kingdom an order of Court, if sitting, or of a judge, if Court not sitting, for a subpoena to issue. The subpoena to have a note at the foot showing that it is issued by the special leave of Court or judge. (17 & 18 Vict. c. 34, ss. 1, 2.)

Ord. LXXXII. r. 2.

In all other cases not specially provided for by Acts of Parliament or Rules of Court the old practice to continue.

The subpoena is to be marked legibly in the margin near the seal, with the number of witnesses for which it is issued, *e. g.*, "for three witnesses only."

The fee of 5*s.* is payable for not exceeding three witnesses, and the like fee for every additional three and for any less number beyond.

AS TO COSTS OF JUDGMENTS BY DEFAULT.

If for a sum exceeding 50*l.* on specially indorsed Writs issued on or after 25th January, 1884:—

Country and agency cases, and in cases where service effected more than five miles from General Post Office, St. Martin's-le-Grand ..	£ s. d.
Town cases	5 6 0
And in addition for each extra service	4 14 0
	0 6 0

The above allowances to include all mileage.

If writ indorsed for a liquidated claim exceeding 50*l.*, but not specially, and in all cases in which sum recovered amounts to 20*l.* and upwards, but does not exceed 50*l.*, on writs issued on or after 25th January, 1884:—

Country and agency cases, or where service effected more than five miles from General Post Office, St. Martin's-le-Grand	4 12 0
Town cases	4 0 0
And in addition for each extra service	0 6 0

The above allowances to include all mileage.

In cases under 20*l.* no costs unless a judge's order for costs.

In cases where the writ was issued prior to 25th January, 1884, the old scale of allowances to be made, viz. :—

ON WRITS ISSUED PRIOR TO 24TH OCTOBER, 1883.

Country, &c.	4 6 0
Town	3 14 0
And in addition for each extra service	0 6 0

ON WRITS ISSUED ON OR AFTER 24TH OCTOBER, 1883, DOWN TO AND INCLUSIVE OF 24TH JANUARY, 1884, ABOVE 50*l.*

Country, &c. special indorsement (Statement of Claim)	5 0 0
Town " "	4 8 0
And in addition for each extra service	0 6 0

AND IN CASES NOT EXCEEDING 50 <i>l.</i> , OR WHERE THE WRIT IS INDORSED FOR A LIQUIDATED CLAIM BUT NOT SPECIALLY.	£	s.	d.	Ord. LXI.
Country, &c.	4	6	0	
Town cases	3	14	0	
And in addition for each extra service	0	6	0	

FIXED COSTS IN CASES OF JUDGMENT UNDER ORDER XIV. FOR SUMS NOT EXCEEDING 50*l.*, AS SETTLED BY MR. JUSTICE FIELD, NOVEMBER, 1883.

Town cases	6	10	0
Country	7	0	0
And 6 <i>s.</i> extra for each additional defendant. "And any extraordinary costs that have been incurred" may be added by the Master.			

The amount of costs should be inserted in the order for judgment.

FIXED COSTS OF JUDGMENT UNDER ORDER LXV., RULE 27, SUBSECTION 38.

Costs	1	10	0
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The Master will give a certificate for the above amount for costs of judgment, without taxation of such costs. This regulation will be particularly applicable to judgments for costs under Ord. XXII. r. 7 (for non-payment of costs on payment into Court), and to judgments for non-payment of costs under Ord. XXVI. r. 3 (for non-payment of costs on discontinuance), and will also be applicable to any other case where parties are entitled to sign judgment for costs of judgment, either alone or in addition to other costs previously taxed and allowed.

FORM OF CERTIFICATE FOR COSTS USUALLY ADOPTED IN SUCH CASES.

I certify that the costs of the _____ have been taxed and allowed at £ _____ (and the costs of judgment, if, and when, signed, in case the above costs are not paid, at 1*l.* 10*s.*)

(Signature.)

SUMMONS AND ORDER DEPARTMENT.

When any of the orders mentioned below are drawn up, a copy (to be made in the Stationer's Department, and stamped with the seal of the Summons and Order Department) shall be sent to the General Filing Office to be filed. The order shall, if possible, be ready for delivery out on the afternoon of the day after it is spoken ;—

- For appointment of receiver.
- For injunction.
- For attachment or committal.
- To inspect banker's books.
- Interpleader orders by which provision is made for payment of money into Court.
- Charging orders under 1 & 2 Vict. c. 110, s. 14, and 3 & 4 Vict. c. 82.
- And any other special order which, in the opinion of the officer drawing it up, ought to be recorded.

ORDER LXII.

REGISTRARS OF THE CHANCERY DIVISION.

1. The registrars of the Chancery Division shall attend the judges of the Chancery Division, and the Court of Appeal upon the hearing of appeals from the Chancery Division, in rotation as they may arrange amongst themselves, and in default of arrangement week by week on alternate days (*d*). Attendance of registrars.

(*d*) This rule is from Cons. Ord. I. r. 17. See as to the powers and duties of the registrars generally, *Davenport v. Stafford*, 8 Beav. 503; 9 Jur. 801; Seton, 1546; and see Ord. XXVIII. r. 11, *ante*, p. 380.

Ord. LXII.

Entry of judgments, orders, præcipes for attachments, and other documents.

2. All judgments and orders drawn up the registrars, or by the chief clerks to the judges, and all *præcipes* for attachments, and such other documents (if any) as, according to the present practice or the practice for the time being, ought to be entered by the entering clerks to the registrars, shall be entered by them without abbreviations, and in a clear and legible hand, under the direction of the senior registrar for the time being, within one clear day after the same shall be left for entry, and all such entries shall be examined by one of the said entering clerks, and be marked with his initials to denote such examination (e).

Passing and entry of judgments, &c.

(e) This rule is from Cons. Ord. I. r. 18.
A judgment or order is said to be passed when the registrar has signed his initials in the margin at the foot of the last page of the engrossment or print, as an authority to the clerk of entries to enter it in the registrar's book. When passed, the order is left by the registrar for entry (Seton, 1546). All proceedings on a decree or order before it is entered are voidable and irregular (*Tolson v. Jervis*, 8 Beav. 364); though in the case of an injunction parties are bound by notice of the order, however received, from the time it is pronounced.

Indexes to such entries.

3. Proper calendars or indexes of such entries shall be made by the entering clerks, so that the same may be conveniently referred to when required, and the calendars or indexes and the books in which the entries are made shall when completed be transmitted to the filing and record department of the central office to be there preserved, and shall at all times during office hours be accessible to the public on payment of the usual fee (f).

(f) This is taken from Cons. Ord. I. r. 19.

Counsel's brief, &c. to be left with the registrar by person bespeaking judgment or order.

4. At the time of bespeaking a judgment or order, the party bespeaking the same shall leave with the registrar his counsel's brief, and such other documents as may be required by the registrar for the purpose of enabling him to draw up the same (g).

(g) This rule is taken from Cons. Ord. I. r. 20.
As to the documents required by the registrar, see *Daniell*, 801; and as to entering evidence as read, see *Daniell*, 793; *Seton*, 18.

Judgment or order to be bespoken, and other documents left with registrar, within seven days after judgment pronounced. Consequence of default.

5. Every judgment or order shall be bespoken, and the briefs and other documents mentioned in the last preceding rule shall be left with the registrar within seven days after the judgment or order is pronounced or finally disposed of by the Court or judge (h).

(h) This rule is from Cons. Ord. I. r. 21.

6. In case any judgment or order is not bespoken, and the briefs and other requisite documents are not left with the registrar within the time prescribed by the last preceding rule, the registrar may decline to draw up the judgment or order without the leave of the Court or judge (i).

(i) This rule is from Cons. Ord. I. r. 22.

Time for settling draft judgment or

7. At the time of delivering out the draft of any judgment or order which requires to be settled by the registrar in the presence of the

parties, the registrar shall deliver out to the party on whose application the draft has been prepared, an appointment in writing of a time for settling the same (*k*). Ord. LXII.
order to be
appointed in
writing.

(*k*) This rule is from Cons. Ord. I. r. 23.

8. A notice of the appointment shall be served on the opposite party one clear day at least before the time fixed thereby for settling the draft judgment or order, and the party serving the notice, and the party so served shall attend the appointment, and produce to the registrar their briefs, and such other documents as may be necessary to enable him to settle the draft (*l*). Service of a
copy of such
appointment
on opposite
party.
Attendance at
the time ap-
pointed with
briefs and
documents.

(*l*) This rule is from Cons. Ord. I. r. 24.

9. Service of the notice of appointment shall be effected by leaving it at the place for service of the party to be served, or by transmitting it by post to such party at such place for service (*m*). Notice of
appointment,
how served.

(*m*) This rule is from Cons. Ord. I. r. 25.

10. At the time fixed for settling the draft the registrar shall satisfy himself in such manner as he may think fit that service of the notice of appointment has been duly effected (*n*). Proof of
service.

(*n*) This rule is from Cons. Ord. I. r. 26.

11. When the draft judgment or order has been settled by the registrar, he shall name a time in the presence of the several parties, or else deliver out an appointment in writing of a time for passing the judgment or order, and in the latter case notice of the appointment shall be served on the opposite party in like manner as directed by rules 8 and 9 of this order, with reference to an appointment to settle the draft judgment or order (*o*). Time for
passing the
decrees or
order to be
named or
appointed.
Notice of
appointment.

(*o*) This rule is from Cons. Ord. I. r. 27.

12. If any party fails to attend the registrar's appointment for settling the draft of or passing any judgment or order, or fails to produce his briefs and such other documents as the registrar may require to enable him to settle such draft, or pass such judgment or order, the registrar may proceed to settle the draft, or pass the judgment or order in his absence, and the registrar shall be at liberty to dispense with the production of counsel's briefs, and to act upon such evidence as he may think fit of the actual appearance by counsel of the party failing to attend or to produce such documents or papers as aforesaid, or may require the matter to be mentioned to the Court or judge (*p*). Default in
attending
appointment
with briefs
and docu-
ments.

(*p*) This is taken from Cons. Ord. I. r. 28. See *Yeatman v. Yeatman*, 14 W. R. 123, for a motion under this rule.

13. The registrar may adjourn any appointment for settling the draft of or passing any judgment or order to such time as he may Adjournment
of appoint-
ment.

Ord. LXII. think fit, and the parties who attended the appointment shall be bound to attend such adjournment without further notice (*g*).

(*g*) This rule is from Cons. Ord. I. r. 31.

Settling or passing judgment or order without appointment or notice.

14. Notwithstanding the preceding rules of this order, the registrar shall be at liberty, in any case in which he may think it expedient so to do, to settle and pass the judgment or order, without making any appointment for either purpose and without notice to any party (*r*).

(*r*) This is from Cons. Ord. I. r. 32.

Registrar may certify for special allowance.

15. The registrar shall, at the time of any attendance before him for the purpose of settling the terms of and passing any judgment or order, if requested to do so by any party, on the ground that it is of a special nature or of unusual length or difficulty, certify, for the information of the taxing officer, whether in his opinion any special allowance ought to be made in taxation of costs in respect thereof (*s*).

(*s*) See Ord. LXV. r. 27 (11), *post*, p. 550.

Money orders to be drawn up in accordance with rules.

16. All orders for the payment or transfer of money or securities into Court to the account or credit of the Paymaster-general, and for the payment or transfer of money or securities out of Court by the Paymaster-general shall be drawn up in conformity with such rules relating thereto as shall be from time to time made under the Court of Chancery Funds Act, 1872, or any Act amending the same (*t*).

(*t*) See Supreme Court Funds Rules, 1884, *ante*, p. 215 *et seq.*

Registrars to keep lists of causes, &c.

17. The registrars of the Chancery Division shall keep distinct lists of the causes and matters set down to be heard before each judge of that division (*u*).

(*u*) This rule is from Cons. Ord. VI. r. 8.

Petitions to be answered in name of senior registrar; orders on petitions to be drawn up by registrars.

18. All petitions which require to be answered, shall be answered in the name of the senior registrar for the time being, and any orders on petitions which, according to the practice formerly prevailing in the Chancery Division, were drawn up, passed, and entered in the office of the secretaries of the Master of the Rolls, shall be drawn up, passed, and entered by or under the direction of the registrars of the Chancery Division.

ORDER LXIII.

SITTINGS AND VACATIONS.

Sittings of Court of Appeal and High Court.

1. The sittings of the Court of Appeal and the sittings in London and Middlesex of the High Court of Justice shall be four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings. The Michaelmas sittings shall commence on the 2nd of November and terminate on the 21st of December; the Hilary sittings shall commence on the 11th of January

and terminate on the Wednesday before Easter; the Easter sittings shall commence on the Tuesday after Easter week and terminate on the Friday before Whit Sunday; and the Trinity sittings shall commence on the Tuesday after Whitsun week and terminate on the 8th of August (v). Ord. LXIII.

(v) By an Order in Council, dated the 12th December, 1883, it was ordered:— Order in Council as to sittings and vacations.
That the Trinity sittings of the Court of Appeal, and in London and Middlesex of the High Court of Justice, shall for the future be extended till the 12th of August inclusive, and that the long vacation in the several Courts and offices of the Supreme Court shall for all purposes commence on the 13th of August, that the Michaelmas sittings of the same Courts respectively, shall for the future commence on the 24th of October, and that the long vacation in the several Courts and offices of the Supreme Court shall for all purposes terminate on the 23rd of October. See W. N. (1883), Pt. II., p. 591.

2. It shall not be necessary for the Court of Appeal or the High Court of Justice to sit on the day appointed to be kept as the Queen's birthday. Queen's birthday.

3. The sittings of the several offices of the Supreme Court shall extend over the whole of the four periods between the vacations. Sittings of offices.

4. The vacations to be observed in the several Courts and offices of the Supreme Court shall be four in every year, viz., the long vacation, the Christmas vacation, the Easter vacation, and the Whitsun vacation. The long vacation shall commence on the 10th of August and terminate on the 24th of October; the Christmas vacation shall commence on the 24th of December and terminate on the 6th of January; the Easter vacation shall commence on Good Friday and terminate on Easter Tuesday; and the Whitsun vacation shall commence on the Saturday before Whit Sunday and shall terminate on the Tuesday after Whit Sunday (w). Vacations in Courts and offices.

(w) See rule 1, and note thereto.

5. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively. First and last days to be included.

6. The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Whit Monday, Christmas Day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving. Offices, when to be open.

7. The offices of each district registrar of the High Court of Justice shall be open on every day and hour in the year on which the offices of the registrar of the County Court of the place in which the district registry is situate are required to be kept open. District registries.

8. The offices of the Supreme Court (including the judge's chambers) shall, save as hereinafter mentioned, close on Saturdays at 2 o'clock. Saturdays.

9. The office hours in the several offices of the Supreme Court, other than the summons and order, crown office, and associates departments of the central office, shall be from ten in the forenoon Office hours.

Ord. LXIII. to four in the afternoon, except on Saturday and in vacation, when the offices shall close at two in the afternoon. In the excepted departments the hours shall be from eleven in the forenoon to five in the afternoon, except on Saturday and in vacation, when the hours shall be from eleven in the forenoon to three in the afternoon.

Manchester
district
registry.
Vacation
judges.

10. The office of the district registry at Manchester shall not be open in any year on the five days next following Whit Monday.

11. Two of the judges of the High Court shall be selected at the commencement of each long vacation for the hearing in London or Middlesex, during vacation, of all such applications as may require to be immediately or promptly heard. Such two judges shall act as vacation judges for one year from their appointment. In the absence of arrangement between the judges, the two vacation judges shall be the two judges last appointed (whether as judges of the said High Court or of any Court whose jurisdiction is by the principal Act transferred to the said High Court) who have not already served as vacation judges of any such Court, and if there shall not be two judges for the time being of the said High Court who shall not have so served, then the two vacation judges shall be the judge (if any) who has not so served and the senior judge or judges who has or have so served once only according to seniority of appointment, whether in the said High Court or such other Court as aforesaid. The Lord Chancellor shall not be liable to serve as a vacation judge.

Sittings of
vacation
judges.

12. The vacation judges may sit either separately or together as a Divisional Court as occasion shall require, and may hear and dispose of all causes, matters, and other business, to whichever division the same may be assigned. No order made by a vacation judge shall be reversed or varied except by a Divisional Court or the Court of Appeal, or the judge who made the order. Any other judge of the High Court may sit in vacation for any vacation judge.

Chambers in
the Chancery
Division.

13. Any judge of the Chancery Division whose chambers may be open for business during any vacation, or any vacation judge acting on his behalf, may issue summonses for the purpose of any proceeding before any other judge of that division at chambers after the vacation (*x*).

(*x*) This rule is from Cons. Ord. XXXV. r. 58.

Proceedings
under judg-
ments, &c.
during
vacation.

14. In the interval between the close of any sittings and the commencement of the next sittings, the judgments or orders of any judge may be prosecuted at the chambers of any other judge by his permission; and in case the prosecution thereof shall not be completed during such interval, the prosecution may be continued at the chambers of the same judge if and so far as he shall think fit (*y*).

(*y*) This rule is from Cons. Ord. XXXV. r. 59.

Intervals be-
tween sittings.

15. Any interval between the sittings of the High Court or any division thereof, not included in a vacation, shall, so far as the disposal

of business by the vacation judges is concerned, be deemed to be a portion of the vacation (*yy*). Ord. LXIII.

(*yy*) See *Wilson v. Watson*, 38 L. T. 380.

16. The official referees shall sit at least from 10 A.M. to 4 P.M. on every day during the Michaelmas, Hilary, Easter, and Trinity sittings of the High Court of Justice, except on Saturdays, during such sittings, when they shall sit, at least, from 10 A.M. to 1 P.M.; but nothing in this rule shall prevent their sitting on any other days. Sittings of official referees.

ORDER LXIV.

TIME.

1. Where by these rules, or by any judgment or order given or made after the commencement of the principal Act (*z*), time for doing any act or taking any proceeding is limited by months, and where the word "month" occurs in any document which is part of any legal procedure under these rules, such time shall be computed by calendar months, unless otherwise expressed. "Month" means calendar month.

(*z*) The principal Act is the Judicature Act, 1873; see Ord. LXXI. r. 1, *post*, p. 567. "Principal Act."

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time (*a*). When Sunday, &c. excluded.

(*a*) See *Ex parte Viney*, 4 Ch. D. 794.

3. Where 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 shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open (*b*). Where time expires on a Sunday.

(*b*) This rule is identical with Cons. Ord. XXXVII. r. 12; under which it was held that where the time for doing an act, or taking a proceeding is expressly fixed by Act of Parliament, the rule does not enable such act or proceeding to be done or taken after the expiration of the time so fixed (*Flower v. Bright*, 2 J. & H. 590). See also as to the rule, *Ex parte Saffery*, 5 Ch. D. 365.

4. No pleadings shall be amended or delivered in the long vacation, unless directed by a Court or a judge. Amendment and delivery of pleadings in long vacation.

5. The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these rules for filing, amending, or delivering any pleading, unless otherwise directed by the Court or a judge (*c*). Long vacation not to be reckoned in computation of time.

(*c*) In all cases not specified in the corresponding rule, Cons. Ord. XXXVII. r. 13, vacations were counted in the computation of time. See *Bothomley v. Squire*, 7 De G. M. & G. 246; *Ware v. Watson*, *ibid.* 789; *Hitchin v. Hughes*, 14 W. R. 93.

Ord. LXIV.

Time not to run after service of order for security until security is given.

6. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter (*d*).

(*d*) This rule is taken from Cons. Ord. XXXVII. r. 14. Merely taking out the summons for security for costs does not prevent the time from running (*Henderson v. Atkins*, 7 W. R. 318).

As to security for costs generally, see Ord. LXV. r. 6, *post*, p. 541.

Time may be enlarged or abridged.

7. The Court or a judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed (*e*).

(*e*) The rule only applies where a limited time is fixed for something to be done, not where it is ordered that *some act must be done before another* (*Re Pileher*, 11 Ch. D. p. 907).

A judge may enlarge the time for appealing against an order dismissing an action for want of prosecution, even after the order has taken effect and the action has therefore been dismissed; and when he has so enlarged the time for appealing he may vary or amend the order dismissing the action (*Carter v. Stubbs*, 6 Q. B. D. 116; and see the case there cited).

For instances in which time has been enlarged, see *Hastings v. Hurley*, 16 Ch. D. 734; *Sproat v. Peckett*, W. N. (1883), 76 (endorsement on writ of date of service); *Re Jones*, *Eyre v. Cox*, W. N. (1877), 38; 46 L. J. Ch. 316; 25 W. R. 303 (renewal of writ; see, however, *Doyle v. Kaufman*, 3 Q. B. D. 7, 340); *Canadian Oil Works v. Hay*, W. N. (1878), 107 (delivery of statement of claim); *Eaton v. Storer*, 22 Ch. D. 91 (delivery of reply).

As to an extension of time for appealing, see Ord. LVIII. r. 15, and note thereto, *ante*, p. 516.

Enlarging time by consent.

8. The time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing, without application to the Court or a judge.

[Rules 9 and 10 apply only to Admiralty actions.]

Time for effecting service.

11. Service of pleadings, notices, summonses, orders, rules, and other proceedings, shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any weekday except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday (*f*).

(*f*) See *Re Clay*, 16 Ch. D. 3.

Number of days, how to be reckoned.

12. In any case in which any particular number of days, not expressed to be clear days, is prescribed by these rules, the same shall be reckoned exclusively of the first day and inclusively of the last day.

13. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed (g). A summons on which no order has been made shall not, but notice of trial although countermanded shall, be deemed a proceeding within this rule. Ord. LXIV.
Notice of intention to proceed, when to be given.

(g) See *Staffordshire Bank v. Weaver*, W. N. (1884), 78; *Webster v. Myer*, W. N. (1884), 223.

14. An application to set aside an award may be made at any time before the last day of the sittings next after such award has been made and published to the parties. Setting aside award.

[Rule 15 applies only to Admiralty actions.]

ORDER LXV.

COSTS.

1. Subject to the provisions of the Acts and these rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge: Provided that nothing herein contained shall deprive an executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in the Chancery Division: Provided also that, where any action, cause, matter, or issue is tried with a jury, the costs shall follow the event, unless the judge by whom such action, cause, matter, or issue is tried, or the Court shall, for good cause, otherwise order (h). Costs to be in the discretion of the Court.
Trustees, &c.
Jury trials.

(h) The combined effect of the Judicature Act and of this rule is, it seems, to repeal, with certain specified exceptions (see Judicature Act, 1873, s. 67), all previous Acts directing costs to follow certain rules without leaving the Court a discretion; and where a previous Act contains no provision as to the costs of proceedings under it to supply the omission by leaving the costs in the discretion of the Court; see *Garnett v. Bradley*, 3 App. Cas. 944; 48 L. J. Ex. 186; 26 W. R. 698; 39 L. T. 261; *Ex parte Mercers' Co.*, 10 Ch. D. 481; 48 L. J. Ch. 384; 27 W. R. 424; *Ex parte Hospital of St. Katharine*, 17 Ch. D. 378; *Re Lee*, 24 Ch. D. 669. Cotton, L. J., however, has recently expressed a doubt whether the Act and rules mean more than this, that where the Court can give costs they shall be in the discretion of the Court (*Re Sarah Knight*, 26 Ch. D. p. 91, a case under the Trustee Act); and it is clear, notwithstanding the wide terms in which the rule is expressed, that the Court has no jurisdiction to dismiss an action and order the defendant to pay the costs; see *Dicks v. Yates*, and the other cases cited below. As a matter of practice the Court, in the case of proceedings under an Act of Parliament (e. g., the Lands Clauses Act), follows the rule as to costs prescribed by the particular Act under which the proceedings are taken, as explained and illustrated by the decided cases. In the case of proceedings under the general jurisdiction the costs have always been in the discretion of the Court; and that discretion is generally exercised by making the unsuccessful party pay them (*Vancouver v. Bliss*, 11 Ves. 463; *Millington v. Fox*, 3 My. & Cr. 352; *Ferguson v. Wilson*, 2 Ch. p. 92). The Court can, however, make a decree in favour of a plaintiff without costs, or it may even under very special circumstances make a decree in his favour and order him to pay all the costs (*Wootton v. Wootton*, W. N. (1869), 175; *Norman v. Johnson*, 29 Beav. 77; *Harrie v. Petherick*, 4 Q. B. D. 611). On the other hand it may dismiss an action without costs; but it cannot dismiss an Costs generally.

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action and order the defendant to pay all the costs (*Dicks v. Yates*, 18 Ch. D. 76; *Re Foster v. Great Western Ry. Co.*, 8 Q. B. D. 515; *Witt v. Corcoran*, 2 Ch. D. 69); though he may be ordered to pay some particular costs incurred in the action, e. g., costs occasioned by his improper conduct of the litigation (*Dufaur v. Sigel*, 4 De G. M. & G. 520; *Re Foster v. Great Western Ry. Co.*).

Where the plaintiff comes to enforce a legal right and there has been no misconduct on his part he is entitled to his costs as of right (*Cooper v. Whittingham*, 15 Ch. D. 501); and see *Upmann v. Forester*, 24 Ch. D. 231.

The judge has no power to impose costs by way of penalty, beyond the costs of the suit (*Willmott v. Barber*, 17 Ch. D. 772); nor can he give the difference between solicitor and client and party and party costs as damages (*Cockburn v. Edwards*, 18 Ch. D. 449; *Quartz Hill Co. v. Eyre*, 31 W. R. 668).

Costs of administration actions.

The costs of administration actions are now in the discretion of the Court. Under the former practice a residuary legatee plaintiff, in the absence of special circumstances, was entitled to his costs out of the estate as of right (*Farrow v. Austin*, 18 Ch. D. 58); but this is no longer the rule (*Re Hodgson*, W. N. (1884), 117, where, however, the costs were allowed, judgment having been given before the present rules came into operation). Even under the former practice the costs might be refused in a proper case; see *Bartlett v. Wood*, 9 W. R. 817; *Craggan v. Allen*, 22 Ch. D. 101; *Fane v. Fane*, 13 Ch. D. 228; 28 W. R. 348; 41 L. T. 551; *Sykes v. Brook*, 29 W. R. 821. In *Re Cabburn*, *Gage v. Rutland*, W. N. (1882), 92; 46 L. T. 848, an administration action instituted by a trustee was dismissed with costs; and see also *Wood v. Ainley*, W. N. (1883), 133; *Ackers v. Ackers*, W. N. (1884), 82.

Costs of trustees and mortgagees.

The saving of the right of trustees and mortgagees to costs out of the estate is less extensive than that in the corresponding repealed rule, being restricted to the case of a trustee or mortgagee "who has not unreasonably instituted or carried on or resisted any proceedings." But these words have not, it seems, made any real alteration in the law (*Re Sarah Knight*, 26 Ch. D. 90); the right of a trustee or mortgagee to his costs rests substantially upon contract (*Cotterell v. Stratton*, 8 Ch. D. 295; *Turner v. Hancock*, 20 Ch. D. 303); for improper conduct, whether of the kind specified in the rule or any other, he may be deprived of them, but not otherwise (*Cotterell v. Stratton*; *Re Chennell*, 8 Ch. D. 492; *Turner v. Hancock*; *Re Watts*, 22 Ch. D. 5). If a trustee or mortgagee is deprived of his costs he may appeal on this ground alone; see the cases above cited. In suits between themselves and persons strangers to the trust, trustees, executors, and administrators suing in that character are, of course, in no better position than parties suing in their own right. For the general law and practice as to costs in the Chancery Division, see *Morgan & Wurtzburg on Costs*.

Solicitor.

A solicitor who brings or defends an action in person is entitled to the same costs as an ordinary litigant appearing in person, subject to this restriction, that no costs which are really unnecessary can be recovered (*London Scottish Society v. Chorley*, 13 Q. B. D. 872).

Costs of issues.

2. When issues in fact and law are raised upon a claim or counterclaim, the costs of the several issues respectively, both in law and fact, shall, unless otherwise ordered, follow the event (i).

Costs where claim and counterclaim both dismissed with costs:

(i) Where a claim and a counterclaim are both dismissed with costs, the plaintiff pays to the defendant the general costs of the action, and the defendant pays to the plaintiff only the amount by which the costs have been increased by reason of the counterclaim; there is no apportionment (*Mason v. Brentini* (C. A.), 15 Ch. D. 287; 29 W. R. 126; 42 L. T. 726; 43 L. T. 557; *Saner v. Bilton*, 11 Ch. D. 416; 48 L. J. Ch. 545; 27 W. R. 472; 40 L. T. 134).

where both successful.

Where the claim and the counterclaim are both successful the plaintiff, in the absence of special directions to the contrary, is entitled to the general costs of the action, although the result of the litigation as a whole is in favour of the defendant (*Re Brown*, *Ward v. Morse*, 23 Ch. D. 377); there is no apportionment of the common charges in the action.

Costs in inferior Court where cause removed.

3. If a cause be removed from an inferior Court, having jurisdiction in the cause, the costs in the Court below shall be costs in the cause.

Where action ordered to be tried in County Court.

4. Where an action is ordered to be tried in a County Court under the provisions of 19 & 20 Vict. c. 108, s. 26, the costs of the action shall, subject to the provisions of the principal Act and these rules, follow the event, unless by the registrar's certificate of the result of the trial it shall appear that the judge before whom the action was tried

was of opinion that the question of costs ought to be referred to a judge of the High Court, in which case no costs shall be recovered unless ordered by the Court or a judge (k).

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(k) See *Evans v. Edwards*, W. N. (1883), 194; *Emeny v. Sandes*, 14 Q. B. D. 6.

5. Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court or judge, and which according to the practice ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court or judge shall think fit to award (l).

Where cause, &c. cannot proceed through neglect of solicitor.

(l) This rule is from Cons. Ord. XXI. r. 12. See *Cook v. Broomhead*, 16 Ves. 133, where a solicitor having undertaken to appear for a defendant at the hearing was ordered to pay all the costs occasioned by his neglect so to do; and see also *Courtney v. Stock*, 2 Dr. & W. 251; *Birch v. Williams*, 24 W. R. 700; W. N. (1876), 168.

6. In any cause or matter in which security for costs is required (m) the security shall be of such amount (n) and be given at such times (o) and in such manner and form (p) as the Court or a judge shall direct.

Security for costs.

(m) The following are the cases in which a plaintiff is required to give security for costs:—

(1) When he is resident out of the jurisdiction (*Republic of Costa Rica v. Erlanger*, 3 Ch. D. 62; 24 W. R. 955; 35 L. T. 19); or goes to reside permanently abroad during the suit (*Green v. Charnock*, 1 Ves. jun. 396; *Hoby v. Hitchcock*, 5 Ves. 699; *Blakeney v. Dufaur*, 2 De G. M. & G. 271; *Edwards v. Burke*, 9 L. T. 406; *Kenaway v. Tripp*, 11 Beav. 588; *Stewart v. Stewart*, 20 Beav. 322); and see *Baddeley v. Harding*, 6 Madd. 214, where the plaintiff was under sentence of transportation; *Seilaz v. Hanson*, 5 Ves. 261; but if the plaintiff goes abroad on public service or for a temporary purpose the rule does not apply; see *Colebrooke v. Jones*, Dick. 154 (where the plaintiff was a consul abroad). As to officers, see *Evelyn v. Chippendale*, 9 Sim. 407; *Clark v. Fergusson*, 1 Giff. 184; *Fisher v. Bunbury*, Sa. & Sc. 625; *Miller v. Hales*, 17 Eq. 430; 43 L. J. Ch. 446; but from *Long v. Tottenham*, 1 Ch. Rep. 127, it seems it must distinctly appear that the plaintiff is abroad on foreign service. As to seafaring men, see *Stewart v. Stewart*, 20 Beav. 322; *Gowran v. Barnett*, Sa. & Sc. 651.

Security for costs may be required from a plaintiff:

(1) When resident out of the jurisdiction.

If, however, at the time of the application for security, the plaintiff (whether an Englishman or a foreigner) is within the jurisdiction, though only temporarily, security cannot be required (*Redondo v. Chaytor*, 4 Q. B. D. 453; 27 W. R. 701; 40 L. T. 797; *Ebrard v. Gassier*, W. N. (1885), 1); and so where he is permanently resident without the jurisdiction but has property within it (*Hamburger v. Poetting*, 30 W. R. 769; *Kilkenny Ry. v. Feilden*, 6 Ex. 81); or the defendant admits his liability (*De St. Martin v. Davis*, W. N. (1884), 86).

Where an action was brought by two plaintiffs, one residing abroad, alleging a contract by the defendant with the plaintiffs jointly, and in the alternative with each of them separately, security could not be required from the plaintiff residing abroad (*D'Homusgee v. Grey*, 10 Q. B. D. 13).

(2) When a plaintiff misdescribes his residence, or is keeping out of the way (*Redondo v. Chaytor*, 4 Q. B. D. 453; *Swanzy v. Swanzy*, 4 K. & J. 237); and see as to misdescription, the plaintiff having changed his residence, *Kerr v. Gillespie*, 7 Beav. 269; *Campbell v. Andrews*, 12 Sim. 578; but if a misdescription is innocently inserted, and the defendant knows the real address, a motion for security for costs will be refused (*Smith v. Cornfoot*, 1 De G. & S. 684); and for instances of accidental errors in the plaintiff's description on account of which security was not required, see *Watts v. Kelly*, 6 W. R. 206; *Clark v. Clark*, 14 W. R. 449; and it is the defendant's duty, if the plaintiff cannot be found at the place of residence named in the writ, to make inquiries from the solicitor before he applies for security (*Knight v. Cory*, 11 W. R. 354; *Bailey v. Gundry*, 2 Keen, 53; *Manby v. Bewicke*, 8 De G. M. & G. 468); and see *Hutchinson v. Swift*, 13 W. R. 532; *Dick v. Munden*, *ibid.*

(2) If plaintiff misdescribes his residence or keeps out of the way.

- Ord. LXV. 1013, where the order was that the plaintiff should amend within a week by inserting his proper address, or else should give security.
- (3) Ambassador. (3) An ambassador's servant being a person privileged under 7 Anne, c. 12, must give security (*Goodwin v. Archer*, 2 P. Wms. 452; *Adderley v. Smith*, 1 Dick. 355); but, *semble*, not an ambassador himself (*Duke de Montellano v. Christin*, 5 M. & S. 593).
- (4) Insolvent. (4) A plaintiff or petitioner who is *actually insolvent* may be required to give security (*Re Carta Para Mining Co.*, 19 Ch. D. 457, and cases there cited; *The Lake Megantic*, 36 L. T. 183; *Smith v. Smith*, 7 P. D. 227). As to a trustee in bankruptcy suing in his official name, see *Pooley's Trustee v. Whetham*, 28 Ch. D. 38. But security for costs is not required merely on account of poverty (*Hind v. Whitmore*, 2 J. & H. 562); but see *Burke v. Hutchinson*, 7 Ir. Eq. Rep. 708, where a pauper was ordered to give security for costs; this case, however, depended on the special circumstances, and would not probably be generally followed; see the comments on it in *Worrall v. White*, 3 Jo. & Lat. 513.
- Not merely because plaintiff is poor, except from a relator. A relator in a charity information, however, may be required to give security for costs on the ground of his poverty (*Attorney-General v. Skinners' Company*, 1 C. P. C. 1, 5; *Attorney-General v. Mayor of Rochester*, Reg. Lib. A. fol. 271, cited in Shelford on Mortmain); but *semble*, not where in an information and bill the relator is also the plaintiff (*Attorney-General v. Knight*, 3 My. & Cr. 154).
- (5) Limited company. An appellant, however, may be required to give security on the ground of poverty; see the cases cited in Ord. LVIII. r. 16, *ante*, p. 516.
- Trustee in bankruptcy. (5) Where a *limited* company is plaintiff, security may be required if there is reason to believe that the assets will be insufficient to pay the defendant his costs if he is successful; see 25 & 26 Vict. c. 89 (Companies' Act, 1862), s. 69; *Northampton Coal Co. v. Midland Waggon Co.*, 7 Ch. D. 500; 26 W. R. 485; *City of Moscow Gas Co. v. International Finance Co.*, 7 Ch. 225; *Accidental Co. v. Mercati*, 3 Eq. 200.
- Petitioner. Security cannot, it seems, be required from a plaintiff merely because he sues "as trustee of the property of A. B., a bankrupt," without his own name appearing on the record (*Pooley's Trustee v. Whetham*, 28 Ch. D. 38).
- Security not required from a defendant or person compelled to litigate. Security for costs will be required from a petitioner under the same circumstances as from a plaintiff (*Re Latta*, 3 De G. & S. 186; *Ex parte Foley*, 11 Beav. 456; *Re Norman*, 11 Beav. 401; *Re Home Assurance Association*, 12 Eq. 112).
- Counterclaim. Security will not be required from a defendant, or from a person who, though nominally a plaintiff, is compelled to litigate; see *Morgan & Wurtzburg on Costs*, p. 18, where the cases are collected. As to security for costs where there is a counterclaim, see *Winterfield v. Bradnum*, 3 Q. B. D. 324; 47 L. J. Q. B. 270; 26 W. R. 472; 38 L. T. 250; *Mapleson v. Masini*, 5 Q. B. D. 144; 49 L. J. Q. B. 423; 28 W. R. 488; 42 L. T. 531.
- Amount of security. (n) The amount of the security is in the discretion of the judge. In an ordinary case 100*l.* will be required from a plaintiff, and 40*l.* from a petitioner (Seton, pp. 1643-1645; *Paxton v. Bell*, 24 W. R. 1013; W. N. (1876), 221, 249); but the amount may be very largely increased (*Massey v. Allen*, 12 Ch. D. 807; 43 L. J. Ch. 692; 23 W. R. 243; *Sturla v. Freccia*, W. N. (1878), 161, 188; *Republic of Costa Rica v. Erlanger*, 3 Ch. D. 62; 45 L. J. Ch. 743; 24 W. R. 955). In the case of a company, the security must be "sufficient," and for an amount equal to the probable amount of the costs (*Imperial Bank of China v. Bank of Hindustan*, 1 Ch. 437; *Freehold Land Co. v. Spargo*, W. N. (1868), 94).
- Security may be required at any stage. (o) The Court may direct security to be given at any stage of the suit (*Martano v. Mann*, 14 Ch. D. 419; 42 L. T. 890; *Lydney Co. v. Bird*, 23 Ch. D. 358); and for past as well as future costs (*Massey v. Allen*).
- Manner and form of security. (p) Security is given either in the shape of a bond, as to which see next rule and note thereto; or by payment into Court.
- Default in giving security. Application for security is made by summons (*Lydney Co. v. Bird*). The order is that all proceedings be stayed till the plaintiff gives security (*Fox v. Bleu*, 5 Mad. 147; Seton, 1643).
- Bond to be given to person requiring security. If the plaintiff makes default in giving security he will be ordered to give security within a limited time (generally a fortnight), or his action be dismissed (*Giddings v. Giddings*, 10 Beav. 29; *Kennedy v. Edwards*, 11 Jur. N. S. 153; *Cherras v. Pickering*, 39 L. J. Ch. 190); and see *La Grange v. McAndrew*, 4 Q. B. D. 210.
- Security, how given by bond. 7. Where a bond is to be given as security for costs, it shall, unless the Court or a judge shall otherwise direct, be given to the party or person requiring the security, and not to an officer of the Court (q).
- Who may be sureties. (q) As to the mode of giving security by bond, see Daniell, 1928. The plaintiff's proposed sureties must be solvent persons (*Cliffe v. Wilkinson*, 4 Sim. 122), and it is improper that his solicitor should be his surety (*Panton v. Labertouche*, 1 Ph. 265; 7 Jur. 589); but in *Plestown v. Johnson*, 1 Sm. & G. App. xx.,

2 W. R. 3, the bond of the British Guarantee Association, incorporated by Act of Parliament, was held sufficient security. And the bond of an officer in the army whose regiment is at the time quartered in Scotland is sufficient (*Miller v. Hales*, 17 Eq. 430; 43 L. J. Ch. 436; 30 L. T. 10; 22 W. R. 625). If the surety dies or becomes bankrupt, the plaintiff must find fresh security (*Lautour v. Holcombe*, 1 Ph. 263; *Veitch v. Irving*, 11 Sim. 122); but the defendant must not delay his application for that purpose, otherwise proceedings will not be stayed in the mean time (*Lautour v. Holcombe*). Ord. LXV.

8. In causes and matters commenced after these rules come into operation, solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "lower scale" in Appendix N. in all causes and matters, and no higher fees shall be allowed in any case, except such as are by this order otherwise provided for; and in causes and matters pending at the time when these rules come into operation, to which the higher scale of costs previously in force was applicable, the same scale shall continue to be applied (*r*). Scale of costs:
lower scale.

(*r*) See Appendix N., *infra*.

9. The fees set forth in the column headed "higher scale" in Appendix N. may be allowed, either generally in any cause or matter, or as to the costs of any particular application made, or business done, in any cause or matter, if, on special grounds arising out of the nature and importance, or the difficulty or urgency of the case, the Court or a judge shall, at the trial or hearing, or further consideration of the cause or matter, or at the hearing of any application therein, whether the cause or matter shall or shall not be brought to trial or hearing or to further consideration (as the case may be), so order (*s*); or if the taxing officer, under directions given to him for that purpose by the Court or a judge, shall think that such allowance ought to be so made upon such special grounds as aforesaid. Higher scale.

(*s*) For Appendix N., see *infra*. See *Re Chaytor*, 25 Ch. D. 655; and *Holland v. Worley*, W. N. (1884), 90, in which the costs were ordered to be taxed on the higher scale. In *Hudson v. Osgerby*, W. N. (1884), 83; 32 W. R. 566; and *Re Spettigue*, W. N. (1884), 6; 32 W. R. 385, applications for this purpose were refused. The rule does not apply to actions pending at the time the present rules came into operation (*Edgington v. Fitzmaurice*, 32 W. R. 848).

10. Upon any reference to a taxing officer to tax a bill of costs of a solicitor for the purpose of ascertaining the amount due to such solicitor in respect thereof from the person to be charged therewith, if such bill shall include charges for business done in any cause or matter, the taxing officer may allow the fees set forth in the column headed "higher scale" in Appendix N. in respect of such cause or matter, or in respect of any particular application made or business done therein, if on such special grounds, as are in the last preceding rule mentioned, he shall think that such allowance ought to be so made. Higher scale
may be
allowed on
special
grounds.

11. If in any case it shall appear to the Court or a judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person Costs occa-
sioned by
misconduct
of solicitor.

Ord. LXV. incurring the same, the Court or judge may call on the solicitor of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require) why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require. The Court or judge may, if they or he think fit, refer the matter to a taxing officer for inquiry and report; and direct the solicitor in the first place to show cause before such taxing officer, and may also, if they or he think fit, direct or authorise the official solicitor of the Supreme Court to attend and take part in such inquiry. Such notice (if any) of the proceedings or order shall be given to the client in such manner as the Court or judge may direct. Any costs of the official solicitor shall be paid by such parties, or out of such funds as the Court or a judge may direct; or, if not otherwise paid, may be paid out of such moneys (if any) as may be provided by Parliament.

Plaintiff recovering only 50% in contract, to be allowed County Court costs.

12. In actions founded on contract, in which the plaintiff recovers, by judgment or otherwise, a sum (exclusive of costs) not exceeding 50%, he shall be entitled to no more costs than he would have been entitled to, had he brought his action in a County Court, unless the Court or a judge otherwise orders (*t*).

(*t*) See as to this rule, *Bye v. Kirby*, W. N. (1883), 195; *Langley v. Sugden*, *ibid.* 198; *Calvert v. Davidson*, W. N. (1884), 18; *Mendelssohn v. Hoppe*, *ibid.* 31; *Copley v. Jackson*, *ibid.* 94; *Saywood v. Cross*, 14 Q. B. D. 53.

Cost of guardian *ad litem* where solicitor is guardian.

13. Where the Court or a judge appoints one of the solicitors of the Court to be guardian *ad litem* of an infant or person of unsound mind, the Court or judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in Court in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require (*u*).

(*u*) This rule is taken from Cons. Ord. XL. r. 4.

Costs of solicitor guardian *ad litem*.

Where the official solicitor is appointed guardian to a defendant, who is an infant or of unsound mind, at the instance of the plaintiff, it is the settled rule that the plaintiff shall pay his costs in the first instance, and add them to his own (*Fraser v. Thompson*, 4 De G. & J. 659; *Newbury v. Marten*, 15 Jur. 166), even in a foreclosure suit, where the security is insufficient (*Harris v. Hamlyn*, 3 De G. & S. 470; see *Ex parte Davies*, 16 Jur. 882). But in a partition suit, the guardian's costs were ultimately charged on the infant's share (*Robinson v. Aston*, 9 Jur. 224; and see *Robey v. Whitewood*, there cited).

The Court had no jurisdiction to order the costs of a defendant, to whom the solicitor to the Suitors' Fee Fund was appointed guardian, to be paid out of the suitors' fund (*Fraser v. Thompson*, 4 De G. & J. 652).

Costs where lunatic recovers.

Where a person of unsound mind, to whom a guardian *ad litem* has been appointed, recovers before the hearing, he must pay the costs of the guardian before obtaining an order to substitute his own solicitor, but may add such costs to his own costs of suit (*Frampton v. Webb*, 11 W. R. 1018).

The guardian *ad litem* is not liable for costs except in case of gross misconduct (*Morgan v. Morgan*, 11 Jur. N. S. 233). Ord. LXV.

14. A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought. Solicitor's lien not to interfere with set-off.

15. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed. Taxation of costs on award.

16. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase (if any) (*v*), shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor, in all cases where a notice to tax is necessary. Notice of taxing costs.

(*v*) An affidavit of increase is not generally required on taxations in the Chancery Division (*Smith v. Day*, 16 Ch. D. 726).

17. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian. Where defendant has not appeared.

18. Every reference for the taxation of costs in the Chancery Division shall be made to the taxing master in rotation; provided that in any case where there shall have been any former taxation in the same cause or matter, or in any summons under Order LV., rules 3 or 4, relating to the same estate or trust, the reference shall be to the taxing master before whom such former taxation took place (*w*). Order of reference.

(*w*) This rule is taken from Cons. Ord. XL. r. 2.

19. The taxing masters shall be respectively assistant to each other, and in the discharge of their duties; and, for the better despatch of the business of their respective offices, any taxing master may tax or assist in the taxation of a bill of costs which has been referred to any other taxing master for taxation, and for ascertaining what is due in respect of such costs, and in such case shall certify accordingly (*x*). Taxing masters to assist each other.

(*x*) This rule is from Cons. Ord. XL. r. 3. As to the mode of carrying in objections when part of the bill has been taxed by a Chancery taxing master and part by a common law master, see *Ross v. Ashwin*, W. N. (1884), 86.

20. Where, upon the taxation of any bill of costs in the Chancery Division, it appears to the taxing master that for the purpose of duly taxing the same it is necessary to inspect any books, papers, or documents, relating to the cause or matter in the chambers of any judge, the taxing master shall be at liberty to request the chief clerk of such judge to cause the same to be transmitted to the office of the taxing master, and also to request such chief clerk to certify any proceedings in the said chambers which may be comprised in the bill of costs under taxation, and in such cases the chief clerk, when and so soon, and at and for such times, as the due transaction of the business at the said chambers will permit, shall direct such books, papers, and documents, to be transmitted to the office of the taxing master for his

Books, &c. to be transmitted by the judge's chief clerk to the taxing master.

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use during the taxation, and shall certify the proceedings which have taken place in the said chambers according to the request of the taxing master; and after the costs in respect of which such request of the taxing master was made shall have been certified, the taxing master shall cause the same books, papers, and documents, which have been so transmitted to his office, if then remaining there, to be returned to the chambers of the judge (y).

(y) This is taken from Cons. Ord. XL. r. 26.

Memorandum of transmission, &c.

21. When any book, paper, or document, shall be transmitted from the chambers of a judge to the office of a taxing master, a memorandum of such transmission shall be made and signed by the taxing master or the clerk of the taxing master, at whose request, such book, paper, or document, may be transmitted, and shall be delivered to the chief clerk of such judge; and when any such book, paper, or document, shall be returned from the office of the taxing master to the judge's chambers, a memorandum of such return shall be made and signed by such chief clerk, or by one of his clerks, and shall be delivered to the taxing master (z).

(z) This is from Cons. Ord. XL. r. 27.

Costs of drafts settled by private counsel before or after they are settled by conveyancing counsel of Court.

22. Where in pursuance of any direction by the Court or a judge in chambers drafts are settled by any of the conveyancing counsel of the Court, the expense of procuring such drafts to be previously or subsequently settled by other counsel, on behalf of the same parties on whose behalf such drafts are settled by the conveyancing counsel of the Court, shall not be allowed on taxation as between party and party, or as between solicitor and client, unless the Court or a judge shall otherwise direct (a).

(a) This rule is from Cons. Ord. XL. r. 30.

Gross sum in lieu of taxed costs.

23. Upon interlocutory applications where the Court or a judge shall think fit to award costs to any party, the Court or judge may by the order direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such sum in gross shall be paid (b).

(b) This rule is from Cons. Ord. XL. r. 37. In *London & Blackwall Ry. v. Limehouse Board of Works*, 26 L. J. Ch. p. 170, V.-C. Wood is reported to have said that the Court would not act on this rule unless the parties were poor and anxious to put an end to the matter; but see *Yearsley v. Yearsley*, 19 Beav. 1; *Dakins v. Garratt*, 4 Jur. N. S. 579. The rule is frequently acted on in chambers (Seton, 126).

Fees on proceedings under Charitable Trusts Act in chambers:

24. The fees payable on proceedings before a judge in chambers under the Charitable Trusts Act, 1853, s. 28, shall be the same as the fees payable according to the rules relating to costs in respect of other proceedings commencing by summons, and shall also in all other respects be regulated by these rules (c).

(c) This rule is from Cons. Ord. XLI. r. 11. As to this Act, see *ante*, p. 94.

25. Where the judge directs that any matter commenced by summons under the Act in the last preceding rule mentioned shall be heard in open Court, the same fees shall be payable and the same costs shall be allowed as would have been payable in respect of any other matter so heard (*d*). Ord. LXV.
in Court.

(*d*) This is from Cons. Ord. XLI. r. 12.

26. The fees and allowances to solicitors on proceedings under the Act 22 & 23 Vict. c. 35, s. 30, shall be the same as are payable under these rules, and by the practice of the Court for business of a similar nature (*e*). Proceedings
under Lord
St. Leonards',
Act.

(*e*) This rule is from Gen. Ord. March 20th, 1860, r. 5; for the Act here referred to, see *ante*, p. 102.

SPECIAL ALLOWANCES AND GENERAL REGULATIONS.

27. The following special allowances and general regulations shall apply to all proceedings and all taxations in the Supreme Court of Judicature. Special
allowances.

1. As to writs of summons requiring special indorsement, and as to special cases, pleadings, and affidavits in answer to interrogatories, and other special affidavits, and admissions under Ord. XXXII. r. 4, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing, and attendances, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he may think proper. Writs requir-
ing special in-
dorsement, &c.

2. As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle. Drawing fee
to include
copy.

3. As to instructions to sue or defend, or the preparation of briefs, if the taxing officer shall on special grounds consider the fee in either scale provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable. Instructions
to sue or
defend.

4. As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit. Affidavits.

5. The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponent to settle and read over. Attendances.

6. As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service. Delivery of
pleadings, &c.

7. As to perusals the fees are not to apply where the same solicitor is for both parties. Perusals.

8. Where the same solicitor is employed for two or more defendants, and separate pleadings are delivered or other proceedings had by or Separate pro-
ceedings by
co-defendants.

Ord. LXV. for two or more such defendants separately, the taxing officer 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 pleadings 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 (f).

(f) This rule is taken from Cons. Ord. XL. r. 12. Whether the costs should be allowed or not is a matter entirely in the discretion of the taxing master and the Court will not interfere (*Beattie v. Lord Ebury*, 22 W. R. 68; 43 L. J. Ch. 80; 29 L. T. 419).

Attending for two parties.

Where the same solicitor appeared for the receiver and a party to the suit, he was only allowed to charge for one copy of the receiver's account (*Sharp v. Wright*, 1 Eq. 634); and where one solicitor attended in chambers for two parties in different interests, the costs of one attendance only were allowed (*Brown v. Gellatly*, 15 W. R. 887); see also *Tarbut v. Woodcock*, 3 Beav. 239.

The liability for costs as between themselves, of several plaintiffs or defendants employing the same solicitor, is discussed and the rules stated in *Re Colquhoun*, 5 De G. M. & G. 35; and see *Davies v. Chatwood*, 11 Ch. D. 244.

Defendants appearing by one or more solicitors.

Defendants in the same interest should appear by one solicitor, but it is difficult to lay down any precise rule as to the circumstances under which parties are held to be in the same interest, so as to be allowed only one set of costs, if they sever in defence. See *Morgan & Wurtzburg on Costs*, p. 124, where the cases are collected.

Where one of a class of defendants is separately charged, and relief is prayed against him, he may appear separately and have his costs (*Shaw v. Johnson*, 9 W. R. 629); and see *Re Humber Ironworks Co.*, 2 Eq. 15, where the costs payable on winding-up petitions are considered; and *Re European Banking Co.*, *ibid.* 521; *Re Anglo-Egyptian Navigation Co.*, 8 Eq. 660.

Winding-up petitions.

Trustees severing.

Trustees ought not generally to sever (*Gaunt v. Taylor*, 2 Beav. 346); and see *Course v. Humphrey*, 26 Beav. 402; *Att.-Gen. v. Wyville*, 28 Beav. 464, where only one set of costs was allowed, the division being left to the taxing-master. In *Prince v. Hine* (No. 2), 27 Beav. 345, where only one set of costs was allowed, one of the trustees, who had alone obeyed an order for payment of money into Court, by paying in the whole sum ordered to be paid in, was held entitled to the whole of the costs. Charges of fraud against one of them will justify trustees in severing (*Walters v. Woodbridge*, 7 Ch. D. 504).

In general, trustees and their *cestuis que trust* are not justified in severing (*Farr v. Sheriffe*, 4 Hare, 528); and so with mortgagor and mortgagee (*Remnant v. Hood*, 27 Beav. 613); and see *Heinrich v. Sutton*, 6 Ch. 220.

Husband and wife.

A husband and wife living apart were held entitled only to one set of costs (*Garey v. Whittingham*, 5 Beav. 268); and see *Mildmay v. Quicke*, 46 L. J. Ch. 667.

Parties living at a distance.

Where defendants live at a distance, this may be a sufficient ground for putting in several defences (*Aldridge v. Westbrook*, 4 Beav. 212; *Wiles v. Cooper*, 9 Beav. 299; *Russell v. Nicholls*, 9 Jur. 613; but see *Farr v. Sheriffe*).

Procuring evidence.

9. As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed (g).

Attendance of scientific witnesses at the trial.

(g) This rule gives the taxing master power to allow so much for the attendance of scientific witnesses at the trial as shall appear to him to be "just and reasonable" (*Turnbull v. Janson*, 3 C. P. D. 264; 26 W. R. 815).

Expenses of witnesses qualifying.

A reasonable sum will ordinarily be allowed for a scientific witness to get up a case for the purpose of giving evidence; see *Smith v. Buller*, 19 Eq. 473; 23 W. R. 332; 31 L. T. 473, where seven guineas a day were allowed to a scientific witness for reading up a case; *Churton v. Frewen*, 15 W. R. 559; W. N. (1867), 101; *Duke of Beaufort v. Lord Ashburnham*, 13 C. B. N. S. 598; 11 W. R. 267; 32 L. J. C. P. 97; 7 L. T. 710, where charges of an expert for searching for and translating ancient records and documents were allowed; *Re Charles Laffitte & Co.*, 20 Eq. 650; 44 L. J. Ch. 633; 24 W. R. 7; 33 L. T. 91, where an accountant was employed as a skilled witness to give evidence in support of a claim; *Batley v. Kynock*, 20 Eq. 632; but great care is necessary in dealing with such charges in party and party costs (*Batley v. Kynock*). See also *Murphy v. Nolan*, I. R. 7 Eq. 598. The same

practice in this respect now prevails in the Queen's Bench Division (*Mackley v. Chillingworth*, 2 C. P. D. 273; 46 L. J. C. P. 484; 25 W. R. 650; 36 L. T. 514; *Turnbull v. Janson*, 3 C. P. D. 264; 26 W. R. 815). In *Stanger Leathes v. Stanger Leathes*, W. N. (1879), 86, the Court would not allow the costs of more than three experts to prove a county custom.

The costs of keeping a witness abroad, in addition to the costs of bringing him over here to give evidence, may be allowed (*Picasso v. Trustees of Maryport Harbour*, W. N. (1884), 85; and see as to costs and expenses of witnesses, Ord. XXXVII. r. 9, and note thereto, *ante*, p. 424).

The costs of all necessary evidence will of course be allowed; see *Stimpson v. Jeyson*, 18 W. R. 962. As to the costs of unnecessary evidence, see *Booth v. Booth*, 1 Beav. 130; *Farrow v. Rees*, 4 Beav. 24.

The costs of affidavits filed, but not entered in the order, will not be allowed even on a taxation as between solicitor and client (*Stephens v. Lord Newborough*, 11 Beav. 403; *Stuart v. Greenall*, 13 Price, 755); and see further as to costs of affidavits, *Camille v. Donati*, 13 W. R. 358. A solicitor is entitled to the costs of an affidavit made on delivering up papers under an order (*Re Catlin*, 18 Beav. 514; see *Rawlinson v. Moss*, 9 W. R. 733).

Where notice was given to cross-examine witnesses at the hearing, and they were brought up accordingly, but were not, in fact, cross-examined, it was held that the costs of bringing them up ought to be allowed in taxation as between party and party (*Clark v. Malpas*, 31 Beav. 554; 1 N. R. 221). Where interrogatories, though prepared, were not filed in order to save expense, the costs of preparing them were allowed on taxation as between party and party (*Davies v. Marshall* (No. 2), 1 D. & Sm. 564; 9 W. R. 756). But where a demurrer was allowed the costs of perusing interrogatories, served before the demurrer was filed, were disallowed (*Ernest v. Partridge*, 2 N. R. 232). The costs of taking depositions which became useless were disallowed (*Ridley v. Sutton*, 1 H. & C. 741; but see *Duke of Beaufort v. Lord Ashburnham*, 13 C. B. N. S. 598). A solicitor will be allowed a reasonable sum for reading depositions taken abroad (*Wentworth v. Lloyd*, 2 Eq. 607); and may be allowed costs of perusing exhibits to affidavits (*Rymer v. De Rosaz*, 24 Ch. D. 684). Where a similar affidavit has been filed in each of several suits, a solicitor is not entitled to charge for perusing, when he has simply taken an office copy of the affidavit in one suit and examined the affidavits in the other suits (*Betts v. Cleaver*, 7 Ch. 513).

The costs of shorthand notes of the evidence and proceedings, including both the sum paid to the shorthand writer and the costs of copies, will not be allowed on taxation without a special direction from the judge at the time of giving judgment (*Ashworth v. Outram*, 9 Ch. D. 483; 27 W. R. 98; 39 L. T. 441; *Kirkwood v. Webster*, 9 Ch. D. 239; 26 W. R. 812; 47 L. J. Ch. 880; *Wells v. Miteham Gas Co.*, 4 Ex. D. 1; 48 L. J. Ex. 75; 27 W. R. 112; 39 L. T. 667). Where, however, shorthand notes of evidence are essential to the proper hearing of the case, the costs of such notes will be allowed (*Lee Conservancy Board v. Button*, 12 Ch. D. 383; 41 L. T. 500; *Clark v. Malpas*, 31 Beav. 554; 1 N. R. 221; 11 W. R. 251; and see *Re London and Birmingham Railway Co.*, 6 W. R. 141; *Malins v. Price*, 1 Ph. 590; *Twinberrow v. Braid*, W. N. (1878), 169). Pearson, J., allows the costs in all but very trivial cases (*Gandy v. Reddaway*, W. N. (1883), 89). In *Thorley's Cattle Food Co. v. Massam*, 41 L. T. 543, the Court declined to give the successful plaintiff the costs of the shorthand writer's notes of the proceedings, which had been taken by each side, as the Court had not required them for its own use. The Court of Appeal, of course, has power to allow the costs of all shorthand notes properly used in the appeal, whether taken for the purposes of the appeal or not; but an application to be allowed such costs should be made when judgment is delivered (*Hill v. Metropolitan Asylums Board*, 49 L. J. Q. B. 668; 28 W. R. 664; W. N. (1880), 98). In *Crawford v. Hornsea Brick Co.*, W. N. (1876), 215, an order allowing the costs of shorthand notes was made at chambers by V.-C. Malins. As a general rule, however, the costs of shorthand notes of evidence in the Court below will not be allowed; the judge's notes of the evidence, supplemented by those of counsel, ought in all ordinary cases to be sufficient for the purposes of the appeal (*Kelly v. Byles*, 13 Ch. D. 682; 28 W. R. 585; 42 L. T. 338; 49 L. J. Ch. 181; *Re Duchess of Westminster Co.*, 10 Ch. D. 307; 27 W. R. 539; 40 L. T. 300; *Vernon v. Vestry of St. James, Westminster*, 16 Ch. D. 449, 473; 50 L. J. Ch. 81; 44 L. T. 229; *Eari de la Warr v. Miles*, 19 Ch. D. 80; 30 W. R. 35; W. N. (1881), 140). Where the *vivâ voce* evidence was voluminous and the appeal could not have been properly argued without referring to all parts of it, the costs of printing and transcribing, but not the costs of taking, the notes, were allowed (*Biggsby v. Dickinson*, 4 Ch. D. 24; 46 L. J. Ch. 280; 25 W. R. 89, 122; 35 L. T. 679); and see *Orr, Ewing & Co. v. Johnston & Co.*, 13 Ch. D. 465; *Smith v. Chadwick*, 20 Ch. D. p. 81. In *Ex parte Sawyer*, 1 Ch. D. 698, the charge for a copy of a shorthand writer's notes of the proceedings in a County Court was allowed as part of the costs of an

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Costs of affidavits.

Witnesses brought up for cross-examination at hearing.

Costs of shorthand notes.

- Ord. LXV. appeal to the chief judge; see also *Watson v. Great Western Ry. Co.*, 6 Q. B. D. 163; 50 L. J. C. P. 302; *Re Albezette*, 8 Ch. D. 599. In *Re Beetlestone*, W. N. (1876), 1, which was heard in private, the costs of shorthand notes of *vivâ voce* evidence were ordered to be paid out of the estate.
- Shorthand notes of judgment. Where the Court of Appeal makes use of shorthand notes of the judgment below, it allows the costs of the notes (*Collyer v. Isaacs*, 45 L. T. 567); and see *London & South Western Ry. v. Gomm*, 20 Ch. D. 589.
- Costs as between solicitor and client. The costs of a shorthand writer's notes of the argument will never, it seems, be allowed (*Re London & Birmingham Ry. Co.*, 6 W. R. 141). In *Weymann v. Corcoran*, 41 L. T. 592, the costs of copies of the transcript of the notes of the judgment below, furnished to the defendant's counsel, were allowed. And see *Singer Co. v. Loog*, 31 W. R. 392; W. N. (1883), 15.
- Agency correspondence. The costs of shorthand notes of the evidence will not be allowed as between a solicitor and his own client, unless the solicitor has expressly told the client that he may have to pay them even if he gets the general costs of the action (*Re Blyth*, 10 Q. B. D. 207).
- Attendance of solicitor to settle judgment. 10. As to agency correspondence, in country agency causes, and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper.
- Proceedings in chambers. 11. As to the attendance of solicitors upon the registrars in the Chancery Division for the purpose of settling the terms of and passing judgments or orders, the taxing officer may, in such cases as are provided for by Order LXII., rule 15, make such special allowances in respect thereof as he shall consider reasonable.
- Non-attendance at chambers. 12. As to attendances at the judges' chambers, where, from the length of the attendance, or from the difficulty of the case, the judge or master shall think the highest of the fees an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the judge or master in chambers, or on a summons, shall have required skill and labour for which no fee has been allowed, the judge or master may allow such fee, in lieu of the fee of 1*l.* 1*s.* provided, not exceeding 2*l.* 2*s.*, or where the higher scale is applicable 3*l.* 3*s.*, or in proceedings to wind up a company 5*l.* 5*s.*, as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a judge at chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the judge to deserve higher remuneration than the ordinary fees, the judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the judge, specifying distinctly the grounds of such allowance, such fee, not exceeding ten guineas, as in his discretion he may think fit, instead of the fees of 2*l.* 2*s.*, 3*l.* 3*s.*, and 5*l.* 5*s.*
13. As to attendances at the judges' chambers, where by reason of the non-attendance of any party (unless it be considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the judge may order such an amount of costs (if any), as he

shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested. Ord. LXV.

14. A folio is to comprise seventy-two words, every figure comprised in a column, or authorized to be used, being counted as one word. Folio to be seventy-two words.

15. Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed; but as to affidavits a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time (*h*). Counsel.

(*h*) This rule supersedes Cons. Ord. XL. r. 17; the fees for counsel settling affidavits are generally allowed; see *Davies v. Marshall* (No. 2), 1 Dr. & Sm. 564. Fees to counsel are almost invariably left to the discretion of the taxing master (*Att.-Gen. v. Lord Carrington*, 6 Beav. 454; *Parkinson v. Hanbury*, 13 W. R. 1056; 11 Jur. N. S. 475; 12 L. T. 624; *Smith v. Daniell*, 34 L. T. 899; *Stanton v. Baring*, W. N. (1875), 188); including the conveyancing counsel of the Court (*Rumsey v. Rumsey*, 21 Beav. 40); see also r. 38, *post*, p. 557. The Court, in fact, will not interfere unless a gross mistake has been made (*Brown v. Sewell*, 16 Ch. D. 517; 29 W. R. 295; *Hargreaves v. Scott*, 4 C. P. D. 21; 27 W. R. 323; 40 L. T. 36; *Kidstone v. Empire Insurance Co.*, 16 L. T. 286). Fees to counsel are in the discretion of the taxing master.

16. As to counsel attending at judges' chambers, no costs thereof shall in any case be allowed, unless the judge certifies it to be a proper case for counsel to attend (*i*). Counsel at chambers.

(*i*) This rule applies on a taxation as between a solicitor and his own client (*Re Chapman*, 9 Q. B. D. 254; affirmed, 10 Q. B. D. 54).

17. As to inspection of documents under Ord. XXXI. r. 15, no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection (*k*). Inspection of documents.

(*k*) Where an order is made for production of documents at the office of the producing party's solicitor, that party, if ultimately successful, is not entitled as between party and party to his solicitor's costs of the production, nor to his own costs of inspecting the documents of the other party (*Brown v. Sewell*, 16 Ch. D. 517).

18. As to taking copies of documents in possession of another party, or extracts therefrom, under rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of 4*d.* per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof (*l*). Copies.

(*l*) As to the costs of copies of pleadings on an interlocutory application, see *Warner*

Ord. LXV. *v. Mosses*, 19 Ch. D. 72; if the copies are necessary or proper for the attainment of justice they must be allowed.

Documents previously existing in print cannot be charged for as copies (*Underwood v. Secretary of State in Council*, 16 W. R. 752, 926; 18 L. T. 351).

Solicitor concerned for several parties.

A solicitor concerned for two or more parties is not allowed to charge for supplying to himself copies of documents which he has himself prepared (*Sharp v. Wright*, 1 Eq. 634). Where there is a voluminous correspondence which the Court must read, the expense of having copies made by a law stationer will be allowed; see *Hayne v. Cavell*, W. N. (1875), 141.

See further, as to the costs of copies, *Millard v. Burroughes*, W. N. (1880), 4; *Murphy v. Nolan*, I. R. 7 Eq. 498; *Wyman v. Bockett*, W. N. (1866), 318; *Singer Co. v. Loog*, 31 W. R. 392; W. N. (1883), 15. As to the costs of a copy of a document already on the file, see *Ex parte Hall*, 19 Ch. D. 580; and as to defendant's costs of taking copies of and perusing answer of co-defendants, see *Great Eastern Ry. Co. v. Norwich and Spalding Ry. Co.*, W. N. (1881), 92.

Unnecessary appearances on petition.

19. Where any petition in a cause or matter assigned to the Chancery Division is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be 1*l.* 10*s.* The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or judge shall consider the party entitled, notwithstanding such notice or tender, to appear in Court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition, without appearing thereon, he is to be allowed a fee not exceeding the amount aforesaid (*m*).

(*m*) Trustees respondents to a petition under the Trustee Relief Act who have accepted the sum tendered will not be allowed their costs of appearance unless they come for some good reason (*Re Sutton*, 21 Ch. D. 855; 30 W. R. 657). Where parties whose appearance is unnecessary are served without any tender, they will be allowed a small fixed sum, probably 30*s.* (*Campbell v. Holyland*, 7 Ch. D. 166; *Somes v. Martin*, W. N. (1882), 113); and see *ante*, p. 478; r. 23, *post*, p. 553; *Morgan & Wurtzburg on Costs*, p. 67, *seq.*

Improper and unnecessary matter.

20. The Court or judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in Court or at chambers, and whether the same is objected to or not, direct the costs of any indorsement on a writ of summons, pleading, summons, affidavit, evidence, notice requiring a statement of claim, notice to produce, admit, or cross-examine witnesses, account, statement, procuring discovery by interrogatories or order, applications for time, bills of costs, service of notice of motion or summons, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such

question shall not have been raised before and dealt with by the Court or judge, it shall be the duty of the taxing officer to look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so: and in the Queen's Bench Division the master shall make such order as may be required to effect the object of this regulation (n).

Ord. LXV.

(n) This rule takes the place of Cons. Ord. XL. rr. 9, 10. The taxing master must exercise the discretion thus given him without special directions from the judge (*Baines v. Wormsley*, 47 L. J. Ch. 844; 27 W. R. 36; 39 L. T. 85; W. N. (1878), 193).

Unnecessary matter.

The Court can act under this rule *mero motu* and without any application by the aggrieved party (*Cracknall v. Janson*, 11 Ch. D. 1). And apart from any rule, it has power to order oppressive documents to be taken off the file (*Hill v. Hart-Davis*, 26 Ch. D. 470).

The Court will in general leave to the taxing master the province of distinguishing what parts are unnecessary. See *Re Atkinson and Pilgrim*, 26 Beav. 151 (decided under the similar rule, Cons. Ord. XL. r. 9); *Watson v. Rodwell*, W. N. (1876), 214.

For form of direction, see *Cracknall v. Janson*; *Burchell v. Giles*, 11 Beav. 34; *Woods v. Woods*, 5 Hare, 229; *Hanslip v. Kitton*, 8 Jur. N. S. 835; and observations of Lord Romilly in *Moore v. Smith*, 14 Beav. 396.

As to disallowing the costs occasioned by the issue of a great number of writs of summons where one might have sufficed, see *Guéret v. Young*, W. N. (1883), 216. And as to scandalous matter in a bill of costs, see *Re Miller*, W. N. (1884), 234.

21. In any case in which, under the last preceding regulation, or any other rule of Court, or by the order or direction of a Court or judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered (o). Set-off.

(o) See *Batten v. Wedgwood Coal Co.*, W. N. (1884), 218. A set-off for costs may be allowed notwithstanding the solicitor's lien; see r. 14, *ante*, p. 545.

See as to set-off generally, *Robarts v. Buëe*, 8 Ch. D. 198; *Cooper v. Pitcher*, 4 Ha. 485; *Barker v. Hemming*, 5 Q. B. D. 609; *Morgan & Wurtzburg on Costs*, p. 133.

22. Where in the Chancery Division any question as to any costs is under regulation 20 dealt with at chambers, the chief clerk is to make a note thereof, and state the same on his allowance of the fees for attendances at chambers, or otherwise as may be convenient for the information of the taxing officer.

Note of proceeding under Reg. 20.

23. Where any party appears upon any application or proceeding in Court or at chambers, in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance unless the Court or judge shall expressly direct such costs to be allowed (p).

Unnecessary appearances.

(p) See note (a) to Ord. LV. r. 40, *ante*, p. 498; and r. 19, *ante*, p. 552.

Ord. LXV.

Applications
to extend
time.

24. The costs of applications to extend the time for taking any proceedings shall be in the discretion of the taxing officer, unless the Court or judge shall have specially directed how the costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary, and could not, with due diligence, have been avoided. The costs of a summons to extend time shall not be allowed in cases to which rule 8 of Ord. LXIV. applies, unless the party taking out such summons has previously applied to the opposite party to consent, and he has not given a consent, to a sufficient extension of time, or the taxing officer shall consider there was a good reason for not making such application; and in case the taxing officer shall not allow the costs of such summons, and shall consider that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment, or deal with such costs, in the manner provided by regulation 21.

Duties, &c. of
taxing
masters.

25. The taxing officers of the Supreme Court, or of any division thereof, shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been or are by general orders directed to be performed by any of the masters, taxing masters, registrars, or other officers of any of the Courts whose jurisdiction is by the principal Act transferred to the High Court of Justice or Court of Appeal, and shall, in respect thereof, have such powers and authorities as previous to the commencement of the principal Act were, or by general orders are, vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocators, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith, as may be directed by the Court or a judge (g).

(g) This rule is substantially identical with Cons. Ord. XL. r. 1. Matters unconnected with bills of costs cannot be referred to the taxing master (*King v. Savery*, 8 De G. M. & G. 311).

Where costs
form part of
an account.

26. Where an account consists in part of any bill of costs, the Court or judge may direct the taxing officer to assist in settling such costs, not being the ordinary costs of passing the account of a receiver, and the taxing officer, on receiving such direction, shall proceed to tax such costs, and shall have the same powers, and the same fees shall be payable in respect thereof, as if the same had been referred to the taxing officer by an order; and he shall return the same, with his opinion thereon, to the Court or judge by whose direction the same were taxed.

Attendance

27. The taxing officer shall have authority to arrange and direct

what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested. Ord. LXV.
before taxing
master.

28. When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect. Refusal to
bring in costs
for taxation.

29. As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party (*r*). Allowances
on taxation
as between
party and
party.

(*r*) Cf. Cons. Ord. XL. r. 32.
As to what costs will be allowed by the taxing master, see generally Morgan & Wurtzburg on Costs, p. 482 *et seq.* The general principle is, that, as between party and party, only such costs are chargeable as were *reasonably necessary for the conduct of the litigation*; other charges are considered "luxuries," and must be paid by the party incurring them; see *Smith v. Buller*, 19 Eq. 473; 45 L. J. Ch. 69; 23 W. R. 322; 31 L. T. 473; *Batley v. Kynock*, 20 Eq. 632; *Warner v. Mosses*, 19 Ch. D. 72.

30. As to any work and labour properly performed (*s*) and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed. Work, &c. not
provided for.

(*s*) As to taxation of costs where the work is really thrown away, *e. g.* by a motion being abandoned or an action discontinued, see *Harrison v. Leutner*, 16 Ch. D. 559; and see also *Thomas v. Palin*, 21 Ch. D. 360.

31. Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the Court at the time of any amendment (*t*). Costs of
amendment
of pleadings.

(*t*) This rule is taken from Cons. Ord. XL. r. 7.

32. Where upon taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount Where amend-
ment unneces-
sary.

Ord. LXV. thereof deducted from the costs to be paid by the defendant to the plaintiff (*u*).

(*u*) This is taken from Cons. Ord. XL. r. 8.

Unnecessary amendments.

See as to directions to the taxing master to tax the costs occasioned by unnecessary amendments, *Burchell v. Giles*, 11 Beav. 34; *Watts v. Manning*, 1 S. & S. 421; *Pledge v. Buss*, Johns. 663; and where important allegations contained in the original bill were struck out by amendment, the plaintiff had to pay the additional costs occasioned (*Strickland v. Strickland*, 3 Beav. 242); and see *Bower v. Cooper*, 2 Hare, 408; *Mavor v. Dry*, 2 S. & S. 113; *Mounsey v. Burnham*, 1 Hare, 22.

Order for taxation, when unnecessary.

33. Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such costs without any order referring the same for taxation, unless the Court or a judge upon the application of the party alleging himself to be aggrieved prohibits the taxation of such costs (*v*).

(*v*) This rule is taken from Cons. Ord. XL. r. 38; it is not generally acted upon, and it is still the practice to insert the direction for taxation.

If nothing is said to the contrary, an order directing costs to be paid, means that they shall be taxed and paid forthwith (*Philippis v. Philippis*, 5 Q. B. D. 60; 28 W. R. 376).

Taxation of costs where parties differ.

34. Where it is directed that costs shall be taxed in case the parties differ about the same, the party claiming the costs shall bring the bill of costs into the office of the proper taxing officer, and give notice of his having so done to the other party, and at any time within eight days after such notice such other party shall have liberty to inspect the same without fee, if he thinks fit. And at or before the expiration of the eight days, or such further time as the taxing officer shall in his discretion allow, such other party shall either agree to pay the costs or signify his dissent therefrom, and shall thereupon be at liberty to tender a sum of money for the costs; but where he makes no such tender, or where the party claiming the costs refuses to accept the sum so tendered, the taxing officer shall proceed to tax the costs; and where the taxed costs shall not exceed the sum tendered, the costs of the taxation shall be borne by the party claiming the costs (*w*).

(*w*) This rule is from Cons. Ord. XL. r. 39.

Total amount of costs taxed to be stated.

35. Where any costs are by any judgment or order directed to be taxed and to be paid out of any money or fund in Court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order (*x*).

(*x*) This is from Cons. Ord. XL. r. 40.

Conveyancing counsel, scientific persons, &c.

36. The allowances in respect of fees to the conveyancing counsel of the Court, and to any accountants, merchants, engineers, actuaries, and other scientific persons to whom any question is referred, shall be regulated by the taxing officers, subject to appeal to the Court or judge, whose decision shall be final (*y*).

(*y*) This rule is taken from 15 & 16 Vict. c. 80, s. 43. As to accountants' charges,

see *Meymott v. Meymott* (No. 2), 33 Beav. 590; as to surveyors, see *A.-G. v. Drapers' Co.*, 9 Eq. 69. Ord. LXV.

37. The rules, orders, and practice of any Court whose jurisdiction is transferred to the High Court of Justice or Court of Appeal, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs, existing prior to the commencement of the principal Act, shall, in so far as they are not inconsistent with the principal Act and these rules, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal (z).

Existing practice to continue where not inconsistent with Act and rules.

(z) See as to this rule, *Pringle v. Gloag*, 10 Ch. D. 678.

38. As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances: and where a party is entitled to sign judgment for his costs, the taxing officer, in taxing the costs, may allow a fixed sum for the costs of the judgment.

Discretionary fees and allowances.

39. Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items, or parts thereof, objected to, and the grounds and reasons for such objections, and may thereupon apply to the taxing officer to review the taxation in respect of the same (a).

Objection to an allowance or disallowance by the taxing master, how made.

(a) This rule is taken from Cons. Ord. XL. r. 33; the corresponding repealed rule did not oblige the objecting party to state his reasons (*Simmons v. Storer*, 14 Ch. D. 154; 49 L. J. Ch. 121; 28 W. R. 408; 42 L. T. 291). A person not a party to an order for taxation who wishes the taxation reviewed should apply to have the order to tax set aside, and not move to review the taxation (*Charlton v. Charlton*, W. N. (1882), 183; 31 W. R. 237).

40. Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required, by either party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto (b).

Review of taxation upon objection.

(b) This rule is from Cons. Ord. XL. r. 34.

Ord. LXV.

Review of
taxation on
summons.

41. Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to as aforesaid, may within fourteen days from the date of the certificate or allocatur, or such other time as the Court or judge, or taxing officer, at the time he signs his certificate or allocatur, may allow, apply to a judge at chambers for an order to review the taxation as to the same item or part of an item, and the judge may thereupon make such order as the judge may think just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid (c).

(c) This rule is from Cons. Ord. XL. r. 35.

What ques-
tions enter-
tained on
application
to review
taxation.

A re-taxation will in no case be directed if the items alleged to be overcharged do not amount to forty shillings (*Newton v. Boodle*, 4 C. B. 359); and on an application to review, the amount must be stated (*Re Dearden*, 9 Exch. 210); and the items alleged to have been improperly allowed or disallowed must be specified (*Re Congreve*, 4 Beav. 87). A taxation of costs cannot be reviewed on a point not raised before the taxing master (*Scorfield v. Jones*, 18 Sol. J. 86). Unless there has been some very gross overcharge (*Smith v. Buller*, 19 Eq. 473), the Court, on an application to review, will only determine questions which involve some principle, and not those relating to quantum only, which will be left to the discretion of the taxing master (*Re Catlin*, 18 Beav. 508; *Friend v. Solly*, 10 Beav. 329; *Re Congreve*, 4 Beav. 87; *Turner v. Turner*, 7 W. R. 573; *Re Hubbard*, 23 Beav. 481; *Att.-Gen. v. Lord Carrington*, 6 Beav. 454; *Alsop v. Lord Oxford*, 1 M. & K. 564; *Att.-Gen. v. Drapers' Co.*, 9 Eq. 69; *Re Mortimer*, Ir. R. 4 Eq. 96; 18 W. R. 367). And the discretion of the taxing master applies not only to the quantum but to the quotes, e.g., in the case of interviews, to the number of interviews as well as to the amount to be allowed for each (*Re Brown*, 4 Eq. 464). Where, however, there had been some irregularity in the proceedings before the taxing master (*Fenton v. Crickett*, 3 Mad. 496), or where costs had been wrongly omitted from taxation (*Greenwood v. Churchill*, 14 Beav. 160), or taxed on the higher instead of on the lower scale (*Padden v. Winch*, 20 Eq. 449), or where the master refused to allow any costs in respect of a particular proceeding (*Heming v. Leifchild*, 8 W. R. 352, affirmed on appeal, 9 W. R. 174), the taxation was ordered to be reviewed; see also *R. v. L. C. & D. Ry. Co.*, 12 Jur. N. S. 230; *Gilbert v. Guignon*, 21 W. R. 745. Where the objections were carried in before the certificate was filed, but were not proceeded with, it was held that the Court in exercise of its general jurisdiction over its officers could order the taxation to be reviewed (*Kenrick v. Wood*, W. N. (1870), 216).

Where refer-
ence is from
common law
master.

Where, in taxing costs at law, the common law master referred equity matters to a Chancery taxing master, an application to review such taxation was refused (*Re Lett*, 10 W. R. 6).

What matters
within pro-
vince of tax-
ing master.

It is not the province of the taxing master to deal with any but ordinary costs: any other question which arises must be dealt with by the judge in chambers (*Turner v. Turner*, 7 W. R. 573; *King v. Savery*, 8 De G. M. & G. 311). Thus the master has no jurisdiction to inquire into the propriety of a compromise entered into between the solicitor and the client which the client has not sought to impeach (*Re Catlin*, 18 Beav. 511), and his doing so will be a ground for reviewing the taxation (*ibid.*). In *Graham v. Wickham*, 34 L. J. Ch. 220; 11 Jur. N. S. 168; 13 W. R. 396; 12 L. T. 39, it was held that the taxing master might allow executors their costs of litigation, though no direction was given in the suits in which such costs were incurred that they should be so allowed.

Costs of
application
to review.

Where the applicant had not taken proper steps to satisfy the master when the matter was in his office, he was, though successful on his application to review, ordered to pay the costs of the application (*Sturge v. Dimesdale*, 9 Beav. 170). Where the taxation was upheld in some respects, and ordered to be reviewed in others, no costs were given (*Re Catlin*, 18 Beav. 508). See, too, *Re Whalley*, 20 Beav. 578; *Re Colquhoun*, 5 De G. M. & G. 35; 1 Sm. & Giff. App. 1; *Re London, Birmingham and Bucks Ry. Act*, 6 W. R. 141.

Evidence on
application.

42. Such application shall be heard and determined by the judge upon the evidence which shall have been brought in before the taxing

officer, and no further evidence shall be received upon the hearing thereof, unless the judge shall otherwise direct (*d*). Ord. LXV.

(*d*) This rule is from Cons. Ord. XL. r. 36. See note to last rule.

43. When a writ of summons for the commencement of an action shall be issued from a district registry, and when an action proceeds in a district registry, all fees and allowances, and rules and directions relating to costs, which would be applicable to such proceeding if the writ of summons were issued at the central office, and if the action proceeded in London, shall apply to such writ of summons issued from and other proceedings in the district registry (*dd*).

Fees, &c. in actions in district registries.

(*dd*) See *Wilson v. Alltree*, 27 Ch. D. 242.

44. No retaining fee to counsel shall be allowed on taxation as between party and party.

Retaining fee.

45. Fees for conferences are not to be allowed in any cause or matter in addition to the solicitor's and counsel's fees for drawing and settling, or perusing any pleadings, affidavits, deeds, or other proceedings or abstracts of title, or for advising thereon, unless it shall appear to the taxing officer for some special reason that a conference was necessary or proper.

Conferences.

46. In any case in which under rule 12 of this order the scale of costs in County Courts is applicable, the costs of briefing more than one counsel shall not be allowed, unless the taxing officer shall, for special reasons, be of opinion that briefing more than one counsel was proper.

Costs of one counsel.

47. Where the costs of retaining two counsel may properly be allowed, such allowance may be made although both such counsel may have been selected from the outer bar (*e*).

Costs of two counsel.

(*e*) This is taken from Cons. Ord. XL. r. 20. The costs of two counsel should be allowed in all ordinary cases (*Llanover v. Homfray*, W. N. (1884), 134; *Cooke v. Turner*, 12 Sim. 649; *Stevens v. Lord Newborough*, 11 Beav. 403; *Sturge v. Dimsdale*, 9 Beav. 170; but see *Friend v. Solly*, 10 Beav. 329; *Yearsley v. Yearsley*, 19 Beav. 1).

Number of counsel allowed.

The costs of a third counsel will not be allowed, as between party and party, except under *very special circumstances*; see *Pearce v. Lindsay*, 1 De G. F. & J. 577; *Kirkwood v. Webster*, 9 Ch. D. 239; *Wentworth v. Lloyd*, 2 Eq. 607; *Morgan & Wurtzburg on Costs*, p. 491 *et seq.*, where the cases are collected. And even in a solicitor and client taxation the general rule is to allow only the costs of two (*Friend v. Solly*, 10 Beav. 329; *Downing College Case*, 3 My. & Cr. 474). The mere fact of a junior having been appointed a Queen's counsel is not a sufficient reason for allowing the costs of three counsel (*Mem.* 10 Ch. 540); and see, further, as to fees to counsel, rr. 15, 16, and notes thereto, *ante*, p. 551; *Morgan & Wurtzburg*, 489—497.

48. As to refresher fees, when any cause or matter is to be tried or heard upon *vivâ voce* evidence in open Court, if the trial shall extend over more than one day, and shall occupy either on the first day only, or partly on the first and partly on a subsequent day or days, more than five hours, without being concluded, the taxing officer may allow, Refreshers.

Ord. LXV. for every clear day subsequent to that on which the five hours shall have expired, the following fees:—

- To the leading counsel from 5 to 10 guineas.
- To the second, if three counsel „ 3 to 7 „
- To the third, if three counsel, or the second, if only two „ 3 to 5 „

* *Sic.* The like allowances may be made where the evidence in chief is not taken *vivâ voce*, if the trial on * hearing shall be substantially prolonged beyond such period of five hours, to be so computed as aforesaid, by the cross-examination of witnesses whose affidavits or depositions have been used (*ee*).

(*ee*) Term refreshers may also be allowed (*Levetus v. Newton*, 28 Sol. J. 166).

Costs prematurely incurred.

49. Where a cause or matter shall not be brought on for trial or hearing, the costs of and consequent on the preparation and delivery of briefs shall not be allowed if the taxing officer shall be of opinion that such costs were prematurely incurred (*f*).

(*f*) See *Harrison v. Leutner*, 16 Ch. D. 559; *Thomas v. Palin*, 21 Ch. D. 360.

Costs of cause struck out for defect on part of plaintiff, and again set down.

50. Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or other defect on part of the plaintiff, and is therefore struck out of the paper, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he does not obtain the costs of the cause or matter (*g*).

(*g*) This rule is from Cons. Ord. XL. r. 21.

Counsel's clerks.

51. The following fees are to be allowed to counsel's clerks:—

	£	s.	d.
Upon a fee under 5 guineas	0	2	6
5 guineas and under 10 guineas	0	5	0
10 guineas and under 20 guineas	0	10	0
20 guineas and under 30 guineas	0	15	0
30 guineas and under 50 guineas	1	0	0
50 guineas and upwards, per cent.	2	10	0
On consultations, senior's clerk	0	5	0
On consultations, junior's clerk	0	2	6
On conferences	0	5	0
On retainers (where allowed):—			
General retainer	0	10	6
Common retainer	0	2	6

Fees to be vouched.

52. No fee to counsel shall be allowed on taxation unless vouched by his signature (*h*).

(*h*) This rule is not retrospective (*Perks v. Gillott*, W. N. (1883), 189).

Office copy of original affidavit:

53. In cases in which an original affidavit can be used, and to which Order XXXVIII. r. 15, applies, it shall not be necessary to take an office copy.

54. It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used as against such party. Ord. LXV.
of affidavit of
discovery of
documents.

55. Where, in proceedings before the taxing officer, any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the taxing officer may direct such party or his solicitor to pay such costs as he may think proper, or deal with them under Regulation 21. Neglect, &c.
in proceedings
before taxing
master.

56. Where in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the taxing officer may, if he shall consider there is a reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill, or any part thereof, previously to such officer completing the taxation thereof, accompanied by any statement such officer may direct, and by a letter informing such client that the bill of costs has been referred to the taxing officer, giving his name and address for taxation, and will be proceeded with at the time the officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable. On taxation
and payment
out of a fund,
taxing master
may require
solicitor to
deliver copy
of bill to the
client.

57. The taxing officer shall have power to limit or extend the time for any proceeding before him, and where, by any general order, or any order of the Court or a judge, a time is appointed for any proceeding before or by a taxing officer, unless the Court or judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms (if any) as the justice of the case may require, and although the application for the same is not made until after the expiration of the time appointed, it shall not be necessary to make a certificate or order for this purpose, unless required for any special purpose. Taxingmaster
may limit or
extend time
for proceed-
ings before
him.

58. Every bill of costs which shall be left for taxation shall be endorsed with the name and address of the solicitor by whom it is so left, and also the name and address of the solicitor, if any, for whom he is agent, including any solicitor who is entitled or intended to participate in the costs to be so taxed. Endorsement
on bill of
costs.

ORDER LXVI.

NOTICES, PRINTING, PAPER, COPIES, OFFICE COPIES, MINUTES, &c.

1. All notices required by these rules shall be in writing, unless expressly authorised by the Court or a judge to be given orally. Notices to be
in writing.

2. All accounts, copies, and papers left at chambers, shall be written upon foolscap paper, bookwise, unless the nature of the document renders it impracticable (i). Accounts,
&c. left at
chambers to
be written on
foolscap,
bookwise.

(i) This is taken from Regulations as to Business, August 8, 1857, r. 17.

- Ord. LXVI.
- Paper and printing. 3. Proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three quarters of an inch wide, and an outer margin about two inches and a half wide.
- Affidavits in print or manuscript. 4. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.
- Filed deposition to be printed. 5. Where any written deposition of a witness has been filed, such deposition shall be printed, unless otherwise ordered.
- Depositions and affidavits previously used. 6. The rules of Court as to printing depositions and affidavits to be used on a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed.
- Rules where pleadings, &c. are to be printed and office copies to be taken: 7. Where, pursuant to these rules, any pleading, notice, special case, petition of right, deposition, or affidavit is to be printed, and where any printed or other office copy of any such document is to be taken, the following regulations shall be observed:
- Printing. (a) The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner provided by rule 3 of this order:
- Delivery of copy for printing. (b) To enable the party printing, to print any deposition or affidavit, the officer with whom it is filed shall on demand deliver to such party a copy written on draft paper on one side only:
- Furnishing printed copies to other party. (c) The party printing shall, on demand in writing, furnish to any other party any number of printed copies, not exceeding ten, upon payment therefor, at the rate of 1*d.* per folio for one copy, and $\frac{1}{2}$ *d.* per folio for every other copy:
- Payment for copies. (d) As between a solicitor delivering any printed copies and his client, credit shall be given by the solicitor for the whole amount payable by any other party for such printed copies:
- Charge for written copy. (e) The party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the Court or a judge shall otherwise direct:
- Office copy. (f) Except as provided by Ord. LV. r. 48, the party by or on whose behalf any deposition, affidavit, or certificate is filed shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy; such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed:
- Production of office copy. (g) The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates:
- Furnishing written copies. (h) Where any party is entitled to a copy of any deposition, affidavit, proceeding, or document filed or prepared by or on behalf of another party, which is not required to be printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared:

- (i) The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the Court or a judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges : Ord. LXVI.
Application for copy, how made.
- (j) In the case of an *ex parte* application for an injunction or writ of *ne exeat regno*, the party making such application is to furnish copies of the affidavits upon which it is granted upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the Court or a judge : Ex parte applications for injunction or ne exeat.
- (k) It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party : Foot note to affidavit.
- (l) The name and address of the party or solicitor by whom any copy is furnished is to be indorsed thereon in like manner as upon proceedings in Court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be : Party furnishing copy to be responsible for its accuracy.
- (m) The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies : Folios to be numbered.
- (n) In case any party or solicitor who shall be required to furnish any such written copy as aforesaid shall either refuse or, for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be payable to the solicitor so making default in respect of the copy so applied for : Refusal to furnish copy.
- (o) Where, by any order of the Court (whether of appeal or otherwise) or a judge, any pleading, evidence or other document is ordered to be printed, the Court or judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit. Costs of printing ordered by the Court.

[Rules 8 and 9 apply only to Admiralty actions.]

ORDER LXVII.

I. SERVICE OF ORDERS, &C.

Original order, when to be shown. 1. Except in the case of an order for attachment, it shall not be necessary to the regular service of an order that the original order be shown if an office copy of it be exhibited.

Service other than personal, how effected. 2. All writs, notices, pleadings, orders, summonses, warrants and other documents, proceedings and written communications in respect of which personal service is not requisite shall be sufficiently served if left within the prescribed hours, at the address for service of the person to be served as defined by Ords. IV. and XII., with any person resident at or belonging to such place (*k*).

(*k*) Where there was no one at the address for service but a housekeeper, who refused to receive documents, and a summons was left in the letter-box, it was held that the service was bad (*Jiminez v. Owen*, W. N. (1883), 232).

Notices from any office of Court may be posted. 3. Notices sent from any office of the Supreme Court may be sent by post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service.

Where no appearance. 4. Where no appearance has been entered for a party, or where a party or his solicitor, as the case may be, has omitted to give an address for service as required by Ords. IV. and XII., all writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite may be served by filing them with the proper officer.

Personal service, how effected. 5. Where personal service of any writ, notice, pleading, order, summons, warrant, or other document, proceeding, or written communication is required by these rules or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the personal service of a writ of summonses.

Substituted service. 6. Where personal service of any writ, notice, pleading, summons, order, warrant, or other document, proceeding, or written communication is required by these rules or otherwise, and it is made to appear to the Court or a judge that prompt personal service cannot be effected, the Court or judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just (*l*).

(*l*) As to service abroad, see *Van der Kan v. Ashworth*, W. N. (1884), 58. See also Ord. IX. r. 2, and note thereto, *ante*, p. 316.

Service on authorised solicitor. 7. Where a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorised to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants, and other documents, proceedings, and written communications which ought to be delivered to or served upon the party on whose

behalf the notice is given shall thereafter be delivered to or served upon such solicitor. Ord. LXVII.

8. Where a person who is not a party appears in any proceeding either before the Court or in chambers, service upon the solicitor in London by whom such person appears, whether such solicitor act as principal or agent, shall be deemed good service except in matters requiring personal service. Service on person not a party.

9. Affidavits of service shall state when, where, and how and by whom, such service was effected. Affidavit of service.

[Rules 10—14 apply only to Admiralty actions.]

[Ord. LXVIII. applies only to Crown, Revenue, and Matrimonial Cases.]

ORDER LXIX.

ARREST OF DEFENDANT UNDER SECT. 6 OF THE DEBTORS ACT, 1869.

1. An order to arrest under the 6th section of the Debtors Act, 1869 (which shall be in the Form No. 31 in Appendix K., with such variations as circumstances may require), shall be made upon affidavit and *ex parte*; but the defendant may at any time after arrest apply to the Court or a judge to rescind or vary the order or to be discharged from custody, or for such other relief as may be just (*m*). Form of order.

(*m*) As to the Debtors Act, 1869, see *ante*, p. 187. For this form, see *infra*.

2. An order to arrest shall before delivery to the sheriff be indorsed with the plaintiff's address for service as required by Ord. IV. rr. 1 and 2. Concurrent orders may be issued for arrest in different counties. The sheriff or other officer executing the order shall be entitled to the same fees as heretofore. Indorsement on order.

3. The security to be given by the defendant may be a deposit in Court of the amount mentioned in the order, or a bond to the plaintiff by the defendant and two sufficient sureties (or with the leave of the Court or a judge either one surety or more than two), or, with the plaintiff's consent, any other form of security. The plaintiff may, within four days after receiving particulars of the names and addresses of the proposed sureties, give notice that he objects thereto, stating in the notice the particulars of his objections. In such case the sufficiency of the security shall be determined by a master who shall have power to award costs to either party. It shall be the duty of the plaintiff to obtain an appointment for that purpose, and unless he do so within four days after giving notice of objection, the security shall be deemed sufficient. Mode of giving security.

4. The money deposited, and the security, and all proceedings thereon, shall be subject to the order and control of the Court or a judge. Security to be subject to order of Court.

5. Unless otherwise ordered, the costs of and incidental to an order of arrest, shall be costs in the cause. Costs.

Ord. LXIX.

Payment into Court.

6. Upon payment into Court of the amount mentioned in the order, a receipt shall be given; and upon receiving the bond or other security, a certificate to that effect shall be given, signed or attested by the plaintiff's solicitor if he have one, or by the plaintiff, if he sue in person. The delivery of such receipt, or a certificate to the sheriff or other officer executing the order, shall entitle the defendant to be discharged out of custody.

Date of arrest to be indorsed on the order.

7. The sheriff or other officer named in an order to arrest shall, within two days after the arrest, indorse on the order the true date of such arrest.

ORDER LXX.

EFFECT OF NON-COMPLIANCE.

Non-compliance with rules.

1. Non-compliance with any of these rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court or a judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or judge shall think fit (*n*).

(*n*) This rule enables the Court to do justice without regard to technicalities (*Dawson v. Besson*, 22 Ch. D. 504).

It was held under the old practice that an order irregularly obtained must be properly discharged, and could not be treated as a nullity. See *Wilkins v. Stevens*, 10 Sim. 617; *Blake v. Blake*, 7 Beav. 514; *Fennings v. Humphrey*, 4 Beav. 1; *Chuck v. Cremer*, 2 Ph. 113.

But where a notice of motion was irregularly given it was held that the parties to whom it was given need not have appeared upon the motion, and they were not allowed their costs of doing so (*Daubney v. Shuttleworth*, 1 Ex. D. 63; 34 L. T. 357).

Power to dispense with strictness of rules.

As to the power to dispense with the strict requirements of the general orders, where justice requires, see *Smith v. Baker*, 2 H. & M. 498; *Ferrand v. Mayor of Bradford*, 8 De G. M. & G. 93; *Betts v. De Vitre*, 15 W. R. 701; *Re Hutchinson*, W. N. (1867), 49; *Re Snell*, 19 W. R. 1000; and the rules must not be construed too strictly in bad faith (*Talbot v. Keay*, 8 Eq. 610).

Waiver of irregularity.

An irregularity may be waived by the other side; see *Kettlewell v. Barstow*, 10 Eq. 210; but an application to restore a suit which was dismissed after an order to speed, was refused (*Burkinshaw v. Wilson*, 12 Eq. 103).

Application to set aside for irregularity.

2. No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity.

Objections must be stated.

3. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion.

Costs.

4. When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs.

ORDER LXXI.

INTERPRETATION OF TERMS.

1. The provisions of the 100th section of the principal Act shall apply to these rules. Jud. Act, 1873, s. 100.
- In the construction of these rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the meanings following:— Definitions.
- “Originating summons” means a summons by which proceedings are commenced without writ: “Originating summons:”
- “Person” includes a body corporate or politic: “Person:”
- “Probate actions” include actions and other matters relating to the grant or recall of probate or of letters of administration other than common form business: “Probate actions:”
- “Proper officer” means an officer to be ascertained as follows:— “Proper officer:”
- (a) Where any duty to be discharged under the Acts or these rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same:
- (b) Where any new duty is under the Acts or these rules to be discharged, the proper officer to discharge the same shall be such officer as may from time to time be directed to discharge the same, in the case of an officer of the Supreme Court, or the High Court of Justice, or the Court of Appeal, not attached to any Division, by the Lord Chancellor, and in the case of an officer attached to any Division, by the President of the Division, and in the case of an officer attached to any judge, by such judge:
- “Master” means a Master of the Supreme Court of Judicature: “Master:”
- “Receiver” includes consignee or manager appointed by or under an order of the Court: “Receiver:”
- “Taxing Officer” means taxing master in the Chancery Division, and the master or person whose duty it is to tax the costs to be taxed in the other divisions respectively: “Taxing officer:”
- “The Principal Act” means the Supreme Court of Judicature Act, 1873: “Principal Act:”
- “The Acts” means the Supreme Court of Judicature Acts, 1873 to 1879, the Appellate Jurisdiction Act, 1876, and the Supreme Court of Judicature Act, 1881: “The Acts:”
- “Central Office” means the Central Office of the Supreme Court of Judicature. “Central Office.”
2. In these rules, unless repugnant to the context, the singular number shall include the plural, and the plural number shall include the singular. Singular to include plural, and vice versa.

ORDER LXXII.

GENERAL RULES.

Annulled
orders not
revived by
rules.

Former
practice.

Vacancy in
office of Lord
Chancellor or
Lord Chief
Justice.

1. No order or rule annulled by any former order shall be revived by any of these rules, unless expressly so declared.

2. Where no other provision is made by the Acts or these rules, the present procedure and practice remain in force.

3. During the period of any vacancy in the office of Lord Chancellor, and when the great seal is not in commission, these rules shall operate as if wherever the words "Lord Chancellor" are used, the words "Lord Chief Justice of England" were used; and during the period of any vacancy in the office of Lord Chief Justice of England, as if wherever the words "Lord Chief Justice of England" are used, the words "Lord Chancellor" were used.

APPENDIX A.

App. A.
Pt. I.

PART I.

FORMS OF WRITS OF SUMMONS, &c.

No. 1.

General Form of Writ of Summons.

18 . [Here put the letter and number.]

In the High Court of Justice.
Division.

Between A. B. Plaintiff,
and
C. D. and E. F. Defendants.

Victoria, by the Grace of God, &c.

To C. D. of in the county of .
We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of A. B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and .

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant [or defendants] may appear hereto by entering an appearance [or appearances] either personally or by solicitor at the Central Office, Royal Courts of Justice, London.

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, &c.

This writ was issued by the said plaintiff, who resides at , or, this writ was issued by E. F., of , whose address for service is , solicitor for the said plaintiff, who resides at , or, this writ was issued by G. H., of , whose address for service is , agent for , solicitor for the said plaintiff, who resides at [mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any].

Indorsement to be made on the writ after service thereof.

This writ was served by me at on the defendant on the day of 18 .
Indorsed the day of 18 .
(Signed)
(Address)

No. 2.

Specially Indorsed Writ, Order III., Rule 6.

18 . [Here put the letter and number.]

In the High Court of Justice.
Division.

Between Plaintiff,
and
 Defendant.

Victoria, by the Grace of God, &c., to of in the county of .
We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of . And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and .

App. A.
Pt. I.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

Statement of Claim :—

The plaintiff's claim is

Particulars :—

Place of trial

(Signed)

And the sum of £ , [or such sum as may be allowed on taxation,] for costs. If the amount claimed is paid to the plaintiff or h solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ was issued by the said plaintiff, who resides at , [or] this writ was issued by E. F., of , whose address for service is , solicitor for the said plaintiff, who resides at , [or] this writ was issued by G. H., of , whose address for service is , agent for , of , solicitor for the said plaintiff, who resides at .

This writ was served by me at on the defendant on the day of 18 .

Indorsed the day of 18 .

(Signed)
(Address)

No. 3.

Writ for Issue from District Registry.

18 . [Here put the letter and number.]

In the High Court of Justice.
Division.

Between Plaintiff,
and
Defendant.

(MANCHESTER) DISTRICT REGISTRY.

Victoria, by the Grace of God, &c., to of in the of .
We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of . And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and .

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district.*

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is .

This writ, &c.

N.B.—The address for service must be within the district.

This writ was served, &c.

* Insert address of office.

No. 4.

App. A.
Pt. I.

Specially Indorsed Writ for Issue from District Registry.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between Plaintiff,
and
Defendant.

(*MANCHESTER*) DISTRICT REGISTRY.

Victoria, by the Grace of God, &c., to of in the of .
We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of . And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district.*

* Insert address of office.

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

Statement of Claim :—

The plaintiff's claim is

Particulars :—

Place of trial
(Signed)

And the sum of £ , [*or such sum as may be allowed on taxation,*] for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ, &c.

N.B.—*The address for service must be within the district.*

This writ was served, &c.

No. 5.

Writ for Service out of the Jurisdiction, or where Notice in Lieu of Service is to be given out of the Jurisdiction.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between A. B. Plaintiff,
and
C. D. and E. F. Defendants.

Victoria, by the Grace of God, &c.

To C. D. of

We command you, C. D., that within [*here insert the number of days directed by the Court or judge ordering the service or notice*] after the service of this writ [*or notice of this writ as the case may be*] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Division of our High Court of Justice in an action at the suit of A. B. ; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

Memoranda and Indorsement as in Form No. 1.

Indorsement to be made on the writ before the issue thereof.

N.B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominion, notice of the writ, and not the writ itself, is to be served upon him.

App. A.
Pt. I.

No. 6.

Specially Indorsed Writ for Service out of the Jurisdiction.

[Heading as in Form 1.]

* Insert No. of days directed by Court or judge.

† If notice of the writ is to be served, insert here "of notice."

Victoria, by the Grace of God, &c., to of in the of .
We command you, that within* days after service † of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

Statement of Claim :—

The plaintiff's claim is :—

Particulars :—

Place of trial

(Signed)

* Insert No. of days limited for appearance.

And £ [or such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within* days from service † hereof, further proceedings will be stayed.

This writ was issued, &c.

† If notice to be served, insert here "of notice."

This writ [or notice of this writ] was served, &c.

N.B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

No. 7.

Writ from District Registry for Service out of the Jurisdiction.

[Heading as in Form 3.]

* Insert No. of days directed by Court or judge.

† If notice of writ is to be served, insert here, "notice of."

‡ Insert address of office.

Victoria, by the Grace of God, &c., to of .
We command you, that within* days after service of † this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

A defendant who resides or carries on business within the above-named district, must enter appearance at the office of the registrar of that district. ‡

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the central office, Royal Courts of Justice, London.

The plaintiff's claim is

This writ was issued by, &c.

N.B.—The address for service must be within the district.

This writ [or notice of this writ] was served, &c.

N.B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. Where the defendant to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

No. 8.

App. A.
Pt. I.

Specially Indorsed Writ from District Registry for Service out of the Jurisdiction.

[Heading as in Form 3.]

Victoria, by the Grace of God, &c. to of in the of .
We command you, that within* days after service of† this writ on you, in an action at the suit of in an action at the suit of .
And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.
Witness, &c.

* Insert No. of days directed by Court or judge.

† If notice of writ is to be served, insert here, "notice of."

‡ Insert address of office.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district.‡

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the central office, Royal Courts of Justice, London.

Statement of Claim :—

The plaintiff's claim is

Particulars :—

Place of Trial

(Signed)

and £ , [or such sum as may be allowed on taxation] for costs. If the amount claimed be paid to the plaintiff or his solicitor or agent within* days from service† hereof, further proceedings will be stayed.

* Insert No. of days limited for appearance.

† If notice of writ is to be served, insert here, "of notice."

This writ was issued by, &c.

N.B.—The address for service must be within the district.

This writ [or notice of this writ] was served, &c.

N.B.—This writ is to be used where the defendant or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. Where the person to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

No. 9.

Notice of Writ in lieu of Service to be given out of the Jurisdiction.

[Heading as in Form 1.]

To G. H. of .

Take notice, that A. B., of has commenced an action against you, G. H., in the Division of Her Majesty's High Court of Justice in England, by writ of that Court, dated the day of , A.D. 18 ; which writ is indorsed as follows [copy in full the indorsements], and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action; and in default of your so doing, the said A. B. may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the Central Office, Royal Courts of Justice, London.

(Signed)

A. B. of &c.

X. Y. of or &c.

Solicitor for A. B.

In the High Court of Justice.
Division.

App. A.
Pt. I.

No. 10.

Notice of Writ in lieu of Service to be given out of the Jurisdiction.

[Heading as in No. 3.]

To _____, of _____.

Take notice, that _____, of _____, has commenced an action against you in the _____ Division of Her Majesty's High Court of Justice in England, by writ of that Court, dated the _____ day of _____, 18____, which writ is indorsed as follows:—

And you are hereby required within _____ days after the receipt of this notice, inclusive of the day of such receipt, to defend this action by causing an appearance to be entered for you thereto, and in default of your so doing the said _____ may proceed therein, and judgment may be given in your absence.

If you reside or carry on business within the above-named district, appearance is to be entered at the office of the registrar for that district.*

* Insert address of office.

If you do not either reside or carry on business within that district, appearance is to be entered either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

(Signed)

This notice was served by, &c.

N.B.—This notice is to be used where the person to be served is not a British subject, and is not in British dominions.

No. 18.

Form of Memorandum for Renewed Writ.

[Heading as in Form 1.]

Seal renewed writ of summons in this action indorsed as follows:—

[Copy original writ and the indorsements.]

No. 19.

Certificate of Solicitor as to Assignment of Cause or Matter.

[Heading as in Form 1.]

I, A. B., solicitor for the above-named _____ hereby certify that the writ [summons or petition] annexed hereto relates to the administration of the same trust, [or, the winding-up of the same company,] as or is so connected with, the cause or matter entitled [insert title] and assigned to the Hon. Mr. Justice _____, as to be conveniently dealt with by the same judge.

PART II.

FORMS OF ENTRY OF APPEARANCE.

No. 1.

Memorandum of Appearance in General.

In the High Court of Justice. 18 . No.
Division. Between Plaintiff,
and Defendant.

Enter an appearance for in this action.
Dated the day of 18 .
(Signed)
of *
Agent for
of

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

No. 2.

Notice of Entry of Appearance.

[Heading as in Form 1.]

Take notice, that have this day entered an appearance at the central office, Royal Courts of Justice [or at the office of the registrar of the district registry] for the defendant to the writ of summons in this action.

[If statement of claim is required, add] The said defendant require delivery of a statement of claim.

Dated the day of 18 .
(Signed)
of
Agent for

Solicitor for the defendant .

To

No. 3.

Notice limiting Defence.

[Heading as in Form 1.]

Take notice, that the [above-named] defendant [A. B.] limits his defence to part only of the property mentioned in the writ of summons, namely, to the close, called "The Big Field."

Dated the day of 18 .
(Signed)
of
Agent for
of

Solicitors for the above-named defendant.

To Messrs.

The Plaintiff's Solicitors.

No. 4.

Entry of Appearance limiting Defence.

[Heading as in Form 1.]

Enter an appearance for the defendant in this action. The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to the close called "The Big Field."

The address of is
Dated the day of 18 .
(Signed)
of *
Agent for
of

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

App. A.
Pt. II.

No. 5.

Entry of Appearance, Order XVI., Rule 49.

[Heading as in Form 1.]

Enter an appearance for _____ to the notice issued in this action on the _____ day
of _____ 18____ by the defendant _____ under the Rules of the Supreme Court,
1883, Ord. XVI. r. 49.

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

Dated the _____ day of _____ 18____ .
(Signed)
of*
Agent for
of _____

No. 6.

Entry of Appearance, Order XVII., Rule 5.

[Heading as in Form 1.]

Enter an appearance for _____, who has been served with an order dated the _____
day of _____ to carry on and prosecute the proceedings in this action.

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

Dated the _____ day of _____ 18____ .
(Signed)
of*
Agent for
of _____

No. 7.

Entry of Appearance to Counter Claim.

[Heading as in Form 1.]

Enter an appearance for _____ to the counter-claim of the above-named defendant
in this action.

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

Dated the _____ day of _____ 18____ .
(Signed)
of*
Agent for
of _____

No. 8.

Affidavit for Entry of Appearance as Guardian.

[Heading as in Form 1.]

I, _____, of _____, make oath and say as follows:—
A. B., of _____, is a fit and proper person to act as guardian *ad litem* of the
above-named infant defendant, and has no interest in the matters in question in this
action [*matter*] adverse to that of the said infant, and the consent of the said A. B.,
to act as such guardian is hereto annexed.

Sworn, &c.

[To this affidavit shall be annexed the document signed by such guardian in testimony of
his consent to act.]



PART III.

GENERAL INDORSEMENTS ON WRITS OF SUMMONS.

SECTION I.

In Matters assigned by the 34th Section of the Act to the Chancery Division.

1.

The plaintiff's claim is as a creditor of X. Y., of _____, deceased, to have the [real and] personal estate of the said X. Y. administered. The defendant C. D. is sued as the administrator of the said X. Y. [and the defendants E. F. and G. H. as his co-heirs-at-law]. Creditor to administer estate.

2.

The plaintiff's claim is as a legatee under the will dated the _____ day of _____, 18____, of X. Y., deceased, to have the [real and] personal estate of the said X. Y. administered. The defendant C. D. is sued as the executor of the said X. Y. [and the defendants E. F. and G. H. as his devisees]. Legatee to administer estate.

3.

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the day of _____], and to have the affairs of the partnership wound up. Partnership.

4.

The plaintiff's claim is to have an account taken of what is due to him for principal, interest, and costs on a mortgage dated the _____ day of _____ made between [or by deposit of title deeds], and that the mortgage may be enforced by foreclosure or sale. By mortgage.

5.

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated _____ and made between [parties], and to redeem the property comprised therein. By mortgage.

6.

The plaintiff's claim is that the sum of _____ l., which by an indenture of settlement dated _____ was provided for the portions of the younger children of _____, may be raised. Raising portions.

7.

The plaintiff's claim is to have the trusts of an indenture dated _____ and made between _____, carried into execution. Execution of trusts.

8.

The plaintiff's claim is to have a deed dated _____ and made between [parties], set aside or rectified. Cancellation or rectification.

9.

The plaintiff's claim is for specific performance of an agreement dated the day of _____, for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at _____.

SECTION II.

Money Claims where no Special Indorsement under Order III., Rule 6.

The plaintiff's claim is _____ l., for the price of goods sold. [This Form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.]	Goods sold.
The plaintiff's claim is _____ l., for money lent [and interest].	Money lent.
The plaintiff's claim is _____ l., whereof _____ l. is for the price of goods sold, and _____ l. for money lent, and _____ l. for interest.	Several demands.
The plaintiff's claim is _____ l. for arrears of rent. [The Appendix contains many additional forms.]	Rent.

App. A.
Pt. III.
Sect. 3.

SECTION III.

Indorsements for Costs.

Add to the above forms :—

And *l.* for costs ; and if the amount claimed be paid to the plaintiff or his solicitor within four days [or if the writ is to be served out of the jurisdiction, or notice in lieu of service allowed, insert the time for appearances limited by the rules] from the service hereof, further proceedings will be stayed.

SECTION IV.

Damages and other Claims.

- Account. The plaintiffs claim that an account be taken of [*say what*].
- Agent, &c. The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.
- Nuisance. The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [*or, &c.*].
- Innkeeper. The plaintiff's claim is for damages from nuisance by noise from the defendant's works [*or stables, or, &c.*].
- Mandamus. The plaintiff's claim is for damages from loss of the plaintiff's goods in the defendant's inn.
- Injunction. *Add to Indorsement :—*
And for a mandamus commanding the defendant to
- Mesne profits. *Add to Indorsement :—*
And for an injunction to restrain the defendant from
- Arrears of rent. *Add to Indorsement where claim is to land, or to establish title, or both.*
And for mesne profits.
- Breach of covenant. And for an account of rents or arrears of rent.
And for breach of covenant for [*repairs*].
[*The Appendix contains many additional forms.*]
-

SECTION VII.

Indorsements of Character of Parties.

- Executors. The plaintiff's claim is as executor [*or administrator*] of C. D., deceased, for, &c.
The plaintiff's claim is against the defendant A. B., as executor [*or, &c.*] of C. D., deceased, for, &c.
- Trustee in bankruptcy. The plaintiff's claim is against the defendant A. B., as executor of X. Y., deceased, for, &c., and against the defendant C. D., in his personal capacity, for, &c.
- Trustee. The plaintiff's claim is as trustee under the bankruptcy of A. B., for
- Public officer. The plaintiff's claim is as trustee under the will of A. B. [*or under the settlement upon the marriage of A. B. and X. Y., his wife*].
- Heir and devisee. The plaintiff's claim is as public officer of the bank, for
- Qui tam action. The plaintiff's claim is against the defendant as public officer of the bank, for
- The plaintiff's claim is against the defendant A. B., as principal, and against the defendant C. D., as public officer of the bank, as surety, for
- The plaintiff's claim is against the defendant as heir-at-law of A. B., deceased.
- The plaintiff's claim is against the defendant C. D., as heir-at-law, and against the defendant E. F., as devisee of lands under the will of A. B.
- The plaintiff's claim is as well for the Queen as for himself, for
-

APPENDIX B.

NOTICES, &c.

No. 1.

Third Party Notice.

188. . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between A. B. Plaintiff,
and

C. D. Defendant.

To Mr. X. Y.

Notice filed . . . , 188 .

Take notice that this action has been brought by the plaintiff, against the defendant [as surety for M. N.,] upon a bond conditioned for payment of 2,000*l.* and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are (his co-surety under the said bond, *or*, also surety for the said M. N. in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the . . . day of . . . , A.D. . . .).

Or [as acceptor of a bill of exchange for 500*l.*, dated the . . . day of . . . , A.D. . . . , drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

Or [as acceptor of a bill of exchange for 500*l.*, dated the . . . day of . . . A.D. . . . , drawn by you before and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

Or [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent].

And take notice that, if you wish to dispute the plaintiff's claim in this action against the defendant C. D. or your liability to the defendant C. D., you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant C. D., and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to the Rules of the Supreme Court, 1883, Order XVI., Part VI.

(Signed) E. T.

or, X. Y.

Solicitor for the defendant,
E. T.

Appearance to be entered at . . .

No. 2.

Notice of Counterclaim.

[*Heading as in Form 1.*]

"To the within-named X. Y.

"Take notice that if you do not appear to the within counterclaim of the within-named C. D. within eight days from the service of this defence and counterclaim upon you, you will be liable to have judgment given against you in your absence.

"Appearance to be entered at . . ."

App. B.

No. 3.

Notice of Payment into Court.

[Heading as in Form 1.]

Take notice that the defendant has paid into Court £ _____, and says that that sum is enough to satisfy the plaintiff's claim [or the plaintiff's claim for, &c.]

To Mr. X. Y.,
the plaintiff's solicitor.

Z.,
Defendant's solicitor.

No. 4.

Acceptance of Sum paid into Court.

[Heading as in Form 1.]

Take notice that the plaintiff accepts the sum of £ _____ paid by you into Court in satisfaction of the claim in respect of which it is paid in.

No. 5.

Confession of Defence.

[Heading as in Form 1.]

The plaintiff confesses the defence stated in the _____ paragraph of the defendant's defence [or, of the defendant's further defence].

No. 6.

Interrogatories.

In the High Court of Justice. 18 . [Here put the letter and number.]
Division. Between A. B. Plaintiff,
and
C. D., E. F., and G. H., Defendants.

Interrogatories on behalf of the above-named [plaintiff, or defendant C. D.] for the examination of the above-named [defendants E. F. and G. H., or plaintiff].

1. Did not, &c.

2. Has not, &c.

&c. &c. &c.

[The defendant E. F. is required to answer the interrogatories numbered .]

[The defendant G. H. is required to answer the interrogatories numbered .]

No. 7.

Answer to Interrogatories.

[Heading as in Form 6.]

The answer of the above-named defendant E. F. to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F., make oath and say as follows :—

No. 8.

Affidavit as to Documents.

[Heading as in Form 1.]

I, the above-named defendant C. D., make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [here state upon what grounds the objection is made, and verify the facts as far as may be].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [state when].

6. That [here state what has become of the last-mentioned documents, and in whose possession they now are].

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

No. 9.

Notice to produce Documents.

[Heading as in Form 1.]

Take notice that the [plaintiff or defendant] requires you to produce for his inspection the following documents referred to in your [statement of claim, or defence, or affidavit, dated the day of A.D.].

Describe documents required.

X. Y.,
Solicitor to the

To Z.,
Solicitor for

No. 10.

Notice to inspect Documents.

[Heading as in Form 1.]

Take notice that you can inspect the documents mentioned in your notice of the day of A.D. [except the deed numbered in that notice] at [insert place of inspection] on Thursday next the inst., between the hours of 12 and 4 o'clock.

Or, that the [plaintiff or defendant] objects to giving you inspection of the documents mentioned in your notice of the day of A.D. , on the ground that [state the ground] :—

App. B.

No. 11.

Notice to admit Documents.

[Heading as in Form 1.]

Take notice that the plaintiff [or defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his solicitor or agent, at _____ on _____, between the hours of _____; and the defendant [or plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

(Signed)

To E. F., solicitor [or agent] for defendant [or plaintiff].

G. H., solicitor [or agent] for plaintiff [or defendant].

[Here describe the documents, the manner of doing which may be as follows:—]

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between A. B. and C. D. first part, and E. F. second part	January 1, 1848.
Indenture of lease from A. B. to C. D.	February 1, 1848.
Indenture of release between A. B., C. D. first part, &c. . .	February 2, 1848.
Letter, defendant to plaintiff	March 1, 1848.
Policy of insurance on goods by ship "Isabella," on voyage from Oporto to London	December 3, 1847.
Memorandum of agreement between C. D., captain of said ship, and E. F.	January 1, 1848.
Bill of exchange for 100 <i>l.</i> at three months, drawn by A. B. on and accepted by C. D., indorsed by E. F. and G. H. . .	May 1, 1849.

COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Registrar of baptism of A. B. in the parish of X.	January 1, 1848.	Sent by General Post, February 2, 1848. Served March 2, 1848, on defendant's attorney by E. F., of _____
Letter—plaintiff to defendant ..	February 1, 1848.	
Notice to produce papers	March 1, 1848	
Record of a judgment of the Court of Queen's Bench in an action, F. S. v. F. N.	Trinity Term, 10th Vict.	Served March 2, 1848, on defendant's attorney by E. F., of _____
Letters Patent of King Charles II. in the Rolls Chapel	January 1, 1680.	

No. 12.

Notice to admit Facts.

[Heading as in Form 1.]

Take notice that the plaintiff [*or defendant*] in this cause requires the defendant [*or plaintiff*] to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant [*or plaintiff*] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated, &c.

G. D., solicitor [*or agent*] for the plaintiff [*or defendant*].

To E. F., solicitor [*or agent*] for the defendant [*or plaintiff*].

The facts, the admission of which is required, are—

1. That John Smith died on the 1st of January, 1870.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1876.
5. That Julius Smith never was married.

No. 13.

Admission of Facts, pursuant to Notice.

[Heading as in Form 1.]

The defendant [*or plaintiff*] in this cause, for the purposes of this cause only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this cause.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant [*or plaintiff*] on any other occasion, or by anyone other than the plaintiff [*or defendant or party requiring the admission*].

Delivered, &c.

E. F., solicitor [*or agent*] for the defendant [*or plaintiff*].

To G. H., solicitor [*or agent*] for the plaintiff [*or defendant*].

Facts admitted.	Qualifications or Limitations, if any, subject to which they are admitted.
1. That John Smith died on the 1st of January, 1870.	
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1876.
5. That Julius Smith never was married.	5.

No. 14.

Notice to produce (General Form).

[Heading as in Form 1.]

Take notice that you are hereby required to produce and show to the Court on the trial of this all books, papers, letters, copies of letters, and other writings

App. B.

No. 22.

Notice as to Stock under Order XLVI.

To the [here add the name of the Company].

Take notice that the stock comprised in and now subject to the trusts of the [settlement, will, &c.] referred to in the affidavit to which this notice is annexed consists of the following (that is to say) [here specify the stock].

This notice is intended to stop the transfer of the stock only, and not the receipt of dividends [or, the receipt of the dividends on the stock as well as the transfer of the stock].

(Signed) A. B.

No. 23.

Affidavit of Service of Summons.

[Heading as in Form 1.]

I of solicitor for the above-named make oath and say as follows:—

I did on the day of 18, before the hour of in the noon, serve the above-named in this action with a true copy duly stamped of the summons hereto annexed marked A, by leaving it at the of the said situate with there

Sworn at }
this }
day of 18 }
Before me

This affidavit is filed on behalf of the

No. 24.

Affidavit on Registration of Bill of Sale.

In the High Court of Justice.
Division.

18 . No. .

I of make oath and say as follows:—

1. The paper writing hereto annexed and marked A is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by

2. The said bill of sale was made and given by the said on the day of 18 .

3. I was present and saw the said duly execute the said bill of sale on the said day of 18 .

4. The said resides at [state residence at time of swearing affidavit] and is [state occupation].

5. The name subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in the proper handwriting of me this deponent.

6. I am a solicitor of the Supreme Court, and reside at

7. Before the execution of the said bill of sale by the said I fully explained to the nature and effect thereof.

Sworn, &c.

No. 25.

Affidavit in support of Garnishee Order.

In the High Court of Justice.
Division.

Between 18 . . . No. .
Judgment Creditor,
and
Judgment Debtor.

I of the above-named judgment creditor [*or, solicitor for the above-named judgment creditor*] make oath and say as follows:—

1. By a judgment of the Court given in this action, and dated the day of 18 , it was adjudged that I [*or the above-named judgment creditor*] should recover against the above-named judgment debtor the sum of £ , and costs to be taxed, and the said costs were by a master's certificate dated the day of 18 allowed at £ .

2. The said still remains unsatisfied to the extent of and interest amounting to £

3. * is indebted to the judgment debtor in the sum of £ or * Name, address and description of garnishee.

4. The said is within the jurisdiction of this Court.
Sworn, &c.

No. 26.

Affidavit on Interpleader.

[*Heading as in Form 1.*]

I of the defendant in the above action make oath and say as follows:—

1. The writ of summons herein was issued on the day of 18 , and was served on me on the day of 18 .

2. The action is brought to recover The said * in my possession, but I claim no interest therein.

3. The right to the said subject matter of this action has been and is claimed † by one who †

4. I do not in any manner collude with the said or with the above-named plaintiff, but I am ready to bring into court or to pay or dispose of the said in such manner as the Court may order or direct.
Sworn, &c.

* "is" or "are."

† If claim in writing, make the writing an exhibit.

‡ State expectation of suit, or that he has already sued.

No. 27.

Affidavit as to Stock under Order XLVI.

In the matter of [*here state the nature of the document comprising the stock, and add the date and other particulars, so far as known to the deponent, sufficiently to identify the document*];

and

In the matter of the Act of Parliament, 5 Vict. c. 5.

I of make oath and say that according to the best of my knowledge, information, and belief, I am [*or, if the affidavit is made by the solicitor, A. B. of is*] beneficially interested in the stock comprised in the [*settlement, will, &c.*] above mentioned, which stock, according to the best of my knowledge and belief, now consists of the stock specified in the notice hereto annexed.

This affidavit is filed on behalf of A. B., whose address is [*state address for service*].



App. C.
Sect. I.

APPENDIX C.

FORMS OF STATEMENTS OF CLAIM TO BE USED PURSUANT TO ORDER XIX., RULE 5.

SECTION I.

General.

In the High Court of Justice.
Division.

18 . [Here put the letter and number.]

Writ issued the of 18 .

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

Statement of Claim.

The plaintiff, &c.

[or]

The plaintiff's claim is, &c.

[To be filled up in manner exemplified in the following forms.]

The plaintiff claims [as in following forms].

The plaintiff

(Signed)

Delivered the of 18 .

SECTION II.

*Actions specially assigned to the Chancery Division by s. 34, subs. 3
of the Principal Act.*

No. 1.

Administra-
tion.

The plaintiff is a creditor of X. Y. deceased, of whom the defendant C. D. is executor [or administrator] and the defendant E. F. is heir at law [or devisee].

Particulars of the claim:

Principal due on the bond of the testator [or intestate] dated the

of	18 .	of	at 5 per cent.		£2,000 0 0
					250 0 0

£2,250 0 0

The plaintiff claims to be paid the amount due to him, or to have the real and personal estate of the said X. Y. administered.

(Signed)

Delivered ,

No. 2.

Wilful
default.

1. The plaintiff is residuary legatee of A. B. of the city of Bath, who died March 3rd, 1882, having made his will dated March 2nd, 1882, and appointed the defendants his executors, who proved his will April 6th, 1882.

2. The defendants have been guilty of wilful default in not getting in certain property of the testator.

3. The wilful default on which the plaintiff relies is as follows:—

C. D. owed to the testator 1,000*l.*, in respect of which no interest had been paid or acknowledgment given for five years before the testator's death. The defendants were aware of this fact, but never applied to C. D. for payment until more than a year after testator's death, whereby the said sum was lost.

The plaintiff claims:—

1. Account of testator's personal estate on footing of wilful default.
2. Administration of the testator's personal estate.

(Signed)

Delivered

No. 3.

App. C.
Sect. II.

1. The plaintiff on December 20th, 1875, entered into partnership articles with the defendant for 10 years.

Dissolution of
partnership.

2. The defendant has broken the partnership articles as follows:—

- (a.)
- (b.)
- (c.)

The plaintiff claims:—

- 1. Dissolution.
- 2. Accounts and inquiries.
- 3. A receiver and manager.

(Signed)
Delivered

No. 4.

For accounts.

- 1. The plaintiffs are executors of A., deceased.
- 2. From the year 1875 till his death A. employed the defendant as his confidential agent in the management of a large building estate at X.
- 3. The defendant as such agent received large sums of money for the said A., for which he refuses to account.

The plaintiffs claim:—

- 1. Accounts of all sums received and paid by the defendant as agent of A.
- 2. Payment of the amount found due.

(Signed)
Delivered

No. 5.

Foreclosure
or sale.

- 1. The plaintiff is mortgagee of lands belonging to the defendant.
 - 2. The following are the particulars of the mortgage:—
 - (a.) (*Date and names of mortgagor and mortgagee.*)
 - (b.) (*Sum secured.*)
 - (c.) (*Rate of interest.*)
 - (d.) (*Property subject to mortgage.*)
 - (e.) (*Amount now due.*)
- (*If the plaintiff's title is a derivative title, state shortly the assignments under which he claims.*)

(*If the plaintiff is mortgagee in possession add:*)

3. The plaintiff took possession of the mortgaged property on the _____ of _____, and is ready to account as mortgagee in possession from that time.

The plaintiff claims payment, or, in default, sale, or foreclosure (and possession).

(Signed)
Delivered

No. 6.

Redemption.

- 1. The plaintiff is mortgagor of lands, of which the defendant is mortgagee.
 - 2. The following are the particulars of the mortgage:
 - (a.) (*Date.*)
 - (b.) (*Sum secured.*)
 - (c.) (*Rate of interest.*)
 - (d.) (*Property subject to mortgage.*)
- (*If the plaintiff's title is derivative, state shortly the deeds under which he claims.*)
- (*If the defendant is mortgagee in possession add:*)
- 3. The defendant has taken possession [*or has received the rents*] of the mortgaged property.

The plaintiff claims to redeem the said premises, and to have the same reconveyed to him [and to have possession thereof].

(Signed)
Delivered

No. 7.

- 1. By a settlement on the marriage of A. B. and C. B., dated January 10, 1850, Whiteacre was demised to trustees for 1,000 years on trust after the deaths of A. B. and C. B. to raise 5,000*l.* for the younger children of the marriage who should attain 21.

For raising
portions or
other charges
on land.

- 2. A. B. died February 15, 1870.
- 3. C. B. died June 10, 1875.

App. C.
Sect. II.

4. There were five children only of the marriage of A. B. and C. B., all of whom are now living and have attained twenty-one. The plaintiff is the second born child.

5. The defendants were on April 5, 1877, appointed trustees of the settlement.

The plaintiff claims :

1. To have 5,000*l.* raised by sale or mortgage, and distributed among the persons entitled.

(Signed)

Delivered

No. 8.

Sale and distribution of proceeds of property subject to any lien or charge.

1. On November 12, 1880, A. and the defendant B. deposited with the plaintiff 500 Russian Government bonds as security for a debt of 1,000*l.* and interest at 4 per cent. due from A. and the defendant B. to the plaintiff.

2. A. died March 12, 1881.

3. On March 30, 1881, administration of the estate of A. was granted to the defendant C.

4. 800*l.* and 30*l.* for interest is owing to the plaintiff on the security of the said bonds.

The plaintiff claims :

1. Sale of the said bonds.

2. Application of the proceeds in payment of his debt.

3. Distribution of the surplus among the parties entitled.

(Signed)

Delivered

No. 9.

Breach of trust.

1. By a settlement dated July 3rd, 1872, on the marriage of the plaintiffs' father and mother, of which the defendant A. B. and one C. D. were trustees, the plaintiffs are absolutely entitled on the deaths of their father and mother.

2. On August 5, 1874, C. D. died, and the defendant E. F. was appointed in his place.

3. On December 1, 1879, the plaintiffs' father died.

4. On January 1, 1880, the plaintiffs' mother died.

5. The defendants have committed the following breaches of trust by :

(a.) Sale of 3,000*l.* Bank Stock and investment of the proceeds in the business of the defendant A. B.

(b.) Sale of leasehold property worth 5,000*l.* to G. H. for 1,000*l.* [without taking any proper steps to ascertain its value or to obtain such value].

The plaintiffs claim :

1. The replacement of 3,000*l.* Bank Stock and 5*l.* per cent. interest on the proceeds of the Bank Stock sold from the date of sale till replacement.

2. Payment of 4,000*l.* and interest at 5 per cent. per annum from the date of the sale.

(Signed)

Delivered

No. 10.

Execution of trust.

1. By a settlement dated June 10, 1856, upon trust for A. B. and C. B. successively for life, with remainder for their children who should attain twenty-one, the following property was assured :—

(a.) A sum of 5,735*l.* 14*s.* 2*d.* consolidated 3*l.* per cent. annuities.

(b.) 4,000*l.* invested on mortgage of land at X.

(c.) One-fifth of the residuary estate of D. deceased, subject to a prior life interest.

2. On August 15, 1862, C. B. died.

3. On February 18, 1875, A. B. died.

4. On September 10, 1879, D. died.

5. A. B. and C. B. had five children only, of whom the plaintiff is one.

6. The defendants are the present trustees of the settlement.

The plaintiff claims :

1. Execution of the trusts of the settlement.

2. All necessary accounts and inquiries.

3. A receiver.

(Signed)

Delivered

No. 11.

App. C.
Sect. II.

1. In 1865 a marriage was arranged between A. B. and the plaintiff.
2. By an agreement contained in two letters, dated February 10 and 12, 1865, it was agreed between C. B., the father of A. B., and D. the father of the plaintiff, that each should settle 10,000*l.* on trust, for A. B. and the plaintiff successively for life, with remainder on the usual trusts for the children of the marriage.
3. By letter, dated March 7, 1865, from D. to Messrs. E. & Co., his solicitors, he instructed them to prepare a settlement.
4. A settlement dated April 25, 1865, was executed upon the marriage of A. B. and the plaintiff, accidentally omitting to give a life interest to the plaintiff after the life interest of A. B.
5. On May 20, 1882, A. B. died.
6. The defendants H. and K. are the present trustees of the settlement.
7. The defendants L., M., and N., are the only children of the marriage.

For rectification,
&c. of
instruments.

The plaintiff claims:

Rectification of the settlement.

(Signed)
Delivered

No. 12.

1. By an agreement [*or*, letters] dated [*or*, made verbally at interviews on or about] the day , the plaintiff agreed to sell to the defendant the Home Farm, Kent, for £ . The sale was to be completed on the of .
(If the agreement was verbal, add—)
 2. The agreement so entered into has been part performed as follows [*state how*].
- The plaintiff claims specific performance of the above agreement, and that the defendant may be ordered to execute a proper conveyance of the premises to the plaintiff [*stating in each case what the defendant is required specifically to do*].

(Signed)
Delivered

No. 13.

1. By will, dated January 5, 1864, A. devised Whiteacre to B., C. and D., as tenants in common.
2. On March 10, 1865, A. died.
3. On March 20, 1865, A.'s will was proved.
4. On June 25, 1867, B. conveyed to the plaintiff his share of Whiteacre.
5. On July 30, 1869, C. conveyed his share to the defendants on trust for sale.
6. By will, dated November 5, 1872, D. devised his share among his children equally.
7. On December 2, 1872, D. died.
8. On December 15, 1872, D.'s will was proved.
9. There were ten children of D. living at his decease, some of whom have since died.

Partition or
sale of real
estates.

10. Whiteacre consists of a mansion, house, and grounds.
11. A sale of the property and a division of the proceeds will be more beneficial than a division of the property.]

The plaintiff claims:—

A division of Whiteacre among the parties interested.

[*or*, a sale of Whiteacre and distribution of the proceeds among the parties interested.]

(Signed)
Delivered

No. 14.

1. By will, dated August 10, 1882, A. devised Whiteacre and 10,000*l.* to defendant on trust for plaintiff.
2. On August 15, 1882, A. died.
3. On August 30, 1882, probate was granted to the defendant, the sole executor.
4. The plaintiff is an infant twelve years old.

Wardship of
infants and
care of in-
fants' estates.

The plaintiff claims:—

1. That the plaintiff may become a ward of Court.
2. Administration of the trusts of the will of A. so far as necessary.

(Signed)
Delivered

App. C.
Sect. IV.

SECTION IV.

Actions included in Order III., Rule 6, Classes A., B., C., D., E. and F.

No. 1.

Goods sold and delivered.

The plaintiff's claim is for the price of goods sold and delivered.
Particulars:—
1881—31st December,—

	£ s. d.
Balance of account for butcher's meat to this date.....	35 10 0
1882—1st January to 31st March—	
Butcher's meat	74 5 0
	109 15 0
1882—1st February.—Paid	45 0 0
	£64 15 0

Place of trial, London.

(Signed)
Delivered

No. 8.

Covenantee against covenantor on a covenant to pay money.

The plaintiff's claim is for principal and interest due under a covenant in a deed dated the 1st of January, 1882.
Particulars:—

	£
Principal	100
Paid	20
	80
Principal due	80
Interest	3
	83

Place of trial, London.

(Signed)
Delivered

No. 9.

Against shareholder for allotment money and calls by a company under 25 & 26 Vict. c. 89.

The plaintiff's claim is for money in which the defendant, as a member of the company, is indebted to the plaintiffs (being a company incorporated under the Companies Act, 1862) for allotment money of per share on shares in the company allotted to the defendant, as such member, at his request and for calls of £ each upon shares in the company of which the defendant is a holder, whereby an action has accrued to the plaintiffs.

Particulars:—

18	—Allotment of	shares to the	
	defendant at £	per share ...	£
18	—(1st) call at £	per share..	£
	(2nd) call at £	per share..	£
			£

Amount due

Place of trial,

(Signed)
Delivered

No. 12.

Debt upon a trust.

The plaintiff's claim is against the defendants as trustees under the settlement upon the marriage of A. B. and X. Y., dated January 1st, 1870, whereby 10,000l. invested on mortgage of land at Z. was vested in the defendants as trustees upon trust to pay the income thereof half-yearly to the plaintiff.

Particulars:—

1882, December 25th, half a year's income	£ 200
---	-------

[Several additional forms are contained in the Appendix.]

No. 13.

See Sect. VII. Form No. 1.

App. C.
Sect. IV.

Landlord
against tenant
whose term
has expired or
has been de-
termined by
notice to quit.

SECTION V.

Actions for Damages for Breach of Contract or Duty arising out of Contract.

No. 1.

1. The plaintiff has suffered damage by breach of contract for sale and delivery by the defendant to the plaintiff of 100 tons of Scotch pig iron at 5*l.* per ton to be delivered on rail at Middlesborough on the 15th of March, 1882.

Buyer against
seller of goods
for not deli-
vering.

2. The defendant did not deliver any (or tons, as the case may be) of the said iron.

Particulars of damage:—

Loss of profit at 1*l.* per ton on 100 tons..... £ 100

The plaintiff claims 100*l.*

Place of trial, London.

(Signed)
Delivered

No. 8.

1. The plaintiff has suffered damage from the defendant's negligence in his conduct for the plaintiff, as his solicitor, of business undertaken by the defendant on the plaintiff's retainer.

Client against
solicitor for
negligence.

2. The negligence was in making an application under Order XIV., Rule 1, in the case of A. B. (the plaintiff) v. C. D., where the case was one of unliquidated damages and not of debt.

Particulars of damage:—

Taxed costs paid to defendant on dismissal of summons £

The plaintiff claims £

Place of trial.

(Signed)
Delivered

No. 9.

1. By a repairing covenant contained in a lease under seal from the plaintiff to the defendant, dated the 1st of January, 1876, of a house No. 401, Piccadilly, for seven years from the 25th day of December, 1875, the defendant covenanted to keep the premises in such repair and condition as therein mentioned.

Landlord
against tenant
for breach of
covenant to
repair.

2. The premises were during the term out of such repair as was required by the covenant.

3. They were yielded up out of such repair at the expiration of the term.

4. Particulars of dilapidations were delivered to the defendant's solicitor on the of 18, and exceed three folios.

The plaintiff claims £

Place of trial.

(Signed)
Delivered

[The Appendix contains several other Forms.]

SECTION VI.

Actions claiming Injunctions, Damages, or Declarations of Right founded on Wrongs.

No. 1.

The plaintiff has suffered damage by the defendant wrongfully depriving the plaintiff of two casks of oil by refusing to give them up on demand (or, throwing of them overboard out of a boat in the London Docks, &c.)

Conversion
of goods.

M.

Q Q

App. C.
Sect. VI.

[If any special damage is claimed add :]—

Particulars [fill them in].

The plaintiff claims 100*l*.

Place of trial, London.

(Signed)
Delivered

No. 6.

Injunction,
&c. for in-
fringement
of patent.

The defendant has infringed the plaintiff's patent, No. 14,084, granted for the term of 14 years, from the 21st of May, 1880, for certain improvements in the manufacture of iron and steel, whereof the plaintiff was the first inventor.

The plaintiff claims an injunction to restrain the defendant from further infringement and 100*l*. damages.

Particulars of breaches are delivered herewith.

Place of trial, Durham.

(Signed)
Delivered

No. 7.

Damages for
infringement
of copyright.

The defendant has infringed the plaintiff's copyright in a book entitled "The History of Rome," registered on the _____ day of _____

Particulars of special damage are as follows :—

Loss of sale of 50 copies	.	.	.	.	£50
Loss of profit in the copyright	.	.	.	.	50
					<hr/> £100

The plaintiff claims 100*l*.

Place of trial, Surrey.

(Signed)
Delivered

No. 8.

Injunction,
&c. for in-
fringement of
trade mark.

1. The defendant has infringed the plaintiff's trade mark.

2. The trade mark is (*describe it*).

[If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived.]

3. The following are the acts complained of, viz. :—

(*Set them out.*)

The plaintiff claims an injunction to restrain the defendant, his servants, and agents, from infringing the plaintiff's said trade mark, and in particular from [*stating any particular injunction sought*].

The plaintiff also claims an account or damages.

(Signed)
Delivered

No. 10.

Obstruction
of lights.

1. The plaintiff is the owner [*or, lessee*] and occupier of a house, 700, Regent Street, in which are the following ancient lights :—

(1.) The kitchen window in the basement on the south side.

(2.) The two back dining room windows on the ground floor on the south side.

(3.) The landing window and back drawing room window on the south side.

2. The defendant is erecting a building which will, if not stopped, materially diminish the light coming through the said windows.

The plaintiff claims an injunction to restrain the defendant, his contractors, servants, and workmen, from continuing the erection of the building, so as to obstruct or diminish the access of light to the said windows or any of them.

The plaintiff will also, if necessary, claim to have the said building pulled down, or damages for the injury he will sustain if the same is completed and not pulled down.

(Signed)
Delivered

No. 11.

APP. C.
SECT. VI.

The plaintiff has suffered damage from offensive and pestilential smells and vapours caused by the defendant in the plaintiff's dwelling-house, No. 15, James Street, Durham. Nuisance by smells.

The plaintiff claims :—

- (1.) £50.
- (2.) An injunction to restrain the defendant from the continuance or repetition of the said injury or the committal of any injury of a like kind in respect of the same property.

Place of trial, Yorkshire, West Riding.

(Signed)
Delivered

No. 12.

1. The plaintiff is the owner (or lessee) and occupier of a farm known as _____, through which there runs a river known as _____, Nuisance by pollution of water.
 2. The defendant or persons in his employ pollute the water in the said river by passing into the same the refuse of the defendant's dye works, situate higher up the said river.

The plaintiff claims an injunction to restrain the defendant, his servants and agents, from sending from the said dye works into the said river any matter so as to pollute the waters thereof, or to render them unwholesome or unfit for use, to the injury of the plaintiff (*or, as the case may be*).

The plaintiff will also claim damages in respect of the said nuisance.

Place of trial.

(Signed)
Delivered

No. 13.

1. On 31st January, 1883, the defendant issued a prospectus to the public relating to the A. B. Company, Limited. Fraudulent prospectus.
2. On Feb. 1st, 1883, the plaintiff received a copy of this prospectus.
3. The plaintiff subscribed for 100 shares in the company on the faith of this prospectus.
4. The prospectus contained misrepresentations, of which the following are particulars :—
 - (a.) The prospectus stated " whereas in fact"
 - (b.) The prospectus stated " whereas in fact"
 - (c.) The prospectus stated " whereas in fact"
5. The defendant knew of the real facts as to the above particulars.
6. The following facts, which were within the knowledge of the defendants, are material, and were not stated in the prospectus :
 - (a.)
 - (b.)

7. The plaintiff has paid calls to the company to the extent of 1,000%.

The plaintiff claims :—

1. Repayment of 1,000% and interest.
2. Indemnity.

(Signed)
Delivered

No. 14.

The plaintiff has suffered damage from the defendant inducing the plaintiff to buy the goodwill and lease of the George public-house, Stepney, by fraudulently representing to the plaintiff that the takings of the said public-house were 40% a week, whereas in fact they were much less, to the defendant's knowledge. Fraudulent sale of a lease.

Particulars of special damage :—

(Fill them in.)

The plaintiff claims £

(Signed)
Delivered

[The Appendix contains other Forms besides those here given.]

App. C.
Sect. VII.

SECTION VII.

Actions for Recovery of Land, &c.

No. 1.

Landlord
against tenant
whose term
has expired,
&c.

1. The plaintiff is entitled to the possession of a farm and premises called Church Farm, in the parish of St. James, in the county of Surrey, which was let by the plaintiff to the defendant for the term of three years from the 29th of September, 1879, which term has expired [or as tenant from year to year from the 29th September, 1875, which said tenancy was duly determined by notice to quit expiring on the 29th of September, 1881.]

The plaintiff claims possession and 50*l.* for mesne profits.
Place of trial, Surrey.

(Signed)
Delivered

No. 2.

Heir-at-law
against
stranger.

1. The plaintiff is entitled to the possession of Blackacre in the parish of [or, of No. 2, Bridge Street, Bristol], in the county of
2. On and before the of 188 , A. B. was seised in fee and in possession of the premises.
3. On the of 188 the said A. B. died so seised, whereupon—
4. The estate descended to the plaintiff, his eldest son and heir-at-law.
5. After the death of the said A. B. the defendant wrongfully took possession of the premises.

The plaintiff claims:—

1. Possession of the premises.
2. Mesne profits from the of
Place of trial,

(Signed)
Delivered

APPENDIX D.

FORMS OF DEFENCE TO BE USED PURSUANT TO ORDER XIX.,
RULE 5.

SECTION I.

General Form.

In the High Court of Justice,
Division.

18 . No. .

Between
and
Plaintiff,
Defendant.

Defence.

The defendant says that:—

1. }
2. } (*To be filled up in the manner exemplified in the following forms.*)
3. }

(Signed)
Delivered

Counter-claim.

The defendant says that:—

1. } (To be filled up in the manner exemplified in the following forms.)
2. }

The defendant counter-claims.

(Signed)
DeliveredApp. D.
Sect. I.

Defence and Counter-claim.

Defence.

The defendant says:—

1. }
2. } (To be filled up.)

Counter-claim.

The defendant repeats paragraph 2 of his defence, and says that:—

3. }
4. } (To be filled up.)

The defendant counter-claims.

(Signed)
Delivered

SECTION II.

To Actions specially assigned to the Chancery Division by Section 34 of the Principal Act. Appendix C., Sect. II.

1. The defendants do not admit the plaintiff's claim.

The defendant A. B. admits the plaintiff's claim, but not assets.

The defendant C. D. admits assets, but not the plaintiff's claim.

To actions for
administration.

2. The claim is barred by the Statute of Limitations.

[State which.]

3. Payment was made by deceased.

4. The claim is fraudulent in the following particulars:

[Set out particulars.]

5. The defendant is entitled to a set-off, of which the following are the particulars:—

[Set out particulars.]

6. The claim was released by deed dated the _____ of _____

7. Notice was given and assets distributed under Statute 22 & 23 Vict. c. 35, s. 29.

Particulars of the Notice.

Advertisements in the Times of January 1, 1880.

„ New York Herald, February, 1881.

„ Bombay Gazette of January 25, 1881.

[giving the titles of the newspapers and the dates of those in which the advertisement appeared.]

8. The personal estate of the testator is sufficient to pay the plaintiff his debt if established.

9. The defendant is not heir-at-law or devisee of the deceased.

(Signed)
Delivered

No. 1.

1. The defendant did not execute the mortgage.

2. The mortgage was not assigned to the plaintiff (if more than one assignment is alleged say which is denied).

To actions for
foreclosure by
mortgagee.

3. The debt is barred by the Statute of Limitations.

4. Payments have been made, viz.:—

10 July, 1874, 1,000*l.*

18 October, 1875, 500*l.*

App. D.
Sect. II.

5. The plaintiff took possession on the _____ of _____ and has received the rents ever since.
6. The plaintiff released the debt by deed, dated 1 June, 1882.
7. The defendant conveyed all his interest to A. B. by deed, dated 25 November, 1880.

The defendant claims :—
1. Account.
2. Re-conveyance.

(Signed)
Delivered

No. 2.

To same by
alleged second
incumbrancer
who claims
priority.

1.)
2.)
3.)
4.) *(As in preceding Form.)*
5.)
6.)

7. By a deed dated 1st June, 1880, the mortgagor A. B. mortgaged the property in question to the defendant to secure 5,000*l.* and interest at 5 per cent. per annum.

The defendant claims—

1. A declaration of priority and foreclosure (and a receiver).

(Signed)
Delivered

[If the plaintiff claims payment of the mortgage debt, the defendant must, if he disputes his liability, show the grounds on which he does so as in other cases of debt ; or he can claim indemnity against the owner of the equity of redemption under Order XVI., Rule 48.]

To actions for
redemption.

1. The plaintiff's right to redeem is barred by the Statute of Limitations.—*[State which.]*
2. The plaintiff assigned all interest in the property to A. B.
3. The defendant by deed, dated the _____ day of _____ assigned all his interest in the mortgage debt and property comprised in the mortgage to A. B.
4. The defendant never took possession of the mortgaged property, or received the rents thereof.

[If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.]

(Signed)
Delivered

To actions for
specific per-
formance.

1. The defendant did not enter into the agreement.
 2. A. B. was not the agent of the defendant *(if alleged by plaintiff)*.
 3. The plaintiff has not performed the following conditions.—*(Conditions.)*
 4. The defendants did not.—*[Alleged acts of part performance.]*
 5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matters :—*[State why.]*
 6. The Statute of Frauds has not been complied with.
 7. The agreement is uncertain in the following respects.—*[State them.]*
 8. *[or]* The defendant has been guilty of delay ;
 9. *[or]* The defendant has been guilty of fraud *[or misrepresentation]* ;
 10. *[or]* The agreement is unfair ;
 11. *[or]* The agreement was entered into by mistake.
- The following are particulars of (8), (9), (10), (11), *[or as the case may be]*.
12. The agreement was rescinded under Conditions of Sale, No. 11, *(or, by mutual agreement)*.

(Signed)
Delivered

[In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e. g., Statute of Limitations, accord and satisfaction, release, fraud, &c.]

SECTION IV.

To Actions included in Order III., Rule 6, Classes A., B., C., D., E., and F.

1. The defendant did not accept the bill.
2. The defendant did not make the note.
3. The defendant did not draw the check.
4. The defendant did not indorse to A. B.
5. The defendant (*or* A. B.) did not indorse to the plaintiff.
6. The bill was not presented for payment.
7. The defendant had not due notice of dishonour.
8. The plaintiff was not the holder at the commencement of the action.
9. The bill was accepted (*or*, the note was made) for the accommodation of the defendant without consideration.
10. The bill was accepted for the accommodation of the drawer and indorsed to the plaintiff without consideration.
11. The bill was accepted and delivered to the drawer without consideration for the purpose of his getting it discounted for the defendant, and the drawer, in fraud of the defendant, and contrary to the said purpose indorsed the bill to the plaintiff without consideration (*or*, with notice of the said fraud, *or*, overdue).
12. The defendant was induced to accept by the fraud of the drawer, who indorsed to the plaintiff without consideration (*or*, with notice of the fraud, *or*, overdue).

To actions on bills of exchange, promissory notes or checks.

Particulars of the fraud are as follows:—The drawer on or about the 15th of May, 1882, falsely and fraudulently stated to the defendant that he had shipped 20 tons of pig iron for the defendant on board the “Ajax,” which he had not done.

13. The defendant accepted the bill (*or*, made the note) for and on account of the price of 50 tons of coal to be delivered by the plaintiff to the defendant by the 1st of May, 1882, and the plaintiff failed to deliver the goods.

14. The bill (*or*, note, *or*, check) was rendered void after issue by a material alteration, viz., by the alteration of the date from the 21st of January to the 2nd of January.

(Signed)
Delivered

General Defences.

1. On 5th April, 1882, a brown horse was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action; (*or*, on 5th April, 1882, an agreement between the plaintiff and the defendant whereby it was agreed between the plaintiff and the defendant that the defendant should deliver the cargo of the “Mary” at the Surrey Commercial Docks instead of at Hull as per charter-party of 1st March, 1882, was accepted in discharge of the alleged cause of action). Accord and satisfaction.
2. The defendant became bankrupt. Bankruptcy, &c.
3. The plaintiff became bankrupt before action, and the cause of action vested in the trustees of his property.
4. The defendant was discharged under a liquidation by arrangement pursuant to the 125th section of the Bankruptcy Act, 1869.
5. The defendant compounded with his creditors under the 126th section of the Bankruptcy Act, 1869, and duly paid to the plaintiff the composition on the day appointed.
6. The defendant was covert at the time of making the alleged contract (*or*, contracting the alleged debt). Coverture.
7. The defendant was an infant at the time of making the alleged contract (*or*, contracting the alleged debt). Infancy.
8. The defendant as to the whole action (*or*, as to of £ , parcel of the money claimed, *or*, as to the plaintiff’s claim on the guarantee of the of 18 , *or*, as the case may be), has paid into court £ , and says that sum is enough to satisfy the plaintiff’s claim, (*or*, the plaintiff’s claim herein pleaded to). Payment into Court.
9. The causes of action were released by deed dated the 1st of May, 1882, between the plaintiff of the first part and the defendant of the second part. Release.
10. The contract was rescinded (*or*, the defendant was exonerated by the plaintiff) before breach. Particulars are as follows:—An arrangement between the plaintiff and the defendant, made verbally on the 15th of April, 1882 (*or*, by letter from the defendant to the plaintiff, and answer of the plaintiff dated the 14th and 15th of April, 1882). Rescission before breach.

App. D.
Sect. IV.

Statute of
Limitations.
Statute of
Frauds.

11. The debt was barred by the Statute of Limitations [*state which*].
12. (17th) section of the Statute of Frauds has not been complied with.
(Signed)
Delivered

[*Other forms are given in the Appendix.*]

SECTION V.

To Actions for Damages for Breach of Contract or Duty. Appendix C., Sect. V.

Denials.

1. The defendant did not contract (*or, promise, or, agree*) as alleged.
2. The defendant did not receive the goods for the alleged purpose (*or, on the alleged terms*).
3. The defendant did not receive the plaintiff as a passenger to be carried as alleged.

[*Other forms are given in the Appendix.*]

SECTION VI.

To Actions claiming Injunctions, Damages, or Declarations of Right, founded upon Wrongs. Appendix C., Sect. VI.

To all actions
for wrongs.

1. Denial of the several acts (*or, matters*) complained of.
(Signed)
Delivered

To actions for
infringement
of a patent.

1. The defendant did not infringe the patent.
2. The invention was not new.
3. The plaintiff was not the first or true inventor.
4. The invention was not useful.
5. [*Denial of any other matter of fact affecting the validity of the patent.*]
6. The patent was not assigned to the plaintiff.

(Signed)
Delivered

Copyright.

- (1.) The plaintiff is not the author [*assignee, &c. as the case may be*].
- (2.) The book was not registered.
- (3.) The defendant did not infringe.

(Signed)
Delivered

Trade mark.

- (1.) The trade mark is not the plaintiff's.
- (2.) The alleged trade mark is not a trade mark.
- (3.) The defendant did not infringe.

(Signed)
Delivered

Light.

1. The plaintiff's lights are not ancient [*or deny his other alleged prescriptive rights*].
2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

3. The defendant denies that he or his servants pollute the water [or, do what is complained of].

App. D.
Sect. VI.

[If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of his claim, i. e. whether by prescription, grant, or what.]

Nuisance.

4. The plaintiff has been guilty of laches, of which the following are particulars:—

1870. Plaintiff's mill began to work.

1871. Plaintiff came into possession.

1883. First complaint.

5. As to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [If other grounds are relied on, they must be stated, e. g. the Statute of Limitations as to past damage].

(Signed)
Delivered

[Other forms are given in the Appendix.]

SECTION VII.

To Actions for Recovery of Land. Appendix C., Sect. VII.

1. The defendant is in possession of the premises by himself or his tenant.
2. The defendant had no notice to quit.

(Signed)
Delivered

SECTION VIII.

Counterclaims.

The defendant lent 500*l.* to the plaintiff on 1st May, 1882.

The defendant counterclaims 500*l.*

1. The defendant has suffered damage by the plaintiff's breach of a contract for the sale and delivery by the plaintiff to the defendant of 5,000 tons of Merthyr steam coal at 18*s.* 6*d.* per ton F.O.B. at Cardiff by equal monthly deliveries over the first five months of 1882.

2. The April and May instalments were not delivered.

Particulars of the damages:—

	£	s.	d.
Difference between market price in April and May, and the contract price, 2 <i>s.</i> 6 <i>d.</i> per ton on 2,000 tons	250	0	0
The defendant counterclaims 250 <i>l.</i>			

(Signed)
Delivered



App. E.
Sect. I.

APPENDIX E.

FORMS OF REPLY, &c., TO BE USED PURSUANT TO ORDER XIX.,
RULE 5.

SECTION I.

General form. In the High Court of Justice,
Division.

18 . [*Here put the letter and number.*]
Between Plaintiff,
and Defendant.

Reply.

The plaintiff as to the defence says that—

- 1.
- 2.

The plaintiff as to the counter-claim says that—

- 1.
- 2.

(Signed)
Delivered

Reply.

The plaintiff as to the defence says that—

1. He joins issue.
2. The agreement giving time to the principal expressly reserved remedies against the surety.

The plaintiff as to the counter-claim says that—

1. The defendant was not ready and willing to accept and pay for the goods.

(Signed)
Delivered

To actions on a guarantee to which defence raised of time given to the principal and counterclaim for non-delivery of goods.

SECTION II.

Example of a Statement of Claim, Defence, and Reply.

In the High Court of Justice,
Queen's Bench Division.

18 . [*Here put the letter and number.*]
Between A. B., Plaintiff,
and
C. D., Defendant.

Statement of Claim.

The plaintiff's claim is for work done and materials provided by the plaintiff for the defendant at his request.

Particulars:—

1882, January 1 to 31 May. To rebuilding house at	£		s.		d.
Wigan, as per contract dated the 24th December, 1881	3,400				0 0
To extras as per account delivered		243			0 0

Paid on account	3,643		0		0
					0 0

Balance due	643		0		0
-----------------------	-----	--	---	--	---

The plaintiff also seeks to recover interest on the above balance from the 31st May, 1882, till payment or judgment.

Place of trial, Lancashire, Northern Division.

(Signed)
Delivered the 1st of January, 1883.

[*Heading as in General Form.*]

Defence and Counter-claim.

App. E.
Sect. II.

Defence.

The defendant says that—

1. Except as to 200ℓ., parcel of the money claimed, the architect did not grant his certificate pursuant to the contract.

2. As to 200ℓ., parcel of the money claimed, the defendant brings (or has brought) into Court 200ℓ., and says that sum is enough to satisfy the plaintiff's claim herein pleaded to.

Counter-claim.

The defendant says that—

1. The contract contained a clause whereby it was provided that the plaintiff should complete the works by the 31st of March, 1882, or in default pay to the defendant 1ℓ. a day for every subsequent day during which the works should remain unfinished, and they so remained unfinished for 61 days to the 31st of May.

The defendant counter-claims 61ℓ.

(Signed)

Delivered the 22nd of January, 1883.

[*Heading as in General Form.*]

Reply.

The plaintiff says that—

1. As to the first paragraph of the defence, he joins issue.

2. As to the second paragraph thereof, the plaintiff accepts the £ in satisfaction.

The plaintiff as to the counterclaim says that—

3. The liquidated damages were waived by ordering extras and material alterations in the works.

4. The defendant waived the liquidated damages by preventing the plaintiff from having access to the premises till a week after the agreed time.

(Signed)

Delivered the 5th of February, 1883.

SECTION III.

Defence including an objection in Point of Law.

No. 1.

[*Heading.*]

Defence.

The defendant says that—

1. The goods were not supplied to E. F. on the guarantee.

2. The defendant will object that the guarantee discloses a past consideration on the face of it.

To action on a guarantee for the price of goods.

(Signed)

Delivered

[*Other forms are given in the Appendix.*]

App. F.

APPENDIX F.

FORMS OF JUDGMENT.

No. 1.

Default of Appearance and Defence in Case of Liquidated Demand.

18 . [Here put the letter and number.]

In the High Court of Justice,
Division.

Between A. B. Plaintiff,
and
C. D. and E. F. Defendants.

30th November, 18 .

The defendants [or the defendant C. D.] not having appeared to the writ of summons herein [or not having delivered any defence], it is this day adjudged that the plaintiff recover against the said defendant £ , and costs, to be taxed.

No. 2.

Interlocutory Judgment in Default of Appearance or Defence where Demand unliquidated.

[Heading as in Form 1.]

The day of 18 .

No appearance having been entered to the writ of summons or no defence having been delivered by the defendant herein.

It is this day adjudged that the plaintiff recover against the defendant the value of the goods [or damages or both, as the case may be] to be assessed.

No. 3.

Judgment in Default of Appearance in Action for Recovery of Land.

[Heading as in Form 1.]

30th November, 18 .

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the indorsement on the writ described as

No. 4.

Judgment in Default of Appearance and Defence after Assessment of Damages.

[Heading as in Form 1.]

30th November, 18 .

The defendants not having appeared to the writ of summons herein [or not having delivered any defence], and a writ of inquiry, dated 1876, having been issued directed to the sheriff of to assess the damages which the plaintiff was entitled to recover, and the said sheriff having by his return dated the 18 , returned that the said damages have been assessed, at £ , it is adjudged that the plaintiff recover £ and costs to be taxed.

No. 5.

Judgment after Appearance and Order under Order XIV., Rule 1.

[Heading as in Form 1.]

The day of 18 .

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of , dated the day of 18 , obtained leave to sign judgment under the Rules of the Supreme Court, Order XIV., Rule 1, for [recite order].

It is this day adjudged that the plaintiff recover against the defendant £ [or possession of the land in the indorsement on the writ described as] and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a (taxing officer's) certificate dated the day of 18 .

No. 6.

Judgment at Trial by Judge without a Jury.

[Heading as in Form 1.]

[If in Chancery Division, name of judge.]

This action coming on for trial [the day of and] this day, before in the presence of counsel for the plaintiff and the defendants [or, if some of the defendants do not appear, for the plaintiff and the defendant C. D., no one appearing for the defendants E. F. and G. H., although they were duly served with notice of trial as by the affidavit of filed the day of appears,] upon hearing the probate of the will of , the answers of the defendants C. D., E. F., and G. H., to interrogatories, the admission in writing, dated and signed by [Mr. the solicitor for] the plaintiff A. B. and by [Mr. the solicitor for] the defendant C. D., the affidavit of filed the day of , the affidavit of filed the day of , the evidence of taken on their oral examination at the trial, and an exhibit marked X., being an indenture dated, &c. and made between [parties], and what was alleged by counsel on both sides: This Court doth declare, &c.

And this Court doth order and adjudge, &c.

No. 7.

Judgment after Trial with a Jury.

[Heading as in Form 1.]

15th November, 18 .

The action having on the 12th and 13th November, 18 , been tried before the Honourable Mr. Justice with a special jury of the county of , and the jury having found [state findings as in officer's certificate], and the said Mr. Justice having ordered that judgment be entered for the plaintiff for £ and costs [or as the case may be]: Therefore it is adjudged that the plaintiff recover against the defendant £ and £ for his costs [or that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff £ for his costs of defence, or as the case may be].

No. 8.

Judgment after Trial before Referee.

[Heading as in Form 1.]

30th November, 18 .

The action having on the 27th November, 18 , been tried before X. Y., Esq., an official [or special] referee, and the said X. Y. having found? [or having ordered that judgment be entered] [state substance of referee's certificate], it is this day adjudged that—

App. F.

No. 9.

Judgment after Trial of Questions of Account by Referee.

[Heading as in Form 1.]

The day of 18 .
 The questions of account in this action having been referred to and he
 having found that there is due from the to the the sum of £ and
 directed that the do pay the costs of the reference.
 It is this day adjudged that the recover against the said £ and
 costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a (taxing
 officer's) certificate dated the day of 18 .

No. 10.

Judgment upon Motion for Judgment.

[Heading as in Form 1.]

30th November, 18 .

This day before Mr. X. of counsel for the plaintiff [*or as the case may be*],
 moved on behalf of the said [*state judgment moved for*], and the said Mr. X.
 having been heard of counsel for and Mr. Y. of counsel for the Court
 adjudged

No. 11.

Judgment after Trial by Court without Jury.

[Heading as in Form 1.]

This action having on the day of 18 been tried before and the
 said on the day of 18 having ordered that judgment be entered
 for the for £

It is this day adjudged that the recover from the £ and costs to
 be taxed.

The above costs have been taxed and allowed at £ as appears by a (taxing
 officer's) certificate dated the day of 18 .
 Judgment entered the day of 18 .

No. 12.

Judgment in pursuance of Order.

[Heading as in Form 1.]

Pursuant to the order of dated 18 whereby it was ordered and
 default having been made

It is this day adjudged that the plaintiff recover against the said defendant £
 and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a (taxing
 officer's) certificate dated the day of 18 .

No. 13.

Judgment on Certificate of Registrar of County Court.

[Heading as in Form 1.]

The day of 18 .
 This action having been ordered under section 26 of the County Court Act, 1856 (19 & 20 Vict. c. 108), to be tried in the County Court of and the registrar of that Court having certified that the result was
 It is this day adjudged that recover against £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a (taxing officer's) certificate dated the day of 18 .

No. 14.

Judgment for Defendant's Costs on Discontinuance.

[Heading as in Form 1.]

The day of 18 .
 The plaintiff having by a notice in writing dated the day of 18 , wholly discontinued this action or withdrawn his claim in this action for or withdrawn so much of his claim in this action as relates to [or as the case may be].
 It is this day adjudged that the defendant recover against the plaintiff costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a (taxing officer's) certificate dated the day of 18 .

No. 15.

Judgment for Plaintiff's Costs after Confession of Defence.

[Heading as in Form 1.]

The day of 18 .
 The defendant in his defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the day of 18 delivered a confession of that defence,
 It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a (taxing officer's) certificate dated the day of 18 .

No. 16.

Judgment for Costs after Acceptance of Money paid into Court.

[Heading as in Form 1.]

The day of 18 .
 The defendant having paid into Court in this action the sum of £ in satisfaction of the plaintiff's claim, and the plaintiff having by his notices dated the day of 18 , accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within forty-eight hours after the said taxation ;
 It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a (taxing officer's) certificate dated the day of 18 .

App. F.

No. 17.

Judgment where no Judgment entered at Trial by Jury.

[Heading as in Form 1.]

The day of 18 .

This action having on the 18 been tried before and a jury of the of , and the jury having found and the not having thought fit to order any judgment to be entered . Now on motion before the Court for judgment on behalf of the , the Court having .
It is this day adjudged that the recover against the the sum of £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a master's certificate dated the day of 18 .
Judgment entered the day of 18 .

No. 18.

Judgment on Motion after Trial of Issue.

[Heading as in Form 1.]

The day of 18 .

The issues or questions of fact arising in this action [or cause or matter] by the order dated the day of ordered to be tried before having on the day of been tried before and the having found . Now on motion before the Court for judgment on behalf of the , the Court having .

It is this day adjudged that the recover against the the sum of £ , and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a master's certificate dated the day of 18 .
Judgment entered the day of 18 .

APPENDIX G.

PART I.

FORMS OF PRÆCIPE.

No. 1.

Of Fieri Facias.

In the High Court of Justice, [18 . Here put the letter and number.]
Division. 'Between A. B. Plaintiff,
and
C. D. and others, Defendants.

Seal a writ of fieri facias directed to the sheriff of to levy against C. D. the sum of £ and interest thereon at the rate of £ per centum per annum from the day of [and £ costs] to judgment [or order] dated day of .

[Taxing officers' certificate, dated day of .]
X. Y., solicitor for [party on whose behalf writ is to issue].

No. 2.

Of Elegit.

[*Heading as in Form 1.*]

Seal a writ of elegit directed to the sheriff of _____ against _____ of _____ in the county of _____ for not paying to A. B. the sum of £ _____ together with interest thereon, from the _____ day of _____ [and the sum of £ _____ for costs,] with interest thereon at the rate of 4*l.* per centum per annum.

Judgment [*or order*] dated _____ day of _____ 18 _____
 [Taxing officer's certificate, dated _____ day of _____ 18 _____]
 X. Y.,
 Solicitor for _____ .

No. 3.

Of Venditioni Exponas.

[*Heading as in Form 1.*]

Seal a writ of venditioni exponas directed to the sheriff of _____ to sell the goods and _____ of C. D. taken under a writ of fieri facias in this action tested _____ day of _____ .

X. Y.,
 Solicitor for _____ .

No. 4.

Of Fieri Facias de Bonis Ecclesiasticis.

[*Heading as in Form 1.*]

Seal a writ of fieri facias de bonis ecclesiasticis directed to the Bishop [*or Archbishop, as the case may be*] of _____ to levy against C. D. the sum of _____ *l.*

Judgment [*or order*] dated _____ day of _____ .
 [Taxing officer's certificate dated _____ day of _____ .]
 X. Y.,
 Solicitor for _____ .

No. 5.

Of Sequestrari Facias de Bonis Ecclesiasticis.

[*Heading as in Form 1.*]

Seal a writ of sequestrari facias directed to the Bishop of _____ against C. D. for not paying to A. B. the sum of _____ *l.*

No. 6.

Of Writ of Sequestration.

[*Heading as in Form 1.*]

Seal a writ of sequestration against C. D. for not _____ at the suit of A. B. directed to [*names of Commissioners*].

Order dated _____ day of _____ .

M,

B R

App. G.
Pt. I.

No. 7.

Of Writ of Possession.

[Heading as in Form 1.]

Seal a writ of possession directed to the sheriff of _____ to deliver possession to
A. B. of _____
Judgment dated _____ day of _____ .

No. 8.

Of Writ of Delivery.

[Heading as in Form 1.]

Seal a writ of delivery directed to the sheriff of _____ to make delivery to A. B.
of _____ .

No. 10.

Of Writ of Attachment.

[Heading as in Form 1.]

Seal in pursuance of order dated _____ day of _____ an attachment directed to the
sheriff of _____ against C. D. for not delivering to A. B.

No. 11.

Of Distringas against Ex-Sheriff.

[Heading as in Form 1.]

Seal a writ of distringas nuper vicecomitem quod venditioni exponat, directed to
the sheriff of _____, to sell the goods and _____ of _____ taken under a writ of
feri facias in this action tested the _____ day of _____ 18 _____ .
Dated the _____ day of _____ 18 _____ .
(Signed)
(Address)
Solicitor for the _____ .

No. 12.

Of Inquiry.

[Heading as in Form 1.]

Seal a writ of inquiry directed to the sheriff of _____ to assess the damages in
this action.
Judgment dated _____
Dated the _____ day of _____ 18 _____ .
(Signed)
(Address)
Solicitor for the _____ .

No. 13.

Of Certiorari.

[*Heading as in Form 1.*]

Seal in pursuance of order dated a writ of certiorari directed to
 Dated the day of 18 .
 (Signed)
 (Address)
 Solicitor for the .

No. 14.

Of Prohibition.

18 . [*Here put letter and number.*]

In the High Court of Justice, &c.
 Division.

In the matter of a certain now depending in the Court.
 Between Plaintiff,
 and Defendant.

Seal a writ of prohibition directed to the judge of the above-named Court
 and to the above-named plaintiff to prohibit them from further proceeding in the
 said 18 .
 Dated the day of 18 .
 (Signed)
 (Address)
 Solicitor for the .

No. 15.

Of Mandamus.

[*Heading as in Form 1.*]

Seal in pursuance of order dated a writ of mandamus directed to ,
 commanding to returnable
 Dated the day of 18 .
 (Signed)
 (Address)
 Solicitor for the .

No. 16.

Of Habeas Corpus ad Testificandum.

[*Heading as in Form 1.*]

Seal in pursuance of order dated a writ of habeas corpus ad testificandum
 directed to the to bring before
 Dated the day of 18 .
 (Signed)
 (Address)
 Solicitor for the .

App. G.
Pt. I.

No. 17.

Of Commission to examine Witnesses.

[*Heading as in Form 1.*]

Seal in pursuance of order dated _____ a writ in the nature of a mandamus or
commission to examine witnesses directed to _____

Dated the _____ day of _____ 18 .
(Signed)
(Address)
Solicitor for the _____

No. 18.

Of Commission of Partition.

[*Heading as in Form 1.*]

Seal in pursuance of order dated _____, a commission of partition directed to
returnable _____

Dated the _____ day of _____ 18 .
(Signed)
(Address)
Solicitor for the _____

No. 19.

Of Amended Summons.

[*Heading as in Form 1.*]

Amend in pursuance of order [or fiat] dated _____ the writ of summons in this
action by [*set out amendments when required*].

Dated the _____ day of _____ 18 .
(Signed)
(Address)
Solicitor for the _____

No. 20.

Of Renewed Summons.

[*Heading as in Form 1.*]

Seal in pursuance of order dated _____, a renewed writ of summons in this action
indorsed as follows:

Dated the _____ day of _____ 18 .
(Signed)
(Address)
Solicitor for the _____

No. 21.

Of Subpœna.

[*Heading as in Form 1.*]

Seal writ of subpœna _____ on behalf of the _____ directed to _____ return-
able _____

Dated the _____ day of _____ 18 .
(Signed)
(Address)
Solicitor for the _____

No. 22.

Entry of Action for Trial.

[Heading as in Form 1.]

Enter this action for trial.

Dated the _____ day of _____ 18 .
(Signed)
(Address)

No. 23.

Entry of Appeal.

[Heading as in Form 1.]

Enter this appeal from the order [or judgment] of _____ in this action, dated the _____ day of _____, 18 .

Dated the _____ day of _____ 18 .
(Signed)
(Address)

No. 24.

Entry for Argument generally.

[Heading as in Form 1.]

Set down for argument the _____

Dated the _____ day of _____ 18 .
(Signed)
(Address)

No. 25.

Entry of Special Case.

[Heading as in Form 1.]

Set down the _____ dated the _____ day of _____, 18 , of Mr. _____ the referee in this _____ for hearing as a special case.

Dated the _____ day of _____ 18 .
(Signed)
(Address)

No. 26.

Memorandum of Service of Notice of Judgment.

[Heading as in Form 1.]

Enter memorandum of service of notice of judgment made in this action, and dated the _____ day of _____, 18 , on the under-mentioned persons, viz. :—

Name of Party served.	Date of Service.

Dated the _____ day of _____ 18 .
(Signed)
(Address)

App. G.
Pt. I.

No. 27.

Search.

[*Heading as in Form 1.*]

Search for
Dated the day of 18 .
(Signed)
(Address)
Agent for
Solicitor for

No. 28.

Memorandum on Notice of Judgment.

Take notice that from the time of the service of this notice you [or as the case may be, the infant or person of unsound mind] will be bound by the proceedings in the above cause in the same manner as if you [or the said infant or person of unsound mind] had been originally made a party and that you [or the said infant or person of unsound mind] may, on entering an appearance at the central office, attend the proceedings under the within-mentioned judgment [or order] and that you [or the said infant or person of unsound mind] may within one month after the service of this notice apply to the Court to add to the judgment [or order].

APPENDIX H.

FORMS OF WRITS.

No. 1.

Writ of Fieri Facias.

18 . [Here put the letter and number.]

18 . B. No.

In the High Court of Justice,
Division.

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

Victoria, by the grace of God, &c.
Defender of the Faith,

of Great Britain and Ireland Queen,

To the sheriff of greeting.

We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made the sum of £ and also interest thereon at the rate of £ per centum per annum from the day of * which said sum of money and interest were lately before us in our High Court of Justice in a certain action [or certain actions, as the case may be] wherein A. B. is plaintiff and C. D. defendant [or in a certain matter there depending intitled "In the matter of E. F." as the case may be] by a judgment [or order, as the case may be] of our said Court, bearing date the day of adjudged [or ordered, as the case may be] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [or order, as the case may be] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of l. as appears by the certificate of the said taxing officer, dated the day of . And that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made the said sum of £ [costs] together with interest thereon at the rate of £4 per centum per annum from the day of ,* and that you have that money and

* Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be.

App. H.

tenure thereof, to him and to his assigns, until the said two several sums of £. and £. together with interest upon the said sum of £. at the rate of £. per centum per annum from the said day of and on the said sum of £. (costs) at the rate of 4£. per centum per annum from the day of shall have been levied. Therefore we command you that without delay you cause to be delivered to the said A. B. by a reasonable price and extent all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick as the said C. D., or any person or persons in trust for him was or were seised or possessed of on the said day of ,* or at any time afterwards, or over which the said C. D. on the said day of ,* or at any time afterwards had any disposing power which he might without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums of £. and £. together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our Court aforesaid, immediately after the execution thereof, under your seals, and the seals of those by whose oath you shall make the said extent and appraisalment. And have there then this writ.

Witness, &c.

No. 4.

Writ of Venditioni Exponas.

[Heading as in Form 1.]

Victoria, by the grace of God, &c.

To the sheriff of greeting.

Whereas by our writ we lately commanded you that of the goods and chattels of C. D. [here recite the *feri facias* to the end]. And on the day of you returned to us in the Division of our High Court of Justice aforesaid, that by virtue of the said writ to you directed you had taken goods and chattels of the said C. D. to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore, we being desirous that the said A. B. should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels of the said C. D., by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court of Justice immediately after the execution hereof, to be paid to the said A. B. And have there then this writ.

Witness, &c.

No. 5.

Writ of Fieri Facias de Bonis Ecclesiasticis.

[Heading as in Form 1.]

Victoria, by the grace of God, &c. :

To the Right Reverend Father in God [John] by Divine permission Lord Bishop of greeting: We command you, that of the ecclesiastical goods of C. D., clerk in your diocese, you cause to be made £. which lately before us in our High Court of Justice in a certain action [or certain actions, as the case may be] wherein A. B. is plaintiff and C. D. is defendant [or in a certain matter there depending, intituled "In the matter of E. F.," as the case may be], by a judgment [or order, as the case may be] of our said Court bearing date the day of , was adjudged [or ordered, as the case may be] to be paid by the said C. D. to the said A. B., together with interest on the said sum of at the rate of £. per centum per annum,

* The date of the certificate of taxation. The writ must be so moulded as follow the substance of the judgment or order.

from the day of and have that money, together with such interest as aforesaid, before us in our said Court immediately after the execution hereof, to be rendered to the said A. B., for that our sheriff of returned to us in our said Court on [or "at a day now past"] that the said C. D. had not any goods or chattels or any lay fee in his bailiwick whereof he could cause to be made the said l. and interest aforesaid or any part thereof, and that the said C. D. was a beneficed clerk (to wit) rector of rectory [or vicar of the vicarage] and parish church of , in the said sheriff's county, and within your diocese [as in the return]. And in what manner, &c.; And have you there then this writ.

Witness, &c.

No. 6.

Writ of Fieri Facias to the Archbishop de bonis Ecclesiasticis during the vacancy of a Bishop's See.

Victoria, by the grace of God, &c. To the Right Reverend Father in God [John] by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, greeting: We command you, that of the ecclesiastical goods of C. D., clerk in the diocese of which is within the province of Canterbury, as ordinary of that church, the episcopal see of now being vacant, you cause to be made [&c., conclude as in the preceding form].

No. 7.

Writ of Sequestrari Facias de bonis Ecclesiasticis.

[Heading as in Form 1.]

Victoria, by the grace of God, &c. To the Right Reverend Father in God [John] by Divine permission Lord Bishop of greeting: Whereas we lately commanded our sheriff of that he should omit not by reason of any liberty of his county, but that he should enter the same, and cause [to be made, if after the return to a fieri facias, or delivered, if after the return to an elegit, &c., and in either case recite the former writ]. And whereupon our said sheriff of on [or "at a day past"] returned to us in the Division of our said Court of Justice, that the said C. D. was a beneficed clerk; that is to say, rector of the rectory [or vicar of the vicarage] and parish church of in the county of , and within your diocese, and that he had not any goods or chattels, or any lay fee in his bailiwick [here follow the words of the sheriff's return]. Therefore, we command you, that you enter into the said rectory [or vicarage] and parish church of , and take and sequester the same into your possession, and that you hold the same in your possession until you shall have levied the said l. and interest aforesaid, of the rents, tithes, rent-charges in lieu of tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods in your diocese of and belonging to the said rectory [or vicarage] and parish church of and to the said C. D. as rector [or vicar] thereof to be rendered to the said A. B., and in what manner, &c.

And have you there then this writ.

Witness, &c.

No. 8.

Writ of Possession.

[Heading as in Form 1.]

Victoria, by the grace of God, &c. To the sheriff of , greeting: Whereas lately in our High Court of Justice, by a judgment of the Division of the same Court [A. B. recovered] or [E. F. was ordered to deliver to A. B.] possession of all that with the appurtenances in your bailiwick: Therefore, we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said A. B. to have possession of the said land and premises with the appurtenances. And in what manner, &c.

And have you there then this writ.

Witness, &c.

App. H.

No. 10.

Writ of Delivery.[*Heading as in Form 1.*]

Victoria, by the grace of God, &c. To the sheriff of greeting: We command you, that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment or order for the return of which execution has been ordered to issue*], to be returned to A. B., which the said A. B. lately in our High Court of Justice recovered against C. D. [*or C. D. was ordered to deliver to the said A. B.*] in an action in the Division of our said Court.* And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels.†

And in what manner, &c.

And have you there then this writ.

Witness, &c.

No. 11.

The like, but instead of a distress until the chattel is returned, commanding the Sheriff to levy on defendant's goods the assessed value of it.

[*Proceed as in the preceding form until the*, and then thus:*] And we further command you that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said C. D. in your bailiwick you cause to £ [*the assessed value of the chattels*].† And in what manner, &c.

And have you there then this writ.

Witness, &c.

[*If in either of the preceding forms it is wished to include damages, costs, and interest, proceed to the † and continue thus.*]

And we further command you that of the goods and chattels of the said C. D. in your bailiwick, you cause to be made the sum of £ [*damages*]. And also interest thereon at the rate of £4 per centum per annum, from the day of which said sum of money and interest were in the said action by the judgment therein [*or by order dated the day of*] adjudged [*or ordered*] to be paid by the said C. D. to A. B. together with certain costs in the said judgment [*or order*] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of £ as appears by the certificate of the said taxing officer dated the day of . And that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made the said sum of £ [*costs*], together with interest thereon at the rate of £4 per centum per annum from the day of and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said A. B. in pursuance of the said judgment [*or order*].

And in what manner, &c.

And have you there this writ.

Witness, &c.

No. 12.

Writ of Attachment.[*Heading as in Form 1.*]

Victoria, by the grace of God, &c. To the sheriff of greeting. We command you to attach C. D. so as to have him before us in the Division of our High Court of Justice wheresoever the said Court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, and bring this writ with you.

Witness, &c.

No. 13.

Writ of Sequestration.

[Heading as in Form 1.]

Victoria, by the grace of God, &c. To [names of not less than four Commissioners] greeting.

Whereas lately in the Division of our High Court of Justice in a certain action there depending, wherein A. B. is plaintiff and C. D. and others are defendants [or, in a certain matter then depending, intituled "In the matter of E. F.," as the case may be] by a judgment [or order, as the case may be] of our said Court made in the said action [or matter], and bearing date the day of 187, it was ordered that the said C. D. should [pay into Court to the credit of the said action the sum of l., or, as the case may be]. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said C. D., and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever; and therefore we command you, any three or two of you, that you do at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said C. D., and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall [pay into Court to the credit of the said action the sum of l., or, as the case may be,] clear his contempt, and our said Court make other order to the contrary.

Witness, &c.

No. 14.

Distringas against Ex-Sheriff.

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to the sheriff of greeting.

We command you that you distrain late sheriff of your county aforesaid by all his land and chattels in your bailiwick, so that neither he nor any one by him do lay hands on the same until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said expose for sale and sell or cause to be sold for the best price that can be gotten for the same, those goods and chattels which were of in your bailiwick, to the value of l.,* the sum of l. which lately before us in our High Court of Justice in a certain action wherein plaintiff and defendant, by amount of, or "part of." a † of our said Court bearing date the day of, was † to be † "judgment" or "order." paid by the said to the said and of the sum of l., the amount at † "adjudged" or "ordered." which the costs in the said † mentioned have been taxed and allowed, and of interest on the said sum of l. at the rate of 4l. per centum per annum from the day of, and on the said sum of l. at the same rate from the day of, which goods and chattels he lately took by virtue of our writ, and which remain in his hands for want of buyers, as the said late sheriff hath lately returned to us in our said Court. And have the money arising from such sale before us in our said Court immediately after the execution hereof, to be paid to the said, and have there then this writ.

Witness, &c.

This writ was issued by, &c.

The defendant is a and resides at in your bailiwick.



APPENDIX J.

FORMS OF SUBPENA, &c.

No. 1.

Subpœna Ad Testificandum (General Form).

In the High Court of Justice. 18 . [*Here put the letter and number.*]
 Division. Between Plaintiff,
 and Defendant.

Victoria, by the grace of God, &c. to [*the names of three witnesses may be inserted*]
 greeting: We command you to attend before at on day the
 day of 18 , at the hour of in the noon, and so from day to day
 until the above cause is tried, to give evidence on behalf of the plaintiff [*or*
 defendant].

Witness, &c.

No. 2.

Habeas Corpus ad Testificandum.

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c. to the [*keeper of our prison at*]
 We command you that you bring , who it is said is detained in our prison
 under your custody , before at on day the day of
 at the hour of in the noon, and so from day to day until the above action
 is tried, to give evidence on behalf of the . And that immediately after the
 said shall have so given his evidence you safely conduct him to the prison from
 which he shall have been brought.

Witness, &c.

This writ was issued, &c.

No. 3.

Subpœna Duces Tecum (General Form).

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c. to [*the names of three witnesses may be inserted*]
 greeting: We command you to attend before at on day the
 day of 18 , at the hour of in the noon, and so from day to day
 until the above cause is tried, to give evidence on behalf of the and also to
 bring with you and produce at the time and place aforesaid [*specify documents to be*
produced].

Witness, &c.

No. 4.

Subpœna Ad Testificandum at Assizes.

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c. to [*the names of three witnesses may be inserted*]
 greeting: We command you to attend before our justices assigned to take the assizes
 in and for the county of to be holden at on day the day of
 18 , at the hour of in the noon, and so from day to day during
 the said assizes until the above cause is tried, to give evidence on behalf of the .

Witness, &c.

No. 5.

Subpœna Duces Tecum at Assizes.

[Heading as in Form 1.]

Victoria, by the grace of God, &c. to [the names of three witnesses may be inserted] greeting: We command you to attend before our justices assigned to take the assizes in and for the county of to be holden at on day the day of 18 , at the hour of in the noon, and so from day to day during the said assizes, until the above cause is tried, to give evidence on behalf of the , and also to bring with you and produce at the time and place aforesaid [specify documents to be produced].

Witness, &c.

No. 6.

Subpœna Ad Testificandum at Sittings of High Court.

* [Heading as in Form 1.]

Victoria, by the grace of God, &c., to [the names of three witnesses may be inserted] greeting: We command you to attend at the sittings of the Division of our High Court of Justice, for to be holden at on day the day of 18 , at the hour of in the noon, and so from day to day during the said sittings, until the above cause is tried, to give evidence on behalf of the

Witness, &c.

No. 7.

Subpœna Duces Tecum at Sittings of High Court.

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to [the names of three witnesses may be inserted]. We command you to attend at the sittings of the Division of our High Court of Justice for , to be holden at on day the day of 18 , at the hour of o'clock in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the and also to bring with you and produce at the time and place aforesaid [specify documents to be produced].

Witness, &c.

No. 8.

Writ of Inquiry for Assessment of Damages.

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to the sheriff of greeting.

Whereas it has been adjudged that the plaintiff recover against the defendant damages to be assessed.

Therefore we command you, that by the oaths of twelve good and lawful men of your bailiwick you inquire what damages the plaintiff is entitled to recover under the said judgment, and that forthwith thereafter you send the inquisition which you shall take thereupon to our said Court, under your seal, and the seals of those by whose oaths you take the inquisition, together with this writ.

Witness, &c.

This writ was issued by, &c.

The defendant is a and reside at in your bailiwick.

App. J.

No. 9.

Certiorari to County Court.

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to the judge of the County Court holden at greeting.

We, willing for certain causes to be certified of a plaint leyed in our Court before you against at the suit of command you that you send to us forthwith in the Division of our High Court of Justice the said plaint with all things touching the same, as fully and entirely as the same remain in our said Court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, &c.

This writ was issued by, &c.

No. 10.

Certiorari (General).

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to the greeting.

We, willing for certain causes to be certified of command you that you send to us in our High Court of Justice on the day of the aforesaid, with all things touching the same, as fully and entirely as they remain in together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, &c.

This writ was issued by, &c.

No. 11.

Prohibition.

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to the [judge of the County Court holden at] and to [name of plaintiff] of greeting.

Whereas we have been given to understand that you the said have [entered a plaint against] C. D. in the said Court, and that the said Court has no jurisdiction in the said [cause] or to hear and determine the said [plaint] by reason that [state facts showing want of jurisdiction].

We therefore hereby prohibit you from further proceeding in the said [action] in the said Court.

Witness, &c.

This writ was issued by, &c.

No. 12.

Mandamus.

Victoria, by the grace of God, &c. to of greeting.

Whereas by [here recite Act of Parliament or Charter if the act required to be done is founded on either one or the other]. And whereas we have been given to understand and be informed in the Queen's Bench Division of our High Court of Justice before us that [insert necessary inducement and averments]. And you the said were then and there required by [insert demand] but that you the said

well knowing the premises, but not regarding your duty in that behalf then and there wholly neglected and refused to [*insert refusal*] nor have you or any of you at any time since in contempt of us and to the great damage and grievance of as we have been informed from their complaint made to us. Whereupon we being willing that due and speedy justice should be done in the premises as it is reasonable, do command you the said and every of you firmly enjoining you that you [*insert command*] or that you show us cause to the contrary thereof, lest by your default the same complaint should be repeated to us and how you shall have executed this our writ make known to us in our said Court forthwith then returning to us this our said writ, and this you are not to omit.

Witness, JOHN DUKE, BARON COLERIDGE, the day of in the year of our reign.

By the Court,
(Signed) COCKBURN.

No. 13.

Commission to examine Witnesses.

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c., to of and of Commissioners named by and on behalf of the and to of and of Commissioners named by and on behalf of the greeting: Know ye that we in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *vidé voce* as herein-after mentioned witnesses on behalf of the said and respectively at before you or any two of you, so that one Commissioner only on each side be present and act at the examination.—And we command you as follows:

1. Both the said and the said shall be at liberty to examine on interrogatories and *vidé voce* on the subject matter thereof or arising out of the answers thereto such witnesses as shall be produced on their behalf with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and *vidé voce*, the party producing any witness for examination being at liberty to re-examine him *vidé voce*; and all such additional *vidé voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said Commission.

2. Not less than days before the examination of any witness on behalf of either of the said parties, notice in writing, signed by any one of you, the Commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the names of the witnesses to be examined, shall be given to the Commissioners of the other party by delivering the notice to them, or by leaving it at their usual place of abode or business, and if the Commissioners or Commissioner of that party neglect to attend pursuant to the notice, then one of you, the Commissioners of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the Commissioners or Commissioner present and acting to be a true and correct copy or extract shall be annexed to the witnesses' deposition.

4. Each witness to be examined under this Commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the Commissioners or Commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *vidé voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the Commissioners or Commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said Commissioners or Commissioner truly to interpret the questions to be put to the witness and his answers thereto.

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6. The depositions to be taken under this Commission shall be subscribed by the witness or witnesses, and by the Commissioners or Commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the senior master of the Supreme Court of Judicature on or before the day of _____ enclosed in a cover under the seals or seal of the Commissioners or Commissioner.

8. Before you or any of you, in any manner act in the execution hereof you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences. In the absence of any other Commissioner, a Commissioner may himself take the oath.

And we give you or any one of you authority to administer such oath to the other or others of you.

Witness, &c.

This writ was issued by, &c.

WITNESSES' OATH.

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

COMMISSIONERS' OATH.

You [*or I*] shall, according to the best of your [*or my*] skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the Commission within written. So help you [*or me*] God.

INTERPRETER'S OATH.

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations which he shall administer to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the Commissioners named in the Commission within written, as far forth as you are directed and employed by the said Commissioners, to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

CLERK'S OATH.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said Commissioners named in the Commission within written, as far forth as you are directed and employed by the Commissioners to take, write down, transcribe or engross the said questions and depositions. So help you God.

Direction of Interrogatories, &c., when returned by the Commissioners.

THE SENIOR MASTER OF THE SUPREME COURT OF JUDICATURE, ROYAL COURTS OF JUSTICE, LONDON.



APPENDIX K.

No. 1.

Summons (General Form).

In the High Court of Justice, 18 . [*Here put the letter and number.*]
 Division. Between Plaintiff,
 and Defendant.

Let all parties concerned attend the Judge [*or Master*] in chambers on day
 the day of 18 , at o'clock in the noon, on the hearing of
 an application on the part of

Dated the day of 18 .
 This summons was taken out by of solicitor for
 To

No. 2.

Order (General Form).

[*Heading as in Form 1.*]

*Judge [*or Master*] in Chambers.

Between
 Upon hearing , and upon reading the affidavit of filed the
 of 18 and day

* Insert name
 of judge or
 master.

It is ordered and that the costs of this application be
 Dated the day of 18 .

No. 3.

Summons for Directions pursuant to Order XXX.

[*Heading as in Form 1.*]

Let all the parties concerned attend Master [] in Chambers on day Fill in a date
 the day of 18 , at o'clock in the noon, on the hearing of not less than
 an application on the part of for directions for. four days

[*Here state all matters or proceedings previous to trial on which directions are required.*]
 Dated the day of 18 . from service
 of summons.

This summons was taken out by solicitor for
 To

No. 4.

Order for Directions pursuant to Order XXX.

[*Heading as in Form 1.*]

Upon hearing and upon reading it is ordered as follows:—

1. That the plaintiff deliver to the defendant further and better particulars with
 dates and items of his claim, and that unless such particulars be delivered within
 days from the date of this order, all further proceedings be stayed until the
 delivery thereof.

2. That the plaintiff and defendant be at liberty to deliver to each other interroga-
 tories in writing, and that the said parties do respectively answer the said interroga-
 tories as prescribed by Ord. XXXI. rr. 8 and 26.

3. That the be at liberty to issue a commission for the examination of
 witnesses on his behalf at and that the trial of the action be stayed until the

M,

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App. K.

return of the said commission, the usual long order for the said commission to be drawn up, and unless agreed upon by the parties within one week, to be settled by the master.

4. That the action be tried in the county of _____ by a judge.

5. That either party be at liberty without further summons, to apply to the master herein for further directions, such application to be made upon two clear days' notice to be served upon the other party.

6. That the costs of this application be costs in the action.

Dated _____ day of _____ 18 ____ .

No. 5.

Order for Time.

[*Heading as in Form 1.*]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18 ____, and _____

It is ordered that the _____ shall have _____ time, and that the costs of this application be _____

Dated the _____ day of _____ 18 ____ .

No. 6.

Order under Order XIV., No. 1.

[*Heading as in Form 1.*]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18 ____, and _____

It is ordered that the plaintiff may sign final judgment in this action for the amount indorsed on the writ, with interest, if any, [or possession of the land in the indorsement of the writ described as _____] and costs to be taxed, and that the costs of this application be _____

Dated the _____ day of _____ 18 ____ .

No. 7.

Order under Order XIV., No. 2.

[*Heading as in Form 1.*]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18 ____, and _____

It is ordered that the defendant be at liberty to defend this action by delivering a defence within _____ days after service of this order, and that the costs of this application be _____

Dated the _____ day of _____ 18 ____ .

No. 8.

Order under Order XIV., No. 3.

[*Heading as in Form 1.*]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18 ____, and _____

It is ordered that if the defendant _____ pay into Court within a week from the date of this order the sum of £ _____, he be at liberty to defend this action by delivering a defence within _____ days after service of this order, but that if that sum be not so paid the plaintiff be at liberty to sign final judgment for the amount indorsed on the writ of summons, with interest, if any, and costs, and that in either event the costs of this application be _____

Dated the _____ day of _____ 18 ____ .

No. 9.

Order under Order XIV., No. 4.

[Heading as in Form 1.]

Upon hearing and upon reading the affidavit of filed the day of
18 , and

It is ordered that if the defendant pay into Court within a week from the date of this order the sum of £ , he be at liberty to defend this action as to the whole of the plaintiff's claim.

And it is ordered that if that sum be not so paid the plaintiff be at liberty to sign judgment for that sum and the defendant be at liberty to defend this action as to the residue of the plaintiff's claim.

And it is ordered that in either event the defence be delivered within days after service of this order, and that the costs of this application be

Dated the day of 18 .

No. 10.

Order to Amend.

[Heading as in Form 1.]

Upon hearing and upon reading the affidavit of filed the day of
18 , and

It is ordered that the plaintiff be at liberty to amend the writ of summons in this action by and that the costs of this application be

Dated the day of 18 .

No. 11.

Order for Particulars (Partnership).

[Heading as in Form 1.]

Upon hearing and upon reading the affidavit of filed the day of
18 , and

It is ordered that the furnish the with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm, pursuant to the Rules of the Supreme Court, 1883, Ord. XVI. r. 14, and that the costs of this application be

Dated the day of 18 .

No. 12.

Order for Particulars (General).

[Heading as in Form 1.]

Upon hearing and upon reading the affidavit of filed the day of
18 , and

It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the plaintiff's claim in this action, and that unless such particulars be delivered within days from the date of this order all further proceedings be stayed until the delivery thereof, and that the costs of this application be

Dated the day of 18 .

App. K.

No. 14.

Order to discharge or vary on Application by Third Party.

[Heading as in Form 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18____, and _____
 It is ordered that the order of _____ in this action dated the _____ day of _____ 18____, be discharged [or varied by _____], and that the costs of this application be _____
 Dated the _____ day of _____ 18____.

No. 15.

Order to dismiss for want of Prosecution.

[Heading as in Form 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18____, and _____
 It is ordered that this action be, for want of prosecution, dismissed with costs to be taxed and paid to the defendant by the plaintiff, and that the costs of this application be _____
 Dated the _____ day of _____ 18____.

No. 16.

Order for Delivery of Interrogatories.

[Heading as in Form 1.]

Upon hearing _____ and upon reading the affidavit of _____, filed the _____ day of _____ 18____, and _____
 It is ordered that the _____ be at liberty to deliver to the _____ interrogatories in writing, and that the said _____ do answer the interrogatories as prescribed by Order XXXI. Rules 8 and 26 of the Rules of the Supreme Court, and that the costs of this application be _____
 Dated the _____ day of _____ 18____.

No. 17.

Order for Affidavit as to Documents.

[Heading as in Form 1.]

Upon hearing _____
 It is ordered that the _____ do, within _____ days from the date of this order answer on affidavit stating what documents are or have been in _____ possession or power relating to the matters in question in this action, and that the costs of this application be _____
 Dated the _____ day of _____ 18____.

No. 18.

Order to produce Documents for Inspection.

[Heading as in Form 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18____, and _____
 It is ordered that the _____ do, at all reasonable times, on reasonable notice, produce at [insert place of inspection], situate at _____ the following documents, namely _____, and that the _____ be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and extracts therefrom, at expense, and that in the meantime all further proceedings be stayed, and that the costs of this application be _____
 Dated the _____ day of _____ 18____.

No. 20.

Order for Service out of Jurisdiction.

[Heading as in Form 1.]

Upon hearing and upon reading the affidavit of filed the day of
 18 , and
 It is ordered that the plaintiff be at liberty to issue a writ for service out of
 the jurisdiction against
 And it is further ordered that the time for appearance to the said writ be within
 days after the service thereof, and that the costs of this application be .
 Dated the day of 18 .

No. 21.

Order for Substituted Service.

[Heading as in Form 1.]

Upon hearing and upon reading the affidavit of filed the day
 of 18 , and
 It is ordered that service of a copy of this order, and of a copy of the writ of
 summons in this action, by sending the same by a prepaid post letter, addressed
 to the defendant at shall be good and sufficient service of the writ.
 Dated the day of 18 .

No. 22.

Order for Renewal of Writ.

[Heading as in Form 1.]

Upon hearing and upon reading the affidavit of filed the day of
 18 , and
 It is ordered that the writ in this action be renewed for six months from the date
 of its renewal, pursuant to the Rules of the Supreme Court Order VIII., Rule 1.
 Dated the day of 18 .

No. 23.

Order for Issue of Notice claiming Contribution.

[Heading as in Form 1.]

Upon hearing and upon reading the affidavit of filed the day of
 18 , and
 It is ordered that the defendant be at liberty to issue a notice claiming
 over against , pursuant to the Rules of the Supreme Court Order XVI.,
 Rule 48.
 Dated the day of 18 .

App. K.

No. 24.

Order of Reference.

[Heading as in Form 1.]

Upon hearing _____ and by consent

It is ordered as follows:

1. [*State matters to be referred*] shall be referred to the award of _____
2. The arbitrator shall have all the powers as to certifying and amending of a judge of the High Court of Justice.
3. The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (or their respective personal representatives, if either of the said parties die before the making of the award) on or before the _____ next, or on or before such further day as the arbitrator may from time to time appoint and signify in writing signed by him and indorsed on this order.
4. The said parties shall in all things abide by and obey the award so to be made.
5. The costs of the said cause and the costs of the reference and award shall be _____
6. The arbitrator may (if he think fit) examine the said parties to this cause, and their respective witnesses, upon oath or affirmation.
7. The said parties shall produce before the arbitrator all books, deeds, papers, and writings in their or either of their custody or power relating to the matters in difference.
8. Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator or of or concerning the matters so to be referred.
9. If either party by affected delay or otherwise wilfully prevent the said arbitrator from making an award, he or they shall pay such costs to the other as may think reasonable and just.
10. In the event of either of the said parties disputing the validity of the said award, or moving the _____ to set it aside, the said _____ shall have power to remit the matters hereby referred or any or either of them to the reconsideration of the arbitrator.
11. In the event of the arbitrator declining to act or dying before he has made his award, the said parties may, _____ or if they cannot agree, the master may, on application by either side, appoint a new arbitrator.
12. Unless restrained by any order of the Court or a judge, the party or parties in whose favour the award shall be made shall be at liberty within _____ days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated the _____ day of _____ 18 ____ .

No. 25.

Order for Examination of Witnesses before Arbitrator.

[Heading as in Form 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18 ____ , and _____

It is ordered that _____ attend before _____ the arbitrator herein on _____ the days of _____ 18 ____ , at _____ and then and there submit to be examined on oath or affirmation on behalf of the _____ touching the matters referred to the said arbitrator.

Dated the _____ day of _____ 18 ____ .

No. 26.

Order for Examination of Witnesses and Production of Documents.

[Heading as in Form 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed _____ day of _____ 18 ____ , and _____

It is ordered that _____ attend before _____ the arbitrator herein on _____ the days of _____ 18 ____ , at _____ , and then and there submit to be examined

on oath or affirmation on behalf of the touching the matters referred to the said arbitrator. App. K.

And it is further ordered that the said do at the time and place aforesaid produce and deliver to the said arbitrator the papers, documents, and writings hereafter mentioned, that is to say [*specify documents to be produced*].

Dated the day of 18 .

No. 27.

Order Charging Stock—Nisi.

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of filed the day of 18 , whereby it appears

It is ordered that unless sufficient cause be shown to the contrary before on day the day of 18 , at o'clock in the forenoon, the defendant's interest in the so standing as aforesaid shall, and that it in the meantime do, stand charged with the payment of the above-mentioned amount due on the said judgment.

Dated the day of 18 .

No. 28.

Order Charging Stock—Absolute.

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of filed the day of 18 , and an order nisi made herein on the day of 18 , reciting the affidavit of whereby it appeared

It is ordered that the defendant's interest in the so standing as aforesaid stand charged with the payment of the above-mentioned amount due on the said judgment.

Dated the day of 18 .

No. 29.

Charging Order. Solicitor's Costs.

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the said the solicitor for the in this action shall have a charge upon for his costs, charges, and expenses of and in reference to this action.

Dated the day of 18 .

No. 30.

Order to remove Judgment from County Court.

In the High Court of Justice. 18 . [*Here put the letter and number.*]
 Division. Y.
 Master in Chambers.

In the matter of a plaint in the County Court of holden at wherein plaintiff, and defendant.

Upon reading the affidavit of filed the day of 18 , and the certified copy of the judgment in the plaint above mentioned,

It is ordered that a writ of certiorari issue to remove the said judgment from the above-named County Court into the Division of the High Court of Justice.

Dated the day of 18 .

App. K.

No. 31.

Order for Arrest (Capias) under Debtors Act.

[Heading as in Form 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18____, and

It is ordered that the defendant _____ be arrested and imprisoned for the term of _____ from the date of his arrest, including the day of such date, unless and until he shall sooner deposit in Court the sum of £ _____, or give to the plaintiff a bond executed by him and two sufficient sureties in the penalty of £ _____, or some other security satisfactory to the plaintiff, that

And it is further ordered that the sheriff of _____ do within one calendar month from the date hereof, including the day of such date, and not afterwards, take the defendant for the purpose aforesaid, if he shall be found in the said sheriff's bailiwick.

Dated the _____ day of _____ 18____.

No. 32.

Order of Reference under Sect. 56 of the Supreme Court of Judicature Act, 1873.

[Heading as in Form 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18____, and

It is ordered that the following question arising in this action, namely, _____ be referred for inquiry and report to _____ under section 56 of the Supreme Court of Judicature Act, 1873, and that the costs of this application be

Dated the _____ day of _____ 18____.

No. 33.

Order of Reference under Sect. 57 of the Supreme Court of Judicature Act, 1873.

[Heading as in Form 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18____, and

It is ordered that the [state whether all or some, and if so which, of the questions are to be tried] in this action be tried by _____ who shall have all the powers as to certifying and amending of a judge of the High Court of Justice, and shall make his report of and concerning the matters ordered to be tried as aforesaid pursuant to the statute [or direct judgment to be entered and otherwise deal with the whole action pursuant to Order XXXVI., Rule 50].

And it is further ordered that the said referee may, if he think fit, examine the parties to this action, and their respective witnesses, upon oath or affirmation, and that the said parties shall produce before the said referee all books, deeds, papers, and writings in their or either of their custody or power relating to the matters so ordered to be tried.

And it is further ordered that neither the plaintiff nor the defendant shall bring or prosecute any action against the said referee, or against each other, of or concerning the matters so ordered to be tried, and that if either party by affected delay or otherwise wilfully prevent the said referee from making his report, he or they shall pay such costs to the other as the Court, or a judge, may think reasonable and just.

And it is further ordered that in the event of the said referee declining to act, or dying before he has made his report, the said parties may, or if they cannot agree, one of the judges of the High Court may, upon application by either party, appoint a new referee.

And it is ordered that the costs of this application be

Dated the _____ day of _____ 18____.

No. 34.

App. K.

Order of Reference to Master.

[Heading as in Form 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18____, and _____

It is ordered that this action [or the matters of account in this action, or the following questions in this action being matters of account, namely, *stating them*] be referred to the certificate of the master, with all the powers as to certifying and amending of a judge of the High Court of Justice, and that the costs of the and of the reference be in the discretion of the master, and that the costs of this application be _____

Dated the _____ day of _____ 18____.

No. 35.

Order for Examination of Witnesses before Trial.

[Heading as in Form 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18____, and _____

It is ordered that _____ a witness on behalf of the _____ be examined *vivâ voce* (on oath or affirmation) before the master [or before _____ esquire, special examiner], the _____ solicitor or agent giving to the _____ solicitor or agent _____ notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed in the Central Office of the Supreme Court of Judicature, and that an office copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor or agent of the _____ as to his belief, and that the costs of this application be _____

Dated the _____ day of _____ 18____.

No. 36.

Short Order for Issue of Commission to examine Witnesses.

[Heading as in Form 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18____, and _____

It is ordered that the _____ be at liberty to issue a commission for the examination of witnesses on _____ behalf at _____

And it is further ordered that the trial of this action be stayed until the return of the said commission, the usual long order to be drawn up, and unless agreed upon by the parties within one week, to be settled by the master [or as the case may be], and that the costs of this application be _____

Dated the _____ day of _____ 18____.

No. 37.

Long Order for Commission to examine Witnesses.

[Heading as in Form 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 18____, and _____

It is ordered as follows:—

1. A commission may issue directed to _____ of _____ and _____ of _____ commis-
sioners named by and on behalf of the _____ and to _____ of _____ and _____

App. K.

commissioners named by and on behalf of the _____ for the examination upon interrogatories and *vidé voce* of witnesses on behalf of the said _____ and _____ respectively at _____ aforesaid before the said commissioners, or any two of them, so that one commissioner only on each side be present and act at the examination.

2. Both the said _____ and _____ shall be at liberty to examine upon interrogatories and *vidé voce* upon the subject matter thereof or arising out of the answers thereto such witnesses as may be produced on their behalf, with liberty to the other party to cross-examine the said witnesses upon cross-interrogatories and *vidé voce* the party producing the witness for examination being at liberty to re-examine him *vidé voce*; and all such additional *vidé voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and, with the answers thereto, returned with the said commission.

3. Within _____ days from the date of this order the solicitors or agents of the said _____ and _____ shall exchange the interrogatories they propose to administer to their respective witnesses, and shall also within _____ days from the exchange of such interrogatories, exchange copies of the cross-interrogatories intended to be administered to the said witnesses.

4. _____ days previously to the sending out of the said commission, the solicitor _____ of the said _____ shall give to the solicitor _____ of the said _____ notice in writing of the mail or other conveyance by which the commission is to be sent out.

5. _____ days previously to the examination of any witness on behalf of the said _____ or _____ respectively, notice in writing signed by any one of the commissioners of the party on whose behalf the witness is to be examined and stating the time and place of the intended examination, and the names of the witnesses intended to be examined, shall be given to the commissioners of the other party by delivering the notice to them personally, or by leaving it at their usual place of abode or business, and if the commissioners of that party neglect to attend pursuant to the notice, then one of the commissioners of the party on whose behalf the notice is given shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same, from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

6. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition, to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present to be a true and correct copy or extracts shall be annexed to the witnesses' deposition.

7. Each witness to be examined under the commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the said commissioners or commissioner.

8. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *vidé voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters, to be nominated by the commissioners or commissioner, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness or witnesses, and his and their answers thereto.

9. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken such depositions.

10. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the senior master of the Supreme Court of Judicature on or before the _____ day of _____, or such further or other day as may be ordered, enclosed in a cover under the seal or seals of the said commissioners or commissioner, and office copies thereof may be given in evidence on the trial of this action by and on behalf of the said _____ and _____ respectively, saving all just exceptions, without any other proof of the absence from this country of the witness or witnesses therein named, than an affidavit of the solicitor _____ or agent _____ of the said _____ or _____ respectively, as to his belief of the _____

11. The trial of this cause is to be stayed until the return of the said commission.

12. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories, and depositions to be taken thereunder, together with any such document, copy, or extract as aforesaid, and official copies thereof, and all other costs incidental thereto, shall be

Dated the _____ day of _____ 18 _____.

No. 37A.*

App. K.

Order for Issue of Letter of Request.

* This and the next rule were added by R. S. C. Oct. 1884.

It is ordered that a letter of request de issue directed to the proper tribunal for the examination of the following witnesses, that is to say: E. F. of , G. H. of , and I. J. of .

And it is ordered that the depositions taken pursuant thereto when received be filed at the central office, and be given in evidence on the trial of this action, saving all just exceptions.

No. 37B.

Request to Examine Witnesses.

Whereas an action is now pending in the Division of the High Court of Justice in England, in which A. B. is plaintiff and C. D. is defendant. And in the said action the plaintiff claims [endorsement upon writ].

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say: E. F. of G. H. of and I. J. of

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court.

Now I as the President of the said Division of the High Court of Justice have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the High Court of Justice, you as the President and judges of the said or some one or more of you, will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or mere of you, or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or *viva voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers, and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses, through her Majesty's Secretary of State for Foreign Affairs, for transmission to the said High Court of Justice in England.

No. 38.

Order for Examination of Judgment Debtor.

18 . [Here put the letter and number.]

In the High Court of Justice.
Division.

Between Judgment Creditor,
and
Judgment Debtor.
filed the day

Upon hearing and upon reading the affidavit of
of 18 , and

It is ordered that the above-named judgment debtor attend and be orally examined as to whether any and what debts are owing to him, before in chambers, at such time and place as he may appoint, and that the said judgment debtor produce his books [or as may be ordered] before the said at the time of the examination, and that the costs of this application be

Dated the day of 18 .

App. K.

No. 39.

Garnishee Order (Attaching Debt).

In the High Court of Justice. 18 . [Here put the letter and number.]
 Between Judgment Creditor,
 Division. and
 in Chambers. Judgment Debtor,
 Garnishee.

Upon hearing and upon reading the affidavit of filed the day
 of 18 , and

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of 18 , for the sum of on which judgment the said sum of £ remains due and unpaid.

And it is further ordered that the said garnishee attend the in chambers on day the day of 18 , at o'clock in the noon, on an application by the said judgment creditor, that the said garnishee pay the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment.

And that the costs of this application be
 Dated the day of 18 .

No. 40.

Garnishee Order (Absolute).

In the High Court of Justice. 18 . [Here put the letter and number.]
 Between Judgment Creditor,
 Division. and
 in Chambers. Judgment Debtor,
 Garnishee.

Upon hearing and upon reading the affidavit of filed the day
 of 18 , and whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of 18 , for the sum of £ on which judgment the said sum of £ remained due and unpaid.

It is ordered that the said garnishee do forthwith pay the said judgment creditor the debt due from him to the said judgment debtor (or so much thereof as may be sufficient to satisfy the judgment debt), and that in default thereof execution may issue for the same, and that the costs of this application be

Dated the day of 18 .

No. 41.

Order on Client's Application to tax Solicitor's Bill of Costs.

In the High Court of Justice. 18 . [Here put the letter and number.]
 Division.
 in Chambers.

In the matter of the taxation of costs, and in the matter of gentleman, one of the solicitors of the Supreme Court.

It is ordered that the bill of fees, charges, and disbursements delivered to the applicant by the above-named solicitor be referred to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received of or on account of the applicant, and that he refund what, if any thing, he may on such taxation appear to have been overpaid.

And it is further ordered that if the said solicitor attends on the taxation, the taxing officer tax the costs of the reference, and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference, to be charged (if payable) according to the event of the taxation, pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the applicant of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver up to the applicant, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the applicant.

And it is ordered that the costs of this application be

Dated the day of 18 .

No. 42.

Order on Solicitor's Application to tax Bill of Costs.

18 . [Here put the letter and number.]

In the High Court of Justice.

Division.

in Chambers:

In the matter of the taxation of costs, and in the matter of gentleman, one of the solicitors of the Supreme Court.

Upon hearing and upon reading the affidavit of filed the day of 18 , and . It is ordered that the above-named solicitor's bill of fees, charges and disbursements, delivered to (hereinafter called the said client) be referred to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received from or on account of the said client, and that he refund what (if anything) he may on such taxation appear to have been over-paid.

And it is further ordered that the taxing officer tax the costs of the reference and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference, to be paid according to the event of the taxation pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the said client of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver to the said client, or as he may direct, all deeds, books, papers and writings in the said solicitor's possession, custody, or power, belonging to the said client.

And it is ordered that the costs of this application be

Dated the day of 18 .

No. 43.

Order to tax after Action brought.

[Heading as in Form 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and . It is ordered that the plaintiff's bill of costs, charges and disbursements delivered to the defendant, for the recovery of which this action is brought, be referred to the taxing officer to be taxed, and that the plaintiff give credit of the time of taxation for all sums of money by him received from or on account of the defendant.

And it is further ordered that the taxing officer tax the costs of the reference, and certify what upon such reference shall be found due to or from either party in respect of the bill and demand, and of the costs of the reference, pursuant to the statute.

And it is further ordered that the plaintiff do not prosecute this action touching the demand pending the reference.

App. K.

And it is further ordered that upon payment of what (if anything) may appear to be due to the plaintiff, together with the costs of this action (which are to be also taxed and paid), all further proceedings therein be stayed, and that the costs of this application be

Dated the day of 18 .

No. 44.

Order to try Action in County Court.

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of filed the day
of 18 , and

It is ordered that this action be tried before the County Court of holden
at , and that the costs of this application be

Dated the day of 18 .

No. 45.

Order to give Security or try Action in County Court.

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of filed the day
of 18 , and

It is ordered that unless the plaintiff within give full security for the defen-
dant's costs to the satisfaction of the Master [or as the case may be], this action be
remitted for trial before the County Court of holden at and that the
costs of this application be

Dated the day of 18 .

No. 46.

Order for Examination touching Means.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.
Master in Chambers.

Between Judgment Creditor,
and
Judgment Debtor.

Upon hearing and upon reading the affidavit of filed the day
of 18 , and

It is ordered that the above-named do attend before the master on the
day of next, at in the noon, to be examined upon oath touching
his means of paying the judgment debt, and that the costs of this application
be

Dated the day of 18 .

No. 47.

App. K.

Order for Payment of Judgment Debt by Instalments.

In the High Court of Justice. 18 . [Here put the letter and number.]
 Division. Between Judgment Creditor,
 Master in Chambers. and
 Judgment Debtor.
 Upon hearing and upon reading the affidavit of filed the day of
 18 , and

It is ordered that the above-named judgment debtor do pay to the above-named judgment creditor the sum of , together with interest thereon at the rate of £4 per centum per annum from the day of 18 , the date of the judgment, and also £ the costs of this application in manner following; namely, [here describe the mode in which the payment is to be made].
 Dated the day of 18 .

No. 48.

Order for Committal of Judgment Debtor.

In the High Court of Justice. 18 . [Here put the letter and number.]
 Division. Between Judgment Creditor,
 Judge in Chambers. and
 Judgment Debtor.
 Upon hearing and upon reading the affidavit of filed the day of
 18 , and

It is ordered that the above-named judgment debtor be, for default in payment of the debt hereinafter mentioned, committed to prison for the term of from the date of his arrest, including the day of such date, or until he shall pay £ being the amount due from him in pursuance of a judgment [or order] of the High Court of Justice, bearing date the day of 18 , together with interest thereon at 4l. per cent. per annum from the aforesaid date, and 1l. 6s. 8d. for costs of this order, and sheriff's fees for the execution thereof.

And it is further ordered that the sheriff take the said debtor for the purpose aforesaid if he is found within his bailiwick.

And it is ordered that the costs of this application be .
 Dated the day of 18 .

No. 49.

Order for Committal of Judgment Debtor on Non-payment of Instalment.

In the High Court of Justice. 18 . [Here put the letter and number.]
 Division. Between Judgment Creditor,
 Judge in Chambers. and
 Judgment Debtor.

Upon hearing and upon reading the affidavit of filed the day of
 18 , and

It is ordered that the above-named judgment debtor be for default in payment of £ , being the amount of the [first] instalment of the judgment debt of £ in this action directed to be paid pursuant to the order of bearing date the day of 18 , committed to prison for the term of from the date of his arrest, including the day of such date, or until he shall pay the said instalment together with 13s. 4d. the costs of this order, and sheriff's fees for the execution thereof. And it is further ordered that the sheriff of take the said debtor for the purpose aforesaid if he is found in his bailiwick.

And it is ordered that the costs of this application be .
 Dated the day of 18 .

App. K.

No. 50.

Interpleader Order, No. 1.

In the High Court of Justice. 18 . [*Here put the letter and number.*]
 Division. Between Plaintiff,
 and
 in Chambers. and between Defendant,
 and Claimant,
 and Respondent.
 Upon hearing and upon reading the affidavit of filed the day
 of 18 , and
 It is ordered that the claimant be barred, that no action be brought against the
 above-named [sheriff] , and that the costs of this application be .
 Dated the day of 18 .

No. 51.

Interpleader Order, No. 2.

In the High Court of Justice. 18 . [*Here put the letter and number.*]
 Division. Between Plaintiff,
 and Defendant,
 and Claimant.
 Upon hearing and upon reading the affidavit of filed the day
 of 18 , and
 It is ordered that the above-named claimant be substituted as defendant in this
 action in lieu of the present defendant and that the costs of this application be .
 Dated the day of 18 .

No. 52.

Interpleader Order, No. 3.

In the High Court of Justice. 18 . [*Here put the letter and number.*]
 Division. Between Plaintiff,
 and Defendant,
 in Chambers. and between Claimant,
 and the said execution creditor, and the sheriff of Respondents.
 Upon hearing and upon reading the affidavit of filed the day
 of 18 , and
 It is ordered that the said sheriff proceed to sell the goods seized by him under
 the writ of fieri facias issued herein, and pay the net proceeds of the sale, after
 deducting the expenses thereof, into Court in this cause, to abide further order
 herein.
 And it is further ordered that the parties proceed to the trial of an issue in the
 High Court of Justice, in which the said claimant shall be the plaintiff and the said
 execution creditor shall be the defendant, and that the question to be tried shall be
 whether at the time of the seizure by the sheriff the goods seized were the property
 of the claimant as against the execution creditor.
 And it is further ordered that this issue be prepared and delivered by the plaintiff
 therein within from this date, and be returned by the defendant therein
 within days, and be tried at
 And it is further ordered that the question of costs and all further questions be
 reserved until the trial of the said issue, and that no action shall be brought against
 the said sheriff for the seizure of the said goods.
 Dated the day of 18 .

No. 53.

App. K.

Interpleader Order, No. 4.

[Heading as in Form 52.]

Upon hearing, &c.

It is ordered that upon payment of the sum of £ into Court by the said claimant within from this date, or upon his giving within the same time security to the satisfaction of the master [or as the case may be] for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of fieri facias herein.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the day of 18 .

No. 54.

Interpleader Order, No. 5.

[Heading as in Form 52.]

Upon hearing, &c.

It is ordered that upon payment of the sum of £ into Court by the said claimant, or upon his giving security to the satisfaction of the master [or as the case may be] for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of fieri facias herein.

And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the day of 18 .

No. 55.

Interpleader Order, No. 6.

[Heading as in Form 52.]

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that

And that the costs of this application be

Dated day of 18 .

App. K.

No. 56.

Interpleader Order, No. 7.

[Heading as in Form 52.]

Upon hearing _____, and upon reading the affidavit of _____ filed the
 day of _____ 18 _____, and _____

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of fieri facias issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale, (after deducting the expenses thereof, and rent, if any,) the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be _____.

Dated the _____ day of _____ 18 _____.

No. 57.

Order dismissing Summons (generally).

[Heading as in Form 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day
 of _____ 18 _____, and _____

It is ordered that the application of _____ be dismissed* with costs to be taxed and paid by the _____ to the _____ (or, and that the costs of _____ and occasioned by this application be the _____'s in any event).

Dated the _____ day of _____ 18 _____.

No. 58.

Summons for Entry of Satisfaction on a Registered Bill of Sale.

In the High Court of Justice.

In the matter of a bill of sale by _____ to _____ dated the _____ day of _____ 18 _____, and registered on the _____ day of _____ 18 _____.

Let all parties concerned attend the registrar of bills of sale at the central office, Royal Courts of Justice, London, on the _____ day of _____ 18 _____, at _____ o'clock in the _____ noon, on the hearing of an application on the part of _____ that satisfaction be entered on the above-mentioned bill of sale.

Dated the _____ day of _____ 18 _____.

This summons was taken out by _____ of _____ to _____.



APPENDIX L.

CHANCERY DIVISION.

No. 1.

Summons by Chief Clerk.

In the High Court of Justice.
Chancery Division.

Mr. Justice

In the matter of the estate of A. B., late of _____ in the county of _____, deceased.

Or,

Between C. D., petitioner,
and
E. F., defendant.

The defendant E. F. [or G. H., of, &c.], is hereby summoned to attend at the Chambers of Mr. Justice _____, at the Royal Courts of Justice, on the _____ day of _____, at _____ o'clock in the _____ noon, to be examined [or to be examined as a witness] on the part of the _____, for the purpose of the proceedings directed by Mr. Justice _____ to be taken before me,

Dated this _____ day of _____ 18 _____.

X. Y.,
Chief Clerk.

This summons was taken out by _____ of _____, in the county of _____, solicitors for _____.

No. 2.

Form of Advertisement for Claimants not being Creditors.

Pursuant to a judgment [or order] of the Chancery Division of the High Court of Justice made in [the matter of the estate of _____, and in] an action by _____ against _____, the persons claiming to be next of kin to [or the heir of, as the case may be], _____, late of _____, in the county of _____, who died in or about the month of _____, are by their solicitors, on or before the _____ day of _____, to come in and prove their claims at the Chambers of Mr. Justice _____, at the Royal Courts of Justice, or in default thereof they will be peremptorily excluded from the benefit of the said judgment [or order]. The _____ day of _____, at _____ o'clock in the _____ noon, at the said Chambers, is appointed for hearing and adjudicating upon the claims.

Dated the _____ day of _____ 18 _____.

A. B.,
Chief Clerk.

No. 3.

Form of Advertisement for Creditors.

Pursuant to a judgment [or an order] of the Chancery Division of the High Court of Justice made in [the matter of the estate of A. B., and in] an action S. against P., the creditors of A. B., late of _____, in the county of _____, who died in or about the month of _____ 18 _____, are on or before the _____ day of _____ 18 _____, to send by post, prepaid, to E. F., of _____, the solicitor of the defendant C. D., the executor [or administrator] of the deceased [or as may be directed], their christian and surname, addresses and descriptions, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them, or in default thereof, they will be peremptorily excluded from the benefit of the said judgment [or order]. Every creditor holding any security is to produce the same before Mr. Justice _____, at his chambers, the Royal Courts of Justice, London, on the _____ day of _____ 18 _____, at _____ o'clock in the _____ noon, being the time appointed for adjudication on the claims.

Dated this _____ day of _____ 18 _____.

G. H.,
Chief Clerk.

App. L.

No. 4.

*Notice to Creditor to produce Documents.**(Short Title.)*

You are hereby required to produce in support of the claim sent in by you against the estate of A. B. deceased [*describe the document required to be produced*], before Mr. Justice _____, at his chambers at the Royal Courts of Justice, London, on the day of _____ 18____, at _____ o'clock in the _____ noon.

Dated this _____ day of _____ 18____.

G. R., of, &c., solicitor for plaintiff [*or defendant, or as the case may be*].
To Mr. S. T.

No. 5.

Affidavit of Executor or Administrator as to Claims of Creditors.

In the High Court of Justice.

Chancery Division.

Mr. Justice _____

(Title.)

We, C. D., of, &c., the above-named plaintiff [*or defendant, or as may be*], the executor [*or administrator*] of A. B., late of _____, in the county of _____, deceased, and E. F., of, &c., solicitor, severally make oath and say as follows:

I, the said E. F., for myself, say as follows:

1. I have in the paper writing now produced, and shown to me, and marked A., set forth a list of all the claims the particulars of which have been sent in to me by persons claiming to be creditors of the said A. B., deceased, pursuant to the advertisement issued in that behalf, dated the _____ day of _____ 18____.

And I, the said C. D., for myself, say as follows:

2. I have examined the particulars of the several claims mentioned in the paper writing now produced, and shown to me, and marked A., and I have compared the same with the books, accounts, and documents of the said A. B. [*or as may be, and state any other inquiries or investigations made*], in order to ascertain, so far as I am able, to which of such claims the estate of the said A. B. is justly liable.

3. From such examination [*and state any other reasons*] I am of opinion and verily believe, that the estate of the said A. B. is justly liable to the amounts set forth in the sixth column of the first part of the said paper writing, marked A., and to the best of my knowledge and belief, such several amounts are justly due from the estate of the said A. B., and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said A. B. is not justly liable to the claims set forth in the second part of the said paper writing, marked A., and that the same ought not to be allowed without proof by the respective claimants [*or, I am not able to state whether the estate of the said A. B. is justly liable to the claims set forth in the second part of the said paper writing, marked A., or whether such claims, or any parts thereof, are proper to be allowed without further evidence*].

5. Except as hereinbefore mentioned, there are not, to the best of my knowledge, information, and belief, any other claims against the estate of the said A. B.

Sworn, &c.

No. 6.

Exhibit referred to in Affidavit, No. 5.

A.

(Short Title.)

List of claims, the particulars of which have been sent in to E. F., the solicitor of the plaintiff [*or defendant, or as may be*], by persons claiming to be creditors of

A. B., deceased, pursuant to the advertisement issued in that behalf, dated the day of 18 .

App. L.

This paper writing marked A. was produced and shown to and is the same as is referred to in his affidavit sworn before me this day of 18 .
W. B. &c.

FIRST PART.—Claims proper to be allowed without further evidence.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount claimed.	Amount proper to be allowed.
				£ s. d.	£ s. d.

SECOND PART.—Claims which ought to be proved by the claimants.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount claimed.
				£ s. d.

No. 7.

Notice to Creditor of Allowance of Claim.

(Short Title.)

The claim sent in by you against the estate of A. B. deceased, has been allowed at the sum of £ with interest thereon at £ per cent. per annum, from the day of 18 , and £ for costs.

[If part only allowed, add, If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file such affidavit as you may be advised in support of your claim and give notice thereof to me on or before the day of 18 next, and to attend by your solicitor at the chambers of Mr. Justice , at the Royal Courts of Justice on day of 18 , at o'clock in the noon, being the time appointed for adjudicating on the claim.]

Dated this day of 18 .

G. R., of, &c., solicitor for the plaintiff [or defendant, or as may be].
To Mr. P. R.

App. L.

No. 8.

*Notice to Creditor to prove his Claim.**(Short Title.)*

You are hereby required to prove the claim sent in by you against the estate of A. B., deceased. You are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me on or before the day of next, and to attend by your solicitor at the chambers of Mr. Justice at the Royal Courts of Justice on the day of 18 at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day of 18 .

G. R., of, &c., solicitor for the plaintiff [*or defendant, or as may be*].
To Mr. S. T.

No. 9.

*Notice that Cheques may be received.**(Short Title.)*

The cheques for the amounts directed to be paid to the creditors of A. B., deceased, by an order made in this [matter and] action dated the day of 18 may be received at the Paymaster-General's office on and after the day of 18 .

G. R., of, &c., solicitor for the plaintiff [*or defendant, or as may be*].
To Mr. W. S.

No. 10.

*Certificate of Chief Clerk.**(Title.)*

In pursuance of the directions given to me by Mr. Justice , I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the judgment [*or order*] in this cause dated the day of is as follows:

1. The defendants the executors of the testator, have received personal estate to the amount of £ and they have paid or are entitled to be allowed on account thereof, sums to the amount of £ having a balance due from [*or to*] them of £ on that account.

The particulars of the above receipts and payments appear in the account marked verified by the affidavit of filed on the day of and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums [*state the same here or in a schedule*] and except that I have disallowed the items of disbursement in the said account numbered , and,

[*Or in cases where a transcript has been made.*]

The defendants have brought in an account verified by the affidavit of , filed on the day of and which account is marked and is to be filed with this certificate. The account has been altered, and the account marked and which is also to be filed with this certificate, is a transcript of the account as altered and passed.

2. The debts of the testator which have been allowed, are set forth in the Schedule hereto, and with the interest thereon and costs mentioned in the Schedule are due to the persons therein named, and amount altogether to £ .

3. The funeral expenses of the testator amount to the sum of £ which I have allowed the said executors in the said account of personal estate.

4. The legacies given by the testator are set forth in the Schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to £ .

5. The outstanding personal estate of the testator consists of the particulars set forth in the Schedule hereto.

6. The real estate to which the testator was entitled consists of the particulars set forth in the Schedule hereto.

7. The defendants have received rents and profits of the testator's real estate, &c. [*in a form similar to that provided with respect to the personal estate*].

8. The incumbrances affecting the said testator's real estate are specified in the Schedule hereto.

9. The real estates of the testator directed to be sold, have been sold, and the purchase monies amounting altogether to £ have been paid into Court.

N.B.—The above numbers are to correspond with the numbers in the order after each statement, the evidence produced is to be stated as follows:—

The evidence produced on this account [*or inquiry*] consists of the probate of the testator's will, the affidavit of A. B. filed and paragraph numbered of the affidavit of C. D., filed.

No. 11.

Affidavit verifying Accounts and answering usual Inquiries as to Real and Personal Estate.

In the High Court of Justice.
Chancery Division.
Mr. Justice

(*Title.*)

We A. B., of &c., C. D., of &c., and E. F., of &c., the above-named defendants, severally make oath and say as follows:

1. We have according to the best of our knowledge, information, and belief, set forth in Schedule I. hereto a full account and inventory of the personal estate of or to which G. H., the testator in the judgment [*or order*] dated made in this action [*or matter*] named, who died on the day of , was possessed or entitled at the time of his death, *and not by him specifically bequeathed.*

2. Save what is set forth in the said Schedule I., *and what is by the said testator specifically bequeathed,* the said testator was not to the best of our knowledge, information, or belief, at the time of his death possessed of or entitled to any debt or sum of money due to him from us or any of us on any account whatsoever, nor to any leasehold or other personal estate whatsoever.

3. The said testator's funeral expenses have been paid. The same consist of the items of disbursement numbered and in the account hereinafter referred to [*or if not paid, it should be so stated with the amount due and to whom due*].

4. We have in the account marked A., now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full account of the personal estate of the said testator, *not by him specifically bequeathed,* which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order or the order of any of us, or for our use or the use of any of us, with the times when, the names of the persons from whom, and on what account the same has been received, and also a like account of the disbursements, allowances, and payments made by us or any of us on account of the said testator's funeral expenses, debts, and personal estate, together with the times when the names of the persons to whom, and the purposes for which the same were disbursed, allowed, or paid.

5. And we, each speaking positively for himself and to the best of his knowledge and belief as to other persons, further say that except as appears in the said account marked A., we have not, nor has any of us, nor have nor has any other person or persons by our order or the order of any of us, or for our use or the use of any of us, possessed, received, or got in any part of the said testator's personal estate, nor any money in respect thereof, and that the said account marked A. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed on the account aforesaid.

6. To the best of our knowledge, information, and belief, the personal estate of the said testator, now outstanding or undisposed of, consists of the particulars set forth in Schedule II. hereto.

7. Save what is set forth in the Schedule II., there is not to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding or undisposed of.

8. We have, according to the best of our knowledge, information, and belief, set forth in Schedule III. hereto the particulars of all the real estate which the said G. H. was seized of or entitled to at the date of his death.

The words in italics to be inserted only where the direction is to take an account of personal estate not specifically bequeathed. This should accord with the order directing the account.

App. L.

9. Save what is set forth in the said schedule, the said testator was not to the best of our knowledge, information, or belief, at the time of his death seized of or entitled to any real estate whatsoever.

10. We have, according to the best of our knowledge, information, and belief, set forth in Schedule IV. hereto the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect.

This should
accord with
the order
directing the
account.

11. We have in the account marked B., now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full account of all the rents and profits of the said testator's real estate which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use, or the use of any of us, and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due, and also a like account of the disbursements, allowances, and payments made by us, or any of either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

12. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say that, except as appears in the said account marked B., we have not, nor has any of us, nor has any other person by our order, or the order of any of us, or for our use, or the use of any of us, possessed, received, or got in any rents or profits of the said testator's real estate, nor any money in respect thereof, and that the said account marked B. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed, as above stated.

The FIRST SCHEDULE above referred to.

1. £50 cash in the house.
2. £100 cash at the testator's bankers, Messrs. A. and B.
3. £1,000 Consolidated £3 per cent. annuities, standing in the testator's name.
4. £10 due from John James, for half year's rent of house at _____, to Michaelmas, 1882.
5. £32 : 6s. 8d., balance remaining due from John Thomas on account of half year's rent of farm at _____, to Michaelmas, 1882.
6. £300, a debt due from Samuel Jones on a bond, with interest from _____, at _____ per cent.
7. A leasehold house situate at _____, held under a lease for a term of _____, which will expire on _____, at a rent of £ _____ a year, underlet to James Evans for a term which will expire on _____, at a rent of £50 a year.
8. £25, half a year's rent due from the said James Evans to _____.

The SECOND SCHEDULE above referred to.

[The particulars to be set forth in the same manner as above.]

The THIRD SCHEDULE above referred to.

[To contain a short particular of the real estate.]

The FOURTH SCHEDULE above referred to.

[To contain a short particular of the incumbrances, and showing what part of the above real estate is subject to each.]

No. 12.

Account of Personal Estate, being Account A. referred to in Form No. 11.

A.

In the High Court of Justice.
Chancery Division.
Mr. Justice

(Title.)

This account marked A. was produced and shown to A. B., C. D., and E. F., and is the account referred to in their affidavit sworn this day of .
Before me [to be signed here by Commissioner or officer before whom the affidavit is sworn].

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account received.	Amount received.
	18 .			£ s. d.
1		.. .. .	Found in house.	
2		Evans and Co.	Balance at bankers.	
3		.. .. .	Half year's dividend on 2,000 <i>l.</i> 3 <i>l.</i> per cent. annuities due.	
4		John James	Bond debt of 300 <i>l.</i> and interest from to .	
5		Samuel Jones	Bond debt of 300 <i>l.</i> and interest from to .	
6		James Evans	Half year's rent of leasehold house due	
7		William Williams	Produce of sale of the above leasehold house.	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount paid or allowed.
	18 .			£ s. d.
1		James Price	Undertaker's bill for funeral.	
2		Messrs. A. & B.	Expenses of probate.	
3		John George	A debt due to him for medical attendance.	
4		James Price	Bond debt of 1,000 <i>l.</i> and 25 <i>l.</i> for interest thereon from to .	

App. L.

No. 13.

Account of Rents and Profits, being the Account B. referred to in No. 11.

B.

In the High Court of Justice.
Chancery Division.
Mr. Justice

(Title.)

This account marked B. was produced and shown to A. B., C. D., and E. F., and is the account referred to in their affidavit sworn this day of
Before me [to be signed here by Commissioner or officer before whom affidavit sworn].

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account and in respect of what Part of the Estate received, and when due.	Amount received.
1	18	John James	Half year's rent for farm in parish of, due	£ s. d.
2		Thomas James	One quarter year's rent of house at, due	
3		John James	Same as No. 1, due	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount paid or allowed.
1	18	Sun Insurance Office . .	One year's insurance against fire, due	£ s. d.
2		Thomas Carpenter	Repairs at John James' farm.	
3		James Francis	Income tax, half year due 10th October.	

No. 14.

Receiver's Account.

[TITLE.]

(To accord with the order.) The [] account of A. B. the receiver appointed in this cause [or, pursuant to] an order made in this cause, dated the [] day of [] to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate of C. D., the testator [or, intestate] in this cause, named from the [] day of [] to the [] day of []

REAL ESTATE—RECEIPTS.

No. of Item.	Date when received.	Tenant's Names.	Description of Premises.	Annual Rent.		Arrears due at		Amount due at		Amount received.		Arrears remaining due.		Observations.
				£	s.	£	s.	£	s.	£	s.	£	s.		£	s.
1		John Jones,	Home Farm, in the parish of Norton, in the county of Oxford.	£	s.	£	s.	£	s.	£	s.	£	s.	
2		Thomas Jones..	House at Norton, aforesaid											

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE.

No. of Item.	Date of Payment or Allowance.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount.	
				£	s.
1		Sun Fire Office	One year's insurance of, due..		d.
2		Thomas Carpenter	Bill for repairs at house let to Thomas Jones		
3		James Francis	Allowance for a half year's Income Tax, due		
			Total payments	£	

App. L.

RECEIPTS ON ACCOUNT OF PERSONAL ESTATE. PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account received.	Amount received.	No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount paid or allowed.

SUMMARY.

Amount of balance due from receiver on account of real estate on last account	£	s.	d.
Amount of receipts on the above account of real estate	"	"	"
Balance of last account paid into Court	£	s.	d.
Amount of payments and allowances on the above account of real estate	"	"	"
Amount of receiver's costs of passing this account as to real estate	"	"	"
Balance due from the receiver on account of real estate	£	s.	d.
Amount of balance due from receiver on last account of personal estate	"	"	"
Amount of receipts on the above account of personal estate	"	"	"
Balance of last account paid into Court	£	s.	d.
Amount of payments and allowances on the above account of personal estate	"	"	"
Amount of receiver's costs of passing this account as to personal estate	"	"	"
Balance due from the receiver on account of personal estate	£	s.	d.

No. 15.

Ordinary Conditions of Sale.

Conditions of Sale.

1. No person is to advance less than £ at each bidding.
 2. The sale is subject to a reserved bidding for each lot which has been fixed by the judge to whom this cause is assigned.

3. Each purchaser is at the time of sale to subscribe his name and address to his bidding, and the abstract of title, and all written notices and communications and summonses are to be deemed duly delivered to and served upon the purchaser by being left for him at such address, unless or until he is represented by a solicitor.

4. Each purchaser is at the time of sale to pay a deposit of £ per cent. on the amount of his purchase money to , the person appointed by the said judge to receive the same.

5. The chief clerk of the said judge will after the sale proceed to certify the result, and the day of at of the clock noon is appointed as the time at which the purchasers may, if they think fit, attend by their solicitors at the Chambers of the said judge at the Royal Courts of Justice, London, to settle such certificate. The certificate will then be settled, and will in due course be signed and filed, and become binding without further notice or expense to the purchasers.

6. The vendor is within [] days after such certificate has become binding to deliver to each purchaser, or his solicitor, an abstract of the title to the lot or lots purchased by him, subject to the stipulations contained in these conditions. And each purchaser is, within four days after the actual delivery of the abstract, to deliver at the office of , solicitor, at , in the county of , a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract, and upon the expiration of such last-mentioned time—and in this respect time is to be deemed of the essence of the contract—the title is to be considered as approved of and accepted by such purchaser, subject only to such objections and requisitions, if any.

7. Each purchaser is, in addition to the amount of his bidding at the sale, to pay the value of all timber and timber-like trees, tellers, and pollards, if any, on the lot purchased by him, down to 1s. per stick, inclusive, the amount thereof to be ascertained by a valuation to be made in manner following; that is to say, each party (vendor and purchaser), or their respective solicitors, is within days after the chief clerk's certificate has become binding to appoint by writing one valuer, and give notice in writing to the other party of such appointment, and the valuers so appointed are to make such valuation, but before they commence their duty they are to appoint an umpire by writing, and the decision of such valuers if they agree, or of such umpire if they disagree, is to be final; and in case the purchaser shall neglect or refuse to appoint a valuer, and give notice thereof in the manner and within the time above specified, the valuation is to be made by the valuer appointed by the vendor alone, and his valuation is to be final.

8. Each purchaser is under an order for that purpose to be obtained by him, or in case of his neglect by the vendors at the costs of the purchaser, upon application at the Chambers of the said judge, to pay the amount of his purchase money (after deducting the amount paid as a deposit), together with the amount of the valuation under the seventh condition, if any, into Court to the credit of this cause , on or before the said day of , and if the same is not so paid, then the purchaser is to pay interest on his purchase money, including the amount of such valuation at the rate of £ per cent. per annum from the day of to the day on which the same is actually paid. Upon payment of the purchase money in manner aforesaid, the purchaser is to be entitled to possession, or to the rents and profits, as from the day of , down to which time all outgoings are to be paid by the vendors.

To be altered if the 4th or 7th condition not inserted.

This to be in accordance with the order directing the sale.

9. If any error or mis-statement shall appear to have been made in the above particulars, such error or mis-statement is not to annul the sale or entitle the purchaser to be discharged from his purchase, but a compensation is to be made to or by the purchaser, as the case may be, and the amount of such compensation is to be settled by the said judge at Chambers.

[Add to these such conditions respecting the title and title deeds as the conveyancing counsel shall advise to be necessary or proper.]

Lastly. If the purchaser shall not pay his purchase-money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by the said judge upon application at Chambers for the re-sale of the lot purchased by such purchaser, and for payment by the purchaser of the deficiency, if any, in the price which may be obtained upon such re-sale and of all costs and expenses occasioned by such default.

App. L.

No. 16.

Affidavit of Result of Sale.

In the High Court of Justice.
 Chancery Division.
 Mr. Justice

(Title.)

I, A. B., of &c., auctioneer, the person appointed by the judge to whom this cause is assigned to sell the estates comprised in the particulars hereinafter referred, do make oath and say as follows :

1. I did at the time and place in the lots, and subject to the conditions specified in the particulars and conditions of sale now produced and shown to me, and marked with the letter A., put up for sale by auction the estates described in such particulars. The result of such sale is truly set forth in the bidding paper marked with the letter B. now produced and shown to me.

2. The sums set forth in the second column of such bidding paper are the highest sums bid for the respective lots, the numbers of which are set forth in the first column opposite to such respective sums, and the persons whose names are subscribed in the third column of such bidding paper as purchasers were respectively the highest bidders for and became the purchasers of the respective lots, the numbers whereof are set opposite to such respective names in the said first column of the said bidding paper at the prices or sums set opposite to their respective names in the said second column thereof.

3. The several lots opposite to the numbers of which I have in the third column of the said bidding paper written the words "not sold" were not sold, no person having bid a sum equal to or higher than the reserved bidding fixed by the said judge.

4. No person bid any sum whatever for either of the lots opposite the numbers of which I have in the second column of the said bidding paper written the words "no bidding."

5. The said sale was conducted by me in a fair, open and candid manner, and according to the best of my skill and judgment.

6. I have received the sums set forth in the fourth column of the schedule hereto as deposits from the respective purchasers whose names are set forth in the second column of such schedule opposite the said respective sums, in respect of their said respective purchase monies, leaving due in respect of the said purchase monies the respective sums set forth in the fifth column of the said schedule.

The SCHEDULE above referred to.

No. of Lot.	Name of Purchaser.	Amount of Purchase Money.	Amount of Deposit received.	Amount remaining due.

No. 17.

List of Debts allowed.

James v. Jones.

List of Debts.

No. of Entry of Claim.	Names of Creditors.	Addresses.	Amounts allowed for Principal, Interest, and Costs.	Total Amounts due.
			£ s. d.	£ s. d.
2	James Allen ..	Boston, in the county of Lincoln, Surgeon	100 0 0	106 2 0
		Interest	4 0 0	
		Costs	2 2 0	
1	Charles Cohen ..	98, Piccadilly, in the county of Middlesex, gentleman, executor of John Thomas..	67 0 0	73 4 0
		Interest from 5th October, 1850, at 5%. per cent. ..	4 2 0	
		Costs	2 2 0	
5	John Dennis and Owen Thomas	16, Fleet Street, London, Grocers, and co-partners ..	100 0 0	171 14 6
		Interest from 16th October, 1852, at 5%. per cent. ..	5 0 0	
		Another debt	62 0 0	
		Interest	2 10 0	
		Costs	2 4 6	

No. 18.

List of Legacies remaining unpaid.

James v. Jones.

List of Legacies.

Name of Legatees.	Descriptions.	Amounts of Principal and Interest.	Total Amounts due.
		£ s. d.	£ s. d.
James Oliver	Son of testator, an infant ..	100 0 0	107 5 6
	Interest	7 5 6	
Mary Russell	Of 20, Cheapside, London, Widow	50 0 0	54 8 0
	Interest from 1st January, 1850, the death of testator	4 8 0	
Jane, the wife of John Williams.	Of Lincoln, Esq.	250 0 0	214 11 0
	Paid in part	50 0 0	
	Interest	200 0 0	
		14 11 0.	
		Total..£	

App. L.

No. 19.

List of Annuities and Arrears due.

List of Annuities.

Names of Annuitants.	Description of Annuitants and Nature of Annuitants.	Amounts of Annuities.	Amounts of Arrears due.
Mary Jones	Spinster, daughter of testator, during her life.	£ s. d. 50 0 0	£ s. d. 25 0 0
Maria Williams ..	Widow of testator, during her life and widowhood.	200 0 0	
	Arrears due from 7th August, 1882, down to which it has been paid.	—	300 0 0
	Totals £		£

No. 20.

List of Apportionments among Creditors or Legatees.

Apportionment among Creditors (or Legatees).

Names of Creditors (or Legatees).	Addresses.	Amounts before certified to be due and subsequent interest.	Totals due.	Amounts apportioned.
John Jones	20, Cheapside, London, woollen draper.	£ s. d. 200 0 0	£ s. d.	£ s. d.
	Subsequent interest ..	17 10 0	217 10 0	57 4 8
Thomas Young and Robert Young.	Braintree, in the county of Essex, executors of William Young, deceased.	200 0 0		
	Subsequent interest ..	17 10 0	217 10 0	57 4 8
			Total . . £	

No. 21.

Receiver's Recognizance.

, o , of , and , of ,
 Before our Sovereign Lady the Queen in her High Court of Justice personally appearing, do acknowledge themselves, and each of them doth acknowledge himself,

to owe to _____ and _____, two of the chief clerks of the Chancery Division, the sum of _____, to be paid to the said _____ and _____, or one of them, or the executors or administrators of them, or one of them, and unless they do pay the same, they, the said _____ do grant, and each of them doth grant for himself, his heirs, executors, and administrators, that the said sum of _____ shall be levied, recovered, and received, of and from them and each of them, and of and from all and singular the manors, messuages, lands, tenements, and hereditaments, goods and chattels, of them and each of them wheresoever the same shall or may be found. Witness our said Sovereign Lady Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and so forth, at the Royal Courts of Justice, the _____ day of _____ 18 _____.

Whereas, by an order of the High Court of Justice made in a cause wherein _____ are plaintiffs and _____ defendants, and dated the _____ day of _____

It was ordered that a proper person should be appointed to receive [or that upon the above bounden _____ first giving security he should be appointed receiver of] the rents and profits of the real estate, and to collect and get in the outstanding personal estate of _____ in the said order named. And whereas the judge to whom this cause is assigned hath [approved of the said _____ as a proper person to be such receiver, and hath] approved of the above bounden _____ and _____ as sureties for the said _____ and hath also approved of the above written recognizance with the under-written condition as a proper security to be entered into by the said _____ and _____ pursuant to the said order and the general orders of the said Court in that behalf, and in testimony of such approbation the chief clerk of the said judge hath signed an allowance in the margin hereof

Now the condition of the above written recognizance is such that if the said _____ do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estate, and in respect of the personal estate of the said _____, at such periods as the said judge shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or judge hath directed or shall hereafter direct, then the above recognizance shall be void and of none effect, otherwise the same is to be and remain in full force and virtue.

Taken and acknowledged by the above-named, &c.

App. L.

Mr. Justice _____, the judge to whose Court this cause is attached, has approved of and allowed this recognizance.
Chief Clerk.

No. 22.*

Affidavit verifying Receiver's Report.

In the High Court of Justice.
Chancery Division.
Mr. Justice _____

(Title.)

I, _____, of _____, the receiver appointed in this cause, make oath and say as follows:

1. The account marked with the letter A. produced and shown to me at the time of swearing this my affidavit, and purporting to be my account of the rents and profits of the real estate and of the outstanding personal estate of _____, the testator [or intestate] in this cause, from the _____ day of _____ 18 _____, to the _____ day of _____ 18 _____, both inclusive, contains a true account of all and every sum of money received by me or by any other person or persons by my order or, to my knowledge or belief, for my use on account, or in respect of the said rents and profits accrued due on or before the said _____ day of _____ on an account or in respect of the said personal estate, except what is included as received in my former account [or accounts] sworn by me.

2. The several sums of money mentioned in the said account, hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. W. X. and Y. Z. _____, the sureties named in the recognizance, dated the _____ of _____ 18 _____, are both alive, and neither of them has become bankrupt or insolvent.

M.

U U

* This form was substituted by R. S. C., Oct. 1884, for that contained in the Rules of 1883.

This is to accord with the order appointing the receiver. The day to which the account is made up.

App. L.

No. 23.

Affidavit verifying Abstract.

In the High Court of Justice.
Chancery Division.
Mr. Justice

(Title.)

I, A. B., of, &c., solicitor for in this cause [or matter], make oath and say as follows:

I have carefully examined and compared the abstract written on sheets of paper, now produced and shown to me at the time of swearing this affidavit, and marked with the letter A, with the several deeds and documents thereby purported to be abstracted. Such abstract is a true and correct abstract of the said deeds and documents, so far as such deeds and documents relate to the hereditaments referred to in an order made in this action [or matter] dated the day of .

No. 24.

Affidavit verifying Engrossments of Deeds.

In the High Court of Justice.
Chancery Division.
Mr. Justice

(Title.)

I, A. B., of, &c., , make oath and say as follows:

1. I have carefully examined and compared the parchment writing now produced and shown to me at the time of swearing this affidavit, and marked with the letter A, with the draft or paper writing now produced and shown to me at the time of swearing this affidavit, and marked with the letter B, being the draft of the conveyance [or settlement, &c.] settled at the chambers of the judge to whom this cause [or matter] is assigned pursuant to the order made in this cause [or matter] dated .

2. The said parchment writing is a true and correct transcript and engrossment of the said draft.

No. 25.

Originating Summons.

In the High Court of Justice.
Chancery Division.
Mr. Justice

In the matter of the estate of A. B., deceased.

Between C. D. Plaintiff,
and

E. F. Defendant.

Let E. F., the executor of the said A. B., attend at the chambers of Mr. Justice , at the Royal Courts of Justice, at the time specified in the margin [or, at the foot] hereof, upon the application of C. D., of , Esq., who claims to be a creditor [or, as the case may be] upon the estate of the above-named A. B., for an order for the administration of the personal [or real and personal] estate of the said A. B.

Dated the day of 18 .

(Seal.)

This summons was taken out by , of , solicitors for the above-named C. D.

The following note to be added to the original summons and when the time is altered by indorsement the indorsement to be referred to as below :—

NOTE.—If you do not attend either in person or by your solicitor at the time and place above mentioned [or at the place above mentioned at the time mentioned in the indorsement hereon], such order will be made and proceedings taken as the judge may think just and expedient.

No. 26.

App. L.

Request to set down Cause for further Consideration.

In the High Court of Justice.
Chancery Division.
Mr. Justice

A. v. B.

I request that this cause, the further consideration whereof was adjourned by order of the day of , may be set down for further consideration before Mr. Justice

C. D.,
plaintiff's [*or* defendant's] solicitor.

No. 27.

Notice that Cause has been set down for further Consideration.

In the High Court of Justice.
Chancery Division.
Mr. Justice

A. v. B.

Take notice that this cause, the further consideration whereof was adjourned by the order of the day of , was on the day of set down for further consideration before Mr. Justice for the day of
Dated, &c.

C. D.,
Solicitor for

To Mr.
Solicitor for

No. 28.

Form of ordering Accounts and Inquiries.

This Court doth order that the following accounts and inquiry be taken and made ; that is to say,

1. An account of the personal estate not specifically bequeathed of A. B., deceased, the testator in the pleadings named, come to the hands of, &c.
2. An account of the testator's debts.
3. An account of the testator's funeral expenses.
4. An account of the testator's legacies and annuities (if any), given by the testator's will.
5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

(If ordered.)

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

6. An inquiry what real estate the testator was seized of or entitled to at the time of his death.
7. An account of the rents and profits of the testator's real estate received by, &c.
8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

(If Sale ordered.)

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

10. An inquiry, what are the priorities of such last-mentioned incumbrances ?

And it is ordered that the testator's real estate be sold with the approbation of the judge, &c., &c.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

App. M.

APPENDIX M.*

* These rules are repealed so far as they are inconsistent with the Supreme Court Funds Rules, 1884, *ante*, p. 215.

PAYMENT INTO AND OUT OF COURT.

1. Any party who intends to pay money into Court will on request at the Bank of England (Law Courts Branch), hereinafter called the Bank, be furnished with a form of request which must be filled up as hereinafter provided, and signed by such party or his solicitor. The money will then be received by the Bank, and an official receipt for the money will be given. Where the money is paid in upon a notice or pleading, such notice or pleading must be produced at the Bank at the time the money is paid in, and the receipt will be given on the margin thereof.

2. In filing up the request mentioned in the last preceding regulation, the party paying the money into Court shall enter thereon the letter, number and short title of the action, and the name of the party by whom the payment is made, and also such one of the following statements as may be applicable to the circumstances under which the money is paid in, *viz.* :—

(a) Where the money is paid in, under the provisions of Rule 5 of Order XXII., an entry in the following form :—

A. Paid in in satisfaction of claim of above-named (name of party).

(b) Where the money is paid in under the provisions of Rule 6 of Order XXII., an entry in the following form :—

B. Paid in against claim of above-named (name of party), with defence, denying liability.

(c) Where the money is paid in under the provisions of Rule 26 of Order XXXI., an entry in the following form :—

C. Paid in to "Security for Costs Account."

(d) Where the money is paid in under an order or certificate, an entry in the following form :—

D. Paid in under order (or certificate) dated the day of .

Upon the money being paid in, an entry corresponding with the entry in the request shall be made in the books of the Bank, and in the receipt given by the Bank for the money, whether such receipt be endorsed on a notice or pleading, or be a separate document.

3. Where a defendant has paid money into Court under an order, and desires to appropriate the whole or any part of such money to the whole or any specified portion of the plaintiff's claim, pursuant to Rule 11 of Order XXII., he or his solicitor shall lodge at the Bank the original receipted order, and a notice, entitled with the letter, number, and short title of the action, and in such one of the following forms as may be applicable to the case, *viz.* :—

A. Take notice that £ of the money in Court herein, is appropriated by the above-named (name of party) to the satisfaction of claim of the above-named (name of party).

B. Take notice that £ of the money in Court herein, is placed by the above-named (name of party) against the claim of the above-named (name of party) with a defence, denying liability.

Upon such notice being lodged at the Bank, an entry corresponding thereto shall be made in the books of the Bank, and the money mentioned in the notice shall thereupon, for the purposes of payment out, be subject, in all respects, to regulations 4 and 5. A record of such appropriation shall be made by the Bank on the original receipted order, and the Bank will give a receipt in the usual form for the money so appropriated.

4. Where, upon the payment of the money into Court, the request contains a statement in the Form A. of regulations 2 and 3, unless an order restraining the payment out of Court has, prior to the issue of the cheque hereinafter mentioned, been lodged at the Bank, the money will be paid out on request to the plaintiff, or on his written authority to his solicitor.

5. Where, upon the payment of the money into Court, the request contains a statement in the Form B. of regulations 2 and 3, the following regulations shall apply :—

(a.) If the plaintiff accepts the sum paid in in satisfaction, he or his solicitor shall lodge at the Bank a notice, entitled with the letter, number, and short title of the action, and in the following form :—

"Take notice that the sum paid in herein has been accepted by the above-named [name of party] in satisfaction, and that I have given due notice of my acceptance thereof."

Such notice shall be sufficient evidence to the Bank, of compliance by the plaintiff with all the conditions entitling him under Order XXII. to have the sum in question paid out to him, and such notice being lodged, the money will, on request, be paid out to the party mentioned in such notice, or on his written authority to his solicitor.

(b.) Unless such a notice as is above mentioned is lodged at the Bank, the money

will not be paid out except on production at the Bank of an order of the Court, or a judge.

6. Where, upon the payment of the money into Court, the request contains a statement in the Form C. of regulations 2 and 3, if, after the cause or matter has been finally disposed of, the party who paid the money in is entitled, under Order XXXI., Rule 27, to have the money paid out to him the taxing officer shall, on the taxation of the costs, give to such party a certificate that he is so entitled; and upon production of such certificate at the Bank, unless an order restraining the payment out of Court has previously been lodged at the Bank, the money mentioned in the certificate, will on request, be paid out to the party mentioned in the certificate as entitled thereto, or on his written authority to his solicitor. Except as above provided, where, upon the payment of the money into Court, the request contains a statement in either of the Forms C. or D., the money will not be paid out except on production at the Bank of an order of the Court or a judge.

7. On bespeaking payment out of Court of money paid in, on a notice or pleading, the original receipted notice or pleading must be lodged at the Bank.

8. Where money is to be paid out under an order or authority, on bespeaking the payment out the order or authority must be lodged at the Bank, and after having been examined by the Bank must be filed in the Filing Department of the Central Office; and a certificate of its having been so filed must be lodged at the Bank on receiving the cheque.

9. Every authority for the payment of money out of Court must be attested by a witness, whose residence and description must be added to his attestation.

10. Each sum paid into Court shall, as regards its payment out of Court, be deemed (when the time for payment out arrives) to be money standing to the credit of the Masters.

11. All payments out shall be authorized by cheques upon the Bank, filled in by the Bank, and drawn in favour of the party claiming to receive the money. One clear day shall be allowed for the preparation of the cheque and it shall be signed by one of the Masters, and made payable to order, crossed specially or generally, and marked "not negotiable."

12. Whenever the cheque is required to be drawn in favour of any person, not a solicitor of the Supreme Court, the Bank may require him to be identified by a solicitor. If such person shall be represented in the cause or matter by a solicitor, the identifying solicitor must be such solicitor; and in case a solicitor on requiring the cheque to be made payable to himself, or on identifying any person receiving such cheque, shall not be known at the Bank, the Bank may, at their discretion, require, on delivery of the cheque, the production by such solicitor of his annual certificate.

13. Where an order directs that money paid into Court is to be invested, the Master to whom the cause or matter is assigned, shall, in the case of an investment, direct the Bank to invest such money in the securities mentioned in the order, and to pay the money necessary for such investment to the Government broker, conditionally, upon his causing the securities to be transferred to the credit of the Masters or persons named in the order or direction; and the said direction shall specify the title of the cause or matter to the credit of which the securities purchased, is to be placed in the books of the Bank.

14. The Bank, on receipt of a direction to invest, shall cause the securities mentioned therein to be purchased in the name of the Masters, or other persons mentioned in the direction, and shall receive and retain the certificate issued by the body corporate, or company, in whose books the securities purchased are registered, and the said certificate shall be sufficient evidence for all purposes that the purchase of such securities has been actually made; and the securities so purchased shall be placed in the books of the Bank to the same credit as that to which the money was paid in, unless the order of the Court or a judge otherwise directs.

15. The dividends on the securities purchased, shall, as and when the same respectively are received, or become due, be placed in the books to the same credit as that to which the money was originally paid in.

16. When securities are to be sold, the Master to whom the cause or matter is assigned shall direct the Bank to receive the proceeds of the sale, and place the same to the credit of such cause or matter, and the Bank shall, upon receipt of the necessary direction, cause the necessary sale to be carried out and the proceeds of such sale to be placed to the credit of the cause or matter mentioned in the direction.

17. The books kept by the Bank relating to payments of money into and out of Court shall be open at all times for inspection by the Masters; but no other person, not belonging to the Bank, shall be entitled to inspect such books without the written authority of a master.

18. In any case in which an affidavit is required, an office copy must be produced at the Bank. All forms to be used under these regulations shall be framed by the Masters, with the approval of the Governor and Company of the Bank of England.

APPENDIX N.

COSTS.

	Higher Scale.	Lower Scale.
	£ s. d.	£ s. d.
WRITS, SUMMONSES, AND WARRANTS.		
Writ of summons for the commencement of any action	0 13 4	0 6 8
And for indorsement of claim, if special	0 5 0	0 5 0
Concurrent writ of summons	0 6 8	0 6 8
Renewal of a writ of summons	0 6 8	0 6 8
Notice of a writ for service in lieu of writ out of jurisdiction..	0 5 0	0 4 0
Writ of inquiry	1 1 0	1 1 0
Writ of mandamus	1 1 0	0 10 0
Or per folio	0 1 4	0 1 4
Writ of subpoena ad testificandum or duces tecum	0 6 8	0 6 8
And if more than four folios, for each folio beyond four	0 1 4	0 1 4
Writ or writs of subpoena ad testificandum for any number of persons not exceeding three, and the same for every additional number not exceeding three	0 6 8	0 6 8
Writ of distringas, pursuant to stat. 5 Vict. c. 5	0 13 4	0 13 4
Writ of execution, or other writ to enforce any judgment or order	0 10 0	0 7 0
And if more than four folios, for each folio beyond four	0 1 4	0 1 4
Procuring a writ of execution or notice to the sheriff, marked with a seal of renewal	0 6 8	0 6 8
Notice thereof to serve on sheriff	0 5 0	0 4 0
Any writ not included in the above	0 10 0	0 7 0

These fees include all indorsements and copies, or præcipes, for the officer sealing them, and attendances to issue or seal, except where otherwise provided, but not the Court fees.

Summonses to attend at judges' chambers	0 6 8	0 3 0
Or if special, at taxing officer's discretion, not exceeding....	1 1 0	0 13 4
Copy for the judge, when required	0 2 0	0 2 0
Or per folio	0 0 4	0 0 4
Originating summonses for proceedings in chambers in the Chancery Division at taxing officer's discretion, not ex- ceeding	1 1 0	1 1 0
And attending to get same and duplicate sealed, and at the proper office to file duplicate and get copies for service stamped	0 13 4	0 13 4
Copy for the judge	0 2 0	0 2 0
Or per folio	0 0 4	0 0 4
Indorsing same and copies under Ord. LV. r. 22	0 6 8	0 6 8

SERVICES AND NOTICES.

Service, or filing in lieu of service, of any writ, summons, warrant, interrogatories, petition, order, or notice on a party who has not entered an appearance, and if not authorized to be served by post	0 5 0	0 5 0
If served at a distance of more than two miles from the nearest place of business, or office of the solicitor serving the same, for each mile beyond such two miles therefrom	0 1 0	0 1 0
Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent), for correspondence in addition	0 7 0	0 7 0
Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit.		
For service out of the jurisdiction such allowance is to be made as the taxing officer shall think fit.		
Service where an appearance has been entered on the soli- citor or party	0 2 6	0 2 6
Or if authorized to be served by post	0 1 6	0 1 6

	Higher Scale. £ s. d.	Lower Scale. £ s. d.	App. N.
Where any writ, order, and notice, or any two of them, have to be served together, one fee only for service is to be allowed.			
In addition to the above fees, the following allowances are to be made:—			
As to writs, if exceeding two folios, for copy for service, per folio beyond such two	0 0 4	0 0 4	
As to summons to attend at the judges' chambers, for each copy to serve	0 2 0	0 1 0	
Or per folio	0 0 4	0 0 4	
As to notices in proceedings to wind up companies, for preparing or filling up each notice to creditors to attend and receive debts, and to contributories to settle list of contributories	0 1 0	0 1 0	
And for preparing or filling up each notice to contributories to be served with a general order for a call, or an order for payment of a call	0 1 0	0 1 0	
And for drawing notice to be served on contributories or creditors of a meeting, per folio	0 1 0	0 1 0	
For each copy of the last-mentioned notice to serve, per folio .	0 0 4	0 0 4	
For preparing or filling up for service in any other cause or matter, each notice to creditors to prove claims, and each notice that cheques may be received, specifying the amount to be received for principal and interest, and costs, if any .	0 1 0	0 1 0	
For preparing notice to produce on the trial or hearing of an action, or notice to admit	0 7 6	0 5 0	
If special or necessarily long, such allowance as the taxing officer shall think proper, not exceeding per folio	0 1 0	0 0 8	
And for each copy, such allowance as the taxing officer shall think proper, not exceeding per folio.....	0 0 4	0 0 4	
For preparing notice of motion	0 5 0	0 3 0	
Or per folio	0 1 0	0 1 0	
Copy for service	0 1 0	0 1 0	
Or per folio	0 0 4	0 0 4	
For preparing any necessary or proper notice, not otherwise provided for, or any demand, pursuant to Ord. VII. rr. 1 and 2	0 1 6	0 1 6	
Or if special, and necessarily exceeding three folios, for preparing same, for each folio beyond three	0 1 0	0 1 0	
And for each copy for service, per folio, beyond such three ..	0 0 4	0 0 4	
Copies for service of interrogatories and petitions, and of orders with necessary notices (if any) to accompany, per folio	0 0 4	0 0 4	
Except as otherwise provided, the allowances for services include copies for service.			
Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.			
In proceedings to wind up a company, the usual charges relating to printing shall be allowed in lieu of copies for service, where the fee for copies would exceed the charges for printing, and amount to more than 3 <i>l</i> .			
Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or next appointment, is not to be allowed.			

APPEARANCES.

Entering any appearance	0 6 8	0 6 8	
If entered at one time, for more than one person, for every defendant beyond the first	0 2 0	0 1 0	
If a person appearing to a writ of summons to recover land limits his defence by his memorandum of appearance, in addition to the above.....	0 6 8	0 6 8	

INSTRUCTIONS.

To sue or defend	0 13 4	0 6 8	
For statement of claim or special case	2 2 0	0 13 4	

App. N.

	Higher Scale.			Lower Scale.		
	£	s.	d.	£	s.	d.
For indorsement of writ of summons when no further statement of claim	1	1	0	0	13	4
For originating summons 6s. 8d., or not to exceed	1	1	0	1	1	0
For defence or further defence	0	13	4	0	6	8
For counter-claim	0	13	4	0	6	8
For reply when defendant sets up a counter-claim	1	1	0	0	13	4
For reply or further reply in any other case with or without joinder of issue	0	13	4	0	6	8
For confession of defence	0	13	4	0	6	8
For joinder of issue without other matter	0	13	4	0	6	8
For special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness	0	13	4	0	6	8
To amend any pleading	0	13	4	0	6	8
For affidavit in answer to interrogatories, and other special affidavits	0	6	8	0	6	8
To appeal against order of Court or judge, and to appear thereon	1	1	0	0	13	4
To add parties by order of Court or judge	0	13	4	0	6	8
For counsel to advise on evidence when the evidence in chief is to be taken orally	0	6	8	0	6	8
Or not to exceed	1	1	0	1	1	0
For counsel to make any application to a Court or judge where no other brief	0	10	0	0	6	8
For brief on motion for special injunction	1	1	0	0	13	4
For brief on hearing or trial of action upon notice of trial or notice for judgment given, whether such trial be before a judge, with or without a jury, or before an official or special referee, or on trial of an issue of fact before a judge, commissioner, or referee, or on assessment of damages	2	2	0	1	1	0
For such brief, and for brief on the hearing of an appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses and procuring evidence.						
The fees for instructions for brief are to apply to a hearing on further consideration in Court only where an order for accounts and inquiries was made without such hearing or trial, as above mentioned.						

DRAWING PLEADINGS AND OTHER DOCUMENTS.

Statement of claim	1	1	0	0	10	0
Or per folio	0	1	0	0	1	0
Defence	0	10	0	0	5	0
Or per folio	0	1	0	0	1	0
Counter-claim	1	1	0	0	5	0
Or per folio	0	1	0	0	1	0
Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, and any other pleading (not being a petition or summons) and amendments of any pleading	0	10	0	0	5	0
Or per folio	0	1	0	0	1	0
Particulare, breaches and objections, when required, and one copy to deliver	0	6	8	0	5	0
Or such amount as the taxing officer shall think fit, not exceeding per folio	0	1	0	0	0	8
If more than one copy to be delivered, for each other copy, per folio	0	0	4	0	0	4
Special case, whether original or in an action, affidavits in answer to interrogatories and other special affidavits, special petitions and interrogatories, per folio	0	1	0	0	1	0
Brief, on trial or hearing of cause, issue of fact, assessment of damages, examination of witnesses, special case and petition before a Court or judge, sheriff, commissioner, referee, examiner, or officer of the Court, when necessary						

	Higher Scale.			Lower Scale.			App. N.
	£	s.	d.	£	s.	d.	
and proper in addition to pleadings, including necessary and proper observations, per folio	0	1	0	0	1	0	
Brief on application to add parties	0	10	0	0	6	8	
Or per folio	0	1	0	0	1	0	
Brief on further consideration, per sheet of 10 folios	0	6	8	0	6	8	
Accounts, statements, and other documents for the judges' chambers, when required, not exceeding per folio	0	1	0	0	0	8	
Advertisements to be signed by judge's clerk, including attendance therefor	0	13	4	0	6	8	
Bills of costs for taxation, including copy for the taxing officer	0	0	8	0	0	8	

COPIES.

Of pleadings, briefs, and other documents where no other provision is made, at per folio	0	0	4	0	0	4	
Where, pursuant to rules of Court any pleading, special case or petition of right, or evidence is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the Court), at per folio	0	0	4	0	0	4	
And for examining the proof print, at per folio	0	0	2	0	0	2	
And for printing the amount actually and properly paid to the printer, not exceeding per folio	0	1	0	0	1	0	
And in addition for every 20 beyond the first 20 copies, at per folio	0	0	1	0	0	1	
And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable.							
These allowances are to include all attendances on the printer.							
The solicitor for a party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay therefor.							
In addition to the allowances for printing and taking printed copies, there shall be allowed for such printed copies as may be necessary or proper for the following, but for no other purposes (videlicet):							
Of any pleading for delivery to the opposite party, or filing in default of appearance							
Of any special case for filing							
Of any petition of right for presentation, if presented in print, and for the solicitor of the Treasury, and service on any party							
Of any pleading, special case, or petition of right, for the use of the Court or judge							
Of any affidavit to be sworn to in print							
And of any pleading, special case, petition of right, or evidence for the use of counsel in Court, and in country agency causes when proper to be sent as a close copy for the use of the country solicitor, at per folio	0	0	3	0	0	2	
Such additional allowances for printed copies for the Court or judge, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause.							
Close copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the taxing officer.							
Inserting amendments in a printed copy of any pleading, special case, or petition of right, when not reprinted	0	5	0	0	1	0	
Or per folio	0	0	4	0	0	4	

App. N.

Higher Scale, Lower Scale.
£ s. d. £ s. d.

PERUSALS.

Of statement of claim, defence, reply, joinder of issue, and other pleading (not being a petition in a pending cause or matter, or summons other than an originating summons), by the solicitor of the party to whom the same are delivered	0 13 4	0 6 8
Or per folio	0 0 4	0 0 4
Of amendment of any such pleading in writing	0 6 8	0 6 8
Or per folio	0 0 4	0 0 4
If same reprinted	0 13 4	0 6 8
Or per folio of amendment	0 0 4	0 0 4
Of interrogatories to be answered by a party by his solicitor.	0 13 4	0 6 8
Or per folio	0 0 4	0 0 4
Of special case by the solicitor of any party except the one by whom it is prepared	0 13 4	0 6 8
Or per folio	0 0 4	0 0 4
Of copy order to add parties, notice of defendant's claim against any person not a party to the action under Ord. XVI. r. 49, and of defendant's defence and counter-claim served on a person not a party under Ord. XXI. r. 13, by the solicitor of the party served therewith, and in these several cases the perusal of the plaintiff's statement of claim is also to be allowed unless the solicitor has been previously allowed such perusal	0 13 4	0 6 8
Or per folio	0 0 4	0 0 4
Of notice to produce on trial or hearing of action, and notice to admit by the solicitor of the party served	0 13 4	0 6 8
Or (if to admit facts) under Ord. XXXII. r. 4, per folio	0 1 0	0 1 0
Of affidavit in answer to interrogatories by the solicitor of the party interrogating, and of other special affidavits by the solicitor of the party against whom the same can be read, per folio	0 0 4	0 0 4

ATTENDANCES.

To obtain consent of next friend to sue in his name or of a guardian <i>ad litem</i>	0 13 4	0 6 8
To deliver, or file in lieu of delivery, any pleading (not being a petition or summons) and a special case	0 6 8	0 3 4
To inspect, or produce for inspection, documents pursuant to a notice to admit	0 13 4	0 6 8
Or per hour	0 6 8	0 6 8
To examine and sign admissions	0 13 4	0 6 8
To inspect, or produce for inspection, documents referred to in any pleading, notice in lieu of pleading, or affidavit, pursuant to notice under Ord. XXXI. r. 14	0 6 8	0 6 8
Or per hour	0 6 8	0 6 8
To obtain or give any necessary or proper consent	0 6 8	0 6 8
To obtain an appointment to examine witnesses	0 6 8	0 6 8
On examination of witnesses before any examiner, commissioner, officer, or other person	0 13 4	0 13 4
Or according to circumstances, not to exceed	2 2 0	2 2 0
Or if without counsel, not to exceed	3 3 0	3 3 0
On deponents being sworn, or by a solicitor or his clerk to be sworn, to an affidavit in answer to interrogatories or other special affidavit	0 6 8	0 6 8
On a summons at judges' chambers	0 6 8	0 6 8
Or according to circumstances, not to exceed	1 1 0	1 1 0
In the Chancery Division, all allowances for attending at the judges' chambers are to be by the judge or chief clerk as heretofore.		
To file chief clerks' and taxing masters' certificates, and get copy marked as an office copy	0 6 8	0 6 8
On counsel with brief or other papers—		
If counsel's fee one guinea	0 6 8	0 3 4
If more and under five guineas	0 6 8	0 6 8
If five guineas and under twenty guineas	0 13 4	0 6 8
If twenty guineas	1 1 0	0 13 4
If forty guineas or more	2 2 0	—

	Higher Scale.			Lower Scale.			App. N.
	£	s.	d.	£	s.	d.	
On consultation or conference with counsel	0	13	4	0	13	4	
To enter or set down action, special case, or appeal, for hearing or trial	0	6	8	0	6	8	
In Court on motion of course and on counsel and for order ..	0	13	4	0	10	0	
To present petition for order of course and for order	0	13	4	0	10	0	
In Court on every special motion, each day	0	13	4	0	6	8	
On same when heard each day	0	13	4	0	13	4	
Or according to circumstances, not to exceed	2	2	0	2	2	0	
On special case, or special petition, or application adjourned from the judges' chambers, when in the special paper for the day, or likely to be heard	0	10	0	0	6	8	
On same when heard	1	1	0	0	13	4	
Or according to circumstances, not to exceed	2	2	0	2	2	0	
On hearing or trial of any cause, or matter, or issue of fact, in London or Middlesex, or the town where the solicitor resides or carries on business, whether before a judge with or without a jury, or commissioner, or referee, or on assessment of damages, when in the paper	0	10	0	0	10	0	
When heard or tried	1	1	0	0	13	4	
Or according to circumstances, not to exceed	3	3	0	3	3	0	
When not in London or Middlesex, nor in the town where the solicitor resides or carries on business, for each day (except Sundays) he is necessarily absent	3	3	0	3	3	0	
And expenses (besides actual reasonable travelling expenses) each day, including Sundays	1	1	0	1	1	0	
Or if the solicitor has to attend on more than one trial or assessment at the same time and place, in each case	1	11	6	1	1	0	
The expenses in such case to be rateably divided.							
To hear judgment when same adjourned	0	13	4	0	6	8	
Or according to circumstances	1	1	0	0	13	4	
To deliver papers (when required) for the use of a judge prior to a hearing	0	6	8	0	6	8	
If more than one judge	0	13	4	0	13	4	
On taxation of a bill of costs	0	6	8	0	6	8	
Or according to circumstances, not to exceed	2	2	0	2	2	0	
Unless the same shall necessarily occupy so much time that the taxing officer shall consider such amount inadequate, in which case he may allow such further fee as he shall think proper.							
In actions and matters for purposes within the cognizance of the Court of Chancery before the Principal Act came into operation, such further fee as the taxing officer may think fit, not exceeding the allowances heretofore made.							
To obtain or give an undertaking to appear	0	6	8	0	6	8	
To present a special petition, and for same answered	0	6	8	0	6	8	
On printer to insert advertisement in Gazette	0	6	8	0	6	8	
On printer to insert same in other papers, each printer	0	6	8	—	—	—	
Or every two	—	—	—	0	6	8	
On registrar to certify that a cause set down is settled, or for any reason not to come into the paper for hearing	0	6	8	0	6	8	
For an order drawn up by chief clerk, and to get same entered	0	6	8	0	6	8	
On counsel to procure certificate that cause proper to be heard as a short cause, and on registrar to mark same	0	6	8	0	6	8	
To mark conveyancing counsel or taxing master	0	6	8	0	6	8	
For preparing and drawing up an order made at chambers in proceedings to wind up a company and attending for same, and to get same entered	0	13	4	0	13	4	
And for engrossing every such order, per folio	0	0	4	0	0	4	
NOTE.—An order of course means an order made on an <i>ex parte</i> application, and to which a party is entitled as of right on his own statement and at his own risk.							
To examine an abstract of title with deeds, per hour, in a cause or matter	0	10	0	0	10	0	
To produce deeds for such purpose, per hour	0	6	8	0	6	8	

OATHS AND EXHIBITS.

Commissioners to take oaths or affidavits. For every oath, declaration, affirmation, or attestation upon honour in London or the country	0	1	6	0	1	6
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App. N.

	Higher Scale.			Lower Scale.		
	£	s.	d.	£	s.	d.
The solicitor for preparing each exhibit in town or country..	0	1	0	0	1	0
The commissioner for marking each exhibit.....	0	1	0	0	1	0

TERM FEES.

For every term commencing on the day the sittings in London and Middlesex of the High Court of Justice commence, and terminating on the day preceding the next such sittings, in which a proceeding in the cause or matter by or affecting the party, after appearance entered, shall take place..... 0 15 0 0 15 0
 And further, in country agency causes or matters, for letters.. 0 6 0 0 6 0
 Where no proceeding in the cause or matter is taken which carries a term fee, a charge for letters may be allowed, if the circumstances require it.

In addition to the above an allowance is to be made for the necessary expense of postages, carriage and transmission of documents.

APPENDIX O.

- (1.) The several Rules, Orders, and Forms contained in the Schedule and Appendix to the Supreme Court of Judicature Act (1873), Amendment Act.
- (2.) The additional Rules to the Judicature Act, 1875.
- (3.) The Rules of the Supreme Court, December, 1875.
- (4.) The Rules of the Supreme Court, February, 1876.
- (5.) The Rules of the Supreme Court, June, 1876.
- (6.) The Rules of the Supreme Court, December, 1876.
- (7.) The Rules of the Supreme Court, May, 1877.
- (8.) The Rules of the Supreme Court (Costs).
- (9.) The Rules of the Supreme Court, June, 1877.
- (10.) The Rules of the Supreme Court, November, 1878.
- (11.) The Rules of the Supreme Court, March, 1879.
- (12.) The Rules of the Supreme Court, December, 1879.
- (13.) The Rules of the Supreme Court, April, 1880.
- (14.) The Rules of the Supreme Court, May, 1880.
- (15.) Rules of the Supreme Court, May, 1883.
- (16.) The Regulæ Generales of Hilary Term, 1853, dated 11th January, 1853, (except the Rules as to juries).
- (17.) Regulæ Generales, as to pleading made by the judges in pursuance of the Common Law Procedure Act, 1852, dated the 10th of May, 1853.
- (18.) The Rules under the 6th section of the Debtors Act, 1869.
- (19.) The Chancery Consolidated General Orders of 1860.
- (20.) The Chancery Orders dated—
 March 6th, 1860.
 March 20th, 1860.
 February 1st, 1861.
 February 5th, 1861.
 July 13th, 1861.
 January 1st, 1862.
 May 16th, 1862.
 May 27th, 1865.
 May 7th, 1866.
 November 22nd, 1866.
 April 17th, 1867.
- (21.) The Chancery Regulations, dated August 8th, 1857, and March 15th, 1860.
- (22.) The Rules, Orders, and Regulations for the High Court of Admiralty of England, 1859 and 1871.

(Signed)

SELBORNE, C.
 COLERIDGE, C. J.
 W. B. BRETT, M. R.
 JAMES HANNEN.
 NATH. LINDLEY, L. J.
 EDW. FRY, L. J.
 C. E. POLLOCK, B.
 H. MANISTY, J.

HENRY COTTON, L. J.,
 (Signed in respect of Rules as to sittings
 of Court of Appeal.)

ORDER AS TO THE FEES AND PERCENTAGES WHICH ARE REQUIRED TO BE TAKEN IN THE SUPREME COURT OF JUDICATURE BY MEANS OF STAMPS.

[4th July, 1884.

WHEREAS by sect. 26 of the Supreme Court of Judicature Act, 1875, it is provided that the fees and percentages appointed to be taken in the High Court of Justice and in the Court of Appeal, and in any Court to be created by any Commission, and in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, shall, except so far as may be otherwise directed, be taken by means of stamps; and further, that such stamps shall be impressed or adhesive, as the Treasury may from time to time direct; and that the Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for ensuring the proper cancellation of such stamps, and for keeping accounts of such stamps.

Now, we, the undersigned, being two of the Lords Commissioners of Her Majesty's Treasury, do, with the concurrence of the Lord Chancellor, hereby give notice, and order and direct:—

1. That from and after the date at which this Order shall come into operation the stamps used for denoting the said fees and percentages shall be of the character, and be applied and otherwise dealt with in the manner, prescribed in the schedule hereto.

2. That the adhesive stamps at present in use in the Supreme Court of Judicature shall continue to be used so long as they are supplied by the Commissioners of Inland Revenue.

3. That in any case in which a deposit of stamps is required, pursuant to the Order as to Supreme Court Fees, 1884, such deposit shall be made in the manner provided by such Order.

THE SCHEDULE above referred to.

The official forms, with impressed or adhesive stamps (as the case may be), required in any Court or Office of the Supreme Court, in respect of any proceedings herein referred to, may be obtained at the Inland Revenue Offices, Royal Courts of Justice.

Forms and stamps for use in the Principal Probate Registry (which except for searches are all adhesive), can be purchased from the licensed vendors at Somerset House.

Summonses, Writs, Commissions and Warrants.

Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On sealing a writ of summons for commencement of an action	Writ of summons.	Impressed.
On sealing a concurrent, renewed, or amended writ of summons for commencement of an action		
On sealing a notice for service under Ord. XVI. r. 48	Notice	Impressed or adhesive.
On sealing a writ of mandamus	Præcipe left at time of issuing writ	{ Impressed, adhesive in Probate Registry.
On sealing a writ of subpoena not exceeding three persons		
On sealing a writ of execution, a subpoena pursuant to the Court of Probate Act, 1858, s. 23, and every other writ.....		

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On sealing or issuing any originating summons.	Summons	Impressed.	
On amending same	Præcipe	Adhesive.	
On sealing or issuing a summons for directions under Ord. XXX.	Summons	Impressed or adhesive.	
On sealing or issuing any other summons or taxing master's warrant.	Summons or warrant.	Impressed or adhesive.	
On filing a notice to have a reference to an Admiralty registrar placed in the list for hearing	} Notice	Impressed.	} The commission or the copy of petition to be written on impressed paper, or the document to be produced at the Inland Revenue, Royal Courts of Justice, to be stamped.
On a notice in Admiralty actions pursuant to Ord. LXVII. r. 10			
On sealing or issuing a commission to take oaths or affidavits in the Supreme Court.	Commission ..	Impressed.	
On every other commission	Commission ..	Impressed, adhesive in Probate Registry	
On marking a copy of a petition of right for service.	Copy of petition	Impressed.	

Appearances.

The fee payable on entering or amending an appearance shall be denoted by an impressed stamp on the form of memorandum as prescribed by the Appendix to the Rules of the Supreme Court, 1883, and where the appearance of more than one person is entered by the same memorandum, the fees for all persons beyond the first shall be denoted by means of impressed stamps.

Forms of memorandum of appearance with the impressed stamp for one or more defendants will be sold at the Inland Revenue Office, Royal Courts of Justice.

Copies.

	Document to be Stamped.	Character of Stamp to be used.
On a copy of a written deposition of a witness to enable a party to print the same.	Copy	Impressed or adhesive.
On examining a written or printed copy, and marking or sealing same as an office copy.	Copy	Impressed or adhesive.
On making a copy, and marking same as an office copy.	Copy	Impressed or adhesive.
On a copy in a foreign language....	Copy	Impressed or adhesive.
On a copy of a plan, map, section, drawing, photograph, or diagram.	Præcipe or copy. ..	Impressed or adhesive.
On a printed copy of an order, not being an office or certified copy.	Copy	Impressed or adhesive.

Attendances.

The fees payable under this heading shall be denoted either by an impressed or adhesive stamp on the subpoena, notice or other document requiring the attendance of the officer.

Oaths, &c.

_____	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the Paymaster-General.	Affidavit or other document answering thereto.	Impressed or adhesive.	
_____	Documents to be Stamped and Character of Stamp to be used.	Regulations and Observations.	
And in addition thereto, for each exhibit therein referred to and required to be marked.	Stamps to be impressed or adhesive on affidavit.	The amount of stamps should be marked on the office copy.	

Filing.

_____	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On filing a special case or petition of right.	Special case, petition of right, or præcipe.	Impressed	Where practicable stamp to be on special case or petition of right, and in other cases on præcipe filed.
On filing, except in Admiralty actions, an affidavit, deposition, or set of depositions (including any exhibits annexed to any such affidavit or deposition), statement of claim in default of appearance, official and special referees' certificates, petition, preliminary act, submission to arbitration, award, warrant of attorney, cognovit, bail satisfaction piece, bond, writ of execution with return, and power of attorney, and every other proceeding in a probate action or in a divorce or other matrimonial cause or matter required by Act of Parliament, general order, or order in the action, cause, or matter to be filed in the Principal Probate Registry.	Document filed	Impressed or adhesive.	

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On filing a scheme pursuant to the statute 30 & 31 Vict. c. 127, or the Liquidation Act, 1868.	Scheme	Impressed.	
On filing scripts in a probate action or on depositing, pursuant to an order in any cause or matter, any documents for safe custody or production.	Affidavit or order.	Adhesive.	
On a receipt for any document or documents to which the two last fees apply, when delivered out, or for any other document or documents when delivered out of the Principal Probate Registry.	Receipt	Adhesive.	
On filing an affidavit and notice under Ord. XLVI. r. 4.	Affidavit	Impressed.	
On every minute in Admiralty actions pursuant to Ord. LXVI. r. 8, for every instrument or document to which the minute relates (other than an exhibit, or any instrument or document previously issued from the registry or the marshal's office).	Minute	Impressed or adhesive.	
On filing a bill of sale and affidavit therewith.	Bill of sale ..	Impressed.	
On filing under the Bills of Sale Acts, 1878 and 1882, any other document.	Document	Impressed.	
On filing an affidavit of re-registration of a bill of sale.	Affidavit	Impressed.	
On filing a fiat of satisfaction.	Fiat	Impressed.	

Certificates.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On a certificate of appearance or of a pleading, affidavit, or proceeding having been entered, filed, or taken, or of the negative thereof, including certificate for use in a foreign country, and certificate of proceedings pursuant to Ord. LXI. r. 24.	Certificate	Impressed or adhesive.	

Searches and Inspections.

The fees on searches and inspections shall be taken by means of impressed stamps on a form of application which will be issued and sold at the Inland Revenue Office, Royal Courts of Justice; or, for the Principal Probate Registry, at Somerset House.

Examination of Witnesses.

The fees under this heading may still be denoted by means of adhesive stamps, which may be affixed either to the deposition or to the order or memorandum of appointment for an examination.

Hearing.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
<p>On entering or setting down, or re-entering or resetting down, an appeal to the Court of Appeal, or a cause or matter for trial or hearing in any Court in London or Middlesex, or at any Assizes, including hearing or further consideration when no fee was paid on the original hearing, whether on summons adjourned from chambers or otherwise, and including special case, a petition in a divorce or matrimonial cause or matter by which a proceeding is commenced, and petition of right, but not any other petition, nor any other summons adjourned from chambers.....</p>	<p>In the Chancery Registrar's Office, on forms provided for the purpose } At offices of Associates } on copy of pleadings.. } At all other offices of the High Court or Court of Appeal on præcipe .. }</p>	<p>Impressed. Impressed or adhesive. Impressed or adhesive in Probate Registry.</p>	
<p>On entering directions of the judge at a trial and certifying same if required.</p>	<p>Certificate</p>	<p>Impressed or adhesive.</p>	
<p>On writing for the attendance of Trinity Masters or other assessors on the hearing of an Admiralty action.</p>	<p>Præcipe</p>	<p>Impressed.</p>	
<p>On answering and setting down for hearing in Court a petition by which any proceeding is commenced on any other petition.</p>	<p>Petition</p>	<p>Impressed.</p>	

FEEES AND PERCENTAGES.

Judgments, Decrees, and Orders.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On drawing up and entering a judgment, decree, or order, whether on the original hearing of a cause or on further consideration, including a cause commenced by summons at chambers, and an order on the hearing of a special case or petition, and any order by the Court of Appeal or any other order or judgment.	Judgment, decree, or order.	Stamp to be impressed on the judgment or order except at the Crown Office, where adhesive stamps may for the present be also admitted, but, as far as practicable, a <i>præcipe</i> , with an impressed stamp, should in all cases be used. Adhesive stamps to be used in the Principal Probate Registry.	
On signing a note or memorandum of an order, pursuant to Ord. LIII. r. 14, when required for production, where no order is drawn up.	Note or memorandum.	Impressed or adhesive.	
On a memorandum to enter an order <i>nunc pro tunc</i> .	Memorandum.	Impressed.	
For copy of a plan, map, section, drawing, photograph, or diagram required to accompany any order.	Copy	Impressed or adhesive.	Where an adhesive stamp would damage the copy, a <i>præcipe</i> with the impressed stamp should be used.

Proceedings at Judge's Chambers or before a Master, Registrar, District Registrar or Official Referee.

The fees payable on these proceedings shall be paid in the manner provided by the order as to Supreme Court Fees, 1884, either by impressed or adhesive stamps, and where any such fees become due and payable upon making a certificate or order they shall be impressed or attached on the certificate or order. When any such fee is impressed or attached on an order, the officer who enters the order shall note on the entry the amount of the fee appearing on the order; and where any such fee is impressed or attached on a certificate the amount thereof shall be noted on every office copy thereof.

Taxation of Costs.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
For taxing a bill of costs..	Bill	Impressed or adhesive.	In any case in which the fees have not been paid by stamps on the bill of costs, and a certificate is used, the fee to be denoted by impressed stamp on the certificate.
For a certificate of the result	Certificate	Impressed.	

On Proceedings in the Pay Office of the Supreme Court.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On a certificate of the amount and description of any money, funds, or securities, including the request therefor.	Request	Impressed.	
On a transcript of an account for each opening, including the request therefor.	Transcript	Impressed.	
On a request to the Paymaster, Bank of England, or a Registrar, of the Probate, Divorce, and Admiralty Division (unless otherwise provided), for any of the following purposes: paying, lodging, transferring, or depositing money, funds, or securities in Court without an order, or money in addition to the amount directed by an order to be paid in; paying out of Court any money without an order or a certificate of a taxing officer.	Request	Impressed.	
On a request for information in writing in respect of any money, funds, or securities, or any transaction in the Pay Office.	Request	Impressed or adhesive.	
On a request for information respecting any money, funds, or securities to the credit of any cause or matter contained in any list prepared by the Paymaster of causes and matters to the credit of which any money, funds, or securities have not been dealt with during 15 years.	Request	Impressed or adhesive.	
On an affidavit for the purpose of paying, transferring, or depositing any money, funds, or securities in Court pursuant to the Statute 10 & 11 Vict. c. 96.	Office copy of schedule.	Impressed.	
On preparing a power of attorney.	Power of attorney.	Impressed.	

Register of Judgments and Lis Pendens.

-----	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On registering a judgment or lis pendens	} Memorandum of registry .. General form of search præcipe ..	} Impressed.	
On re-registering same....			
On a search			
On a certificate of entry of satisfaction.	Certificate....		
On a request for search and certificate pursuant to Ord. LXI. r. 23.	Certificate....	Impressed or adhesive.	
On a duplicate certificate..	Certificate....	Impressed or adhesive.	
On a continuation search..	Original certificate.	Impressed or adhesive.	
On a certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit	} Certificate ..	} Impressed or adhesive.	
On filing for registration a certificate issued out of Courts of Dublin or Court of Session in Scotland under the same Act			
On every certificate of the entry of a satisfaction under the same Act			
On a search made in one or both of the Registers of Irish or Scotch Judgments.	Præcipe	Impressed.	

Miscellaneous.

-----	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On a report of a private Bill in Parliament.	Report	Impressed.	
On an allowance of byelaws or table of fees.	Allowance....	Impressed.	
On a fiat of a judge	Fiat	Impressed.	
On signing, settling or approving an advertisement.	Advertisement.	Impressed, or adhesive in Probate Registry.	
On taking acknowledgment of a deed by a married woman.	Acknowledgment.	Impressed.	
On taking a recognizance or bond.	Recognizance .	Impressed.	
On assignment of a bond ..	Assignment ..	Adhesive.	
On taking bail, and taking same off the file and delivering.	Bail piece ...	Impressed.	
On a commitment	Commitment..	} Impressed.	
On an application to produce judge's notes.	Application ..		

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On appointment of commissioners under glebe exchange.	Appointment..	Impressed.	
On vacating a recognizance	Recognizance..	Impressed.	
On a citation	Præcipe	Adhesive.	
On admission or re-admission of a solicitor.	Admission	Impressed.	
On filing a claim in the Admiralty Registry for repayment of the excess of wages paid to a substitute hired in the place of a volunteer into the Royal Navy, including copy sent to the Admiralty.	Claim	Impressed or adhesive.	
On the opinion of the Admiralty Registrar objecting to the claim.	Document	Impressed.	
On a certificate of the Admiralty Registrar ordering payment of amount due, including the copy to be sent to the Accountant-General of the Navy.	Certificate	Impressed.	
On registering in the Admiralty Registry a power of attorney for a Queen's ship generally, and a copy thereof for the Accountant-General of the Navy.	Power of attorney.	Impressed.	
On registering same specially.	Power of attorney.	Impressed.	
On taking accounts by the Admiralty Registrar in naval prize matters.	Account.....	Impressed or adhesive.	
On Admiralty Registrar writing letters in regard to naval prize matters.	Document	Impressed or adhesive.	
On every 50l., or fraction of 50l., paid out of the Admiralty Registry in any action, or to the Naval Prize Account.	Account.....	Impressed or adhesive.	
Any other proceeding, pleading, or document not hereinbefore specified.	Document or Præcipe.	Impressed or adhesive.	These are to be impressed, if practicable, where not filed in the office.

General Directions.

In any case in which the use of impressed stamps is prescribed, paper or parchment on which the document requiring a stamp is to be written may be stamped at the Inland Revenue Office, Royal Courts of Justice, notwithstanding that stamped forms are also provided by the Commissioners of Inland Revenue.

The cancellation shall be effected in such manner as the Commissioners of Inland Revenue shall from time to time direct.

It shall be obligatory on all officers of the Supreme Court charged with the duty of cancelling adhesive stamps to see that all such stamps, although obliterated by a written or printed cancellation, be afterwards cancelled by means of perforation.

This order shall come into operation on the 18th day of July, 1884.

Dated the 4th day of July, 1884.

CHARLES C. COTES,
R. W. DUFF,

Two of the Lords of Her Majesty's Treasury.

I concur in this order,

SELBORNE, C.

ORDER AS TO SUPREME COURT FEES, 1884.

The Right Honourable **ROUNDELL, EARL OF SELBORNE**, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned Judges of the Supreme Court, and with the concurrence of the Lords Commissioners of Her Majesty's Treasury, doth hereby in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling him in this behalf, order and direct in manner following :—

I.

The fees and percentages contained in the schedule hereto are fixed and appointed to be, and shall be taken in the High Court of Justice, and in the Court of Appeal, and in any Court to be created by any commission, and in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, and by any officer paid wholly or partly out of public moneys who is attached to any of those Courts, or the Supreme Court or any judge of those Courts, or any of them. And the said fees and percentages shall, until otherwise determined by the Treasury, be taken by stamps in the same manner as heretofore, except those taken in the District Registries, which shall, until otherwise determined by the Treasury, be taken as the fees and percentages are now taken.

II.

The provisions in this Order shall not apply to or affect any of the matters following (that is to say) :—

The existing fees and percentages in respect of any of the jurisdictions which are not, by the Supreme Court of Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or the Court of Appeal ;

The existing fees and percentages in respect of any matters within the jurisdiction of the Court of Probate at the time of the passing of the Supreme Court of Judicature Act, 1875, other than probate actions, or in respect of any appeal in Bankruptcy ;

The existing fees and percentages in respect of any criminal proceedings, other than such proceedings on the Crown side of the Queen's Bench Division as the scale contained in the schedule hereto may be applicable to ;

The existing fees and percentages in respect of matters on the revenue side of the Queen's Bench Division, and proceedings and business in the office of the Queen's Remembrancer, other than such matters, proceedings, and business as the scale contained in the schedule hereto may be applicable to ;

The existing fees and percentages authorised to be taken by any sheriff, under sheriff, deputy sheriff, bailiff, or other officer or minister of a sheriff ;

The existing fees and percentages directed to be taken or paid by any Act of Parliament, and in respect of which no fee or percentage is hereby provided ;

The existing fees and percentages which shall have become due or payable before this Order comes into operation.

III.

Save as otherwise provided by this Order all existing fees and percentages which may be taken in any of the Courts whose jurisdiction is, by the Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or Court of Appeal, or in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those Courts, or the Supreme Court, or any judge of those Courts or any of them, shall be and are hereby abolished.

IV.

A folio is to comprise 72 words, every figure comprised in a column, or authorised to be used, being counted as one word.

V.

The provisions of Order LXXI. of the Rules of the Supreme Court, 1883, shall apply to this Order.

VI.

This order shall come into operation on the 25th day of January, 1884, and may be cited as "The Order as to Supreme Court Fees, 1884."

The SCHEDULE above referred to.

An Order or Rule herein referred to by number shall mean the Order or Rule so numbered in the Rules of the Supreme Court, 1883.

SUMMONSES, WRITS, NOTICES, COMMISSIONS, AND WARRANTS.

	£	s.	d.
1. On sealing a writ of summons for commencement of an action	0	10	0
2. On sealing a concurrent, renewed or amended writ of summons for commencement of an action	0	2	6
3. On sealing a notice for service under Ord. XVI. r. 48	0	2	6
4. On sealing a writ of mandamus	1	0	0
5. On sealing a writ of subpoena for witnesses, not exceeding three persons	0	5	0
6. On sealing a writ of execution, a subpoena pursuant to the Court of Probate Act, 1858, sect. 23, and every other writ	0	5	0
7. On sealing or issuing an originating summons under the Act 6 & 7 Vict. c. 73, for the taxation of a solicitor's bill of costs within twelve months after delivery, or delivery of a bill of costs by a solicitor, including the order to be made thereon	0	10	0
8. On sealing any other originating summons	0	10	0
9. On amending same	0	5	0
10. On sealing or issuing a summons for directions under Ord. XXX.	0	10	0
11. On sealing or issuing any other summons, or Taxing Master's warrant	0	3	0
12. On filing a notice to have a reference to an Admiralty Registrar placed in the list for hearing	0	10	0
13. On a notice in admiralty actions pursuant to Ord. LXVII. r. 10	0	15	0
14. On sealing or issuing a commission to take oaths or affidavits in the Supreme Court	5	0	0
15. On every other commission	1	0	0
16. On marking a copy of a petition of right for service	0	5	0

APPEARANCES.

17. On entering an appearance, for each person	0	2	0
18. On amending same	0	2	0

COPIES.

19. On a copy of a written deposition of a witness to enable a party to print the same, for each folio	0	0	4
20. On examining a written or printed copy, and marking or sealing same as an office copy, for each folio	0	0	2
21. On making a copy and marking same as an office copy, for each folio	0	0	6
22. On a copy in a foreign language—the actual cost.			
23. On a copy of a plan, map, section, drawing, photograph, or diagram—the actual cost.			
24. On a printed copy of an order, not being an office or certified copy, for each folio	0	0	1

ATTENDANCES.

25. On an application, with or without a subpoena, for any officer to attend as a witness, or to produce records or documents to be given in evidence (in addition to the reasonable expenses of the officer) for each day or part of a day he shall necessarily be absent from his office	1	0	0
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The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.

The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited.

OATHS, &c.

	£	s.	d.
26. On taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the Paymaster-General, for each person making the same	0	1	6
27. And in addition thereto for each exhibit therein referred to and required to be marked	0	1	0

FILING.

28. On filing a special case or petition of right	1	0	0
29. On filing, except in admiralty actions, and unless otherwise provided, an affidavit, deposition, or set of depositions (including any exhibits annexed to any such affidavit or deposition), statement of claim in default of appearance, official and special referees' certificates, petition, preliminary act, submission to arbitration, award, warrant of attorney, cognovit, bail, satisfaction piece, bond, writ of execution with return, and power of attorney, and every other proceeding in a probate action or in a divorce or other matrimonial cause or matter required by Act of Parliament, general order, or order in the action, cause, or matter to be filed in the Principal Probate Registry	0	2	6
30. On filing a scheme pursuant to the Railway Companies Act, 1867, or the Liquidation Act, 1868	1	0	0
31. On filing scripts in a probate action or on depositing pursuant to an order in any cause or matter, any documents for safe custody or production, if the number does not exceed five	0	5	0
32. If exceeding five	0	10	0
33. On a receipt for any document or documents to which the two last fees apply, when delivered out, or for any other document or documents when delivered out of the Principal Probate Registry	0	2	6
34. On filing an affidavit and notice under Ord. XLVI. r. 4	0	10	0
35. On every minute in admiralty actions pursuant to Ord. LXVI. r. 8, for every instrument or document to which the minute relates (other than an exhibit, or any instrument or document previously issued from the Registry or the Marshal's office), unless otherwise provided	0	5	0
36. On filing a bill of sale and affidavit therewith where the consideration (including further advances) does not exceed 100 <i>l.</i>	0	5	0
37. Above 100 <i>l.</i> and not exceeding 200 <i>l.</i>	0	10	0
38. Above 200 <i>l.</i>	1	0	0
39. On filing under the Bills of Sale Acts, 1878 and 1882, any other document to which the fees Nos. 36, 37, and 38 do not apply	0	10	0
40. On filing an affidavit of re-registration of a bill of sale or any such other document as in No. 39 mentioned	0	10	0
41. On filing a fiat of satisfaction	0	5	0

CERTIFICATES.

42. On a certificate of appearance, or of a pleading, affidavit or proceeding having been entered, filed, or taken, or of the negative thereof, unless otherwise provided	0	2	6
43. Or if required for use in a foreign country	0	5	0
44. Or if a certificate of proceedings pursuant to Ord. LXI. r. 24	0	5	0

SEARCHES AND INSPECTIONS.

45. On an application to search for an appearance or an affidavit, and inspecting the same	0	1	0
46. On an application to search an index, and inspect a pleading, judgment, decree, order, or other record, unless otherwise expressly provided for by any Act of Parliament or this order, and to inspect scripts filed or documents deposited pursuant to an order for safe custody or production, for each hour or part of an hour occupied	0	2	6
47. Not exceeding on one day	0	10	0

EXAMINATION OF WITNESSES.

48. On every memorandum of appointment for an examination to be taken before an Examiner of the Court	0	5	0
49. On every witness sworn and examined by an officer of the Court in his office, unless otherwise provided, including oath, for each hour or part of an hour	0	10	0

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|---|---------|
| 50. On an examination of witnesses by any such officer away from the office (in addition to reasonable travelling and other expenses), per day | £ s. d. |
| | 3 0 0 |
| 51. The officer may require a deposit of stamps on account of fees and a deposit of money on account of expenses, which may probably become payable beyond any amount paid for fees and expenses upon the examination, and the officer, or his clerk, taking such deposit shall thereupon make a memorandum thereof and deliver the same to the party making the deposit. | |
| The officer may also require an undertaking, in writing, to pay any further fees and expenses which may become payable beyond the amount so paid and deposited. | |

HEARING.

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| 52. On entering or setting down, or re-entering or re-setting down an appeal to the Court of Appeal, or a cause or matter for trial or hearing in any Court in London or Middlesex or at any assizes, including hearing on further consideration where no such fee was paid on the original hearing, whether on summons adjourned from chambers or otherwise, and including special case, a petition in a divorce or matrimonial cause or matter by which a proceeding is commenced, and petition of right, but not any other petition, nor any other summons adjourned from chambers | 2 0 0 |
| 53. On entering directions of the judge at a trial pursuant to Ord. XXXVI. rr. 41 and 42, and certifying same when required | 1 0 0 |
| 54. On writing for the attendance of Trinity masters or other assessors on the hearing of an admiralty action | 0 10 0 |
| 55. On answering and setting down for hearing in Court a petition by which any proceeding is commenced, unless otherwise provided .. | 1 0 0 |
| 56. Any other petition | 0 10 0 |

JUDGMENTS, DECREES AND ORDERS.

On drawing up and entering judgments, decrees, and orders—

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| 57. If made in Court on the original hearing or hearing on further consideration of a cause, or on the hearing of a special case or petition, or on any application to the Court of Appeal unless otherwise provided | 1 0 0 |
| Where in a divorce or matrimonial cause or matter a decree nisi is made, and afterwards a decree absolute, no fee shall be payable on the decree absolute. | |
| 58. If a judgment without hearing in Court or a final order in a probate action made by a registrar, or if an order made in a probate action or in a divorce or matrimonial cause or matter on a motion, including filing the case or application on which the order is made | 0 10 0 |
| 59. If made on the hearing of an originating summons, unless otherwise provided | 0 10 0 |
| 60. If made at chambers in the Chancery Division on the hearing of a cause or matter on further consideration | 0 10 0 |
| 61. If made under Ord. XV., Ord. XXXII. r. 6, or Ord. XXXIII. r. 2 | 0 10 0 |
| 62. If made on any application by Ord. LV. r. 2, directed to be disposed of in chambers comprised in sections (1), (2), (3), (5), (6), (7), or (10) of the said rule, exclusive of those comprised in section (12) of the same rule | 0 10 0 |
| 63. If an order of course on a petition of right | 0 10 0 |
| 64. If an order for a commission on a petition of right | 1 0 0 |
| 65. If an order of course under the Act 6 & 7 Vict. c. 73, to tax a solicitor's bill of costs within 12 months after delivery, or for delivery of a bill of costs by a solicitor where fee No. 7 is not applicable | 0 10 0 |
| 66. On any other order, including an agreement filed pursuant to Ord. LII. r. 23, in admiralty actions, and filing same | 0 5 0 |
| 67. On signing a note or memorandum of an order pursuant to Ord. LII. r. 14, when required for production, where no order is drawn up | 0 3 0 |
| 68. On a memorandum to enter an order nunc pro tunc | 0 5 0 |

ON PROCEEDINGS IN THE CHANCERY DIVISION, AT THE JUDGES' CHAMBERS, OR BEFORE
A TAXING MASTER OR DISTRICT REGISTRAR.

	£	s.	d.
69. On the sale or mortgage of any land or hereditaments pursuant to any order directing a sale or mortgages with the approbation of the judge made in any cause or matter for the purpose of raising money to be dealt with by the Court in such cause or matter, for every 100 <i>l.</i> or fraction of 100 <i>l.</i> of the amount raised	0	2	0
70. On the approval of the purchase of any land or hereditaments, or of the title to any land or hereditaments, to be purchased pursuant to any order in any cause or matter with money under the control of the Court in such cause or matter, for every 100 <i>l.</i> or fraction of 100 <i>l.</i> of the amount of the purchase money	0	2	0
71. On proceedings pursuant to an order in any cause or matter where the amount of the outstanding or undisposed of estate of a deceased person or of the estate subject to any trust or partnership shall be ascertained for the purpose of being dealt with in such cause or matter without deducting any payment to creditors or parties interested after the commencement of the cause or matter, for every 100 <i>l.</i> , or portion of 100 <i>l.</i> , of the amount or value thereof	0	1	0
72. On taking an account of moneys received by an executor, administrator, trustee, agent, solicitor, mortgagee, co-tenant, partner, receiver, guardian, consignee, bailee, manager, provisional official or other liquidator, sequestrator, or execution creditor, or other person liable to account, for every 100 <i>l.</i> or fraction of 100 <i>l.</i> of the amount found to have been received without deducting any payment	0	1	0
73. On taking an account of the debts or ascertaining the amount of any debt due from a deceased person or from any company in any cause or matter when any creditor shall be required to prove his debt otherwise than by production of his security, for every 100 <i>l.</i> or fraction of 100 <i>l.</i> of the amount found to be due to such creditor, or (if more than one) of the aggregate amount found to be due to all such creditors	0	1	0
74. And in any such case, if after evidence adduced by the creditor his claim shall be disallowed, on each such claim	0	10	0
75. On taking an account of or ascertaining the amount due in respect of the debentures or bonds of a joint stock or other company, for every 100 <i>l.</i> or fraction of 100 <i>l.</i> of the aggregate amount found to be due	0	2	0
76. On an inquiry to ascertain the heir and next-of-kin, or the heir or next-of-kin of any one or more than one deceased person whose estate is being administered in any cause or matter or in respect of whose estate an application is made under Ord. LV. r. 3, and on any such inquiry at chambers upon an application under the Act 10 & 11 Vict. c. 96 (the Trustee Relief Act), or the Lands Clauses Consolidation Act, 1845, or any other Act whereby the purchase money of any property sold is directed to be paid into Court	1	0	0
77. On settling a list of shareholders entitled to a return, where there is any money to be returned, or a list of contributories, for every person settled on either such list not exceeding 2,000	0	2	0
78. On settling under the 13th section of the Companies Act, 1867, the list of the creditors of a limited company which proposes to reduce its capital	5	0	0
79. On settling a scheme pursuant to the Railway Companies Act, 1867, or the Liquidation Act, 1868	5	0	0
80. On settling a scheme for the management of a charity	2	0	0
81. On a certificate of a chief clerk, taxing master, or district registrar of the result of any proceeding or taxation of costs before him, including one or any number of matters	0	10	0

The amount on which the fee No. 69 is payable shall not include the amount which may be payable out of the money raised to any mortgagee or other person entitled to any charge, estate, or interest, on or in the property sold when such mortgagee or other person is not in respect of his mortgage, charge, estate, or interest a party to the cause or matter in which the order is made or bound by the proceedings although he may consent to or concur in the sale.

The amount on which the fee No. 71 is payable shall not include any outstanding debts believed to be bad or irrecoverable, nor any property the value of which is undefined or uncertain, nor any property to which the fee No. 69 is applicable, nor any money on which the fee No. 72 shall be payable in the same cause or matter.

The amount on which either of the fees Nos. 70 and 72 is payable shall not include any sum of money or any money arising from the sale of any property upon which either of the fees Nos. 69 and 71 shall have been previously paid.

The value of any stocks, funds, debentures, securities, shares, or other property, the price of which is quoted in the London Daily Stock and Share List, published by the authority of the Committee of the Stock Exchange, to which the fee No. 71 is applicable, shall be the closing price quoted in such published list on the day previous to the fixing the amount of such fee.

When the fee No. 72 shall be applicable to any money received which shall be invested or deposited in a bank, and again be received from such investment or deposit, or shall be paid by one person accounting to any other person accounting in the same cause or matter, or in any other similar case, the fee shall not be payable twice on the same money in the same cause or matter.

When a fee shall be payable on the money raised by the sale of property, and the same property shall be resold, in the same cause or matter, the fee payable on the first sale shall be deducted from the fee payable on the second sale.

The amounts for or in respect of which the following fees are payable shall be limited to 200,000*l.* in the following cases—(a) the amount raised at any time or times in the same cause or matter in the cases to which the fee No. 69 is applicable; (b) the amount of purchase-money to be invested pursuant to any one order in the cases to which the fee No. 70 is applicable; (c) the amount in the same cause or matter of the value of the outstanding or undisposed of estate whenever ascertained in the cases to which the fee No. 71 is applicable; (d) the amount at any time or times in the same cause or matter found to have been received by any executor, administrator, or trustee in the cases to which the fee No. 72 is applicable, except in the case of a trustee directed to account periodically, and in that case, and in all other cases to which the fee No. 72 is applicable, the amount found to be due by any one certificate or on any one account; (e) the amount at any time or times in the same cause or matter found to be due to a creditor or creditors in the cases to which the fee No. 73 is applicable; (f) the amount found to be due in respect of debentures or bonds in the cases to which the fee No. 75 is applicable.

The fees Nos. 69 to 80 inclusive shall become due and payable by the party conducting the proceedings to which they apply as part of his costs of such proceedings, and be allowed as follows or otherwise as the Court or a judge shall direct; that is to say, the fee No. 71 shall become due and payable upon making the certificate or order by which the outstanding or undisposed of estate is ascertained or as to any part thereof the value of which is at that time undefined or uncertain, and which during the further proceedings in the cause or matter shall be realised or the value of which shall be ascertained upon any order or certificate made when or after the same shall be so realised or the value thereof ascertained. The fee No 72 on taking the account of a receiver, guardian, consignee, bailee, manager, liquidator, sequestrator, or execution creditor, or a trustee directed to pass his accounts periodically shall, upon payment, be allowed in the account, unless otherwise ordered by the Court or a judge. The fee No. 72 in the other cases to which it applies, and the fees Nos. 69, 70 and 73 to 80 inclusive, shall become due and payable by the party conducting the proceeding, on making the certificate or order on the result of the sale, purchase, account, inquiry or other proceeding to which the fee is applicable; but if the Court or a judge shall be of opinion that the costs of the party liable to the payment of any such fees will become payable out of any funds or moneys in Court or to be brought into Court, the Court or judge may suspend the payment of any such fees until such funds or moneys are dealt with, or for such other time as may be thought fit, in which case the amount payable shall be stated in the certificate or order upon which the same are payable, or in some subsequent certificate or order, and where such fees have not been paid, and the costs are directed to be paid out of money in Court or out of the proceeds of securities in Court, the taxing master shall certify the amount of fees payable in respect of such proceedings, and the paymaster shall, if so provided by the Rules under the Supreme Court of Judicature (Funds, &c.) Act, 1883, carry over the amount so certified to be payable from the account to which such moneys or proceeds are placed to a separate account in the books of the Pay Office for fees on proceedings or otherwise as shall be provided by such rules, and the amount shall from time to time, as the Treasury may direct, be paid to the account of her Majesty's Exchequer.

Nos. 82—87 apply only to the Queen's Bench and Probate Divisions.

PROCEEDINGS BEFORE AN OFFICIAL REFEREE.	£ s. d.
88. On every reference	5 0 0
89. And for every hour or part of an hour he is occupied beyond two full days.....	0 10 0

90. On every sitting elsewhere than in London or Middlesex a further £ s. d.
 fee for every night the official referee shall be absent from London 1 11 6
 91. And for his clerk 0 15 0
 The fees Nos. 82 to 91 inclusive shall become due and payable by the party conducting the proceedings on the report of the result of the reference or otherwise, as hereinafter provided, where no such report is made.

The above-mentioned fees, Nos. 69 to 80 and 82 to 91 inclusive, shall be due and payable, when no certificate, report or order is made, by the party conducting the proceedings on the completion of such proceedings, or, if not completed, a due proportion shall be payable on so much of the proceedings as shall have taken place, the amount to be fixed by the officer.

In these cases the fees shall be paid by stamps impressed upon or affixed to a memorandum stating on what account such fees are paid.

A deposit of stamps on account of the fees applicable to any proceeding may be required before such proceeding is commenced, or at any time during the course thereof, and in admiralty actions, when Ord. LVI. r. 4, applies, such stamps shall be affixed as therein provided, and in all other cases a memorandum of the amount deposited shall be delivered to the party making the deposit.

Nos. 92—101 apply only to admiralty proceedings.

TAXATION OF COSTS.

102. On taxing a bill of costs where the amount allowed does not exceed 4*l.* £ s. d.
 0 2 0
 103. Where the amount exceeds 4*l.*, for every 2*l.* allowed or a fraction thereof 0 1 0

These fees, unless otherwise provided, shall be taken on signing the certificate or on the allowance of the bill of costs as taxed; but the fees shall be due and payable, if no certificate or allocatur is required, on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the bill of costs.

The taxing officer may require a deposit of stamps on account of fees before taxation not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer or his clerk on taking such deposit shall make a memorandum thereof on the bill of costs.

Ord. V. r. 58 of the Chancery Funds Consolidated Rules, 1874, shall continue to be acted upon in cases to which it is applicable.

ON PROCEEDINGS IN THE PAY OFFICE OF THE SUPREME COURT.

104. On a certificate of the amount and description of any money, funds, or securities, including the request therefor 0 1 0
 105. On a transcript of an account for each opening, including the request therefor 0 2 0
 106. On a request to the Paymaster, Bank of England, or a registrar of the Probate, Divorce and Admiralty Division (unless otherwise provided), for any of the following purposes: paying, lodging, transferring, or depositing money, funds, or securities in Court without an order, or money in addition to the amount directed by an order to be paid in; paying out of Court any money without an order or a certificate of a taxing officer; information in writing in respect of any money, funds, or securities, or any transaction in the Pay Office. 0 1 0
 107. On a request for information respecting any money, funds, or securities to the credit of any cause or matter contained in any list prepared by the paymaster of causes and matters to the credit of which any money, funds, or securities have not been dealt with during fifteen years 0 2 5
 108. On an affidavit for the purpose of paying, transferring, or depositing any money, funds, or securities in Court pursuant to the statute 10 & 11 Vict. c. 96. 0 1 0
 109. On preparing a power of attorney 0 3 0

REGISTER OF JUDGMENTS AND LIS PENDENS.

110. On registering a judgment or lis pendens, although more than one name may have to be registered 0 2 6
 111. On re-registering same 0 1 0

	£	s.	d.
112. On a search for each name	0	1	0
113. On a certificate of entry of satisfaction	0	1	0
114. On a request for a search and certificate pursuant to Order LXI. r. 23	0	5	0
115. If more than one name included in the same request, for each additional name	0	2	0
116. On a duplicate certificate, if not more than three folios	0	1	0
117. For every additional folio	0	0	6
118. On every continuation search, if requested within fourteen days of any former search (the result to be endorsed on such certificate) ..	0	1	0
119. On a certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit ..	0	2	0
120. On filing for registration a certificate issued out of the Courts of Dublin or Court of Session in Scotland under the last-mentioned Act, although more than one name may have to be registered under the said Act	0	7	0
121. On every certificate of the entry of a satisfaction under the last- mentioned Act	0	1	0
122. On a search made in one or both of the registers of Irish and Scotch judgments for each name	0	1	0

MISCELLANEOUS.

123. On a report of a private bill in Parliament	5	0	0
124. On an allowance of byelaws or table of fees	1	0	0
125. On a fiat of a judge	0	5	0
126. On signing, settling, or approving an advertisement	0	10	0
127. On taking the acknowledgment of a deed by a married woman	1	0	0
128. On an appointment of a receiver in a probate action	1	0	0
129. On taking a recognizance or bond, whether one or more than one recognisor or obligor, and whether entered into by all at one time or not	0	10	0
130. On assignment of a bond	0	5	0
131. On taking bail, and taking same off the file and delivering	0	2	0
132. On a commitment	0	5	0
133. On an application to produce judges' notes	0	5	0
134. On appointment of commissioners under glebe exchange	1	0	0
135. On vacating a recognizance	0	10	0
136. On a citation	0	5	0
137. On the admission or re-admission of a solicitor	5	0	0
138. On filing a claim in the Admiralty Registry for repayment of the excess of wages paid to a substitute hired in the place of a volunteer into the Royal Navy, including copy sent to the Admiralty	0	10	0
139. On the opinion of the Admiralty Registrar objecting to the claim ..	0	10	0
140. On a certificate of the Admiralty Registrar ordering payment of amount due, including the copy to be sent to the Accountant- General of the Navy	0	10	0
141. On registering in the Admiralty Registry a power of attorney for a Queen's ship generally, and a copy thereof for the Accountant- General of the Navy	1	10	0
142. On registering same specially	0	10	0
143. On taking accounts by the Admiralty Registrar in Naval Prize matters	0	5	0
144. On Admiralty Registrar writing letters in regard to Naval Prize matters	0	10	0
145. On every 50 <i>l.</i> , or fraction of 50 <i>l.</i> , paid out of the Admiralty Re- gistry in any action, or to the Naval Prize Account	0	5	0

No fee is payable on the transfer of money from the Admiralty Registry to the Naval Prize Account.

(Signed) SELBORNE, C.
COLERIDGE, C. J.
W. B. BRETT, M. R.
JAMES HANNEN,
Prest. P.D.A. Divn.

We concur in the above order.

(Signed) C. C. COTES,
H. J. GLADSTONE,
Lords Commissioners of Her
Majesty's Treasury.

ORDER AS TO SUPREME COURT FEES (OCTOBER), 1884.

I, the Right Honourable Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned judges of the Supreme Court, and with the concurrence of the Lords Commissioners of her Majesty's Treasury, do hereby, in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling me in this behalf, order and direct in manner following:—

The fees hereunder written are fixed and appointed to be, and shall be, taken on appeals brought on or after the Twenty-fourth day of October, 1884, from inferior Courts, notwithstanding anything in the Order as to Supreme Court Fees, 1884, contained.

	£	s.	d.
On filing	0	10	0
On hearing	1	0	0
On drawing up judgment	0	10	0

The 21st day of August, 1884.

SELBORNE, C.
COLERIDGE, C. J.
W. B. BRETT, M. R.
C. E. POLLOCK, B.

We concur,
CHARLES C. COTES,
HERBERT J. GLADSTONE,
Lords Commissioners of Her Majesty's Treasury.

ADDITIONAL RULES OF THE SUPREME COURT.

RULE OF JULY 27, 1885.

NOTE.—*The following Rule may be cited, with reference to the Rules of the Supreme Court, 1883, as Order XLVI. Rule 14.*

Any person who, under Order XLVI. of the Rules of the Supreme Court, 1880, may have served in the manner thereby prescribed a notice, operating in lieu of a writ of *distringas*, which at the time of making this present Rule may be still in force, may at any time during the currency thereof file in the Central Office, without any affidavit in support thereof, a further notice under his hand, stating that the same shall thenceforth have effect without any further renewal, in the same manner as if it had been a notice filed in the Central Office on affidavit under Order XLVI. rr. 4 and 5 of the Rules of the Supreme Court, 1883, and serve a duplicate of such notice under the seal of the Central Office upon the company upon which such first-mentioned notice was served; and the service of the duplicate of such notice so filed shall have the same effect as a writ of *distringas* duly issued under the Act 5 Vict. c. 5, s. 5, would have had against the Bank of England.

Under the Rules of 1880 (r. 27) the notice required to be renewed every five years if it were desired to keep it on foot.

RULES OF THE SUPREME COURT, DECEMBER, 1885.

Note.—The following Rules may be cited as the “RULES OF THE SUPREME COURT,” December, 1885, and each Rule may be cited separately according to the heading thereof with reference to the Rules of the Supreme Court, 1883. They shall come into operation on the 1st of January, 1886.

ORDER V. RULE 9(e).

1. Order V. r. 9(e), shall be read as if the following words were added thereto:—

And such certificate shall be countersigned by the chief clerk, to whom, according to the distribution of business, such cause or matter belongs.

Ord. V.

ORDER V. RULE 9 (f).

2. For the purposes of subsections (a), (b), and (c) of this Rule separate rotations shall be kept.

For Ord. V. r. 9, see *ante*, p. 312. The rule is that which provides for causes and matters commenced in the Chancery Division being assigned to and marked with the name of some particular judge.

ORDER VII. RULE 3.

3. Ord. VII. r. 3, shall be read as if the following words were added thereto :—

“ Until the final conclusion of the cause or matter, whether in the High Court or the Court of Appeal.”

Ord. VII. r. 3, *ante*, p. 315, provides that a party may change his solicitor by simply filing a notice; but until the notice is filed, and a copy of it served and (in Chancery matters) left at the judge's chambers, the former solicitor will be considered the solicitor of the party. To this rule the above addition is now made.

ORDER XIII. RULE 9.

4. Ord. XIII. r. 9, shall be read as if after the words “ arrears of rent ” the words “ double value ” were inserted, and after the words “ breach of contract ” the words “ or wrong or injury to the premises claimed ” were inserted.

Ord. XIII., *ante*, p. 326, relates to proceedings in default of appearance; and r. 9, *ante*, p. 329, prescribes the plaintiff's course where he has indorsed a claim for mesne profits, arrears of rent or damages for breach of contract upon a writ for the recovery of land.

ORDER XIV. RULE 7.

5. The Court or a judge may, with the consent of all parties, dispose of the action finally and without appeal in a summary manner, and on such terms as to costs or otherwise as the Court or judge shall think just.

Ord. XIV., *ante*, p. 330, provides for the prompt dealing with actions where the writ is specially indorsed. This rule extends the power of the judge to deal summarily with this class of cases.

ORDER XVIII. RULE 2.

6. Ord. XVIII. r. 2, shall be read as if the following words were added thereto :—

Provided that nothing in this order contained shall prevent any plaintiff in an action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of the possession of the mortgaged property to the plaintiff on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption and for such delivery of possession shall not be deemed an action for the recovery of land within the meaning of these rules.

Provided also, that in case any mortgage security shall be foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favour such foreclosure has taken place may by motion or summons apply to the Court or a judge for an order for delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case shall require.

Ord. XVIII. r. 2, *ante*, p. 353, provides that, with certain specified exceptions, no cause of action shall be joined with an action for the recovery of land without the leave of the Court or a judge. There was some doubt whether an action for foreclosure was an "action for the recovery of land" within the meaning of the rule. This doubt is removed by the additional words now added to the rule. Actions relating to mortgages are now commenced by originating summons; see Ord. LV. r. 5a, *post*, p. 692.

ORDER XXVII. RULE 8.

7. Ord. XXVII. r. 8, shall be read as if after the words "breach of contract" the words "or wrong or injury to the premises claimed" were inserted.

Ord. XXVII., *ante*, p. 374, regulates proceedings where default is made in pleading.

ORDER XXXIII. RULE 4A.

8. Upon the taking of any account the Court or a judge may direct that the vouchers shall be produced at the office of the solicitor of the accounting party, or at any other convenient place, and that only such items as may be contested or surcharged shall be brought before the judge in chambers.

This is a new and very convenient provision. For Ord. XXXIII. see *ante*, p. 397.

ORDER XXXIV. RULE 3.

9. Ord. XXXIV. r. 3, shall be read as if the words "printed copies for the use of the judges shall be delivered by the plaintiff" were omitted, and the words "three printed copies for the use of the judges shall be left therewith" were substituted therefor.

Ord. XXXIV., which regulates proceedings by way of special case, will be found at p. 400, *ante*.

ORDER XXXV. RULE 6.

10. Ord. XXXV. r. 6, shall be read as if after the word "master" the words "or chief clerk" were inserted.

Ord. XXXV. *ante*, p. 406, relates to proceedings in district registries; and r. 6, *ante*, p. 407, gives the district registrar the same powers as a judge at chambers, except such as by the rules "a master" is precluded from exercising.

Ord. XXXVI.

ORDER XXXVI. RULE 6.

11. Order XXXVI. r. 6, shall be read as if the words "within ten days after notice of trial has been given" were therein inserted after the words "upon application."

Ord. XXXVI. r. 6, *ante*, p. 412, is the rule giving the Court a general power to order an action to be tried with a jury; it gives no absolute right to a jury in actions which, before the Judicature Act, 1873, would have been tried without a jury (*The Temple Bar*, 11 P. D. 6).

As to the new rule, see *Moore v. Deakin*, W. N. (1886), 5.

ORDER XXXVII. RULE 51.

12. The examiners of the Court shall be entitled to charge the fees mentioned in the Appendix hereto, in substitution for the fees heretofore allowed.

The scale of fees hitherto in force will be found at p. 432, *ante*. For this Appendix, see *post*, p. 698.

ORDER XXXVIII. RULE 10.

13. Order XXXVIII. r. 10, shall be read as if the words "indorsed on" were substituted for the words "appended to."

The result of this alteration is that the note showing on whose behalf an affidavit is filed must for the future be indorsed on the affidavit instead of being appended to it.

ORDER XXXVIII. RULE 19A.

14. The consent of a new trustee to act shall be sufficiently evidenced by a written consent signed by him and verified by the signature of his solicitor. Form I. in the Appendix hereto shall be used with such variations as circumstances may require, and may be cited as Form 29 in Appendix L.

The practice hitherto has been to require the signature of the trustee to be verified by affidavit; for the future the certificate of his solicitor in the prescribed form will suffice.

For the form see *post*, p. 697.

ORDER XLIX. RULE 4A.

15. Any judge of the Chancery Division may, at the request or with the consent of any other judge of that division before whom a cause or matter is pending, hear such cause or matter or any application therein, and for that purpose it shall not be necessary that any order for transfer shall be made or consent of the parties obtained.

Ord. XLIX., *ante*, p. 463, deals with the subjects of transfer and consolidation. The new provision appears to be a very convenient one.

ORDER LI. RULE 1A.

Ord. LI.

16. In all cases where a sale, mortgage, partition, or exchange is ordered, the Court or a judge shall have power, in addition to the powers already existing, with a view to avoiding expense or delay, or for other good reason, to authorise the same to be carried out, either as at present—

- (a) by laying proposals before the judge in chambers for his sanction ; or
- (b) by proceedings altogether out of Court, any moneys produced thereby being paid into Court or to trustees, or otherwise dealt with as the judge in chambers may order.

ORDER LI. RULE 3A.

17. No order for the payment of purchase-money into Court shall be necessary, but a direction for that purpose signed by the chief clerk shall be sufficient authority for the paymaster-general to receive the money.

ORDER LI. RULE 6A.

18. In the case of sales under the direction of the Court, the particulars of sale shall be signed by and the result of the sale shall be certified under the hands of the auctioneer and the solicitor of the party having the conduct of the sale. It shall not be necessary to file any affidavit verifying the particulars or the result of the sale. Form 2 in the Appendix hereto shall be substituted for Form 16 in Appendix L., which is hereby annulled.

Ord. LI., *ante*, p. 474, deals with the subject of sales by the Court ; the new rules vary the practice hitherto followed in several important particulars.

For the form of the certificate of the result of a sale, see *post*, p. 697.

ORDER LV. RULE 1A.

19. In any proceeding before the judge in chambers any party may, if he so desire, be represented by counsel.

Only Mr. Justice Kay and Mr. Justice Chitty are in the habit of hearing counsel in chambers.

ORDER LV. RULE 2.

20. Sub-sect. (6) shall be read as if the words “any other Act relating to Parliamentary deposits” were inserted before “for investment” ; and sub-sect. (7) shall be read as if the words “passed before the 14th of August, 1855,” were omitted.

The effect of these alterations is to further extend the jurisdiction in chambers. It would seem that the word “or” should have been added before the words “any other,” &c. Although a proceeding falls, strictly speaking, within Ord. LV. r. 2 (7), the Court has a discretion under Ord. LXX. r. 1, and will not disallow the costs of a petition where that is a cheaper and more expeditious mode of proceeding than a summons (*Re Bethlehem and Bridewell Hospitals*, 30 Ch. D. 541).

Ord. LV.

ORDER LV. RULE 5A.

21. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons, returnable in the chambers of a judge of the Chancery Division, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require; that is to say,—

Sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee.

Note.—Add to the heading of Ord. LV. Part II. the words “Foreclosure and Redemption.”

This rule effects a very important alteration in the practice of the Court. The result will be, that in all simple cases the whole proceedings in suits relating to mortgages will be conducted in chambers, and only those cases will come into Court where questions of real difficulty have arisen, *e. g.* disputes as to the right to redeem, questions of priority, the right to costs, &c.

Compare Ord. XVIII. r. 2, *ante*, p. 688.

In a suit for foreclosure under the present law the mortgagee is entitled (1) If the amount of the debt and interest is proved, admitted or agreed at the trial, to judgment for immediate payment of the whole amount: (2) If the amount is not so proved, admitted or agreed, to an account of what is due to him for principal and interest in respect thereof, and to judgment for payment of the whole amount immediately the same is certified. But in either case the judge has a discretion to allow time for payment. In the order for personal payment the costs will be limited to such as would have been incurred if the action had been brought for payment only of the debt (*Farrer v. Laay Hartland & Co.*, 31 Ch. D. 42).

ORDER LV. RULE 5B.

22. The persons to be served with the summons under the last preceding rule shall be such persons as, under the existing practice of the Chancery Division, would be the proper defendants to an action for the like relief as that specified by the summons.

As to parties, see Fisher on Mortgages, p. 811 *et seq.*; Seton, p. 1050; Daniell, pp. 1387, 1413; the general rule is that all persons who have an interest either in the right of redemption or in the security must be joined.

ORDER LV. RULE 10A.

23. Upon an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the Court or a judge may, in addition to the powers already existing,—

(a.) Order that the application shall stand over for a certain time, and that the executors, administrators, or trustees in the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings:

(b.) When necessary, to prevent proceedings by other creditors, make the usual judgment or order for administration, with a

proviso that no proceedings are to be taken under such judgment or order without leave of the judge in person.

Ord. LV.

Ord. LV. r. 10, *ante*, p. 491, authorized the Court to dispense with an order for general administration; but in the absence of such an order it was difficult to see how creditors could be bound. This sub-rule (b) removes any objection on this ground.

As to the principles which should guide the Court in deciding whether to make an order for general administration or not, see *Re Wilson*, 28 Ch. D. 457; *Re Blake*, 29 Ch. D. 913, both decided previously to the new rule.

ORDER LV. RULE 15.

24. The proviso at the end of Order LV. r. 15, is hereby annulled, and the following proviso is substituted therefor:—

Provided, that no order for general administration or for the execution of a trust, or for accounts or inquiries concerning the property of a deceased person, or other property held upon any trust, or the parties entitled thereto, shall be made except by the judge in person: Provided also that summonses under Rule 3 of this Order, the object of which is to obtain the opinion of the Court or a judge upon the construction of a document or any question of law, and any application for the appointment of a provisional liquidator, and applications for substituted service and for service out of the jurisdiction shall be brought before the judge in person.

ORDER LV. RULE 17A.

25. Any chief clerk shall have power without any transfer of the cause or matter to take any business of any other chief clerk, unless the judge to whose chambers any such chief clerk may be for the time being attached shall otherwise direct.

ORDER LV. RULE 39A.

26. Matters coming before the chief clerk shall, unless the judge otherwise directs, when ready for hearing, be entered in daily lists and taken in their order on such lists; and every matter commenced shall be continued until completion, subject to such adjournments as the chief clerk shall for good cause, and upon such terms as to costs or otherwise as he shall think fit, consider necessary.

ORDER LV. RULE 46.

27. Order LV. r. 46, shall be read as if the words "for claimants" were inserted after the word "advertisement."

ORDER LV. RULE 46A.

28. The advertisement for creditors shall be prepared and signed by the solicitor of the party prosecuting the judgment or order; and such signature shall be sufficient authority to the printer of the Gazette to insert the same.

Ord. LV.

ORDER LV. RULE 66A.

29. The certificate shall, when the judge shall so direct, be prepared by the solicitor of one of the parties, who shall obtain an appointment to settle the certificate, and shall give notice of such appointment to the other parties. No summons to settle the certificate of the chief clerk shall hereafter be issued.

ORDER LV. RULE 74.

30. Order LV. r. 74, is hereby annulled, and the following rule shall stand in lieu thereof:—

Orders made in chambers to be acted on by the paymaster-general shall, unless the judge otherwise directs, be drawn up by the registrar; but every other order made in chambers shall, unless the judge otherwise directs, be drawn up by the chief clerk, to whom, according to the distribution of business, the cause or matter in which such order is made belongs; and all orders drawn up by the registrars shall be entered in the same manner as orders made in open Court.

ORDER LV. RULE 74A.

31. In the case of orders to be drawn up by the chief clerks, as in the last preceding rule mentioned, an order signed by a chief clerk, or a note or memorandum indorsed on the summons upon which any such order is made and signed or initialled by a chief clerk, shall be sufficient evidence of the order having been made.

ORDER LVIII. RULE 15A.

32. The time for appealing against an order made on the further consideration of a cause, and on the hearing of a summons to vary the certificate on which such order is made, shall be the same as the time for appealing against the order on further consideration.

It had been decided that though an order on further consideration was a final order, and therefore appealable any time within a year, yet an order on further consideration, combined with an order on a summons to vary the chief clerk's certificate, was interlocutory, and therefore only appealable within twenty-one days (*Cummins v. Herron*, 4 Ch. D. 787; *White v. Will*, 5 Ch. D. 582). The new rule abolishes this distinction, and a year will now be allowed in each case.

[The nine following rules, numbered Ord. LIX. rr. 9—17, apply only to appeals to the Queen's Bench Division, and other inferior Courts of record of civil jurisdiction, in all proceedings other than proceedings in bankruptcy.]

ORDER LXV. RULE 6A.

42. A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction.

This rule very properly reverses the practice laid down in *Redondo v. Chaytor*, 4 Q. B. D. 453, and *Ebrard v. Gassier*, 28 Ch. D. 432. The old rule frequently worked gross injustice.

ORDER LXV. RULE 19A.

Ord. LXV.

43. The following warrants in the office of the taxing masters of the Chancery Division shall be abolished: Warrant on leaving, warrant to bring in, and warrant to tax.

This and the remaining seven rules relate to the taxation of costs, and make alterations in various important particulars.

ORDER LXV. RULE 19B.

44. Within seven days from the date of the passing of an order directing a taxation of costs, the solicitor having the conduct of the order shall leave at the office of the proper taxing master a copy of the order, and (annexed thereto) a statement containing the names and addresses of the parties appearing in person, and of the solicitors representing the several parties to the cause or matter who do not appear in person, and the names and the nature of the interest of the parties represented by each solicitor.

ORDER LXV. RULE 19C.

45. On the copy order being left a notice of an appointment to proceed with the taxation shall forthwith be issued by the taxing master to the solicitor having the conduct of the order, and a copy of such order shall be sent by post by the solicitor having the conduct of the order to the solicitors of such of the parties as the taxing master shall direct.

ORDER LXV. RULE 19D.

46. At the time mentioned in the notice the taxing master shall appoint a time within which the bills of costs (with all necessary papers and vouchers) shall be left at his office, and he shall give all requisite directions for the conduct of the taxation pursuant to Regulation (27) of this Order.

ORDER LXV. RULE 19E.

47. The taxation shall if possible be continued without interruption till completed, but if adjourned for any reason notice of the adjournment shall be sent by the taxing master by post to any solicitor not present at the time of the adjournment whose attendance he may desire at the next appointment.

ORDER LXV. RULE 19F.

48. In cases in which the solicitors leave their bills with the proper papers and vouchers and with the copy order as above mentioned, the taxing master may, if he shall think fit, forthwith issue a notice as in these rules provided, fixing a time at which the taxation shall be proceeded with.

Ord. LXV.

ORDER LXV. RULE 19g.

49. Any solicitor who shall fail to leave his bills of costs (with the necessary papers and vouchers) within the time or extended time fixed by the taxing master for that purpose, or who shall in any way delay or impede the taxation shall, unless the taxing master otherwise directs, forfeit the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation, and the taxing master may also, if he shall think fit, exercise all or any of the powers vested in him by Regulations (28) and (55) of this Order.

ORDER LXV. RULE 19H.

50. In every bill of costs the professional charges shall be entered in a separate column from the disbursements, and every column shall be cast before the bill is left for taxation.

(Signed) HALSBURY, C.
COLERIDGE, C.J.
ESHER, M.R.
JAMES HANNEN.
NATH. LINDLEY, L.J.
EDW. FRY, L.J.
C. E. POLLOCK, B.
H. MANISTY, J.

December 18, 1885.

APPENDIX.



FORM 1.

APPENDIX L. No. 29.

Consent to act.

I, *A. B.*, of _____, hereby consent to act as a trustee of the
 [*describe the instrument*].

(Signed) *A. B.*

I, *C. D.*, of _____, solicitor, hereby certify that the above-
 written signature is the signature of *A. B.*, the person mentioned in
 the above-written consent.

(Signed) *C. D.*



FORM 2.

APPENDIX K. No. 16.

Certificate of Result of Sale.

In the High Court of Justice,
 Chancery Division.

I, *A. B.*, of _____, of _____, auctioneer, the person appointed to sell
 the estate comprised in the particulars hereinafter referred to, hereby
 certify as follows :

1. I did at the time and place, in the lots and subject to the condi-
 tions specified in the said particulars and conditions of sale hereto
 annexed and marked A., put up for sale by auction the estates
 described in the said particulars.

The result of the sale is truly set forth in the bidding paper hereto
 annexed and marked B.

2. I have received the sums set forth in the fourth column of the
 schedule hereto as deposits from the respective purchasers whose
 names are set forth in the second column of the said schedule opposite
 the said sums in respect of their purchase-money, leaving the sums set
 forth in the fifth column of the said schedule due in respect thereof.

Appendix.

The Schedule above referred to.

No. of Lot.	Name of Purchaser.	Amount of Purchase-Money.	Amount of Deposit received.	Amount remaining due.

(Signed) *A. B.*,
Auctioneer.

To the best of my belief the above certificate is correct.

(Signed) *C. D.*

The solicitor for
the party having the conduct of the
above-mentioned sale.

EXAMINERS' FEES.

	£	s.	d.
1. Upon giving an appointment to take an examination	1	1	0
2. For the examiner's clerk	0	2	6
3. For each hour or part of an hour occupied in an examination within three miles from the principal entrance of the Royal Courts of Justice	0	10	6
4. For each day of six hours or part of a day occupied in an examination beyond three miles from the principal entrance of the Royal Courts of Justice.....	5	5	0
5. For the examiner's clerk, where an examination occupies more than three hours (in addition to Fee No. 2) per day	0	2	6

The party prosecuting the order, or his solicitor, shall also pay all reasonable travelling and other expenses, including charges for the room (other than the examiner's chambers) where the examination is taken.

NOTE.—The fees, Nos. 1 and 2, shall be paid by the party prosecuting the order, or his solicitor, at the time of obtaining the appointment, and may be retained by the examiner and his clerk, respectively, whether the examination is taken or not. The other fees shall be paid so soon as the examination has been concluded, together with any travelling or other expenses as above mentioned.

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